



HOUSE OF LORDS

Revised transcript of evidence taken before

The Select Committee on Secondary Legislation Scrutiny

Inquiry on

THE GOVERNMENT'S NEW APPROACH TO CONSULTATIONS

Evidence Session No. 1

Heard in Public

Questions 1 - 9

TUESDAY 11 DECEMBER 2012

3.45 pm

Witness: Rt Hon Oliver Letwin MP

Members present

Lord Goodlad (Chairman)
Lord Bichard
Lord Eames
Baroness Eaton
Lord Hart of Chilton
Lord Methuen
Baroness Morris of Yardley
Lord Norton of Louth
Lord Scott of Foscote

Examination of Witness

Rt Hon Oliver Letwin MP, Minister for Government Policy, Cabinet Office.

Q1 The Chairman: Minister, can I formally welcome you on behalf of the Committee? It is extremely good of you to make time to come. This is a formal evidence-taking session, on the record and being webcast live. A verbatim note is being taken which will be put on the public record in printed form and on the parliamentary website. Of course, you will be sent a copy of the transcript for amendment of any errors. We would like, as you know, to ask about the Government's new policy on consultations as announced in your Statement to Parliament on 17 July. Perhaps, if it would suit you, you might like to explain the reasons for issuing the Statement on 17 July of *Consultation Principles* to modify the previous practice.

Oliver Letwin MP: Thank you, yes. I am very glad to have this opportunity to speak to the Committee. Can I say before I go on, for reasons that I shall come to, that I think that this is work in progress and that we are going to conduct our own review of all these things come next summer a year on? If the Committee were willing, I would be delighted to come back at that stage and have further discussions. I do not think that any of us is yet at the end of this process. The reason why we were keen to issue some new principles is that we were very strongly of the sense that departments had got into a sort of rigmarole of doing things without particularly thinking about why they were doing what they were doing when it came

it came to consultation. I do not mean to say that this was universal, but there was a tendency of that kind. The overriding purpose of the new principles is to persuade departments to think about what they are trying to achieve and how they are trying to achieve it and to match the one to the other. That is why the most important principle by far in the document is that of proportionality. What we are really trying to get at here is neither more nor less but rather a proportional approach, which means doing a kind of consultation that relates in the right way to what you are consulting about and the people that you are consulting in order to invoke the kind of response which will be useful. Obviously, I am sure that in the course of your questions and points and my responses we will discuss this more, but perhaps I could just quickly sketch what I think is the essence of our idea of proportionality, but this is, as I say, work in progress and we are going to need to look at how departments have interpreted it. I think that it is extraordinarily important that when policy is being formulated, and long before people get to a stage of issuing a document with a proposition in it, we should facilitate discussions of a sensible kind with people that know about the subject in question. This is for the self-interest of government to get better done; there are very frequently all sorts of experts out there; and people have kinds of knowledge that the Government cannot directly have. In my experience of the past two years, the most useful kind of conversations with the outside world go on before you can get to the proposition itself. So, for example, let us take the case of the red tape challenge, where we are going through looking at the whole mass of regulation that the Government have on their books, trying to get a sense of what we do not need and what it would be advantageous to remove. Rather than just doing it, we have gone to quite considerable lengths to gather panels of people who are in each particular field to hear from them about their experiences on the ground. We have opened up all sorts of channels of communication, digital or otherwise, to try to gather real experience from people who have

it, and we have gone out and proactively started talking to groups of people who could be expected to have views, long before we get to a proposition. I think that that is an enormously important part of all this, because there is a danger otherwise that that the consultation is seen as something which is, so to speak, just the formal side of consultation that happens after you have formulated a proposition. Nevertheless, it is obviously very important that, once you have formulated a proposition, there is a process of consultation that is appropriate. Here, I would distinguish, in trying to get at an idea of proportionality, between two kinds of things, one of which is a view and the other an interest or a right or an effect. Almost everything that government does either is or could be controversial and people have views about it. In a democracy, it is very important that they should have the liberty to have to express these and Parliament is here to reflect that in debates and so on. But I do not think that the main purpose of the formal consultative process should be to collect views—those are going to happen anyway in one way or another. It seems to me that the main purpose, once you have formulated the proposition of going through the process of formal consultation, should be to ensure that where the proposal has, or might have, a specific kind of impact on specific groups of people whose rights or interests are therefore affected, they should have a proper means of telling government about that so that government does not wander into having effects on people that it is not aware of. It may of course judge that those effects are tolerable even if the people themselves think that they are not, but it ought to do that reasonably and weigh that up. It seems to me that that leads one into a pattern of thought that there are various kinds of things which would argue for longer, more proactive and more profound consultations and various kinds of things leading in the opposite direction. Where the effect is small and relatively uncontroversial, and the change is relatively technical, it seems to me that there is less reason for consulting. Where the change will be brought about ultimately by primary legislation and therefore would be

debated in the two Houses of Parliament, and people have plenty of opportunity to organise lobby groups and get members of the Opposition or others to raise issues, there is much less reason to concern oneself. Where the thing in question is to be done administratively or through secondary legislation, there seems to be a much stronger case for more consultation, particularly where it affects vulnerable groups. You will have noticed that we have specifically said that we will stick by the compact with the voluntary sector—that is just one example of a group of vulnerable groups. So it seems to me that the overall architecture that we are trying to create here is one of proportionality and proactive intelligence rather following rigmarole. It puts a lot of emphasis on getting hold of real information early, before you are formulating policy, rather than concentrating just on the formal process. So far as the formal process is concerned, it tries to emphasise the need to expect whether this is a case in which there will be ample opportunities for individual effects and effects on people's rights and interests to be debated and, where not, then it encourages longer, deeper, more proactive consultation. That is the sort of framework of thought here.

Q2 Lord Hart of Chilton: I am a great enthusiast for consultation and I think that you would have been helped as a coalition if you had carried it out in relation to your programme of constitutional reform, but that is by the by. The 2008 code was the subject of extensive consultation and we have carried out a little exercise of consultation on our own—you have probably seen the results of that; we had about 77 responses to it. One of them, which was from the Chemical Business Association, said that it had seen no evidence of the Cabinet Office seeking views on its proposed changes to the 2008 code. I just wondered why you chose, because I think that you must have chosen, not to consult before introducing the new approach. My question is to find out why you decided not to consult on consultation.

Oliver Letwin MP: The reason why we decided to proceed with the new principles rather than consult on them is that we felt that we would ultimately know whether they were good only something like a year in or after six months. We think that it is sensible to see what the reaction of the department is, to see how people receive the effects of the reaction and then to judge whether we need to adjust it. Certainly, I have no personal anxiety to avoid a consultation at that stage about the process of consultation, although there is an element of regress there. But the main thing is for all of us to be able to look at what has happened and judge whether it seems to be going well or badly. I do not think that, in advance, you can terribly much tell whether it will perfectly work—we have tried to do a sensible job; we have set up a principle—but how that principle gets interpreted is all, and that will come out in the practice.

Lord Hart of Chilton: I do not know whether you have had a chance to look at the 77 responses that we have had. When you do have a chance, you will see that some of them raise some pretty significant points on all the principles that you have brought forward. I would have thought that it would have helped if you had had a chance to get, for example, the benefit that we have had of 77 responses before launching into the first stage of this.

Oliver Letwin MP: One can do things in various ways. I have not read all the responses; I have read perhaps less than a quarter of them. I chose particularly those from very significant organisations. They do have important things to say. Whether they turn out to be right, we shall see. We should certainly pay attention to those and to anything that this Committee or others say as we go through the work. Then we need to look at the whole thing and see whether people's fears are well grounded, if they have them, and then make a judgment if so. This is by no means the last stab that we can ever make at this; it can be changed quite easily.

Q3 Lord Methuen: Some of our respondees to our requests for evidence suggested that there was just too much legislation and secondary legislation going through, which was overloading them in their task of looking at all these consultations. I think that the points have been made in the evidence that we have seen that an awful lot of people are worried that the consultations that you are going to get will not stick at the 12 weeks and will slowly trickle down to something much lower. There seems to be a real concern that there will not be enough time for the various people to consult people within their organisation.

Oliver Letwin MP: I share the view that there is a sort of overload for many, including us. One of the things that we are trying to do is reduce that by reducing the amount of legislation and regulation on the statute book in order precisely to get to the point where we all have a clearer view and are not taking on so much. However, there is obviously a lot going on. Even the deregulatory measures, which remove things from the statute book, also create a need for people to consider. I do see that it matters that people should have the time to be able to organise and to respond. I will be very happy to send the Committee the data behind this, but the figures show that, in the six months before the principles were issued, there was an average of 10.5 weeks of consultation and that in the period since they have been issued, the average has been about 8.5 weeks, so there has been a diminution but not a very marked one. What matters much more than simply the time is whether the time is proportionate to the thing in question. One of the things that have happened, as you will see if I send your Lordships the graph, is that the graph has extended at both ends. So you have consultation from the MoD which is 23 weeks and others which are very short, in place of a mass at 12. That is perfectly sensible, because some things take a lot longer to deal with than others. But I do not think that it is just a question of time; it is also a question of how proactive departments are being in making sure that the people that they are going to, the people that they are notifying, the way that they are notifying them and the method that

they are using for reaching them are appropriate. If you are legislating in a way that particularly affects blind people, you ought to be jolly careful that what you produce is in Braille. If you are going out to people in a particular part of the country, you need to make sure that the method of communication that you are using is one that you be can sure they will be able to get if they do not have very good access to the internet. Although we go digital by default, that does not mean that we should ignore the fact that this particular group of people may not have access to the internet and so on. It is important not to be fetishistic about the time and concentrate instead on whether each of the consultations that has been issued in the past N months since the principles came out has been done in a way which is appropriate to that issue and gives decent time and decent opportunity to people who need to comment on it to comment on it.

Q4 Lord Bichard: It is interesting that the 2008 code of practice says that consultation responses should be analysed carefully and that clear feedback should be provided. I have to say, having been a civil servant and chaired an NDPB, that that was always regarded as rather burdensome. There is nothing at all in the guidance about that. There is a heading, “Transparency and feedback”, but no commitment to post-consultation and feedback. Do you think that that is a good idea? There is also no specific mention in the guidance of the need to avoid consultation at times that are inconvenient for consultees. Again, having had experience on both sides, I have frequently had to persuade civil servants that sending something out just before the summer holiday or just before Christmas was a touch sneaky. Now, it could well be, surely, that we are going to see quite a lot more of that happening—even one or two Ministers rather like to have these things sent out at times like that. All these specific pieces of guidance, which I think are really important, have just been omitted.

Oliver Letwin MP: First, let me deal with the question—I realise that I am dealing with a distinguished former civil servant—of transparency and feedback. On the bottom of the

second and the beginning of the third page of the new principles, we go specifically into that. The first point there made is very important, which is that, in order to get sensible feedback, you need to avoid “creating unrealistic expectations” and to make clear what the consultation is actually about so that people know what we are asking about and what we are not asking about. Then it goes into the need to give them sufficient information so that they can make the point, which was also in the earlier code, and to make it clear, at least in broad terms, how departments have taken previous feedback into consideration. We have certainly tried to arrange things so that departments are conscious that they need to elicit feedback. If you are talking about the analysis of the feedback, it is probably true that we should say more about that in any revised code. We certainly expect that departments will analyse what they receive; there is no point in doing a consultation if not. I think that you will find that in each case—certainly, in all the cases that I have come across in the past six months; well, in fact, the past two years—of a piece of advice from the Civil Service about a consultation and its response, it does analyse what has been said. That is obviously very important.

Lord Bichard: Should not that analysis be put into the public domain as well? There is nothing more irritating when chairing a voluntary organisation, for example, than to be asked your views and then never to know what others have said, and what has happened to your views. That undermines the whole credibility of the consultation process. It is not just analysing it within the department; it is making it available in the public domain.

Oliver Letwin MP: Yes, I think that it should be. I am sorry that I was unclear. What I mean is that in the published responses to the consultation, my experience is that it continues to be the case, rightly, that departments explain what they have evoked by way of response and how we are responding in the light of that.

Lord Bichard: Would you be likely to include that specific expectation in future guidance?

Oliver Letwin MP: Yes, it would be very reasonable to do so.

Lord Bichard: And would you also include some specific guidance about avoiding inconvenient times?

Oliver Letwin MP: Sorry, that was your second point. Yes.

Lord Bichard: The only reference in the guidance at the moment is to national and local elections, where different rules apply. There is nothing explicit in this guidance suggesting that it would not be a good idea to send something out on Christmas Eve.

Oliver Letwin MP: Yes, I shall look for something in a moment, but we are certainly clear that the department should take that into account. If we look at the periods listed for each consultation that has been issued in the past six months, some of them are 13 or 15 weeks, for example. In some cases, that is precisely because they were over a summer period, which is a very reasonable way to act. Let me just try and find—if you could direct me to—the bit where we talk about the elections, as it is just around there.

Lord Bichard: I think that is under “Timing of consultation”.

Oliver Letwin MP: Yes. Here we are: it says that “Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time”. That very clearly demands of the department that if it is doing it over Christmas, it is not allowing stakeholders sufficient time to provide a considered response if it assumes that they will be working on Christmas Day. If you would like us to spell that out, I see no objection to doing so.

Lord Bichard: Minister, I do not doubt your good intent but there are some civil servants out there who do not always operate according to Ministers’ good intent. Many people would see this as a Civil Service charter for sometimes avoiding proper consultation.

Oliver Letwin MP: I have to say that I do not think that one could decently do that as a civil servant if one is asked to be proportionate and realistic and give stakeholders sufficient time. If one said to his Minister, “We will allow sufficient time for them to make a considered response and that will be on Christmas Eve”, that would not be a rational response. I am

perfectly prepared to talk about the possibility in the next emission of this of specifying a bit more. It is dangerous to specify too much more because you then get back to the point where the officials might believe—indeed, Ministers might believe—that just sticking by the letter of the law was enough. The intent of this short document on principles is to get departments to think, and to do so in the right spirit. So the right spirit should be that, if there is going to be a difficulty in people responding, whether because it is over Christmas, in August, or for some quite other reason specific to them, we should allow for that. The way to get the machine to be responsive to the point you are rightly making is to make sure that people do not feel that they can hide behind, “Well, I did it according to the book”. We need to hold them to account as to whether they are doing it in the right spirit.

Q5 Lord Eames: Minister, in a sense, my question has been touched on three times in what we have been saying today, but can I press you? It is the question of hard-to-reach groups. This becomes particularly serious with disabled persons. Now, the criticism has been made that the question of a shorter-term consultation is going to make it very difficult for some groups, particularly those who are going to demand particular facilities and so on, to respond. Could you say something more and, in a sense, convince me and others that you have taken this on board? It would be devastating were the criticism to be made, particularly in the case of disabled people, that fairness had gone out the window.

Oliver Letwin MP: I entirely agree with that. The first thing to say is that the whole document is put in terms that specifically try to direct Whitehall to imagining the requirements of the people whom it is consulting, or needs to be consulting, and then to formulate a method of consultation that gets to them and gets answers from them. If we have not conveyed that image, we have failed in the drafting, but that is the intent of the whole document. Secondly, very specifically, we say at the bottom of page 1 that, “longer and more detailed consultation will be needed in situations where smaller, more vulnerable

organisations ... could be affected". Thirdly, we then specify very precisely that the compact with the voluntary sector will be observed, and not all, but the overwhelming majority, of the groups that you are talking about would be voluntary sector groups of one kind or another—I suppose that some might be private companies, but in very limited circumstances. We have tried by three methods: the whole tenor of the document, the specific reference to the vulnerable and the locking-in of the compact, to avoid the slightest suggestion that we are diminishing the amount of attention that departments need to pay, and they do need to pay, to making sure that if what they are doing affects the rights and interests of vulnerable groups they need to get through to them.

Lord Eames: I understand that, but it is a dangerous path to go down whereby, by exception to certain groups, you are going to endanger the credibility of the process for others.

Oliver Letwin MP: No, I do not agree in the sense that it seems to me that we should give very specific attention to those groups that will have particular kinds of difficulty. If you are engaged in a proposition the main effect of which will be on big business, so that the main recipients of the consultation and the main people who you want to hear from are the CBI, the engineering federation and the big employers, they are pretty well organised and they know what is going on in government and there is every reason why you should expect them to mobilise pretty quickly and give you an answer. If you are going out to groups of people who meet infrequently and have some difficulty in finding out what is going on and need a lot of internal communication which is not organised in a highly office-bound, bureaucratic way, you ought to take longer. It is exactly this sort of differentiation that we are trying to achieve with these principles, rather than just have a rule that you always take N weeks. If the whole exercise succeeds, it will succeed because Whitehall gets the idea, but sometimes you need a really quite long and proactive process of sending people out, or

sending out to intermediaries who will send people out. It is not enough necessarily just to have a period. It has to be focused on those who are hard to reach. It is not dangerous to distinguish; it is important to distinguish.

Q6 Baroness Morris of Yardley: I can see the advantage of what you are trying to do. It is an interesting concept. As with most things, the difficulty comes in the detail. I suspect that I might be picking up a few of the points that have been made by Lord Bichard but perhaps I can explore them again. Part of the problem with the issue of discretion is on the government side. What consultees had before was certainty and consistency: they knew that the consultation was 12 weeks long. Many of them are voluntary organisations; all of them are busy people. Often consultations are not predictable at certain times of the year; they come from all over the place. At least they knew where they stood. If there was a consultation, there was roughly a similar amount of time. One of the issues here, which has come through in what you have said, is that all the decisions about how the discretion should be exercised are taken by departments and not by those who are being consulted. I think that is why we have got responses in our consultation because they are not part of that discretion. They see it as inconsistency; you see it as discretion. The question that I am asking you is: is that not a problem, that it is almost a system set up for the benefit of the civil servants so they can exercise discretion? It takes away from the consultees. It might be a bit long and a bit inconvenient for the Government, but at least it is consistent and predictable.

Oliver Letwin MP: I do see your point about consistency. That is one reason why we have locked in the 12-week compact for the voluntary bodies, because they are geared up for these kinds of things and it is useful for them to know that if we are issuing something that has a direct effect on the voluntary sector, we will give them the 12 weeks to answer. We try to build it in where it is necessary. Let me give you two instances of recent consultations.

We changed the name of the Bedfordshire and Luton Combined Fire Authority to the Bedfordshire fire authority, and we changed the code of practice on noise from ice cream vans. In the first case, the department chose a four-week period; in the second, a 12-week period was chosen. I suppose you could describe that as inconsistent: they are different periods. But it seems to me that noise from ice cream van chimes is the sort of thing that affects quite a lot of people. I am not saying it is the most important thing in the world but nevertheless, Lady Morris, when you were a constituency MP—and the Chairman when he was an MP—would entirely recognise that quite a lot of constituents have views about that so you need to get out to quite a large population. But changing the name of the Bedfordshire and Luton Combined Fire Authority to the Bedfordshire fire authority, frankly, I really do not think needs an enormously long period for those who are interested.

Now, whether that judgment is right or wrong, I do not know, but it seems to me that it is a matter of judgment and I accept entirely that we must not allow this to become—not least in the interests of the Government—a matter of convenience. That is the very opposite of what we are trying to achieve. We are trying to achieve a change from a rulebook to a spirit. If at the end of the year we find that people are using this to be convenient for themselves, it would not be fulfilling the purpose. If we find that they are being proportionate, it would.

Baroness Morris of Yardley: I can quite see that one did not need 12 weeks to discuss the name change but I am not sure much damage is caused by having 12 weeks. That is the trade-off. The world would not fall in and I am not sure that the organisation lost out by not taking eight weeks longer to get its name changed. I have two more questions on the same thing. I think it is the tone of the Government—you will correct me if I am wrong—that you are asking each department to exercise discretion and they will do that in their own way. What are you doing to make sure that there is at least some consistency across

departments? Otherwise, that will double the difficulty for people predicting what consultations are going to be like.

Oliver Letwin MP: May I come back to your first point in a moment? On your second point, I agree with you. Come July, we will do a full review of the whole thing and see whether different departments are doing quite different things and which of them seem to be living in the spirit of this thing and which are not, and go back to them either with a revised document or for further discussion—or indeed congratulate them if they are all performing as we have hoped. As I say, particularly in relation to secondary legislation, we will take extremely seriously what this Committee says if we are to review things at that stage.

On the question of not losing out if it is four or 12 weeks, you are of course right that there was no enormous loss to humanity in this particular case, but there is a real problem here quite apart from this question of consultation—which I am sure your Government wrestled with and we are wrestling with—which is that is one part of a large number of processes that, quite rightly, come one after another, each one of which is of real importance. If each one of them is at the maximum length, as a sort of rulebook, even when it does not make any sense for it to be long, you end up with everything taking an extraordinarily long time to achieve and that in itself has huge disadvantages.

What we are trying to do is get to the point where, if things can be achieved, they are achieved quickly. In many of these cases, we are dealing with something that will pass through the stages of legislation, implementation, planning and judicial review. With a big infrastructure project, for example, there are loads of stages. If each one of them is, as they have been over the years—this goes back for 50 or 100 years—locked in increasingly to periods, if you add them all up, you end up taking forever to do things that you could do much more quickly. You lose the sense of a difference between the things that you really do

need to take time over—people have to have the chance to make serious representations if their interests are affected at planning inquiries, or whatever—and those things over which you really do not need to take a long time. We are trying to achieve a shift—and this is the point that the Prime Minister was trying to make in his speech to the CBI—to a sense of urgently getting on with that which can be got on with urgently, taking into account what we need to take into account, focusing on being intelligent on how we find things out, so that we do not just treat time as if it were the only way in which to do things, and not sticking to a rulebook but trying, in the spirit of it, to find out where people's interests are affected.

Baroness Morris of Yardley: The valuation that you are going to do is clearly a good thing. Every time that you have referred to it so far, you have talked about talking to the departments about how it has gone for them. Could you just say a bit about how you are going to evaluate this initiative in terms of those who are being consulted?

Oliver Letwin MP: That is a very good point. It makes abundant sense at that stage to do what you have done, and to ask people to comment.

Q7 Lord Scott of Foscote: Mr Letwin, in your letter to the Chairman on what looks like 15 October, although it might be 18 October—I find the number a little difficult to read.

Oliver Letwin MP: My handwriting is notorious.

Lord Scott of Foscote: You refer in your example—and I imagine that it was probably the best example that you could think of—to a case where unnecessary consultation had taken place, in relation to the abolition of British Shipbuilders. You say that the new constitutional principles would put a stop to disproportionate consultation, such as the one on British Shipbuilders Corporation, a shell company, and so on, whose abolition was consulted on for 12 weeks. The power to abolish companies and organisations starts with Section 1 of the Public Bodies Act 2011, which was a coalition government measure, and provided in Section 10 that there had to be consultation before the exercise of the power. Section 11(3) states

that the proposal for abolition could not be acted on until at least 12 weeks had expired since the commencement of the coalition. How do your new consultation principles apply to that, without the amendment of the Act? Are you proposing to amend the Act?

Oliver Letwin MP: We are going through a process of asking departments to come forward with examples where they are currently constrained by legislation to engage in consultation of type X or type Y, not where that makes abundant sense but when it seems not to make sense. I cannot immediately recall, but I think that four or five departments have responded so far. Evidently, if we were to make changes to primary legislation, we would need to go through that process and satisfy people that it was sensible to do so. But we have every intention of doing so in cases where we think that it is right.

Lord Scott of Foscote: Is that in your legislative programme?

Oliver Letwin MP: I must be very careful not to prejudge the parliamentary business Committee, but there is every intention to bring forward a deregulatory Bill which will, among other things, do that.

Lord Scott of Foscote: This is an example, but there may be others, where the requirement for a 12-week consultation period derives not from any guidelines that the Minister has put in place but from Parliament itself.

Oliver Letwin MP: Yes. I would have to take advice on whether, as a matter of fact, the British Shipbuilders Corporation is or is not covered by the Public Bodies Act. As a very distinguished judge, I assume that you will have got this entirely right.

Lord Scott of Foscote: It is—I looked it up. There is a schedule which lists the companies covered, and in that schedule is British Shipbuilders and its subsidiaries.

Oliver Letwin MP: In that case, the rest of what you say is right, and it would require primary legislation. Therefore, we would have to come forward with that as part of this strategy.

Lord Scott of Foscote: At the moment, is that the firm intention of government?

Oliver Letwin MP: Oh, yes, it is a firm intention of the Government, but the scope of it and the exact things that we seek to change are still under discussion.

Lord Scott of Foscote: But the removal of the 12-week requirement of the Public Bodies Act—

Oliver Letwin MP: Not in general, but if we can find a way of changing specific legislative requirements so that we reflect the principle of proportionality in those, then we will do so.

Lord Scott of Foscote: I suppose you can have a statutory amendment to introduce the principle of proportionality that is being introduced into the rules which are not covered by statute.

Oliver Letwin MP: Yes.

Q8 Lord Norton of Louth: I was going to ask about monitoring what is happening under the new code, but you have already answered—that you are indeed monitoring and going to review it. Could I come back really to basics, on the actual mischief that has been addressed by the change, because I am still not clear what it is? If you look at the data before the new code was introduced, we have data that shows that quite a number of consultations were not of 12 weeks, and you have already mentioned this afternoon data for the past six months on what the average is. I am not quite sure why one needs to make the change and, if one did, why one is doing it this way round, where you introduce this flexibility for departments where the departments themselves are deciding what is appropriate—which creates problems of its own—without putting in place improved mechanisms for alerting people to consultations. That is clearly the important point: people need to know that there is a consultation if they are going to make a submission to it. You have referred to departments knowing who the people are that you want to hear from. Well, who you want to hear from may not include those who may have something to contribute to the

consultation, so there might be people that you do not want to hear from but they have got something to contribute. I am not clear that you have got the mechanisms in place for reaching out to them. Certainly, some of the evidence that has been submitted shows that you still have a long way to go before the digital by default can become a reality. You need a digital infrastructure for that to be implemented, so it may be that you are rushing ahead too much before you have actually got in place changes that I would have regarded as a prerequisite for giving departments that flexibility. It might be different if someone else is making the decision about the length, but if you are going to give departments that flexibility perhaps you need other changes as well.

Oliver Letwin MP: The first thing I would say is that departments have always had flexibility to make judgments. That is indeed why, just as you say, it was not an absolutely ineluctable rule that everything was 12 weeks. I have here—probably the Committee has its own—a spread diagram, and the red blobs or bar charts are what the spread used to be. What you see from that is that, in the six months before the new set of principles came in, 95 consultations out of roughly speaking twice that number were 12 weeks, and then you get a few of various kinds around. So there was already a degree of discretion. What we have done, and you can see that from the spread again, is we have tried to get out of the idea that 12 weeks is kind of the norm—a default—and into the idea that people should think about what is actually appropriate to each case. It is not that there is more discretion, but there is more incentive, if you like—more requirement—to think for themselves about what is appropriate to each case. Then we come to the question “Are we are doing enough to make sure that when people do consultations, of whatever length it is, they alert the people that need to be alerted?”, which is your point.

We say very specifically on page 2: “Policy makers should think carefully about who needs to be consulted and ensure the consultation captures the full range of stakeholders affected.

Information should be disseminated and presented in a way likely to be accessible and useful to the stakeholders with a substantial interest in the subject matter". We are trying to capture exactly the point that I think that you are raising. If you are raising the further question of whether the methods that government has used all the way through many years are perfect for reaching all the people that need to be reached, the answer is undoubtedly not, and we need to seek continuous improvement in that. We are taking many more proactive steps than used to be the case, partly because of new technology, to reach more people. In addition, and crucially, we have spent much more effort, and I think that we should spend more effort yet, on making sure that we reach people before we come to a proposition. Very often, that is the most effective way. I think that it was Lord Woolf who observed in a case that, for the consultation to be proper, it needs to affect, or could affect, the decisions that are made. Very often, that is better done—it is not the only time that it needs to be done—if it can be done earlier. So I think that great attention needs to be focused on proactively finding out what people who are going to be expert or are going to be affected might think before you come up with a proposition.

Lord Norton of Louth: Can I ask a supplementary to the point that you made to get to the heart of one of the things that I was touching on, which is not to do with length per se? Do you see these as stakeholder consultations or public consultations?

Oliver Letwin MP: I think both. I see the formal process of consultation, the after-the-proposition part of it, as being directed primarily at those whose interests and rights might be affected by what is being done, as opposed to those who may have views about it. Now, stakeholders could be of either kind. They could have a stake because they have views, or they could have a stake because they have rights and interests. To the extent that they are stakeholders who have rights and interests, we are aiming particularly at them. But you never quite know whose rights and interests might be affected, therefore it is important also

that the thing be public enough so that people who you did not know were going to be affected can come up and say, "I'm going to be affected". That might be a piece of information which, even after you have put the proposition, is material to whether you proceed with it in quite the way that you had in mind.

Lord Norton of Louth: That would satisfy the point that I am getting at: that is, reaching them in time for them to make a meaningful contribution.

Oliver Letwin MP: That is important.

Q9 The Chairman: Minister, thank you very much indeed for joining us. You have been most generous not just with your time but in sharing—

Lord Bichard: Lord Chairman, just a supplementary. You have mentioned several times, and we have, too, the evaluation that you are going to carry out. Might this be an evaluation which you would ask an independent group to carry out on your behalf?

Oliver Letwin MP: That is a very interesting idea. I cannot speak without consulting my colleagues, but I will certainly take that suggestion back. I think that it is a very interesting one. If the Committee were to suggest how that might be structured, I would certainly want to consider it.

The Chairman: You have been most generous in discussing our concerns and thoughts, and we will be producing a report which, of course, you will see. In the mean time, thank you very much.

Oliver Letwin MP: Thank you. May I repeat that I would be delighted to come back at a later stage if you wanted it?