



SELECT COMMITTEE ON THE CONSTITUTION

The office of Lord Chancellor

CALL FOR EVIDENCE

The House of Lords Select Committee on the Constitution, chaired by Lord Lang of Monkton, is beginning an inquiry into the office of Lord Chancellor. The committee invites interested organisations and individuals to submit written evidence to the inquiry.

Written evidence is sought by 29 August 2014. Public hearings are expected to be held in July and early October 2014. The committee aims to report to the House in autumn 2014. The report will receive a response from the Government and is expected to be debated in the House of Lords.

The office of Lord Chancellor has existed in some form since the 11th century, if not before.¹ Reforms announced in 2003 and legislated for in the Constitutional Reform Act (CRA) 2005 changed the role significantly, so that the Lord Chancellor is no longer the head of the judiciary nor the presiding officer of the House of Lords. However, the Lord Chancellor retains a role in judicial appointments and has statutory duties to uphold judicial independence and the rule of law.

Since the creation of the Ministry of Justice in 2007 Lord Chancellors have also been Secretaries of State for Justice. In 2008 the Constitution Committee concluded that the two roles should continue to be combined and that “Lord Chancellors in the future, with their responsibilities for the rule of law and the judiciary, should continue to have the authority necessary to fulfil their duties”.² Six years later, and approaching ten years on from the CRA, the new inquiry revisits the office of Lord Chancellor. The committee seeks clarity on what the current role is, whether changes to it are needed and what criteria (if any) should apply when appointing future holders of the office.

First, the committee will explore what the role and responsibilities of the Lord Chancellor are, as distinct from those of the Secretary of State for Justice. With the establishment of the Judicial Appointments Commission and the Judicial Appointments and Conduct Ombudsman, and with the Lord Chief Justice now the head of the judiciary, we are interested in the extent to which real powers are still wielded by the Lord Chancellor. The committee is interested in the combined roles of Lord Chancellor and Secretary of State for Justice and the advantages and disadvantages of that combination. It has recently been described as creating an inherent conflict in some policy areas,³ but can also be viewed as adding weight to the position.

¹ Nicholas Underhill, *The Lord Chancellor* (1978).

² Constitution Committee, *Relations between the executive, the judiciary and Parliament: Follow-up Report* (11th report, 2007–08, HL Paper 177), paragraph 17.

³ Notably judicial review: see Joint Committee on Human Rights, *The implications for access to justice of the Government's proposals to reform judicial review* (13th report, 2013–14, HL Paper 174, HC 868), paragraph 23.



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The committee will consider the criteria for appointment as Lord Chancellor. Comments are invited on the effectiveness of the current criteria (in section 2 of the CRA). Two criteria that were emphasised following the changes to the office were that the Lord Chancellor should be a lawyer and should be towards the end of his or her political career, although neither is specified in the CRA.

Finally, the committee will explore whether further reforms to the office are desirable, including whether it is still necessary to have a Lord Chancellor. It may be that the extant functions could be divided between other posts. Or it may be that the office remains a vital part of the relationship between the executive, Parliament and the judiciary.

The committee would welcome written submissions on any aspect of this topic, and particularly on the following questions:

The office of Lord Chancellor

1. What are the current functions of the Lord Chancellor, as distinct from those of the Secretary of State for Justice?
2. To what extent are those functions genuine powers, and to what extent are they nominal powers?
3. How in practice does the Lord Chancellor uphold the rule of law and judicial independence?

The combination of the office with Secretary of State for Justice

4. Are the offices of Lord Chancellor and Secretary of State for Justice best performed by the same person?
5. Can judicial independence and the rule of law be defended in Cabinet by a minister responsible for wider departmental policies and budgets, which may point to different priorities? Is an independent voice required?

Criteria for appointment as Lord Chancellor

6. How effective have the criteria for appointment as Lord Chancellor in section 2 of the Constitutional Reform Act 2005 been? What does it mean for an appointee to be “qualified by experience”?
7. Should there be statutory criteria for the appointment?
8. What are the advantages and disadvantages of the office of Lord Chancellor being held by a lawyer?
9. Should the Lord Chancellor be someone who when appointed does not seek further ministerial advancement? Should he or she be a member of the House of Lords?

The future of the office

10. Should there be a Lord Chancellor? If so, what should be his or her functions? If not, who should perform those functions?



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You need not address all the questions. The committee would welcome other relevant views of which you think the committee should be aware.

This inquiry will focus on the office itself rather than current or former office-holders. Submissions are invited on the constitutional aspects of the office; personal comments should be avoided.

July 2014



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ANNEX: GUIDANCE FOR SUBMISSIONS

Written evidence must be submitted online via the committee's The office of Lord Chancellor inquiry page <http://www.parliament.uk/office-of-lord-chancellor>. Please do not submit PDFs (if you do not have access to Microsoft Word you may submit in another editable electronic form). If you cannot submit evidence online, please contact the committee staff.

The deadline for written evidence is **29 August 2014**.

Concise submissions of no more than 25MB/six pages are preferred. A submission longer than six pages should include a one-page summary. Paragraphs should be numbered. Submissions should be dated, with a note of the author's name, and of whether the author is making the submission on an individual or a corporate basis. All submissions submitted online will be acknowledged automatically.

Personal contact details supplied to the committee will be removed from submissions before publication but will be retained by the committee staff for specific purposes relating to the committee's work, such as seeking additional information.

Submissions become the property of the committee which will decide whether to accept them as evidence. Evidence may be published by the committee at any stage. It will appear on the committee's website and be deposited in the Parliamentary Archives. Once you have received acknowledgement that your submission has been accepted as evidence you may publicise or publish it yourself, but in doing so you must indicate that it was prepared for the committee. If you publish your evidence separately you should be aware that you will be legally responsible for its content.

You should not comment on individual cases currently before a court of law, or matters in respect of which court proceedings are imminent. If you anticipate such issues arising, you should discuss with the clerk of the committee how this might affect your submission.

Certain individuals and organisations may be invited to appear in person before the committee to give oral evidence. Oral evidence is usually given in public at Westminster and broadcast in audio and online. Persons invited to give oral evidence will be notified separately of the procedure to be followed and the topics likely to be discussed.

Substantive communications to the committee about the inquiry should be addressed through the clerk or the chairman of the committee, whether or not they are intended to constitute formal evidence to the committee.

This is a public call for evidence. Please bring it to the attention of other groups and individuals who may not have received a copy direct.

You may follow the progress of the inquiry at:

<http://www.parliament.uk/office-of-lord-chancellor>

To contact the committee staff please email constitution@parliament.uk