



JOINT COMMITTEE ON THE DRAFT CONSTITUTIONAL RENEWAL BILL



CALL FOR EVIDENCE

The two Houses of Parliament have established a Joint Committee to examine and report on the Government's Draft Constitutional Renewal Bill (Cm 7342) published on 25 March 2008. The committee has been ordered to report by 18 July.

Membership

The members of the Committee are:

Lords Members:

Lord Armstrong of Ilminster
Lord Campbell of Alloway
Lord Fraser of Carmyllie
Baroness Gibson of Market Rasen
Lord Hart of Chilton
Lord Maclellan of Rogart
Lord Morgan
Lord Norton of Louth
Lord Plant of Highfield
Lord Tyler
Lord Williamson of Horton

Commons Members:

Mr Alistair Carmichael MP
Christopher Chope MP
Michael Jabez Foster MP
Mark Lazarowicz MP
Martin Linton MP
Ian Lucas MP
Fiona Mactaggart MP
Mr Virendra Sharma MP
Emily Thornberry MP
Mr Andrew Tyrie MP
Sir George Young MP

At its first meeting on 7 May the Committee elected Michael Jabez Foster MP as Chairman.

Members' declared interests are available on the Committee's website:
www.parliament.uk/parliamentary_committees/jcdcrb.cfm

The Committee expects to take oral evidence up to mid-June. The programme for these evidence sessions will be announced as soon as possible. It is likely that the Committee will meet on Tuesdays at 1.30pm and Wednesdays at 4pm to hear evidence.

The Joint Committee invites interested organisations and individuals to submit written evidence. Those submitting evidence should read the guidance set out at the end of this notice and evidence should reach the Committee as soon as possible and **no later than 12 June**. Evidence received after this date will be recorded but we cannot guarantee it will form part of the Committee's consideration.

SCOPE OF THE COMMITTEE'S INQUIRY

Overarching questions:

1. How do the proposals set out in the Draft Bill and White Paper fit into the wider constitutional context?
2. The Government have stated that a key goal is to “rebalance power between Parliament and the Government, and give Parliament more ability to hold the Government to account” (White Paper, paragraph 2). The Draft Bill covers a number of disparate subjects. Is it appropriate for one single Bill to contain such a range of provisions?
3. Do the proposals set out in the Draft Bill and White Paper move towards achieving the Government's aim of giving Parliament more ability to hold the Government to account?

Aspects of the Draft Bill and White Paper on which the Committee would particularly welcome evidence:

The Joint Committee's inquiry will cover:

- a) the provisions in the Draft Bill,
- b) those elements of the White Paper (published with the Draft Bill) that relate to the subjects covered in the Draft Bill, and
- c) the proposals in the White Paper covering War Powers.

Other Parliamentary Committees are also undertaking scrutiny on parts of the Draft Bill, in particular the Commons Justice Committee (on the Attorney General) and the Public Administration Select Committee (on the Civil Service). The Joint Committee will take into account evidence given to and reports made by these Committees in producing its final report.

Civil Service

4. Do the provisions in the Draft Bill increase the accountability of the civil service and the Civil Service Commissioners to Parliament?
5. The Draft Bill puts the Civil Service Commission on a statutory footing as a non-departmental public body. Will this increase the independence of the Commissioners?
6. Under the Draft Bill, the Commission retains the right to hear appeals from civil servants and make recommendations, but the Draft Bill does not state who recommendations should be made to. Should this be included in statute?
7. Should the Commission be given the power and resources to initiate investigations without an appeal being made to it?

8. Appointments to the civil service must be made on merit following open and fair competition, but the Draft Bill sets out a number of exceptions to this (in clause 34(3). Are these exceptions appropriate?
9. The Draft Bill does not define the number or role of special advisers. Instead, special advisers must comply with a Code of Conduct published by the Government and the Government must lay an annual report containing information about the number and cost of special advisers. Are these provisions appropriate?
10. Is the way the Draft Bill defines 'civil servants' and 'the civil service' appropriate? Are the exclusions in clause 25(2) appropriate?

Protests

11. The Draft Bill provides an opportunity to re-balance the right to protest outside Parliament against the right of Parliament to operate effectively and without hindrance. How should this balance be struck?
12. Should Parliament be treated any differently from any other part of the country in terms of managing protests? How should the legitimate expectations of Parliamentarians and Parliamentary authorities be defined? In particular, would the repeal of sections 132 to 138 of Serious Organised Crime and Police Act give rise to a need for new powers for the police or other authorities to:
 - (i) Ensure free access to, from and around the Parliamentary Estate and to enable Parliamentarians to discharge their roles and responsibilities,
 - (ii) Restrict the use of loudspeakers,
 - (iii) Take account of the particular security risk,
 - (iv) Protect Parliament Square as a world heritage site,
 - (v) Prevent permanent demonstrations in Parliament Square,
 - (vi) Ensure equal access to the right to protest.
13. Are Sessional Orders (Orders passed by Parliament which impose an obligation on the Metropolitan Police Commissioner) still an appropriate means to manage protests around Parliament?

Attorney General

14. Is the Government's approach to the reform of the Attorney General's role and powers right?
15. Compared with the current situation, are the powers of the Attorney General increased or decreased under the proposals in the Draft Bill? In particular, are the Government's proposals for a statutory power to intervene to safeguard national security appropriate? To what extent can this power be subjected to judicial review or held to account within Parliament?

16. The Draft Bill requires the Attorney General to lay an annual report before Parliament. Will this increase the Attorney General's accountability to Parliament? Are additional measures needed?
17. Do the proposals strike the right balance between accountability of the Attorney General to Parliament for prosecutions and the independence of prosecutors?
18. When is it appropriate for the Attorney General to attend cabinet?
19. Is the Government's proposed model of a statutory protocol between the Attorney and the prosecuting authorities a good one? Is the content of the proposed protocol right?
20. Should the oath of office of the Attorney General be a statutory requirement like that of the Lord Chancellor?
21. Should the Attorney General's power to stop a prosecution by way of a *nolle prosequi* be abolished?
22. Are the provisions of the Draft Bill setting out the tenure of office of the Prosecutorial Directors appropriate?
23. Should the Attorney General's legal advice be disclosed?

NB - Leave to appeal to the House of Lords was granted on 24 April 2008 from the judgment of the High Court concerning the decision of the Director of the Serious Fraud Office to discontinue the investigation into BAE Systems concerning alleged corruption in relation to the Al Yamamah contract with Saudi Arabia. The case is, therefore, *sub judice*. This means that no reference should be made to the case in the Joint Committee's public proceedings, either by Members or witnesses, or in the written evidence submitted to the Committee. This does not, of course, prevent the Committee or witnesses before it from commenting on the wider issues of the Attorney-General's powers to direct prosecutions.

Judicial Appointments

24. Is it too early to embark on further reform of judicial appointments only 3 years after the new system was established in the Constitutional Reform Act 2005? Are reforms necessary to reduce bureaucracy and to streamline the appointments process?
25. Are the Government's proposals to remove the role of the Prime Minister from the appointments process and reduce the Lord Chancellor's discretion in relation to appointments below the High Court appropriate?
26. Does the reduction in the executive's role in judicial appointments leave a gap in Parliamentary accountability? The White Paper suggests that this gap might be filled by giving new powers to the Lord Chancellor to set targets and issue directions, and proposes an annual meeting of the Commons Justice Committee

and the Lords Constitution Committee. Are these proposals appropriate and sufficient?

27. The Government is proposing to give new powers to the Lord Chancellor, including:

- (i) Powers to set targets or issue directions to the Judicial Appointments Commission (which the White Paper recognises is a complex issue),
- (ii) Power to set non-statutory eligibility criteria concerning, for instance, the qualifications, experience and expertise that is required for a post,
- (iii) A delegated power to remove judicial offices from the list that are required to be filled following a selection by the Judicial Appointments Commission under the Constitutional Reform Act 2005,
- (iv) Responsibility for arranging medical checks.

Are these proposed new powers appropriate? What impact will they have on the independence of the Judicial Appointments Commission and the appointments process, including the balance of merit and diversity?

28. Part 2 of Schedule 3 of the Draft Bill proposes a number of key principles that must be taken into account by the Judicial Appointments Commission and others involved in the appointments process. Are these the right principles? How should they be monitored and enforced?

29. Should the Government create the Judicial Appointments Commission Panel? If so, are the provisions in the draft Bill adequate?

30. Is the current size and composition of the Judicial Appointments Commission Board right? Should the process for reappointing Commissioners be simplified?

Treaties

31. Do the proposals in the Draft Bill give the right balance of power to the two Houses? Is it right that the House of Commons has the power to delay treaties indefinitely? Is it right that the Government can re-introduce a treaty which has been subject to a negative vote in the Commons? How should a negative vote in the Lords (as opposed to the Commons) be treated?

32. Is there any merit in Parliament seeking to scrutinise draft treaties prior to signature?

33. Should there be a formal mechanism for Parliament to request an extension of the 21 day sitting day period that treaties are required to be laid before Parliament?

34. Clause 22 of the Draft Bill makes provision for a treaty to be ratified without parliamentary approval in exceptional circumstances. Is it appropriate for the Secretary of State to have the discretion to decide when exceptional circumstances apply? Should there be a requirement on the Secretary of State to (a) take such steps as he thinks appropriate to consult Parliament or (b) report back to Parliament after a treaty has been ratified under clause 22?

35. Are the Government's proposed definitions of "treaty" and "ratification" (contained in clause 24 of the draft Bill) right and unambiguous?
36. Should Parliament change the way it approaches scrutiny of treaties?

War Powers

37. Is the Government right to adopt a resolution route rather than a legislative route for War Powers? Is the Government's proposal for a detailed House of Commons resolution, as opposed to a statutory or a hybrid solution, appropriate? Will Parliamentary scrutiny of the executive in this area be increased by the proposals in the White Paper?
38. Does the draft Resolution in the White Paper give Parliament sufficient control over conflict decisions? In particular,
- (i) Should the Prime Minister determine the most appropriate timing for seeking parliamentary approval?
 - (ii) Should the Prime Minister decide what information should be supplied to Parliament?
 - (iii) In the event that the mechanism contains exceptions to the requirement for parliamentary approval, should the Prime Minister alone determine if the relevant emergency or security conditions are met?
 - (iv) Should there be a requirement to seek retrospective approval where exceptional circumstances have been deemed to apply?
 - (v) Should the Prime Minister determine whether the security condition continues to mean that it would not be appropriate to lay a report before Parliament?
 - (vi) Should there be a regular re-approval process?
 - (vii) Is the role of the House of Lords under the proposals right?
39. Is it appropriate that approval is not required for a conflict decision involving or assisting the special forces?
40. Have the terms 'conflict decision' and 'UK forces' been adequately defined in the draft resolution?

GUIDANCE FOR THOSE SUBMITTING WRITTEN EVIDENCE

Submissions should aim to be no more than 3,000 words and a summary is helpful. We welcome submissions that cover particular aspects of the Committee's inquiry as well as those that cover the Draft Bill more widely. Annexes may be submitted, but will not necessarily be published. Relevant material prepared for other purposes (such as reports or submissions to other inquiries and consultations) may be submitted to the Committee for information, but will not be printed. Witnesses who submit written evidence may be invited to give oral evidence to the Committee if time allows.

Submissions should be sent electronically (in Word) and in hard copy. Evidence should be clearly printed or typed on single sides of A4 paper, unstapled, and should be set out in numbered paragraphs. If drawings or charts are included, they should be in black-and-white and of camera-ready quality. The hard copy submission should be signed and dated, together with a note of the author's name and status and whether the evidence is submitted on an individual or corporate basis. Please ensure that you include relevant contact details. These will be removed before publication.

Evidence and inquiries should be addressed to:

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The deadline for submitting written evidence is 12 June

Once submitted, evidence submitted becomes the property of the Committee, and may be published. **Witnesses may publicise their written evidence themselves, but in doing so should indicate that it was prepared for the Committee.**

You can follow the inquiry via the Committee web pages, accessed from www.parliament.uk/parliamentary_committees/jcdcrb.cfm

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