



Ministry
of Justice

**The Right Honourable
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The Rt Hon. the Lord Lang of Monkton DL
The House of Lords Select Committee on the
Constitution
House of Lords,
London,
SW1A 0PW

Our Ref: 20211

26 February 2015

Dear Lord Lang,

THE OFFICE OF LORD CHANCELLOR

The Government broadly welcomes the Committee's Report on *The office of Lord Chancellor* and makes the following observations in response to a number of the specific recommendations.

The rule of law and judicial independence

We invite the Government to agree that the rule of law extends beyond judicial independence and compliance with domestic and international law. It includes the tenet that the Government should seek to govern in accordance with constitutional principles, as well as the letter of the law. (Paragraph 25)

RESPONSE

The Government agrees that it should govern in accordance with constitutional principles and endorses the importance of the rule of law. However the Government does not endorse the view put forward in paragraphs 23 to 25 of the Committee's Report in so far as it suggests that judges have power to insist that primary legislation passed by the UK Parliament "is not law which the courts will recognise".

The Lord Chancellor's duty to respect the rule of law extends beyond the policy remit of his or her department; it requires him or her to seek to ensure that the rule of law is upheld within Cabinet and across Government. We recommend that the Ministerial Code and the Cabinet Manual be revised accordingly. (Paragraph 50)

To clarify the scope of the Lord Chancellor's duty in relation to the rule of law, we recommend that the oath to "respect the rule of law" be amended to a promise to "respect and uphold the rule of law". (Paragraph 51)

RESPONSE

The Government believes that the Ministerial Code, Cabinet Manual and Oath of Office already accurately reflect ministerial responsibilities in relation to the rule of law. In particular, both the Ministerial Code and the Cabinet Manual note the role of the Law Officers in "helping ministers to act lawfully and in accordance with the rule of law". The Government does not agree that there should be specific requirement on the Lord Chancellor in this respect, nor that the Code, Manual or Oath require amendment.

The Law Officers' role in upholding the rule of law has always been important. The changes to the office of Lord Chancellor over the last decade have made it even more so. As a result, we consider that it is imperative the Attorney General continues to attend all Cabinet meetings, and that they are adequately resourced not only in their role as legal advisers to the Government, but in their capacity as guardians of the rule of law. (Paragraph 79)

RESPONSE

The Government agrees with the Committee on the important role played by the Law Officers in upholding the rule of law. This view has been shared by successive governments. The Law Officers play this role, in particular, by advising on some of the most significant legal issues being dealt with by Government, through their significant public interest functions (for example bringing contempt proceedings) and through participating in the work of government as Ministers of the Crown. This includes the Attorney General participating in Cabinet meetings. Though the expectation is that the Attorney General will continue to attend all Cabinet meetings, this is ultimately a matter for the Prime Minister. The Government considers that the Law Officers are adequately resourced to fulfil their functions as they relate to the rule of law.

We recommend that the Law Officers give due consideration to the more reactive role of modern Lord Chancellors and ensure that the holder of that office is kept informed of potential issues within Government relating to the rule of law. (Paragraph 80)

RESPONSE

An important function of the Law Officers is keeping all Ministerial colleagues informed of significant legal issues. The relationship between the Lord Chancellor and the Attorney General is an especially important one. The Lord Chancellor and the Attorney General meet regularly to discuss matters of common concern, including those that relate to the rule of law, and the expectation is that this will continue.

A Constitutional Guardian in Government

There is no clear focus within Government for oversight of the constitution. We invite the Government to agree that a senior Cabinet minister should have responsibility for oversight of the constitution as a whole, even if other ministers have responsibility for specific constitutional reforms. In the light of the Lord Chancellor's existing responsibility for the important constitutional principle of the rule of law, we consider that the Lord Chancellor is best placed to carry out this duty. (Paragraph 101)

RESPONSE

The Deputy Prime Minister is the relevant Secretary of State for constitutional policy and has been so since 2010. Senior ministerial oversight reflects the importance of the constitutional changes outlined in the Programme for Government. This arrangement gives a clear focus for the delivery of reforms including Individual Electoral Registration; the introduction of fixed term parliaments; changes to the laws of succession; regulation of the lobbying industry and proposals for the recall of MPs. The Deputy Prime Minister works in close collaboration with the Prime Minister and other relevant Cabinet Ministers including the Lord Chancellor and Attorney General and is supported by two ministers, and officials from the Cabinet Office Constitution Group.

The Future of the Office

We recognise the advantages to appointing a Lord Chancellor with a legal or constitutional background. We do not consider that it is essential but, given the importance of the Lord Chancellor's duties to the rule of law, these benefits should be given due consideration. (Paragraph 109)

RESPONSE

The Government welcomes the Committee's acknowledgement that it is not essential for the Lord Chancellor to have a legal background.

We recommend that the Government either ensure that the Permanent Secretary supporting the Lord Chancellor at the Ministry of Justice is legally qualified, or appoint the top legal adviser in that department at permanent secretary level. (Paragraph 113)

RESPONSE

The Government does not agree that the Permanent Secretary at the Ministry of Justice need be legally qualified, nor that the department's top legal adviser need be appointed at permanent secretary level. The Lord Chancellor and Permanent Secretary have access to high quality legal services provided by the Treasury Solicitor's Department including direct access to the Treasury Solicitor and one of his Deputies at Director General level, should it be needed.

Given the importance of the Lord Chancellor's duty to uphold the rule of law, the Lord Chancellor should have a high rank in Cabinet and sufficient authority and seniority amongst his or her ministerial colleagues to carry out this duty effectively and impartially. (Paragraph 117)

RESPONSE

It is for the Prime Minister to determine the order of precedence of Cabinet Ministers. The Lord Chancellor is currently and traditionally one of the highest officers of state.

The Lord Chancellor should be a politician with significant ministerial or other relevant experience to ensure that the rule of law is defended in Cabinet by someone with sufficient authority and seniority. It is not necessary to be prescriptive: more important than age or lack of ambition is that the person appointed has a clear understanding of his or her duties in relation to the rule of law and a willingness to speak up for that principle in dealings with ministerial colleagues, including the Prime Minister. (Paragraph 125)

We urge Prime Ministers, when appointing Lord Chancellors, to give weight to the need for the qualities we have outlined in this report, and above all to consider the importance of the Lord Chancellor's duty to uphold the rule of law across Government. (Paragraph 126)

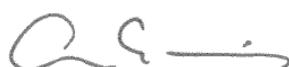
RESPONSE

The Constitutional Reform Act 2005 provides that the Prime Minister may not recommend an individual for appointment as Lord Chancellor unless he or she is satisfied that the individual is qualified by experience. There is a range of evidence that the Prime Minister can take into account when reaching such a conclusion.

We recognise concerns that the combination of the office of Lord Chancellor with that of the Secretary of State for Justice could create a conflict of interests at the heart of the Ministry of Justice. However, upholding the rule of law remains central to the Lord Chancellor's role and in practice the office is given additional authority by being combined with a significant department of state. (Paragraph 133)

RESPONSE

The Government welcomes the Committee's agreement that combining the role of Lord Chancellor with that of Secretary of State for Justice strengthens the office.



CHRIS GRAYLING