Delegated Powers and Regulatory Reform Committee

Uncorrected oral evidence: Consequential provision and the power to "otherwise modify"

Wednesday 8 March 2017

10.30 am

Watch the meeting

Members present: Baroness Fookes (The Chairman); Baroness Drake; Lord Flight; Lord Jones; Lord Lisvane; Lord Thomas of Gresford; Lord Tyler.

Evidence Session No. 1 Heard in Public Questions 1 - 17

Witnesses

I: Elizabeth Gardiner CB, First Parliamentary Counsel and Permanent Secretary of the Government in Parliament Group, Office of the Parliamentary Counsel, Cabinet Office; and David Cook CB, Second Parliamentary Counsel, Office of the Parliamentary Counsel, Cabinet Office.]

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Examination of witnesses

Elizabeth Gardiner and David Cook.

Q1 **The Chairman:** Good morning and a very warm welcome to you. We are delighted that you have agreed to give evidence to us on a somewhat arcane subject perhaps to the outside world, but one of very great interest to us. Can we just for the record ask you to give your names and your roles?

Elizabeth Gardiner: I am Elizabeth Gardiner. I am the First Parliamentary Counsel.

David Cook: I am David Cook, the Second Parliamentary Counsel.

The Chairman: Thank you very much. I believe, Ms Gardiner, you would like to make an opening statement.

Elizabeth Gardiner: I would. Thank you very much.

The Chairman: Please go ahead.

Elizabeth Gardiner: Thank you and thank you very much for inviting us. No subject is too archaic for Parliamentary Counsel. The issue we are discussing today is a fairly narrow and technical one. This opening statement is an attempt to assist the discussion by addressing more generally the nature of delegated powers to make consequential provision, including provision textually amending existing legislation.

The inclusion in an Act of a provision that permits the Secretary of State, by order or regulations, to make provision in consequence of a provision of the Bill has been well precedented for many years. You can find many examples. It is fairly easy. There are a lot of examples in 2016, such as the Enterprise Act, and you can look back to the Financial Services Act 2010, the Education Act 2005 and the Criminal Justice and Court Services Act 2000.

For a variety of reasons, it might not be possible or appropriate for a Bill to deal, on its face, with all the changes needed across the statute book in consequence of the substantive policy changes made by the Bill. The number of consequential amendments might cause a disproportionate increase in the length of the Bill, or it might be determined that utilising drafting resources on consequential amendments is time better spent on refining and improving the substantive provisions of the Bill before they are introduced.

As a matter of practicality, it may be difficult during the drafting or even during the progress of the Bill to anticipate the full extent of the consequential amendments that are needed. An intention to stagger the commencement of the provisions of the Bill, or an expectation of a significant delay in commencement, may lead the drafter to think it would be better to draft consequential amendments by reference to the legislative landscape at the time the provisions come into force.

A power to make consequential provision is, however, inherently limited by the fact that the provision must be consequential on the other provisions of the Act. It must therefore be consistent with the rest of the Act and deal with the consequences that naturally flow from the rest of the Act. It cannot, for example, be used to overturn or alter the core policy in the Act. It is essentially a narrow power that has to be read in the context of the Act as a whole.

From the drafter's perspective, a power to make consequential amendments confers power to deal with matters on which Parliament would not expect to be burdened with further primary legislation, while also maintaining Parliament's ability to scrutinise the provisions made under the power. The drafter will consider, in consultation with the instructing department, whether a power to amend primary legislation should be included.

This is not done without thought or challenge on the part of the drafter. There is an element of judgment involved. The drafter will not want to include a power to do something that he or she knows will not arise, but when the Bill is being drafted it is often unclear precisely what provision is needed to ensure all knock-on effects of the substantive changes made by the Bill are reflected across the statute book. Having weighed the risk, it may be decided that it is wise to include a power to make consequential provision.

The good law principles, which I think you are familiar with, espoused by the Office of the Parliamentary Counsel are that law ought to be effective, necessary, clear, coherent and accessible. For the end users of legislation, ensuring that the full consequential effects of the new policy are explicitly reflected across the statute book, rather than having to be implied by the reader, supports these principles.

The focus of this Committee is understandably on the conferring of the delegated powers, but we are not aware of any suggestion that in practice the sorts of changes that are made under these powers have given rise to any concerns.

Q2 **The Chairman:** Thank you very much indeed for that opening statement. We are well aware as a Committee that consequential provisions are often necessary and we would not quarrel with that principle. Our concerns lie more with the degree of parliamentary scrutiny, particularly questions of modification, as I think you will be well aware.

As I said at the beginning, it is a somewhat arcane subject, but we are also acutely aware as a Committee that we shall soon have coming down upon us a positive tidal wave of legislation engendered by the desire to leave the European Union. Therefore, we shall have the great repeal Bill, plus other important items of separate primary legislation. It would be a miracle if there were not extensive delegated powers included. We would like to try to come to some kind of understanding of the Government's view, particularly on this modification. As you will know, there has been a long-standing difference between the Committee and government

departments on whether modification should always be affirmative. Could I start with this reference to the otherwise modifying of primary legislation? How would you distinguish a power to amend and a power to otherwise modify?

David Cook: We interpret a power to amend in the context of a power to make consequential provision, where we are saying that the power to make consequential provision includes a power to amend or otherwise modify primary legislation, as a textual amendment power. There, the word "amend" is "textually amend", and "otherwise modify" encapsulates any other modification of primary legislation.

The intention of adding "or otherwise modify" in that particular context is not in connection so much with the conferral of the power as to try to set up an implication that by "amend" in this context we mean "textually amend". This means that when we come to the procedure to be applied to the power and that says that amendments of primary legislation must be subject to affirmative instrument, it is clear that that means textual amendments of primary legislation. The origin of the words "or otherwise modify" in the context of these sorts of powers was an attempt to try to deliver some certainty about what fell within the scope of the affirmative procedure and the negative procedure by implication, if you like.

The Chairman: I am not clear why in that case we do not have the terms "a textual amendment" and "a non-textual amendment".

David Cook: It is a very good question. This morning I did a search of the statute book to see how many references there were to "textual amendment". Interestingly, there are only nine across the entire statute book, of which there is only one that there is any real weight on. The others are in a context where it talks about textual amendment or otherwise, where it is encapsulating all forms of modification.

The Chairman: Normally you assume an amendment means a textual amendment. Is that not the jargon?

David Cook: Things over the years have probably changed a little on this. Both Elizabeth and I have been drafting legislation for over 25 years now. When we joined the office, although we joined the office at a time when textual amendment was the norm, we were taught by people who came from a world where there was a lot more non-textual amendment. At that point, if I had asked those people what they meant by amend they may well have said they thought "amendment" covered both textual and non-textual amendment, because there was still quite a lot of non-textual amendment around.

Over that time, textual amendment has absolutely become the norm. It is very rare, certainly in the context of the consequential amendment powers that we are talking about, to see non-textual modifications of the sort that are equivalent to textual amendment. It is now reasonably clear in this sort of context that a reference to "amend" is intended to pick up textual amendment. The purpose of adding "or otherwise modify" was to put that

beyond doubt by drawing this contrast between other modifications and amendments.

The Chairman: Interestingly, when I looked in the *Shorter Oxford English Dictionary*, under "amend" it particularly refers to making minor improvements in a parliamentary Bill. When it gets to "modify", it does not really deal with the parliamentary side at all. It just skirts round it: "make partial or minor changes to"; "alter without radical transformation"; but no reference to "parliamentary". I take it that this term "modify" is very much a specialist piece of jargon.

David Cook: It is a general word. I would not say that it is a particularly specialist term. In some pieces of legislation you will see "modify" defined to include amend or repeal, again to make it clear that it can go beyond that. It is a word that takes its natural meaning. It is about something that modifies or changes another provision.

The Chairman: But without changing the actual wording—that is the point, is it not?

David Cook: Yes, in this context.

The Chairman: It can have the same effect.

David Cook: It can, indeed, in some contexts have the same effect. In the context that we are talking about, we would say that in the vast majority of cases the types of modifications that are made have an effect that is not equivalent to the effect of textual amendment of primary legislation.

Q3 **Lord Jones:** The Lord Chairman has already used "arcane". Forgive me, I am no expert in these things, but here it is. Does the power to amend or repeal implicitly include a power to otherwise modify? If the greater power to amend textually includes the lesser power to modify non-textually, why does consequential provision in some Bills explicitly refer to the power to otherwise modify and not in others? I have made it as simple as I can.

Elizabeth Gardiner: If we look at the form that a consequential amendment power takes in a Bill, a Bill will generally say that the Secretary of State "may by regulations make provision that is consequential on this Act". That is the substantive power that the Minister has.

We have always taken the view that, unless you have made it clear that the width of that power extended to making amendments to primary legislation, a court would not think that that was an expected use of that power because, as we accept, making amendments to primary legislation is quite a high bar. Therefore, we would expect to have to spell that out. The main power is the power to be able to make consequential provision. We then make it clear that that power extends as far as making textual amendments to the existing Acts. The implication is, having said it extends to that high bar, that anything short of that is also included in the original general words, so the general words that say you can make provision consequential on the Act.

To give you a parallel, if we said that you could create a new offence in a Bill and then we said that that offence could be punishable with imprisonment up to two years, we would imply that the offence could also be subject to a non-custodial sentence or a fine, even though we had not spelled that out. We would have given the high watermark of what the power could extend to, and then it is implied that the power of the Bill to create the criminal offence includes anything lesser than that high watermark. That is how we regard the provision about saying that you can amend.

When we say you can amend, we say that—the word "amend"—includes modifications. What we are saying is we have made it clear you can go as far as textually amending an existing Act, and therefore the implication is you can do anything short of that under the general power.

Q4 **Lord Tyler:** This supplementary relates to both the issues we have been looking at. Who decides whether consequential provisions should include the power to otherwise modify and the level of parliamentary scrutiny attached to it? Do you oversee the preparation and explanation of that particular decision for inclusion in the delegated powers memorandum?

Elizabeth Gardiner: The process is collaborative, so the instructing department will instruct Parliamentary Counsel to draft the Bill. They will explain what result they are trying to achieve and what changes in the law they require, and then Parliamentary Counsel, the instructing lawyers and the policy officials will discuss how best to achieve that. They might come and say, "We know we are going to have to make a large number of consequential provisions across this Bill. They are all very minor. We think the Bill is only going to be three pages long. If we put in all the consequential amendments, that would be another 50 pages", or, "We are not going to be commencing it for a couple of years. It is better to look at the landscape then". We would discuss that and we would craft the power accordingly. It is a discussion, and it is not that it is not challenged. If we think the department is asking for a broader power than they require, Parliamentary Counsel will discuss the need for that power and the likely reaction of Parliament to such a power.

Then on the procedure, the Government have accepted that Parliament wishes to see powers to amend primary legislation to be subject to affirmative procedure. When we look at these powers, we look at them in that context. Therefore, we will generally make the textual amendments subject to affirmative procedure, unless there is a very specific reason in a particular case where we think that the negative procedure would be apt, in which case the department ought to explain in their memorandum why they have taken that view. We accept that the memorandums are not always as robust as they need to be.

The Chairman: We can say "amen" to that.

Elizabeth Gardiner: That is especially the case in justifying the full width of a power taken. Sometimes we have been prone to give an example of

how we might exercise the power without illustrating why we need the full width of the power. We are aware of that and trying to tackle it.

Q5 **Lord Thomas of Gresford:** You will appreciate that our concern is that parliamentary control is kept over all sorts of amendments to an Act that has been passed, and it is not just the Minister or the officials who are deciding what can and what cannot be done. Very frequently non-textual modifications can be as significant or as insignificant as textual amendments, yet the affirmative procedure is usually applied to all textual amendments—the bell goes "ting" and it is decided, "Well, this is a textual amendment, therefore it must be affirmative"—and the negative procedure to all non-textual modifications.

Why should it be all one way—the bell going "ting" in that respect—and negative for all the modifications? It seems to us that there is insufficient scrutiny by the department or by Parliamentary Counsel as to what the effect of a particular textual or non-textual modification will be.

David Cook: One thing is that any general rule will have some difficult cases. In a sense, the rule that all textual amendments are subject to affirmative procedure presents difficult cases as well, because some of the exercises of the power will be exercises that are so insignificant that, if they were taken by themselves, one would expect them to be subject to a negative procedure. But you do apply a blanket rule relating to textual amendments so that all textual amendments are subject to the affirmative procedure. You do so for what I imagine is a good reason: it is not very difficult to distinguish between those exercises that are so insignificant that they should be negative and those that are found more significant and should be affirmative. That is an issue with the general rule, whichever way round you put it.

As it stands, the rule for the affirmative procedure is that it will apply to textual amendments. The Government's position relating to non-textual modifications is that the correct rule as a general rule is that the negative procedure, or I guess sometimes no procedure, should apply. There are a number of reasons behind that. In the first place, it is very important to remember that we are in the context of the consequential amendment power. As Elizabeth has explained, the consequential amendment power is itself pretty narrow. There is quite a limit on what that power alone can do.

Secondly, non-textual modifications of the sort that are equivalent to textual amendments are very rare in the context of when the power comes to be exercised. My sense is that this is not a particular practical problem. I did a quick look through Acts with consequential amendment titles last year and identified—this is very rough and ready—11 orders or regulations, none of which had non-textual modifications in them. From the Government's perspective, this does not happen very frequently.

The third reason why the Government take this position, and we may come on to this, is the extent of what non-textual modifications can be. They can be modifications that are equivalent to textual amendments, but the statute book is a very complex place and the interactions between various

different parts of the statute book are complex. There are all sorts of effects that flow from one change in one area across the statute book to other areas. Each of those effects is capable of being described as a modification. Most of those we would say are modifications for which the affirmative procedure is simply not appropriate and the negative procedure is the better procedure.

The fourth reason is that even if one took the view that some non-textual modifications should be subject to affirmative procedure, we have not been able to identify a way of describing those cases that will deliver legal certainty as to the correct procedure to be attached to distinguish between those cases and the negative cases. Finally, the Government have offered the fact that if we do come across in the very rare case, in the context of a narrow power, a non-textual modification that is of the same kind as a textual amendment, we will include it in the affirmative order. There is a whole range of reasons why we take that line.

Lord Thomas of Gresford: If I can summarise what you said, you have a blanket policy for Henry VIII powers where you have a textual amendment and a blanket policy where it is a modification. I also take from what you said that a modification is a much rarer animal than a textual amendment. Consequently, it would not be so great a burden upon you if, in altering the meaning of an Act of Parliament, which has already gone through Parliament, you were to say that that should be subject to the affirmative procedure.

David Cook: Perhaps some examples might help here, because what I was saying was that what is a very rare beast is a non-textual modification that is equivalent to, or has the same effect as, a textual amendment. By that I meant a non-textual gloss, for example, saying that all references to a particular body have effect as if they were to be read as references to another body. There may be a good reason to do that because there are too many places to go into the statute book and textually amend each one. You may have a general gloss. That is clearly the sort of thing that could be done by textual amendment and would, but for the difficulty of doing so, have been done by textual amendment and is the sort of thing I am talking about when I talk about a non-textual modification that is equivalent to a textual amendment.

The difficulty we have is that there are myriad other types of modifications that do modify the effect of primary legislation that sometimes one would know about and sometimes one would not necessarily know about. Let me give a couple of examples.

Lord Thomas of Gresford: Can I just pause? If you do not know about them, you cannot produce a statutory instrument or any sort of instrument in which they are dealt with, can you?

David Cook: Let me give some examples to give an idea. One example of a non-textual modification where probably the affirmative procedure would not be appropriate but where you probably would know about it would be a case where Act A, for example, confers benefits on individuals. As part

of that it makes provision for identity documents to have to be provided for a person to receive a benefit. There is a power to specify the types of documents in regulations—a negative instrument power. Act B comes along. It creates a new type of document. The consequential amendment power to Act B comes along and amends the statutory instrument that contains the list of documents.

That is a textual amendment to the statutory instrument, and on current practice that would be subject to negative procedure, but what it is doing is modifying Act A. By adding a new document, it is ensuring that somebody who is claiming benefit is able to receive the benefit if they provide that document, as well as the other documents. It is a reasonably direct modification, but it does not feel to me, certainly, as though it is the sort of modification that would justify an affirmative instrument rather than a negative instrument.

It gets worse, because there are even more complicated and remote modifications or effects of legislative changes. Particularly I am thinking of areas where you are changing the rule of law in one document, and that rule of law—as I say, the statute book is a complicated place—is sitting alongside various other rules of law. By making that change you may or may not always know about the interaction between the various rules of law, because it may only emerge that they need to interact when a particular case arises. The effect of changing one rule of law in one place may well be to change a rule of law in another. If that other place is in primary legislation you have modified that primary legislation, albeit in a way that is fairly remote and the effect of which is fairly obscure.

Lord Thomas of Gresford: If you have not spotted it beforehand, you do not have a negative resolution in relation to the primary Act, do you? It just happens to emerge at a later stage that this particular change in a rule of law has altered the rule of law that is set out in a different Act. You have not spotted it, so there would be no parliamentary control.

David Cook: No. To give an example of that sort of change where there would be a parliamentary control and a negative instrument, you could have a case where in primary legislation you have a general data sharing-power and then a set of regulations that provide restrictions on data sharing in a particular context between particular parties.

If we are coming along with Act B and making under the consequential power in Act B a change to those regulations that is either changing the identity of the parties—renaming them—or increasing the restriction in some way, that has an effect. Although, again, what we are doing is amending only secondary legislation—and classically that would be a negative procedure—nevertheless one can take the view, as is quite likely in at least some cases, that because those regulations are more particular and made later they operate as an exception to the general data-sharing provision in Act A. The change that we are making to those regulations is itself a change that, albeit made to the regulations, is actually modifying Act A but surely should not have the affirmative procedure.

That is just one example of myriad possibilities, where an impact in one area simply by amending a subordinate instrument could have a knock-on effect that operates as a modification of primary legislation but, I submit, a modification that does not warrant an affirmative procedure and increasing the number of affirmative instruments.

Lord Thomas of Gresford: I understand what you are saying in relation to a specific regulation that may change a regulation in another Act, but it seems to me that you could easily make a decision as to whether you need a negative or affirmative scrutiny in relation to that at the time, rather than have the blanket approach, which you told us about, to all modifications.

David Cook: The issue there is legal certainty. Our view is that it is unrealistic to suppose that we could pick up the trail of every single impact on primary legislation of every single change in secondary legislation.

Lord Thomas of Gresford: I follow that. I can understand you could have a situation where you do not spot something, and it emerges at a different time and a particular set of facts are before a tribunal or whatever of one sort or another, but in many cases you would spot the implications of a change to these regulations upon other regulations. You could in those circumstances, instead of having a blanket approach, make a decision: this is significant modification of primary legislation; therefore we should use the affirmative procedure.

David Cook: There are two things on that. We would have to be able to trace every effect every time, because we need to know that when we are making the regulations we have the right procedure attached to it. In the case where something emerges later and it turns out that there is an impact on primary legislation that we have not spotted at the time, that would be very serious for the instrument because we would have made it subject to the wrong procedure. That is why we would have to identify every single case.

As to your point about whether we could identify cases where the affirmative instrument would be a better procedure, that is exactly what the Government are saying in relation to the non-textual modifications that are equivalent to textual amendments. I must stress they are very rare nowadays. Where we do come across those, we will include them and make sure that we have the power in the Act itself to include them in the affirmative instrument, if we are making one alongside the negative instrument.

Q6 **Lord Flight:** About a quarter of an hour ago you said words to the effect that the decision should be in favour of a negative procedure if in doubt. Surely it is the other way round—that you are dealing with a lot of obscurity here and the prejudice should be in favour of an affirmative procedure if it is unclear?

David Cook: The obscurity is in areas where the types of modifications that we are talking about are fairly remote effects and are likely to be minor. We would say that in those sorts of contexts the effects are ones

that currently you would nevertheless submit to a negative procedure, because amendments of secondary legislation are normally subject to negative procedure under these sorts of powers. Because overall those effects are likely to be minor and obscure, the negative procedure at best is appropriate.

Q7 **The Chairman:** Am I right in thinking that modification can apply not just to consequential legislation but to any legislation?

Elizabeth Gardiner: It can. A good example came up I think in the Technical and Further Education Bill that is currently before the House, where we were trying to explain the different context. In that provision, the power is a power to amend or otherwise modify certain primary legislation. In that case, I think the whole power was subject to affirmative, but that was the substance of the power. There was not a power to do something, which you could then exercise in particular ways.

It goes back to my explanation of what a consequential amendment power is. The substantive power is a power to make consequential provision. That is what we are doing, and then we are saying you can exercise that power in various ways. You could make freestanding provision, modifications or textual amendments, and it is the textual amendments that we think should be subject to affirmative procedure, given the narrowness of the power generally.

The substantive power in the Technical and Further Education Bill was the meat of the power. There was no power to do something that you could exercise by amending the legislation. The power was that Government may amend the legislation, and that is why there it was "amend or modify", because if it just said, "The Secretary of State may amend the Education Act", or whatever, we would have thought that meant he could only textually amend it, because that was the full extent of the power.

The Chairman: It goes back to my original thought: why on earth can we not call it textual and non-textual amendments?

Elizabeth Gardiner: We will take that away, because it is a discussion that David and I have had. The question then is, if we said textual amendment and we said textual amendments were subject to affirmative procedure and everything else was subject to negative procedure in the consequential amendment power, would that would meet the Committee's concerns? We could certainly do that as a matter of drafting. There, from my point of view, the line would be very clear.

Our concern is that we have not found a way of drawing a line where the Committee obviously feels the line should be drawn that would be clear to people exercising the powers, so they know whether it is an affirmative instrument or a negative instrument. From our point of view, it is essential that the people making the instruments know which procedures to apply, because they need to have a valid instrument.

The Chairman: Our basic concern always is that delegated power should not be used for substantial changes in the hands of Ministers and not in

the hands of Parliament. That is our starting position, I think. Possibly one way of looking at it was to see how significant these delegated powers were in modification or amendment, but that I fear would give the Government more power, would it not, than our blanket one?

Elizabeth Gardiner: If they had a choice, yes. I do not think we would want a choice. We would like the line to be clear. I think our starting point is that a consequential power is, by its very nature, already very limited. There have been suggestions in debate in Parliament over recent weeks that we could use that power to repeal the Bill itself or to go back to correct mistakes in our policy or to overturn things. None of those things are things that we think we could use that consequential power for. We feel that it is already a very restricted power, and the ability to tidy up the statute book is because we want the end user to have a tidy statute book and to have all the "t"s crossed and "i"s dotted when they come to look at it. None of those amendments was particularly substantial.

The Chairman: You bring me to my particular bête noire—too much legislation, too hurriedly passed. We could do with a great deal of time refining and amending what we already have. However, I must not pursue my hobbyhorse.

Q8 **Lord Thomas of Gresford:** You talk about legal certainty. The situation that would concern me would be this: non-textual modification is the effect of a particular set of regulations that are passed, and you have not spelled out anywhere the circumstances in which that non-textual modification takes place. Somebody relying on the wording of the original Act may incur a great deal of expense in going to court and arguing the point to be met with the defence, "We had power to otherwise modify these regulations", whatever they happen to be, "and the effect of what we have done has otherwise modified, so you have lost your case". Do you follow what I am saying? It is not clear with a non-textual modification that a change has taken place to the original statutory provisions and somebody might rely on the original statutory provisions to take a case to court.

David Cook: That is one of the reasons why classic non-textual modifications of the sort that are equivalent to textual amendments were superseded by textual amendments: so that the end user could know what the text of the particular statutory provision was. That is why, over the years, legislation moved away from non-textual modifications. In a perfect world everybody would know every effect of every statutory provision or change that is made under a consequential amendment power. As I say, the statute book is incredibly complex and there are myriad effects. It is probably unrealistic to suppose that one could identify every single effect of particular changes.

Lord Thomas of Gresford: The uncertainty arises out of the use of a non-textual modification.

David Cook: Just to clarify that, the examples I have been using are examples where what we have been doing is textually amending a subordinate instrument under our consequential amendment power. The

actual change is a textual change of the subordinate legislation. What I am saying is that that textual change nevertheless sets up various effects that, as a matter of law, can be interpreted as modifications of other primary legislation. It is not as though we are not having a textual change to start off with. We would be.

The Chairman: Do you mean it is a knock-on effect?

David Cook: It is a knock-on effect, absolutely.

Q9 **Lord Lisvane:** I should declare a sort of an interest in that in a previous life I worked happily and respectfully with both our witnesses today, even though we were on, so to speak, different sides of the fence. Can I pick up a point that Lord Thomas raised about the availability of authoritative text? How does legislation.gov.uk deal with non-textual amendments and how quickly?

Elizabeth Gardiner: The honest answer to that is I do not know. The last time I was told, which was fairly recently, about 83% of the statute book was up to date, but there are a lot of modifications that they are working on and they have been increasing the pace of change working on it.

They deal with all sorts of effects by way of the equivalent of footnotes. It is not footnotes, because obviously it is an electronic text. Where we have different texts, for instance in different jurisdictions, they deal with that with additional material. A gloss-type thing—say we were saying, "For 'appeal tribunal', substitute 'Supreme Court'" or something—has effect as if it were substituted. I would imagine a gloss like that would be flagged on legislation.gov.uk. It certainly would generally be flagged on LexisNexis, one of the commercial suppliers.

One of the reasons that we do not tend to do general glosses is that they are often misunderstood by editors of those texts. Sometimes where general glosses have been done in the past, they have been treated as if they were textual amendments in the legislative text that is published. That then becomes confusing for the drafter who comes along afterwards, who thinks that the text has actually been amended when in fact it is just to be read in certain circumstances as if it had a certain amendment in it.

The Chairman: Could you define for us non-lawyers what "gloss" means?

Elizabeth Gardiner: Sorry. A classic example was when employment tribunals were brought in. They were previously called industrial tribunals, I think. There were hundreds and hundreds of references to these things over the statute book, primary and secondary, so there was one provision in the Employment Act that just said that every reference to industrial tribunal was to be read as a reference to an employment tribunal. That is referred to as glossing the existing references.

For the reasons that David has given, we have moved away from that because it is not very user-friendly to gloss things like that. It is much better to go in and textually amend the provisions. Also, as a drafter, if you do go in and textually amend the provisions, you are much more likely

to spot things that do not work. It is quite tempting sometimes to think you could just do a general gloss, but when you go in and look at the detail of a statute, you may realise that that general gloss just does not work in all cases. We would generally much prefer to go in and make specific textual amendments.

Lord Lisvane: I took from the exchanges between Mr Cook and Lord Thomas that the process of identifying whether there are modifications takes place of a period of time, and that it is when you are looking, for example, at subordinate legislation that things start to emerge. Presumably this is the source of the legal uncertainty that we have been told about by departments in explanatory memoranda—in other words, where there is a modification, but it has not, as it were, been formally picked up. Is that the case?

Elizabeth Gardiner: I am not quite sure I quite understand what you are getting at there.

Lord Lisvane: There is a process of identification. I think it was common ground earlier on that a modification power is where the knock-on effect, referred to by the Lord Chairman, extends over a considerable area of the statute book, but mapping that is not an instantaneous process.

Elizabeth Gardiner: No, and indeed might not be a process that the department would undergo particularly, because when they are bringing a provision into force, they would be looking to see what consequential amendments they need to have in place at that time. They would make the textual amendments. They may modify some provisions. They would make the appropriate instrument. They may have spotted a thrice-removed knock-on effect of something, or they may not. The chances are if it is three times removed, it is a very minor effect, or—say it is a list of documents—it is an effect where there is a reference to that list somewhere far removed, where it was always the intention that the documents that were in the main provision would be cross-referred to in this other provision.

The provisions were always intended to stay in tandem. It is not unexpected that this document is now also going to apply in this other provision, but the department would not have necessarily gone looking for that. The statute book is a very complicated place. We would all agree that we would like it to be less complicated, but we are dealing with what we are dealing with.

Lord Lisvane: One of the things that was troubling me was the implication—this goes back to the blanket approach, which was being discussed earlier—that non-textual amendments should have a default position of the negative procedure, and textual amendments, if merited, should have the affirmative. There seems to be an illogicality about that, because surely if you could identify a non-textual amendment, you have identified it for the purpose of attaching a parliamentary procedure to it. Is the default setting simply an acknowledgement that there will be a considerable period of time and experience before some of these things

surface at all?

Elizabeth Gardiner: Possibly, or possibly it is just that we expect there to be textual amendments for everything that we want to amend primary legislation for. We do not expect there to be any modifications that are akin to textual amendments, because we do not generally expect those sorts of things to be made. Other modifications that might end up being made under that power we would expect to be of the thrice-removed version. Yes, it is a blanket rule, just as the affirmative or textual modification is a blanket rule, but we think on balance that is justified, because it is amending the text on the statute book, and on balance the negative procedure is the default procedure.

With regard to trying to do it on a case-by-case basis, we have not come up with a form of words that would draw the line clearly enough that would move the few cases on the affirmative procedure that you would want on the negative, and the few cases on the negative procedure that you would want on the affirmative. There is an element of the rough and ready about it, but in practice we do not see it as a problem because we do not do those sorts of glosses now. We make textual amendments.

Lord Lisvane: I think it is common ground in all the proceedings this morning that what we are talking about is something of considerable complexity. Do you feel in any way embarrassed that this might fail the accessibility test of the test of good law?

Elizabeth Gardiner: If things have a substantive knock-on effect three times removed, we would be embarrassed that that had happened without us spotting it. We would hope that, where such substantive knock-on effects exist, we would spot them before the Bill was introduced or certainly would become aware of them during the time the Bill is introduced. Certainly if it came to light later, we might be embarrassed by that. If people were coming to us and saying that this was a problem when things were implemented—that there were these knock-on effects that nobody had been anticipating—we would need to look at that. But we are not aware of the powers causing problems because the basic starting point is that they are very narrow, so the sorts of changes you are making under them are the expected changes.

Lord Lisvane: You can handle complexity. Parliament, with advice, can handle complexity. The user may not be able to handle complexity, and that has to be a problem, has it not, in practice?

Elizabeth Gardiner: It has, which is why we would make textual amendments wherever possible, so that in an ideal world, when the text is up to date, the user has the full text in front of them. That would be the ideal position.

Lord Lisvane: I think you can predict my next question: would you like to see a lot more resources devoted to consolidation?

Elizabeth Gardiner: Yes and no. From my point of view, I would possibly rather use those resources to have more time to spend on our programme Bills. The electronic texts and the way that we textually amend things nowadays takes one a long way down the consolidation route. It is not as good as starting again, but consolidations are extremely resource intensive. They can be very short-lived in practice, because the landscape is continually moving. I think that the resources might be better used elsewhere.

Q10 **Lord Lisvane:** I have a taxonomy question. We have talked about gloss, about non-textual and about modify. Is there an equivalence between the three or do you see gloss, as it were, as modify-light? I am sorry—forgive me. I am thinking of the passage in Craies that talks about glossing being particularly suitable for provisions of a transitory character or where a subclass is being dealt with.

Elizabeth Gardiner: Where we would use gloss is exactly that, because a gloss is not generally a very helpful thing to do. It is not helpful for the user to be reading the statute book and for it to be referring to body A when, if you knew that there was a gloss somewhere, you would be reading that as body B. But if for a very specific circumstance or a transitional period you needed to read body A as body B, that might be a quick and easy way to do it. I can see that that might be the more normal way we would use it now. Those general glosses have had their time and we would not generally go down that route any more.

Lord Lisvane: The Craies dictum is somewhat losing its force.

Elizabeth Gardiner: Does he say that it is used in a transitory—

Lord Lisvane: "Especially suitable for" is the phrase he used.

Elizabeth Gardiner: I would agree with that. In a transitory case, if you are having to read it like that for only three or four months while something is brought into force, that seems fine. Perhaps the kind of users who are using the legislation during that time may be aware of that and that might be fine, but as a long-term solution a gloss like that is not a very satisfactory situation.

Lord Lisvane: I have a question on vires. Presumably you would agree that where Act A affects Act B by virtue of non-textual modification, for that modification to continue to have effect, that part of Act A must continue in force?

Elizabeth Gardiner: I think that is right, yes.

Lord Lisvane: That is not a barrier that is being challenged in any way.

Elizabeth Gardiner: No, I think that is right. It does not just have effect once and for all. It must continue to have effect.

Lord Lisvane: A court would take a dim view.

Q11 **Lord Thomas of Gresford:** I just wanted to know whether you are aware

of regulations that have been passed that do not amend or repeal, but are simply a non-textual modification. Does that happen?

Elizabeth Gardiner: I cannot say it does not happen, but we had a look at the regulations that we could find made under the powers last year that were consequential amendments, and we could not immediately identify anything that we would class as a modification. Where they are making changes to primary and secondary, it tends to be textual amendment. There may be cases in the kind of example that Lord Lisvane gave, where something will apply for a limited period, where we might make non-textual modifications.

David Cook: That is in the context of a consequential amendment power and regulations made under that. Are there non-textual modifications in regulations more generally? There probably are in some areas. The thing that immediately comes to mind is transfers of functions orders, for example, where you are transferring ministerial functions around and the landscape that you are operating in can be quite complex, particularly if devolved Ministers are involved as well. Because the original reference is one that has layer upon layer of change on top of it, it may be that the only way to deliver the next change is by another layer of non-textual modification.

There are areas where these things happen, but what we are saying is, in the context of what is anyway a narrow power—a consequential amendment power—the cases where it is necessary or appropriate to make non-textual modifications under that power are rare. We absolutely agree with the Committee that non-textual modifications of that sort of nature—glosses—are just not helpful to the reader, and the practice is to try to avoid them.

Lord Thomas of Gresford: You could, I suppose, signal them in notes or something of that sort, if you add notes to the regulations that say that the effect of this is on such-and-such a statute, and that might read across, so that whoever is producing the corpus of the existing statute law would note it and put it as a note to that particular Act.

Elizabeth Gardiner: That does happen. One of the areas where I have come across it is outside the consequential amendment power. Pensions regulations generally apply to single employer schemes, but there are a lot of multiemployer pension schemes. How they do that is they take the regulations for the single scheme and they apply that with modifications to a multiemployer scheme. That is maybe not the most accessible thing. It probably has a fairly limited readership, but that is the way they have chosen to do it. There I am sure the legislation where the main regulations are would flag the fact that there are alternative versions if you are dealing with a multiemployer scheme.

Q12 **Lord Tyler:** This really takes us back to first principles, perhaps less arcane for the wider public and we ignorant Back-Benchers in both Houses. For us in this Committee it is the potential significance of a power, rather than the legislative device by which it is conferred, that should surely determine the

level of parliamentary scrutiny. Looking to the future—perhaps the immediate future, with primary and secondary legislation following from Brexit—can consequential provision be reformulated so that an appropriate distinction can be drawn between those powers that rely on the affirmative procedure and those that require the negative?

David Cook: We have not found a way—we have thought quite carefully about this—of reformulating the power in a way that delivers an affirmative procedure for certain types of non-textual modifications in a way that does that but also delivers the legal certainty that we need about what the appropriate procedure is for a particular exercise of the power. The reason why we have not been able to find a way of doing that is precisely because of the myriad different types of modifications that exist. We have not been able to identify a way to pick out the right ones, which is why the Government have instead said that where we have something that is equivalent to a textual amendment, we will include it within the affirmative instrument so that it is considered by Parliament at that level. In other words, we are not delivering that, if you like, by the operation of law, but the Government have given the undertaking to deliver that in practice in the very rare cases where that will be what is being done under the consequential amendment power.

Q13 **Lord Lisvane:** Particularly with delegated powers, can you say something about the sorts of problems that arise with referential and double-referential legislation? I am thinking particularly in terms of double-referential legislation—the Northern Ireland legislation of the last 10 years or so, although that did not involve significant delegated powers—but simply as a technical challenge.

Elizabeth Gardiner: Can you explain to me what you mean by "double-referential"?

Lord Lisvane: Where Act A amends Act B, but it amends the provision of Act B that has already amended a provision in Act C. That is certainly what Northern Ireland legislation has done.

Elizabeth Gardiner: Would that be where Act B was modifying something and you were coming along and amending those modifications?

Lord Lisvane: You were amending the modifications that had an effect on Act C.

Elizabeth Gardiner: My heart always sinks when I get an SI in to vet that is of that sort.

Lord Lisvane: Exactly.

Elizabeth Gardiner: It is complicated, and sometimes because of the legislative history it may be unavoidable but to go down a certain route that is possibly not the ideal route. But from the drafter's point of view, they have to be absolutely sure what text they are operating on. They have to understand the first Act, the thing that is doing the modifying and the thing that is modified. Then they have to work out which of those it is that

they are amending. In those circumstances you would generally be amending the modifications made by the middle Act, so that it was amended modifications that then had effect on Act C. Yes, it is the sort of thing that makes us wrap a wet towel round our heads. It is very easy to slip up when something is that complicated.

The Chairman: It is the stuff of nightmares.

Elizabeth Gardiner: Indeed.

Lord Lisvane: Going now to the generality of consequential amendments, when you draft a power to make consequential amendments, whether they are textual or non-textual, what sort of consideration do you give as to how long a power like that is likely to be used? Is it while the dust settles after Royal Assent or is it more of a slow burn? What does that depend upon?

Elizabeth Gardiner: Possibly it is less about Royal Assent and more about the commencement of the specific Bill.

Lord Lisvane: I am sorry—commencement. Let us change it to commencement.

Elizabeth Gardiner: I would expect it to be very closely linked to the commencement of the Bill. It would be very hard to justify coming along five years after you have implemented something and claiming that a change that you are now making to the statute book is consequential on a change to the law five years ago. Indeed, even where something has been overlooked, it is quite unlikely that the Government would come along five years later and purport to exercise the consequential power.

We would expect it to be exercised at the point that the provision was brought into force. Different provisions come into force at different times, so I am not sure how helpful it is to suggest that it has an end date, because it has a natural shelf life that is attached to the commencement of each of the provisions. Some provisions sometimes have staggered commencement or are brought into force for different areas at different times, and the consequential power would need to reflect that.

Lord Lisvane: However, that is a practical shelf life rather than a formal shelf life.

Elizabeth Gardiner: Yes.

Lord Lisvane: Say you have consequential power provision in Act A. Act B achieves Royal Assent and is commenced relatively shortly afterwards. Would you think it would be stretching consequentiality too far to use the power in Act A to make it congruent with Act B?

Elizabeth Gardiner: I do not think you could use the power in Act A. A consequential amendment power could not generally be used to amend the Act itself. On some quite specialised occasions the power may be extended to amending the Act itself, where perhaps the Act is in various different

parts with different topics and expected to have different commencements. There may be a very specific reason why you might want to amend the Act itself under the consequential amendment power, but I expect the Government would be able to articulate exactly why they were taking that power, because it would be an unusual power to be able to use the consequential amendment power in the Bill to amend the Bill itself.

Lord Lisvane: On the grounds that the provisions of Act B could not have been foreseen when the powers granted under Act A—

Elizabeth Gardiner: You might expect Act B's consequential power to be the one that was going in and amending Act A.

Q14 **Lord Lisvane:** Yes. In your opening statement you said that when a Bill is being drafted it is often unclear precisely what provision is needed to ensure all knock-on effects of the substantive changes made by the Bill are reflected across the statute book. I can well understand that that would be, as it were, a pressure point, but can you go into a bit more detail about why? Is it a function of the time that the drafter has to draft, or the resources you can apply to the process, or indeed lack of clarity in the drafting instructions?

Elizabeth Gardiner: It could be any of those. It could be that the policy is developing as you are drafting, and therefore you are concentrating. It does happen occasionally.

Lord Lisvane: Good heavens—what a surprise.

The Chairman: Unfortunately it is not a surprise.

Elizabeth Gardiner: You may say it happens even after it is introduced. Therefore, you do not have a solid state early enough to take account of the consequential provisions, or you may be anticipating further changes and therefore do not feel that you have a solid landscape. Within the House itself, if you are making amendments, possibly concessions, maybe in the second House, at a late stage you then have the difficulty of making sure that you have picked up the knock-on effects of that across the statute book. That can be a real driver to taking a power, just so that you can make sure that you can follow that through, having made the concession.

Q15 **Baroness Drake:** I would like to go back to Lord Tyler's point on the perception of the ordinary person regarding the potential significance of a delegated power and how that is used. That concern is enhanced given the imminence of the great repeal Bill, because people are working through their experience and how that will apply in that situation.

There are three observations of concern that I would make that have come up in the work of this Committee. First, policy is often not settled, so how can one make these judgments and have confidence in them, because the policy preceding the drafting of the Bill is not settled? Secondly, the Ministers exercising these powers are also assessing the weight given to that power as to whether it is an otherwise modified power that does not need to be subject to affirmative resolution. Thirdly, sometimes the

Government accept the recommendation that a modified power should be subject to affirmative procedure and sometimes it does not. Yes, that is a positive, but it confirms that it is a subjective judgment because there is not a consistency of criteria that is obviously coming through as to why in that instance they have used it and in another they have not.

That gets me then to the two key questions, which really is going back to Lord Tyler's point. Is it possible to create a series of criteria or tests for assessing the potential significance of a power when it comes to otherwise modify? Secondly, do you see any consistency showing in those situations where Governments have accepted otherwise modifying powers being subject to affirmative? Can you see a pattern that we cannot see as to why they have been conceded?

Elizabeth Gardiner: As to the criteria tests, that is the difficulty we have, in the sense that we would like the line to be clear. We would agree that if we could draft a power to refer to textual amendment as subject to the affirmative procedure and everything else negative, that line would be very clear. That is what we intend when we say "amend" or "otherwise modify". That is where we expect that line to be drawn.

We want to ensure that there is a clear line because, going back to a Minister exercising the power and giving the weight, the Minister does not want to have to make a judgment, because he wants to know for sure that either his instrument has to be negative or it has to be affirmative. He has to get that right, otherwise he does not have a valid instrument. He needs to know exactly where that line falls. That is what we have struggled with—coming up with a line that is other than between textual amendment and others.

It seems to us that is a reasonable line to draw. It seems to the Government that is a reasonable line to draw because of the significance of the sort of thing we do in textual amendments—albeit they are not all of that significance, but a number of them might be regarded as that—where we are going in and amending the wording in the statute book. On the other side of the line, we are very rarely doing anything that looks like the textual amendment, therefore the default of the negative is appropriate.

As to whether we have been consistent or not, we would have to put our hands up and say we have not been consistent. The examples that the Committee brought to our attention were generally older. I think we have been consistent recently. This has come to light. It has been discussed within government and we have now among ourselves articulated what our position is. That is reflected in our more recent responses to the Committee. But drafting is an art, not a science, and things are always moving on.

The modifications that we now accept are affirmative, like the one in the Technical and Further Education Bill, are not consequential amendment powers, so we will still on occasion think that certain powers to apply legislation with modifications fall on the side of the line that requires the

affirmative procedure, but it is not the consequential amendment power. It always comes back to the fact that the consequential amendment power in our minds is not a loosely drawn power. It is not a great blunderbuss of a thing. It is already a very limited power that just allows us to go and tidy up things for the assistance of the end user, so it is not doing the unexpected.

David Cook: Interestingly, on your concern about the policy not being settled, by the time the consequential amendment power is exercised, the Bill is enacted, the core policy is settled and the consequential amendment power is being exercised to deliver the final nuts and bolts, as it were, the policy will in effect be settled.

Baroness Drake: I take issue with that a bit, because I can think of Bills where policy quite clearly has not been settled, even at the point that the Bill acquired Royal Assent. There has been quite a lot of contest around the nature of the delegated powers—I can think of one in particular. It may not always be modified powers—it may be the difference between negative and certainty—but there are Bills that leave us where the policy is not settled.

David Cook: I am sure that is true for Bills where there are substantial powers within the Bill that then have to be exercised and there are still decisions to be made and consultations to undergo relating to policy. I was thinking specifically in the context of consequential amendment powers, where the power itself is not going to be wide enough to deliver real substantive policy changes. There may be minor changes of policy that are possible, depending on the Act itself, but essentially that core policy will have been settled by the time the consequential amendment power is exercised.

Q16 **Lord Thomas of Gresford:** You will appreciate that the raison d'être of this Committee is to consider the potential significance of the power. That is what we are here for. If you adopt the blanket approach and the clear line that is no doubt helpful in telling the Minister what to do, nevertheless it comes to us and, without any steer, we have to take a decision as to how significant the power is and whether we should send it back with our recommendation that an affirmative procedure should be adopted.

Whereas it may be very helpful from your point of view to have a clear line, it might be more helpful to this Committee if you were able to set out the criteria that Baroness Drake just mentioned and come to a conclusion, even possibly that the actual amending under Henry VIII powers is so insignificant that it does not require the affirmative procedure but modifications are so significant that they do. It might be more difficult, but you are in the engine room. You should be sending the signal up.

Elizabeth Gardiner: I am very happy to keep trying to find a way to draw a different line and to think about whether there are things that happen on one side of the line that ought to fall on the other. I am very happy to continue discussing that with your legal adviser. It is not that we have not tried to do that, but it is not just for the Minister's convenience that it is important that there is a clear line. It is also important for Parliament to

understand which instruments it is requiring to be affirmative and which it is requiring to be negative. That is the only clear place that we have been able to draw the line and in policy terms we do not think that is the wrong place to draw it.

That is what we are saying, because while in theory it might be possible to come up with some theoretical amendments that fall on the wrong side of the line, in practice either they will fall within the Government's undertaking that we will put them into an affirmative instrument or they just do not happen in practice. We do not think we ought to move that line in a way that would bring in things that we do not think should be subject to the affirmative procedure.

The Chairman: Could I make a practical suggestion? The memoranda that we get from the departments are not always very clear. They sometimes make an assertion without supporting evidence. If you have those kinds of difficulties, I think if you explained them more to us in a memorandum, we might be less inclined perhaps to say, "Up with this we will not put".

Elizabeth Gardiner: I completely accept that and I will take that back.

Lord Flight: I have a similar point. It seems to me you are tied up with string with your own definitions. The simple point is that anything that is important or Henry VIII, whether it is cast as textual or a memorandum or what have you, should go for the affirmative procedure. It is crackpot that there exists a definition under which you can present something of import such that it does not qualify for the affirmative procedure.

Elizabeth Gardiner: How would a court determine whether something was important or not? It is a subjective judgment as to whether something is important, and from the point of view of the law when we get to court, that is down to the judge.

Lord Flight: That is what we are asked to do as a Committee. If we are asked to do it, surely you can as well.

Elizabeth Gardiner: But you are advising on the procedure. You could have a test on the face of the Bill that says that, for example, if the Minister thinks the amendment is important, it is affirmative, and if it is not important, it is negative, but that immediately gives rise to the prospect of that being challenged on a case-by-case basis where somebody disagrees with that judgment. If the court upholds that, the instrument falls, but the instrument is just making tidying-up changes. I think from everybody's point of view—from the users' point of view, from our point of view and Parliament's point of view—it is better to have a clear line that does not rely on somebody's subjective judgment as to on which side of the line something falls.

Q17 **Lord Lisvane:** Following up your answers to Lady Drake about policy developing on the hoof, let us say, I think I am right in saying in the last parliamentary session there were 96 Henry VIII powers contained in Bills. Sixty-five of those were on introduction. I can understand that the normal

tests that you would apply to whether it is appropriate to have a Henry VIII power could be applied to those, but 31 were actually added during the passage of those Bills. What is the rationale of that? Is it simply that the time pressure is so great that people throw up their hands and say, "We do not know exactly what provision we want to make, so we will have a Henry VIII power"? That seems to be a systemic problem in the way that legislation is amended and the ease with which a Henry VIII power can be put in.

Elizabeth Gardiner: I suspect that those extra ones are not consequential amendment powers but substantive powers.

Lord Lisvane: That is what I am talking about—proper Henry VIII powers.

Elizabeth Gardiner: I have not gone into this and researched it, but from experience I would imagine these primarily relate to new areas that are brought into the Bill, either at the Government's instigation or quite frequently in response to points that are raised in Parliament. If those provisions had been in the Bill from the outset, they may well have had that Henry VIII power attached to them at the time.

It is undoubtedly the case that, when responding particularly to points raised in Parliament, the policy may not be as developed as it might have been if it had been in the Bill at the introduction. That might therefore drive you down the road of taking a Henry VIII power where you would not have previously, or you might require consequential amendment, which you cannot deal with in the time available. It is difficult without going back and having a look at them, but that is the sort of thing that I would have thought would have driven us down the road.

We are very aware of Parliament's reaction to these powers and we do test them with the department. We increasingly test them with the department and we talk within our office about how they are best used and what sort of safeguards we can attach to them. I do not want to give the impression that we throw them in willy-nilly, because that is not the case at all. We are very aware of Parliament's concern about our use of them and we do test them with the department, and the process for introducing Bills tests the powers in the Bill as to whether they are justified. I absolutely take the point about the memorandum, which we are very conscious of and trying to improve such that we justify the full width of those powers in the memorandum.

Lord Lisvane: Very often you are under the cosh of the business managers, who say, "Report and Third Reading is going to be a fortnight hence", and there simply is not time to sort out what might be specified as opposed to dealt with under a Henry VIII power.

Elizabeth Gardiner: Possibly, but possibly the time constraints are just of a bigger magnitude. If you are responding to something in Parliament, you are going to do it over a space of weeks, whereas if it had been a government policy you might have had that in development for several

months in the department. It would not necessarily just be about the timetabling of the Bill.

The Chairman: We must now draw the proceedings to a close. We have kept our witnesses for quite a long time. I thank you, Ms Gardiner and Mr Cook, very much for coming and being so helpful to us. I am sure we are all now better informed than we were before. Thank you very much indeed.