Select Committee on the Constitution
The Constitution Committee is appointed by the House of Lords in each session with the following terms of reference:
To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.

Current membership
Lord Brennan
Lord Crickhowell
Lord Cullen of Whitekirk
Baroness Dean of Thornton-le-Fylde
Baroness Falkner of Margravine
Lord Goldsmith
Lord Lang of Monkton (chairman)
Lord Lester of Herne Hill
Lord Lexden
Lord Powell of Bayswater
Baroness Taylor of Bolton
Baroness Wheatcroft

The following were members of the committee during session 2013–14:
Lord Hart of Chilton
Lord Irvine of Lairg
Baroness Jay of Paddington (chairman)

Declarations of interests
A full list of members’ interests can be found in the Register of Lords’ Interests:

Publications
All publications of the committee are available at: http://www.parliament.uk/hlconstitution

Parliament Live
Live coverage of debates and public sessions of the committee’s meetings are available at:
http://www.parliamentlive.tv

General information
General information about the House of Lords and its committees, including guidance to witnesses, details of current inquiries and forthcoming meetings, is available at:
http://www.parliament.uk/business/lords

Committee staff and legal advisers
The current staff of the committee are Nicolas Besly (clerk), Dr Stuart Hallifax (policy analyst), Hadia Garwell and Melanie Moore (committee assistants). Professor Adam Tomkins is the legal adviser to the committee.

Contact details
All correspondence should be addressed to the clerk of the Select Committee on the Constitution, Committee Office, House of Lords, London, SW1A 0PW.
The telephone number for general enquiries is 020 7219 5960.
The committee’s email address is constitution@parliament.uk.
Sessional report 2013–14

1. The House of Lords Constitution Committee is appointed by the House “to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution”. Accordingly, we conduct bill scrutiny, carry out in-depth policy inquiries and hold annual evidence sessions with holders of certain public offices involved in the constitution.

2. The aims of our sessional reports are:
   • to summarise for the House and the public the work we have undertaken during the session;
   • to assess the effectiveness of that work; and
   • to comment on any general matters which we consider important.

3. During the 2013–14 session we reported on four bills. We conducted three inquiries: into the constitutional arrangements for the use of armed force, the constitutional implications of coalition government, and the immediate constitutional implications were there to be a “yes” vote in the referendum on Scottish independence. Finally, we held stand-alone evidence sessions with the Lord Chancellor, the Deputy Prime Minister, the Lord Chief Justice and the chairman of the House of Lords Appointments Commission.

4. During the session, the committee was the subject of two publications. One was a chapter on the work and influence of the committee by Andrew Le Sueur and Jack Simson Caird in the book *Parliament and the Law*. The other was a report on the committee’s “constitutional standards” by the Constitution Unit at University College London, which sets out in thematic groups the committee’s recommendations since its inception.

Inquiries

5. Our inquiries in the 2013–14 session covered subjects which were of topical interest. Our report on constitutional arrangements for the use of armed force was published shortly before the House of Commons rejected a Government proposal regarding armed force in Syria. Our report on the constitutional implications of the Scottish referendum reflected increased attention on the referendum. Our other inquiry, into coalition government, is relevant to developments in Parliament and government in the approach to the May 2015 general election.

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Constitutional arrangements for the use of armed force

6. Our inquiry into the constitutional arrangements for the use of armed force took place at a time when military assistance to anti-government forces in Syria was being discussed but it was unclear what role the House of Commons would play in any such process.

7. Our work on Parliament’s role followed an inquiry by this committee in the 2005–06 session. We recommended then that there should be a parliamentary convention governing the role of Parliament in decisions to deploy armed force overseas, with the Government seeking parliamentary approval for such action. Since then, there have been suggestions that Parliament’s role should be formalised either through a resolution or through legislation. Meanwhile a vote approving the use of British armed forces over Libya took place in March 2011.

8. In our new report, we concluded that the current convention, whereby (other than in exceptional circumstances) a debate and vote is held in the House of Commons on the deployment of armed force overseas, was the best arrangement. Neither primary legislation nor a resolution by Parliament would represent an improvement on the existing convention; indeed formalisation would potentially reduce flexibility and any legislation or resolution may need to be regularly amended to reflect the changing nature of warfare. During the debate on the report in the House of Lords, the minister stated the Government’s “commitment to respect the existing parliamentary convention” and said they were reflecting on whether any further formalisation was needed.

9. Our report also examined the Government’s internal arrangements for deciding on the use of force. We concluded that the Cabinet should remain the ultimate decision-maker on whether to use armed force overseas. We found that many of the Government’s internal arrangements in this area were poorly understood, and so recommended that they be set out in detail in the next edition of the Cabinet Manual. In their written response the Government agreed with the committee on both points.

10. Following our report, the House of Commons debate on military intervention in Syria on 29 August 2013 reinforced the convention that the House of Commons is consulted before the deployment of UK armed forces overseas. The Prime Minister immediately accepted the House’s vote against intervention, saying “the British Parliament, reflecting the views of the

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5 As proposed in the previous Government’s white paper The Governance of Britain—Constitutional Renewal, Cm 7342–1, March 2008.


7 HL Deb, 28 November 2013, cols 1602–24.
British people, does not want to see British military action. I get that, and the Government will act accordingly.8

Constitutional implications of coalition government9

11. Our inquiry into coalition government looked back at the experience since 2010 and forward to the general election in 2015. While many differences between single-party and coalition government are political, we identified important aspects of coalition government that are constitutionally significant.

12. Our conclusions related to government formation, the day-to-day experience of coalition and the end of the Parliament. On government formation, we found that:

- government formation negotiations should be concluded as promptly as possible—the five days taken in 2015 should not be viewed as a template period;
- the longer, 12-day gap between the election and the first meeting of the new Parliament in 2010 should be repeated;
- precedents have created an expectation that the incumbent Prime Minister will remain in office until a successor can be identified;
- all parties to any post-election negotiation should be offered factual briefing and administrative support by the civil service;
- the vote in the House of Commons on the Queen’s Speech establishes whether the Government command the confidence of that House—a specific vote on a prime minister or a coalition programme would be unnecessary and inappropriate.

13. Our main concerns in the day-to-day running of the coalition were on the convention of collective responsibility. While acknowledging that parties in a coalition will not agree on all issues, we stressed the constitutional importance of reaching a collective position and the accountability to Parliament that comes with the convention. We recommended that a formal process should be put in place to govern instances where collective responsibility is set aside.

14. We concluded that the Salisbury–Addison convention—on the role of the House of Lords as regards bills implementing manifesto commitments—does not apply to coalition agreements, save for policies that appeared in the same or substantially similar form in all coalition parties’ manifestos. However, the practice whereby the Lords does not normally block government bills applies to coalitions as to single-party governments.

15. Our report also addressed how the Government should handle the pre-election period. In order to uphold existing constitutional principles, we concluded that:

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8 HC Deb, 29 August 2013, col 1555.
• collective decision-making and collective responsibility must continue to apply during “purdah”;

• during the manifesto-writing process ministers should be able to commission confidential factual briefings from officials, without the information being shared with their coalition partners;

• the Government’s legislative programme for the final session of the Parliament should be planned so as to avoid a “wash up” at the end of the Parliament, so far as possible;

• the convention on access to previous administrations’ papers should be adapted to cater for coalition governments: we proposed a scheme to do so.

16. When the House debated the report, there was broad support from all sides for its conclusions and recommendations, including from former politicians in coalitions at Westminster and Holyrood, and former senior civil servants.10 Members expressed concern that the Government had not provided a written response to the report within the standard two months of publication.11

Scottish independence: constitutional implications of the referendum12

17. The potential consequences of the referendum on Scottish independence on 18 September 2014 have been widely debated, including in both Houses of Parliament. However, we considered that there had been little discussion about the constitutional implications for the rest of the UK were there to be a “yes” vote. We therefore examined the practicalities of and constitutional principles governing the negotiations that would follow such a result; and we considered the consequences of secession for the UK Government, Parliament and Supreme Court.

18. A key principle underlying the negotiations would be the UK’s status as the “continuator state”, retaining the institutions and international status of the current UK. Scotland would be a new, “successor” state. This would have significant implications for the negotiations as it would mean that United Kingdom institutions (including Parliament, the BBC and the Bank of England) would remain institutions of the rest of the UK. The division of the UK’s liabilities and non-fixed assets would be a matter for political negotiation, based on the principle of equity.

19. We recommended that, in the event of a “yes” vote, a bill should be introduced to set up the rest of the UK’s negotiating team and devolve to the Scottish Parliament power to legislate to appoint the Scottish team. We found that there was no constitutional principle by which the rest of the UK negotiating team would be bound to adhere to the timetable for independence set out in the Scottish Government’s white paper Scotland’s Future. We concluded that a small team representing the UK Government should act as negotiators for the rest of the UK. That negotiating team should not include MPs representing Scottish constituencies, as they would face a conflict between the interests of rest of the UK and the interests of

10 HL Deb, 13 May 2014, cols 1812–58.
11 By the time the report was debated three months had elapsed.
their constituents. Similarly, Scottish MPs should not be able to hold the negotiators to account nor take part in ratifying a final agreement.

20. MPs for Scottish constituencies should nonetheless continue to sit in the House of Commons while Scotland remained in the UK, but leave if and when Scotland seceded from the Union. Between a “yes” vote and independence their participation in debates on non-Scottish issues may be controversial, potentially creating a “West Lothian question on steroids”, as one commentator put it. Similarly, they may affect the balance of power for the government after the 2015 general election. We therefore concluded that the status of these MPs and the timing of their departure should be settled quickly were a “yes” vote to be returned in September.

21. Our report is scheduled to be debated in the House of Lords on 24 June 2014; we look forward to receiving the Government’s response to it.

**Bill scrutiny**

22. We published two reports on government bills in the session and had extended correspondence with the Government on another. The session was unusual for the arrival in the House of Lords of two private members’ bills on significant constitutional matters that had been passed by the Commons.

23. Our report highlighted concerns about the bill’s handling, scope and interaction with polls to be held in Scotland, Wales and Northern Ireland. We felt that the handling of the bill was “a matter of significant concern”, as only the first part of it (creating a register of consultant lobbyists) had been published in draft and subject to pre-legislative scrutiny, and criticism had been expressed at the speed at which the bill was introduced and proceeded with. We highlighted the limited scope of Part 1, which established a register of consultant lobbyists but did not regulate lobbying in general; nor did it capture all of the activities of consultant lobbyists or create a code of conduct.

24. We concluded that Part 2 (non-party campaigning) directly affected “the common law right to freedom of political expression” and that to “the extent that a problem may be identified to which Part 2 is the solution, it may be a problem only in theory”. In light of the concerns raised by this committee and others in the House, the Government took the unusual step of pausing consideration of Part 2 for a month during the bill’s committee stage. They subsequently tabled several amendments to it, including one to review its provisions after the 2015 general election.

**Immigration Bill**


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26. We drew to the attention of the House the question whether clause 11 of the bill undermined the common law right of access to justice by allowing only an administrative review of certain types of decision on immigration cases, rather than a full right to appeal. We also drew attention to an ambiguity over the introduction of “new matter” in an appeal unless the Secretary of State consents to it—the drafting appeared to go beyond the apparent intent of the provision, which was to prevent a tribunal considering new grounds or material raised in an appeal before the Secretary of State had been able to consider it. We also noted “a significant innovation” in clause 14, which set out the public interest factors involved in the right to private and family life in immigration decisions.

27. Clause 60, which allowed for the removal of British citizenship from a naturalised citizen whose conduct was seriously prejudicial to the vital interests of the UK, even when that person would become stateless, attracted controversy. We asked the Government a series of questions about the clause, including asking whether it was in response to a general problem or only the case of Hilal Al-Jedda. The Government answered promptly. A Lords amendment removing clause 60 and setting up a joint committee on the issue was replaced by a government amendment stating that the Secretary of State may only use the power in clause 60 where he or she has “reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory”.

European Union (Referendum) Bill

28. In January 2013 the Prime Minister promised that a future Conservative government would hold a referendum on membership of the European Union, following a renegotiation of the UK’s position in the EU. A private member’s bill was introduced by James Wharton MP, with the support of the Conservative party but not the Government, which would require a referendum on membership of the EU to be held before the end of 2017.

29. Our report noted that the question of the UK remaining in the EU was among the “fundamental constitutional issues” for which referendums are most appropriately be used, as set out in our 2010 report Referendums in the United Kingdom. We highlighted that any amendment to the bill in the House of Lords would make it unlikely to be passed before the end of the session, due to Commons procedures for consideration of Lords amendments to private members’ bills.

30. In our report we also drew attention to the Electoral Commission’s proposed alternative question for the referendum and the absence of provisions in the bill regarding the regulation of the referendum.

House of Lords Reform (No. 2) Bill

31. The House of Lords Reform (No. 2) Bill provided for resignation or retirement of members of the House of Lords, and the expulsion of members

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who do not attend during a session (save for certain exemptions) or who are sentenced to imprisonment for more than one year. Although clearly of constitutional significance, we did not consider that the bill gave rise to constitutional concerns.

32. Our report highlighted comment about a potential unintended consequence of the provision on retirement, whereby prospective MPs or MPs who have lost their seats might be appointed to the House of Lords pending an opportunity to enter (or return to) the Commons. We welcomed the Government’s statement that they did not intend the bill to be used in that way, and urged that legislative steps be taken to address the problem if it arises.

**Anti-Social Behaviour, Crime and Policing Bill**

33. Although we did not publish a report on the Anti-Social Behaviour, Crime and Policing Bill, we wrote to the Lords minister (Lord Taylor of Holbeach) on three aspects of the bill. Our principal concern was about clause 1, which provided for the granting of an injunction against nuisance and annoyance (IPNA) for “conduct capable of causing nuisance or annoyance to any person”. We considered this test to be unclear, making it hard for individuals (including parents or guardians of minors) to predict whether certain conduct might attract an IPNA. The correspondence between our then chairman and Lord Taylor was part of wider pressure from the House to amend this provision. As a result of amendments passed by the Lords, in the Act “anti-social behaviour” is more precisely defined as “conduct that has caused, or is likely to cause, harassment, alarm or distress to any person”.

**Evidence sessions with certain office holders**

34. Much of our annual evidence session with the Lord Chancellor, Chris Grayling MP, addressed proposed changes to judicial review in the Criminal Justice and Courts Bill. The committee examined the justification for and potential impact of the proposed changes. The session also covered human rights, changes to legal aid and judicial diversity. The Lord Chancellor shares a statutory duty to promote judicial diversity with the Lord Chief Justice, Lord Thomas of Cwmgiedd, with whom we also discussed that issue. The latter session also covered proposed reforms in the administration of the courts, including an intermediate level of courts between magistrates’ courts and the Crown Court, and use of a more inquisitorial procedure for civil cases. On communication between the Lord Chief Justice and Parliament, Lord Thomas thought that a written statement by him under section 5 of the Constitutional Reform Act 2005 would not be a “nuclear option”; although its use should be infrequent, he did not want to imply that it indicated “war” between the judiciary and the Government. Diversity was also a key theme when we heard from Lord Kakkar, the chairman of the House of Lords Appointments Commission.

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18 This correspondence is published on our webpages.
19 Section 2(1)(a) of the Anti-Social Behaviour, Crime and Policing Act 2014.
20 26 March 2014. The transcript is published on our webpages.
21 7 May 2014. The transcript is published on our webpages.
22 26 February 2014. The transcript is published on our webpages.
35. We also held our annual evidence session with the Deputy Prime Minister, Nick Clegg MP, who was accompanied by the Minister of State with responsibility for Cities and the Constitution, Greg Clark MP. This session covered the Government’s record on constitutional reform, reform of the House of Lords, the referendum on Scottish independence and issues raised in our report on coalition government—particularly the role of the Deputy Prime Minister and the convention of collective responsibility.

23 9 April 2014. The transcript is published on our webpages.