Select Committee on the Constitution

Corrected oral evidence: The legislative process: the passage of legislation through Parliament

Wednesday 12 September 2018
10.25 am

Watch the meeting

Members present: Baroness Taylor of Bolton (Chairman); Lord Beith; Baroness Corston; Baroness Drake; Lord Dunlop; Lord Hunt of Wirral; Lord Judge; Lord MacGregor of Pulham Market; Lord Morgan; Lord Norton of Louth; Lord Pannick; Lord Wallace of Tankerness.

Evidence Session No. 6 Heard in Public Questions 193 - 201

Witness

I: The Rt, Hon. Baroness Smith of Basildon, Shadow Leader of the House of Lords
Examination of witness

Baroness Smith of Basildon.

Q193 The Chairman: Good morning. Thank you very much for coming to talk about this issue. I think you know what the Committee is about and that we are looking at the legislative process, particularly the role of the Lords. Can we start with a general approach? What is your take on how effective Parliament, particularly the House of Lords, is in scrutinising legislation? What do you think are the main problems?

Baroness Smith of Basildon: I am perhaps less critical than some. Generally, we do a fairly good job of looking at the detail of legislation, better at some times than at others. We have a different approach and focus from the Commons. I do not know whether anyone has looked at Isabel Hardman’s book. She reflects on how the Commons deals with legislation vis-à-vis its other work and casework, whereas our complete and total focus is on legislation, which makes it easier for us.

We look at things in detail, but there is room for improvement, in particular on how we use secondary legislation. I am not sure whether my general perception is accurate: it seems to me, when you look at the detail, that we are using secondary legislation more widely. Too often, the primary legislation we get is framework legislation, consultations have not been completed before the legislation comes forward, or we do not have impact assessments. Those are the kinds of things we could do better and improve.

In the Lords, we are sometimes a bit more creative. If we think back to the Trade Union Bill, there was perhaps more knowledge about trade unions on one side of the House than there was across the House. Clauses 10 and 11, in particular, were quite controversial. What we proposed, in my Motion to the House, was that we set up an evidence-taking Select Committee, not to delay the Bill in any way, but to run parallel to it. It was quite interesting. The House agreed, and the Committee was established on a cross-party basis. Even some Members who opposed it came to me later and said, "That worked well". In the House, one of the Conservatives on the Committee, who had a very firm view, both before and after, on the Bill, said, "I didn’t realise how little I knew about trade unions. I have learned a lot more by having that process". Our ability to be a bit creative in gathering information is good.

There are some shortcomings. It is good that the House of Commons and the Government sometimes use the Lords to bring forward things that have been raised in the Commons as a Commons starter; but the information that should go with that, such as the impact assessment, is sometimes a bit lacking. We need to look quite carefully at how we use legislation and at the detail of legislation. In their evidence, the Convenor of the Cross Benches and the leader of the Liberal Democrats talk about secondary legislation and amending SIs. I can understand why that has come forward. There is more that we should do on SIs and there are some things we can think about. I am not keen on actually amending
them, because then they would become like primary legislation, but we could play a greater scrutiny role, rather than having the nuclear option of a veto or nothing.

**The Chairman:** Colleagues would like to follow up quite a few of those points.

Q194 **Baroness Corston:** Baroness Smith, would you say that, in the consideration of Bills, the two Houses complement each other effectively?

**Baroness Smith of Basildon:** In theory, theory and practice are the same, but, in practice, they are often different. The principle of how we manage it is good. We have different roles. I have some caution about it.

The Lords does extremely well in that we are less selective on amendments. We can debate all amendments and we can be more thorough. The use of the guillotine in the Commons sometimes makes that quite difficult. When we are considering a Bill here and we are trying to follow what happened in the Commons, it can be quite difficult. There might have been several amendments; they are all bundled up into one debate, the votes come at the end, and not all of them are voted on. If it is beyond the guillotine time, the lead amendment is voted on, and then only government amendments. In ministerial responses, Ministers might not respond to everything. I struggle sometimes to follow what has happened in the Commons when legislation comes to us.

My caution would be that their committee process is different. In a Commons committee, clause stand part is automatic, so the reason why there was no debate might be that people were content and there is not an issue, whereas here we have to table clause stand part so that it can be considered.

You are right; the Houses complement each other, because they are different, but sometimes I am not sure that it works quite so well. Often it is quite difficult for us to understand exactly what has been debated and how far the Commons has got with the debate. Ministerial responses are not always as adequate as I would like for us to pick things up in the Lords.

**Baroness Corston:** Arising from that, do you think that more should be done to emphasise the difference in the processes of the two Houses?

**Baroness Smith of Basildon:** Definitely. From some of the comments that were made when our House passed amendments, particularly on Brexit legislation, which has engaged more MPs than usual, you would think that we were stopping the Government doing anything they wanted to do. In fact, our process is to give the House of Commons the opportunity to reconsider, or to consider, something it would not otherwise have considered. People sometimes fail to understand that.

Sometimes outside organisations that wish to campaign or to lobby the Lords are under the mistaken impression—sometimes encouraged, I have to say, by some Peers—that if something is voted for in the Lords,
something will be stopped or changed. In fact, what we are doing is making a recommendation to the House of Commons.

The answer to the question is yes, most definitely, but how we do it is quite difficult. There is a responsibility on all of us to be absolutely clear, when we put forward amendments, that we are giving the Commons a further opportunity.

**Lord Beith:** One of the potential areas of difference is the extent to which the proceedings on a Bill are used to raise new issues, or to extend its scope, rather than to see whether the Bill as set out can carry out the functions and policies ascribed to it. Do you think that in the Lords we should pay more attention to what is likely to end up in the Bill, and spend less time than the Commons on using the Bill as an opportunity to flag up desirable things that we might like included? Do you make a judgment about that sort of thing?

**The Chairman:** Are you referring to the fact that in the Commons the Long Title restricts the scope for amendments, whereas in the Lords there is much wider scope for amendments?

**Lord Beith:** There is wider scope, but, in practice, in the Commons people find ways of spending quite a lot of time debating things that are not in the Bill, and probably never will be in the Bill.

**Baroness Smith of Basildon:** Although we may have more flexibility here, if amendments are not in scope, they will not be accepted. It is the same in the Commons.

The ability to curtail what people talk about has been a challenge to every Speaker of the House of Commons and to the Lords itself. If you have done the detail on a Bill, and worked hard on it, sometimes it can be very frustrating when others who have not been so engaged come in on an amendment in Committee to make a Second Reading speech, which may or may not be within the general scope of the amendment, or even the Bill itself. There is very little you can do. It is about self-restraint.

I am not sure that it is the world’s greatest problem, apart from the fact that it takes up time and causes frustration for those who are fully engaged with the Bill and the amendment. With lots of Bills, there are things where everybody would think, “We could do more here. We could do better there”, but taking things out of scope is observed more in the debates than in the amendments.

**Lord Beith:** It is not really a procedural question about scope; it is about what the balance of our efforts should be in the House of Lords. My assumption is that the balance of our efforts in the Lords should be to try to make sure that the Bill does not have unintended consequences and is capable of doing what it is supposed to do.

**Baroness Smith of Basildon:** That should be the objective of everybody in the Commons too. If legislation comes forward, it has to be fit for
purpose. The role of anyone scrutinising legislation is to ensure that it is fit for purpose.

**Lord Beith:** When, or if, we get to the ping-pong stage, how insistent is the Lords entitled to be? Do present procedures present any problems in that respect? Would you change them in any way? Do you believe that the Lords is likely to become too insistent that the Commons debates things that it has not considered properly beforehand?

**Baroness Smith of Basildon:** The Lords shows remarkable self-restraint with regards to ping-pong. In the Article 50 debate, when your party, the Liberal Democrats, pushed for ping-pong a second time, I took the view that as we had sent it back to the Commons, and the Commons sent it back to us in the first round of ping-pong, and there was no movement from the Commons and no sign of change, that was adequate, so at that point we did not press it. That was the majority view of the House, which did not insist on its amendments. I think the House shows self-restraint and understands that.

It is frustrating that the reasons we get back now from the House of Commons for not accepting amendments are inadequate. I have sat on reasons committees. You go into a little room and talk about the amendment. It seems to me that now the reason is, basically, “We don’t like it”, with not much more detail. The Commons might claim financial privilege, but the reason is, “We don’t want this”. I do not think that is adequate, and it can encourage people to push ping-pong further.

On all kinds of things, this House shows restraint. I am not sure whether it was the wisest thing to have said, but I said once in a speech, ”We know our place”. We absolutely accept the primacy of the House of Commons as the elected House. We should do that, but our role is to be helpful. The Canadians refer to their second Chamber as the Chamber of sober second thought. I rather like that.

**Lord Beith:** Are there circumstances, and do you recall circumstances, in which you think the House is justified in sending something back a second time?

**Baroness Smith of Basildon:** There are circumstances. In my time in this House—just over eight years—I can recall occasions when we have done that, but it is quite rare.

**Lord Pannick:** Do you think that this House would be even more effective in scrutinising legislation if it were to tolerate and, indeed, encourage more actual debate, rather than set speeches? There is a very strong tendency to deprecate interventions and debates at Second Reading and, indeed, in Committee and on Report.

**Baroness Smith of Basildon:** There is a time when interventions go too far and are inappropriate, but we seem to be moving to a situation where no intervention is well received. Last night, when the Minister was responding on the Trade Bill, she got a couple of interventions, but a
number of colleagues were quite agitated; I shall not name anyone. Partly that was because it was getting late, and I think they wanted to go home.

Interventions are justified if they are directly relevant to something the Minister has said in response. When a Member is making a speech and some clarification is required, interventions are justified. That is part of the art of debate. I am more relaxed about that. Personally, I always enjoy taking interventions, but others are less confident about doing so.

We want genuine debate, particularly in Committee. My sense is that, if committees are not on the Floor of the House, there are more interventions. People are less keen to intervene on the Floor of the House, for some reason.

Q195 Lord Morgan: We know that parts, perhaps whole clauses, of a number of the Bills that reach the Lords have not been discussed at all by the House of Commons. I recall the Bill on electoral boundaries, which gave rise to a good deal of nocturnal eloquence, particularly on our Benches. Should the House of Lords treat those lacunae in a Bill differently?

Baroness Smith of Basildon: There is a case for doing so. It is an issue for government, as well as for the House as a whole. When the withdrawal Bill was in the Commons, at one point it was mooted that it would have one day’s debate there. My message to the Government was, “You have to understand that, if the Commons has only one day of debate, there will be a number of issues that are not properly discussed or debated. The House of Lords will think it legitimate to pass more amendments if the only way to get the House of Commons and MPs to debate an issue is on a Lords amendment, because they have not had the opportunity to do so”. When issues are not debated properly in the House of Commons, it affects the way we look at a Bill and how we treat it.

I would slightly urge caution in that sometimes it is difficult to understand what has and has not been debated in the House of Commons, given the nature of the debates. Sometimes there is a choice not to debate something. To get balance when debates take place in the Commons and the Lords, the Government have to ensure that they do not guillotine Bills in the Commons too rigidly and prevent debate.

Lord Morgan: If the Government do not do that, do you think it legitimate for the House of Lords to try to fill the gap?

Baroness Smith of Basildon: Yes. As I said, one of my messages to the Government was that, if they truncated debate too much, the only opportunity that MPs would have to debate and consider an issue would be on a House of Lords amendment. That opens up a different kind of role for the Lords, as a facilitator for House of Commons debate.

Lord Morgan: The other thing that can happen, rather than bits being left out of what is presented to us, is that the Government can bring in additional material, commonly with numerous amendments. What should one do then? Should a Bill be recommitted if that happens?
Baroness Smith of Basildon: Not necessarily. Quite often, it happens because MPs in the Commons have identified a gap in the Bill and the Government have responded by saying, “We can address this in the House of Lords and bring forward an amendment there”. Because it is an amendment tabled in the Lords, it goes back to the Commons for debate there. In those circumstances, you would not need to recommit the Bill. If the Government are introducing completely new material in the House of Lords after a Bill has been in the Commons, there is a justification for enhanced scrutiny in some way. There are different circumstances.

Q196 Lord Hunt of Wirral: How well does the process of scheduling business through the usual channels work in the House of Lords?

Baroness Smith of Basildon: Mostly, it works quite well, but we have our moments. What is helpful, as long as it is not too rigid, is the calendar we now have, which says on which days we are likely to debate which amendments in the course of a Bill. Most colleagues find that quite helpful. If you are interested in a Bill, but you are not there for the whole Bill and have to be there for specific issues, you know roughly when they are going to come up.

The difficulty arises when the Government become too rigid about the timetable and are not willing to look at the Bill as a whole. We had an issue on the withdrawal Bill. I spent two nights, which was two nights too many, in the House until well past midnight—about 2 in the morning—yet on the last two days of the Bill we finished early. There was plenty of time for the Bill. There was no need for us to sit until 2 in the morning. We said to the Government several times that the last day’s schedule was very tight, that it was not particularly controversial, because there would be discussions going on throughout the Bill, and that it would not take a whole day. The Government said, “No, that is the timetable. We have to get to this point”.

In the end, the opposition parties got together. We said, “We are pulling this amendment, because there is another one later on”, so that the House could finish at a reasonable time, but we did not prevent the issue being debated. In those circumstances, we were able to do that, because it was possible to table amendments and that had been done; there were lots of amendments from all over the House. The same issue could come up in different clauses, so we did not lose the ability to discuss it, but it is quite rare for that to happen.

Quite late on the Monday, in order to have Northern Ireland debated when the House started on the Wednesday, people just did not move their clauses. If they had not done that, we would have had quite detailed stuff going through. The Government are sometimes too rigid, which is unhelpful, but in the majority of cases scheduling can work well.

The dilemma for the Government is that they want to get their business through, and they want no question about that, but, if you look at the business of the House, you find that there are days when we are very
busy and other days when, quite frankly, an extra day on a Bill would serve the House well and would not do the Government any harm.

**Lord Hunt of Wirral:** You have mentioned the guillotine a couple of times. I remember the furore in the House of Commons when Michael Foot introduced a whole series of guillotines. It has now moved to more timetabling, has it not? I am not saying that we should do that in the House of Lords—far from it—but should the timing of Bills be more predictable? Should the timetabling be more transparent, in an organised way, rather along the lines you have just referred to?

**Baroness Smith of Basildon:** We do that now. There is a difference in the Commons. They have the knives. When they get to that point, they take the votes, first on the lead amendment and then on government amendments, and every other amendment falls. I would not want us to go down that road.

We have the calendar. The business paper will tell you what the calendar for the Bill is and on which days we are doing particular amendments. That works quite well, but the Government could be a bit more relaxed about it. I cannot recall a time when, by agreement, we did not get a Bill through on the days when the Government wanted it. The one I still resent enormously was the Housing Bill, which was hugely complex. We got inadequate responses from the Minister. Fortunately, I cannot recall who the Minister was at the time.

**Lord Hunt of Wirral:** It changes.

**Baroness Smith of Basildon:** Yes, from time to time. The Government’s scheduled business on the Housing Bill would have run until midnight on three nights running. To me, that is totally unacceptable. As it turned out, on one of those days, the business before the Housing Bill ran later, so we did not do it on that day, but on two days it was scheduled to run until midnight. Most Members who wanted to take part did not take part. It was unacceptable to schedule legislation so late. We sit later than the Commons most of the time anyway. There should be more flexibility.

That puts an onus on the Opposition not to play games with something, but I cannot recall a time when there was filibustering to stop something getting through with no agreement. The only instance was the nocturnal eloquence Lord Morgan spoke of, for which I take some responsibility, not for the eloquence, but for the nocturnal part. On that occasion, the difficulty was getting answers from the Government. I asked the Minister, “What is the justification for 600 seats in the House of Commons?” I was told, “It is a nice round figure”. Lord Strathclyde talked about “a nice round figure” at that time. That is when you get the interventions. There are more interventions when you get unsatisfactory answers.

**The Chairman:** The intention behind programming in the Commons was that the Government would be guaranteed an end date, and everything else would be determined by the Opposition. It has slipped from that, because there has been abuse over the years. In essence, you are saying
that here, in the Lords, as long as the Government get their end date, there should be more flexibility in how we get there.

**Baroness Smith of Basildon:** Yes. There should be more flexibility, but the calendar is still helpful to give guidance to colleagues.

**The Chairman:** As a framework.

**Baroness Smith of Basildon:** Absolutely. We never miss their end dates.

**The Chairman:** Yes. That is the critical thing from the Government’s point of view.

**Baroness Smith of Basildon:** Unless there is something very serious going on. The House as a whole would know that, not just the Opposition.

**Q197 Lord Dunlop:** Can I ask you about the time consumed by Divisions? What scope do you think there is for improving that? We have received evidence from the Law Society of Scotland on practices in the Scottish Parliament, where they use electronic voting. It is a two-part question. Are there things that we can improve? Do you think there is an appetite for electronic voting?

**Baroness Smith of Basildon:** When I was in the Commons, there was a report on electronic voting. The proposal was to have monitors—voting stations—in the Commons Lobbies. I voted for it and was in a minority. The House did not accept it.

I have always thought that going through the Lobby has merit, in that people get together. It has more merit in the Commons than in the Lords, because there are fixed-time votes. You say, “I will see you at the 7 o’clock or 10 o’clock vote”. The Lobbies are wider, and there is more capacity to have a conversation. There are also more Ministers. The whole purpose is to grab hold of a Minister and lobby them. I am not sure that applies in exactly the same way in the House of Lords, for all those reasons, so I am perfectly relaxed about it.

There are two or three things I would look at if we went down that road. First, you need to insist that people need to be in the Chamber or in the Lobby to vote. The idea of voting around the parliamentary estate is not acceptable. In big and serious votes, it is really important to be there for the wind-ups and to listen to the arguments that are being made.

The House of Representatives votes electronically. It is not quite as straightforward as it looks, because you can change your vote within the first 10 minutes, if it is a 15-minute vote. If it is after that time, you have to get a card and get it signed and vote separately. You can change your vote, and you can see on the screen how people are voting.

I am not sure that it would speed things up terribly much, but it might be helpful. I have no opposition to it, but it has to be in or around the Chamber and it has to be clear on ID, so that somebody cannot use
somebody else’s card, if we vote by card. There should be more accuracy. We have had a few votes where inaccurate figures have been given at the end.

Q198 Baroness Drake: In your view, how useful for parliamentarians and the public are the various explanatory materials that accompany Bills? Do you think they could be improved in any way?

Baroness Smith of Basildon: There is probably a difference between parliamentarians and the public. The Library Notes are very helpful; they are always useful. We should insist on impact assessments being available when we have the Bill. Too often, they are delayed. The Trade Union Bill had been through all its stages in the House of Commons and had come to the House of Lords, but by Second Reading we still did not have the impact assessment. That is unacceptable when you are putting legislation through.

The information available in the Commons includes the evidence sessions at the start of a Bill. We do not have that for Lords starters. There is a case to be made for the Lords having its own evidence sessions for Lords starters, perhaps in the Moses Room, prior to starting a Bill.

A new innovation, as of this week in the Ivory Bill amendments, is an explanation of what the amendments mean. We have to be careful that that innovation, which is taken from the Commons, does not become advocacy for the amendments, but it is quite a good proposal.

For anyone looking from outside, it is a bit of a labyrinth. If we have a Bill that was a Commons starter, I always try to go to Hansard. On complicated Bills, that is becoming less useful, because of the way the debate takes place. There are things we can do better. The website that shows the process of the Bill for parliamentarians is very good. You can get to the Hansard for the Lords debate and see the amendments that are tabled. I am not sure that the detail is particularly user-friendly for the public, other than those who are interested in the detail.

Baroness Drake: What about Parliament scrutinising the explanatory materials? I am thinking particularly, but not exclusively, about the impact assessments? Do you think that we scrutinise them or passively accept them?

Baroness Smith of Basildon: The quality of impact assessments varies enormously. If they are late, they are of very little use to us. On the children’s Bill, we got quite cross because quite complicated issues were coming forward in a framework Bill and the detail was going to be put into the SI. I think that was also the Bill where the consultation responses were not yet available. We were supposed to discuss a framework Bill without a proper impact assessment or the consultation information, and the detail was going into the SI, so we were not scrutinising properly. Those of us who were jumping up and down, as I did on several occasions, and asking about it were regarded as a bit of a nuisance.
There are things that we can do better, but a lot of the onus is on the Government. There is also an onus on the House itself to say to the Government, “We expect better”. Some impact assessments are very useful, but the justification, “This is government policy”, is not a useful impact assessment.

**Lord Judge:** In the context of framework Bills, do you mind if I come back to something you said at the very beginning, in the context of secondary legislation and amending it?

**Baroness Smith of Basildon:** Oh dear.

**Lord Judge:** If the Government of the day decide that legislation that should be in primary legislation can wait until secondary legislation time, is there not a very strong case for everybody being able to amend secondary legislation?

**Baroness Smith of Basildon:** There is a special example, as we had with tax credits, when the Government argued that there should be secondary legislation and we took a very clear view that there should be primary legislation. It was another opportunity for the House to be creative. We did not say that we were rejecting or vetoing the measure; we said we expected the Government to come back with transition measures, and we would withhold our support until then. The rest is history: the Government did not proceed with it.

The danger with having amendments is that it would be very easy to rerun the arguments that we had on the primary legislation on the secondary legislation. The problem at the moment is that it is all or nothing. There is a veto or there is nothing at all. Baroness Hollis put a proposal to the Procedure Committee for another way forward that would be less nuclear than a veto but offered a bit of delay, not so long that it could stop something but a limited time for a rethink. The Government were not at all happy about that.

**Lord Judge:** No Government would be.

**Baroness Smith of Basildon:** No. But we needed government approval to get it to the Floor of the House and the Procedure Committee.

There is work to be done on a way forward that could give a little more. The House should not be shy about voting for a veto if it is something that clearly should be in primary legislation. The Cunningham report looked at SIs. It did not say that in no circumstances must you veto an SI; it said that there are very limited circumstances in which the House of Lords would be justified in its constitutional right to do so. One of the examples in the Cunningham report is when the Government are trying to use policy to change something significantly, when it should clearly be in primary legislation.

The proposal is something to be approached with caution; there is more work to do on it. The Government would never want the position to
change, but the demand comes from what I think of as their inappropriate use of SIs.

**Lord Judge:** The Children and Social Work Bill was a very good example.

**Baroness Smith of Basildon:** Yes. I can think back to a number of them. The one in the public mind is always tax credits. The general view on tax credits, and it included quite experienced parliamentarians, was that the House of Lords rejected tax credits, but we did not. We have rejected an SI, I think, six times since 1945. Normally, it was against a Labour Government by a Conservative Opposition, I hasten to add. I am wary of using the veto inappropriately, as I do not think that we should, or going down the road of making all SIs amendable, because we would just rerun the arguments on the primary legislation.

**The Chairman:** We have a new system of filtering SIs, because of the EU withdrawal legislation. This Committee was concerned that policy changes might slip through with those SIs, so we now have a filtering committee. Is there scope for a new filtering role for an SI committee that could say that the SI contains significant policy changes and that perhaps we need a different procedure for certain SIs?

In a year’s time, when we look at the experience of what has happened with the EU legislation, it might be worth looking at whether there is scope for some filtering process. In that way, we could define different types of SIs as making technical changes, as was the original intention, and identify those that stray too far into the policy area.

**Baroness Smith of Basildon:** I had not thought of it going wider. The current committee says whether there are policy changes, but there is no route it can take other than to make suggestions to the Government. I had a quick look at the SIs that the new committees recommend should be done under the affirmative procedure, which is limited in additional scrutiny but a step in the right direction. They are picking up issues around policy, not necessarily policy changes but policy implications and clarifications.

The two sub-committees doing that work will provide a useful guide; it will also be a guide as to how the Government respond, because they do not have to accept that it is affirmative. They have to make a response to that and, to see how effective the proposal is, we will have to look very carefully at how they respond.

**The Chairman:** In time, we might get some useful experience from that.

**Lord Beith:** To go back to what you were saying about SIs, you or others used the phrase “nuclear option” about this House turning down an SI. But does not any nuclear deterrent depend on people believing that you might in certain circumstances use it? One weakness of the nuclear deterrent theory is that people often do not believe that you would do that. Does a certain responsibility not rest on opposition parties to be prepared, and for people to believe that they are prepared, to use that
mechanism when the circumstances require it?

**Baroness Smith of Basildon:** Yes, and the example is tax credits. The Government knew that we were prepared to use that option; but we thought there was a different way to do it, and we got the desired aim. There are a couple of cases, which were not successful in the House, when opposition parties tried to put a veto on an SI, there was a fatal regret Motion and they were not successful. The current arithmetic probably makes it more likely that the House would be reluctant to vote for those Motions.

I have always opposed removing the power. One option floated previously, which may be in the Strathclyde report, although I have not read it recently, was to remove the veto and give other options. To take away the veto would be a diminution of the powers we have at the moment. Strathclyde offered something like removing the veto and having a delaying process.

You are right. This House has shown enormous restraint in using that veto, but it remains a power that can be used and should remain a power to be used.

**Q199 Lord Norton of Louth:** You may feel that you have already answered this question, because you touched on it. We tend to focus somewhat in looking at legislation in a rather insular way; it is proposed and dealt with by committees here and we look at it. As you have said, the public and interested groups outside might not just have interest in the measure but might have information that is invaluable for our purposes, before we have actually approved the legislation.

You touched on what may be an important way to deal with that, which is that when a Bill comes here, when it is a starter in the Lords, at some point it should go before a Select Committee or an evidence-taking committee. Otherwise, the danger is that Lords starters never get that scrutiny here or in the Commons, because they have come from the Lords.

This Committee, in its 2004 report on Parliament and the Legislative Process, recommended that every Bill should be subject at some point in its passage to an evidence-taking committee. I take it from your earlier comment that that is something of which you would approve. You mentioned the website. Are there other ways in which we should be looking at that and seeking to improve our interaction with people who have an interest in the Bill or particular knowledge that we might wish to utilise?

**Baroness Smith of Basildon:** The first answer is yes, there should be an evidence-taking session for Lords starters. It would not hold up the Bill, it could be scheduled in quite easily, and it would be useful.

My sense is that over the last few years Members of the House of Lords have become more of a focus for engagement and lobbying with outside organisations. As an example, at our party conference we host a meeting
for campaigning organisations, or any organisation interested in policy and legislation, to come to meet our Members, Front Bench and Back Bench. The first year we did it, in the year before I was Leader, about five years ago, we had 40 people turn up; now more than 100 turn up.

There is a real appetite to engage with Members of the House of Lords, but a lot of organisations do not know how to. They have grown up sending MPs as many emails as they can, so that MPs know that 1,000 people in their constituency want them to vote a certain way. We have to say, “Don’t do that. Don’t contact Lords in the same way as you contact MPs”. If I get 1,000 emails, they completely clog up my system and we do not have the staff to answer them. MPs can harvest them and keep in contact because they want people’s votes, but we are not subject to that in the same way. What we want is hard, factual information and detail. We are getting better, but those people are getting better at it as well.

When I had the energy brief for our Front Bench, and four or five environmental organisations wanted to come to talk to me, I would always suggest that they got together and sorted out what they were interested in, and then come to talk to me. If there are five different groups, we do not have the capacity to manage that. Both sides are improving.

There will obviously be only limited interest; because we are focused on legislation, we will not have the Sun or the Mirror or the other tabloids running on what a wonderful debate we had last week in the House of Lords. It is usually only if they think somebody has made a fool of themselves that they run a story. But generally there is far more interest in what we do, and in debates generally. Organisations look to the House of Lords to provide the detail in some of those debates, which perhaps they did not do in quite the same way when I first came in.

Lord Norton of Louth: Is not the advantage of having an evidence-taking committee that it is appointed and therefore acts as something of a magnet for people, so they know who to focus on? The other advantage is that it is transparent and on the record, whereas, if they write to us, it might be useful, but nobody else knows what is coming in and what we are doing with it.

Baroness Smith of Basildon: Transparency is a key part, because you know exactly who it is. Like a lot of people, I am uncomfortable with lobbying companies that have lots of clients and say their client wants to speak to me, but I am very happy to talk to organisations, whether professional or campaigning organisations. You know who their members are, who they represent and what their point of view is, which is very helpful. That transparency is very useful; it co-ordinates them and gives them a focus for how best to contact those directly involved in a Bill, rather than telling their members to email 50 Members of the House of Lords at 4 o’clock on Friday afternoon.

Lord Norton of Louth: And it marshals the material in a way that may be helpful to the House.
Baroness Smith of Basildon: Yes, and they will know the kinds of questions that will come up during the passage of the Bill, which will give them a better focus as well.

Lord Norton of Louth: To pick up your point about the website, is there more that we could do to inform people outside about our process and how they might get involved?

Baroness Smith of Basildon: I think there is. The process is always a bit of a mystery to lots of people, including Members of Parliament. Some of the attacks on the House of Lords when we pass amendments are a bit like, “We don’t agree with you, so we’re going to attack what you’ve said”, rather than being about the process. We could do more, possibly through the website, although the House of Lords communications department is responsive rather than proactive. That is a wider issue, and I know the Lord Speaker has looked at it.

We could say why we are doing something, and how we operate. Lots of Peers go to schools and talk about that, but it is a drop in the ocean; there is no wider appreciation. Curiously, the more the public know about the House of Lords, the more they quite like us.

Lord MacGregor of Pulham Market: To follow on from what you were saying about communication, how effectively do you think that Parliament, especially the House of Lords, communicates its legislative scrutiny work? It is obviously detailed and very worthy, but not always newsworthy. How does it do that in relation to the principles and powers involved and in the details of the process, the successes and so on?

Baroness Smith of Basildon: In some ways, the House of Lords is always going to be less newsworthy than the House of Commons, which is not necessarily a problem for us, because our role is different. There are probably fewer Peers than Members of the Commons on Twitter and other social media and putting out press releases. That is partly because of the nature of our work on legislation, which is more detailed, and partly because we are not seeking election and we are not all politicians.

Having said that, greater understanding of what we do and why we do it is helpful, particularly as people have different views on how or whether the House of Lords should face any kind of reform. If you understand what the House does and its purpose, you can have a more intelligent discussion and debate about potential reform. We do it relatively well, but we are often reactive rather than proactive.

There have been some helpful changes. More Peers are out and about; I regularly do things on TV and radio with other Peers. The fact that we get out there and talk about what we do is important, but not everybody wants to do that. We are doing okay, but there is a lot more we could do, and we should be a little more proactive, although I am not really sure how interested people are in what we do.

Lord Wallace of Tankerness: Thank you very much. You have given us lots of food for thought. Do you have one priority for reform of the
process? This may be the same question, but is there anything you get frustrated about in your work as Leader of the Opposition in the Lords? Do you think, “If only we could sort out this bit of process, it would be so much better”?

Baroness Smith of Basildon: How long have you got? There are lots of things. On policy, I regret that we do not go through the process of Green Paper and White Paper so often. It was a really good way of leading into legislation to have the Green Paper, then a bit more detail and then the Bill. That would be of help.

The evidence-taking sessions we talked about for Lords starters would be really helpful. We should not be shy about being creative in how we deal with things. There was some reluctance about the committee on the Trade Union Bill beforehand because it was thought to be controversial, but by the end of that committee it was not seen as controversial at all.

Lord Wallace of Tankerness: Do you think it is up to individual Peers, or groups of Peers, to take the initiative, or is there some way that as a House we could formalise it and encourage more initiative and an imaginative approach?

Baroness Smith of Basildon: There is no lack of imagination, but I think the House is always quite reticent, unless it thinks that something is essential, such as the fact that we do not have an impact assessment. If the Government are co-operative on time and information, the House feels less need to be creative. It is when we feel that we do not have the information to do our job properly, or that the Government are trying it on, perhaps by bringing something forward in secondary legislation, as Lord Judge said, that should be in primary legislation, that the House looks for opportunities to do the job it is here to do. It is not being creative to be obstructive; it is being creative to do the job properly. That would be useful.

Impact assessments of legislation are absolutely crucial, and I wonder whether we should be a bit firmer on that. I am quite staggered that Bills can go through all stages in the Commons without a proper impact assessment. That is not giving proper consideration in any way, and it implies that the Government have not given proper consideration to the Bill before bringing it forward, too. I would look at that.

I like the explanation of amendments, which has been helpful to Members. It was done on a relatively small Bill, and it could be very useful on some of the more complex Bills.

Lord Pannick made the point that we should be less wary about taking interventions in debates. I do not mean that we should have a Commons-style debating Chamber; that is not really what we are looking for, but there are times when we should be less reticent about challenging or probing something a bit more.

There is no one standout thing for me, but there are a number of things that we could look at. There is the issue of the resources available to
Peers to do their work. If you are researching either as a Front-Bencher in an opposition party, or as a Member on the Cross Benches, which do not have a Front Bench in the same way but play a leading role, it can sometimes be difficult to garner the resources you need to do scrutiny work effectively. Some colleagues constantly look to outside organisations for help on resource and to provide information for the work they put in. That brings us to the point that Lord Norton made about transparency. Some internal House resource to do that scrutiny work would be useful.

The Chairman: To go back to the actual quality of the legislation that comes forward, from your days in government you will remember the legislation committee, which had to sign off legislation as compliant with a whole lot of issues—that the Treasury had seen it, its environmental impact and all the rest. Suggestions have been made for a legislative standards committee of either this House or both Houses, or something of that kind, to do that kind of checklist for each piece of legislation. Have you any thoughts about that? It is something that quite a few people have supported in the past.

Baroness Smith of Basildon: That would probably terrify the Government, particularly the Home Office, I suspect. It would be useful. If legislation does not reach the standards it should, it might build in a bit of delay at the beginning, but it might help the passage of a Bill if those basic issues were looked at. A Government should see that as a helpful step, but I suspect they might not.

Lord Norton of Louth: I too was going to ask Baroness Smith whether she favoured a legislative standards committee. Potentially, it could have a very valuable deterrent effect; if the Government knew they would be subject to that, it would encourage greater rigour on their part.

The Chairman: It could smooth the passage of Bills, which from the Government’s point of view might counter the fear they might have in the initial stages.

Baroness Smith of Basildon: It could be a central resource for Government. My sense is that there is sometimes less capacity in government departments in the legislative teams writing things, as their numbers have fallen. I know that numbers are going up to deal with Brexit, but, when there are fewer civil servants in a department, knowing that there is an outside resource whose sole responsibility is for legislative standards might be helpful to individual departments.

Lord Norton of Louth: At the moment, you question whether some of the criteria that are meant to be employed before a Bill comes forward have been properly considered, including whether there is an alternative to legislation.

Baroness Smith of Basildon: Yes. It is difficult to do that in departments. You are right. Ministers are given slots for Bills, and they
are not going to lose a slot, even if they could do it another way; they have a slot for the Bill, and they are going to use it.

**The Chairman:** Is there anything you would like to add that we have not covered?

**Baroness Smith of Basildon:** I do not think so. I made some notes on your questions, but we have covered everything I wanted to pick up.

**The Chairman:** In that case, thank you very much. It was extremely helpful, and we are glad that you were able to come.