



HOUSE OF LORDS

Procedure Committee

2nd Report of Session 2007–08

Royal Commissions for Prorogation

Ordered to be printed 30 June 2008

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

HL Paper 135

The Procedure Committee

The Procedure Committee is appointed each session to consider any proposals for alterations in the procedure of the House that may arise from time to time, and whether the standing orders require to be amended.

Current Membership

The members of the Procedure Committee are:

Lord Addington
Baroness Anelay of St Johns
Baroness Ashton of Upholland (Lord President)
Lord Brabazon of Tara (*Chairman*)
Baroness David
Baroness D'Souza
Lord Elton
Lord Harries of Pentregarth
Baroness Hayman (Lord Speaker)
Lord Jopling
Lord Low of Dalston
Lord McNally
Baroness Northover
Lord Rosser
Baroness Shephard of Northwold
Lord Shutt of Greetland
Lord Strathclyde
Lord Williams of Elvel

Alternate members:

Lord Dubs
Lord Hunt of Wirral
Lord Palmer
Viscount Slim
Baroness Thomas of Winchester

General Information

General information about the House of Lords and its Committees is on the Internet at <http://www.parliament.uk/lords/index.cfm>

Contacts for the Procedure Committee

All correspondence should be addressed to the Clerk to the Procedure Committee, House of Lords, London, SW1A 0PW.

The telephone number for enquiries regarding the Committee's work is 020 7219 8796.

SECOND REPORT OF SESSION 2007-08 FROM THE PROCEDURE COMMITTEE

Royal Commissions for Prorogation

1. The Committee has considered a memorandum from the Lord Chancellor, the Rt Hon Jack Straw, MP, inviting it to review the role of the Lord Chancellor in Royal Commissions for Prorogation. The memorandum is annexed to this Report.
2. According to Appendix E of the *Companion to the Standing Orders*, a Royal Commission “consists of three or more (usually five) Commissioners, including the Lord Chancellor and Lord Speaker”. The description of the procedure at Prorogation in Appendix J of the *Companion* envisages the Lord Chancellor presiding over the Royal Commission and reading the Queen’s Speech.
3. However, Standing Order 77, which dates back to 1621, states that “If Her Majesty is not personally present to prorogue Parliament at the close of a session, such prorogation is not to be by Writ, but by Commission directed unto some of the Lords of the Upper House”. The reference to “Lords of the Upper House” appears to preclude the Lord Chancellor, when not a Member of the House of Lords, from presiding over the Royal Commission.
4. The Lord Chancellor therefore invited us to consider an amendment to the Standing Order, replacing the words “the Upper House” with the words “Her Majesty’s Privy Council”. Mr Straw attended our meeting on 30 June to present his memorandum in person.
5. In support of his suggestion, the Lord Chancellor argues that the Standing Order is inappropriate, in seeking to limit Her Majesty’s choice of Commissioners; he points out the inconsistency between Standing Order 77 and the *Companion*; and he notes an apparent inconsistency in the fact that the Standing Order refers only to Royal Commissions to prorogue Parliament at the close of a session, not to Royal Commissions on other occasions, such as at the start of a new Parliament.
6. We do not find these arguments persuasive. We fully acknowledge that the Standing Order does not and cannot bind Her Majesty. However, that is as much an argument against change as for it. While the Standing Order describes the ceremony of prorogation as it was conceived in the early seventeenth century, it has proved sufficiently flexible to accommodate almost four centuries of evolution in the way Prorogation is managed.
7. The most recent stage in this evolution was the decision in October 2007 that the Lord President, the Leader of the House, should preside over the Royal Commission for Prorogation and deliver the Queen’s Speech. This was an appropriate response to the changed circumstances since the passage of the Constitutional Reform Act 2005, and demonstrated the flexibility inherent in the procedure set out in the Standing Order.
8. We accept that the Standing Order refers only to Prorogation, and that there is nothing to prevent non-Members presiding over Royal Commissions on other occasions, such as the start of a new Parliament. This flexibility has in fact been useful in recent times, allowing newly appointed Lord Chancellors, who had yet to take their titles, to preside at the opening of new Parliaments

in 1974 (Frederick Elwyn Jones) and 1987 (Sir Michael Havers). It will be for the Government of the day to decide how best to make use of this flexibility at the opening of future Parliaments.

9. We therefore recommend no change to Standing Order 77, and make this Report to the House for information. We shall ensure that the descriptions of the various types of Royal Commission contained in the appendices to the *Companion* are updated when the next edition is prepared.

APPENDIX: MEMORANDUM BY THE LORD CHANCELLOR

1. The purpose of this paper is to invite the Committee to consider the role of the Lord Chancellor in Royal Commissions for Prorogation. In so doing, the Committee is invited to resolve an inconsistency between the terms of Standing Order 77 and the *Companion to the Standing Orders*.

2. Standing Order 77 states that:

“If Her Majesty is not personally present to prorogue Parliament at the close of a session, such prorogation is not to be by Writ, but by Commission directed unto some of the Lords of the Upper House; and they, being in their robes and seated on a form placed between the Throne and Woolsack, are to command the Usher of the Black Rod to let the Commons know the Lords Commissioners desire their immediate attendance in the House of Peers, to hear the Commission read; and the Commons being come up to the Bar of this House and standing uncovered, the Commission is to be read by the Clerk, after which Parliament is to be prorogued in such manner, and to such time, as is commanded by the said Commission.”

For very many years, such Commissions have been presided over by the Lord Chancellor. However, the requirement in Standing Order 77 that the Commission should be directed to “Lords of the Upper House” appears to militate against the current Lord Chancellor from participating as a Royal Commissioner by reason of his seat in the House of Commons.

3. A number of difficulties arise with respect to Standing Order 77:
 - The choice of Commissioners is for Her Majesty; it is not appropriate for the House to seek to limit Her choice by Standing Order.
 - The Standing Order is inconsistent with the *Companion to the Standing Orders*, which at pages 224–6 sets out duties which the Lord Chancellor is required to exercise at the prorogation of Parliament in accordance with long-standing custom and practice.
 - The Standing Order refers only to Royal Commissions for Prorogation. This creates inconsistency, in that there is no bar to the Lord Chancellor presiding over Royal Commissions on other occasions, including at the opening of a new Parliament or upon the appointment of a new Speaker of the House of Commons. The role of the Lord Chancellor in such Royal Commissions is described in full in the *Companion*, pages 215 ff. There have been two examples in recent times of Lord Chancellors who were not yet members of the House of Lords presiding over Royal Commissions at the start of a new Parliament—Frederick Elwyn-Jones in 1974, and Sir Michael Havers in 1987.
4. During the passage of the Constitutional Reform Bill it was agreed that the ancient Office of Lord Chancellor should be retained and in particular that the functions which he carries out by virtue of holding the Great Seal should remain part of his functions. The Lord Chancellor remains the highest ranked layman in the Order of Precedence. In the light of the continued high nature of the Lord Chancellor’s Office I believe it is right and proper for the traditional functions of the Lord Chancellor to be preserved, including the responsibility of presiding over Royal Commissions at prorogation. It would be invidious were the role of the Lord Chancellor to vary according to

whether the Lord Chancellor happened to be a member of the House of Lords or the House of Commons.

5. I therefore invite the Committee to consider an appropriate amendment to Standing Order 77. It would be possible to amend the Standing Order thus:

“such prorogation is not to be by Writ, but by Commission directed unto some of the Lords of ~~the Upper House~~ **Her Majesty’s Privy Council**”.

This would reflect the tradition that only Privy Counsellors have been named of Royal Commissions for many years. Also, by retaining the word “Lords”, it would allow certain other forms of words used on these occasions to remain undisturbed, e.g. the reference to Lords Commissioners in the Standing Order, and the Lord Chancellor’s words once the Commons have arrived (“has also assigned to us and other Lords directed” [*Companion*, page 225]).

6. I am able to give the Committee an assurance that the government cannot imagine anyone not a member of the House of Lords being named in Royal Commissions, other than the Lord Chancellor.

JACK STRAW C

May 2008