

HOUSE OF LORDS
HOUSE OF COMMONS
JOINT COMMITTEE ON DRAFT CONSTITUTIONAL RENEWAL BILL

Memorandum by the Lord Goodhart QC (Ev 05)

The Attorney General

I have already made submissions on the role of the Attorney General to the Justice Committee of the House of Commons and to the Government's Green Paper on the Governance of Britain. I will therefore simply resummise my previously expressed views.

1. The Attorney General's main role should be that of principal legal adviser to the Government.
2. This role requires an ability to give independent advice to the Government. This is inconsistent with membership of the Government.
3. The Attorney General should therefore cease to be a Minister, and should not take part in the formulation of criminal justice policy or undertake other ministerial roles such as taking legislation through either House of Parliament.
4. The presence of the Attorney General in the House of Commons involves a risk of undesirable conflict of interest, in particular between the possibility of giving unpopular advice to the Government and the retention of his or her constituency (or the constituencies of close colleagues) at a future election.
5. The Attorney General should therefore either be appointed to membership of the House of Lords (so long as it retains places for appointed members) or not be a member of either House. If the former, he or she should not vote.

6. The Attorney General should attend Cabinet or Cabinet Committees only when that is necessary for the purpose of giving advice to the Government.

7. If the Attorney General ceases to be a Minister, there is no objection to his or her continuing to have a supervisory role over the prosecution services. Directions relating to national security should be given by the Prime Minister with the consent of the Attorney General.

8. The Attorney General can not act as adviser to both the Government and Parliament, because they may have conflicting interests. The Attorney General, as adviser to the Government, should therefore not be personally accountable to Parliament for his or her advice nor should it normally be disclosed. The Government would of course be accountable to Parliament for action taken on the advice of the Attorney General.

May 2008