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Joint Committee on the Draft House of Lords Reform Bill

Draft House of Lords Reform Bill

Report

Session 2010–12

Volume II

Oral and associated written evidence

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The Joint Committee on the Draft House of Lords Reform Bill

The Joint Committee on the Draft House of Lords Reform Bill was appointed by the House of Commons on 23 June 2011 and by the House of Lords on 6 July 2011 to examine the Draft House of Lords Reform Bill and report to both Houses by 27 March 2012. It has now completed its work.

Membership

HOUSE OF LORDS	HOUSE OF COMMONS
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Bishop of Leicester	Mr Tom Clarke MP
Lord Hennessy of Nympsfield	Ann Coffey MP
Lord Norton of Louth	Bill Esterson MP
Lord Richard (Chair)	Oliver Heald MP
Lord Rooker	Tristram Hunt MP
Baroness Scott of Needham Market	Mrs Eleanor Laing MP
Baroness Shephard of Northwold	Dr William McCrea MP
Baroness Symons of Vernham Dean	Dr Daniel Poulter MP
Lord Trefgarne	Laura Sandys MP
Lord Trimble	John Stevenson MP
Lord Tyler	John Thurso MP
Baroness Young of Hornsey	Malcolm Wicks MP

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Publications

The Report and evidence of the Joint Committee is published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at http://www.parliament.uk/lords-reform

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Oral and associated written evidence

MONDAY 10 OCTOBER 2011

Members present:

Lord Richard (Chairman)
Baroness Andrews
Bishop of Leicester
Lord Hennessy of Nympsfield
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Baroness Symons of Vernham Dean
Lord Trefgarne
Lord Trimble
Lord Tyler
Baroness Young of Hornsey
Gavin Barwell MP
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Tristram Hunt MP
Mrs Eleanor Laing MP
Dr William McCrea MP
Dr Daniel Poulter MP
Laura Sandys MP
John Stevenson MP
John Thurso MP

Mr Mark Harper MP (QQ 1–47)

Examination of Witness

Mr Mark Harper MP, Minister for Political and Constitutional Reform

Q1 The Chairman: Minister, I propose that, as the subject is vast and we know that an awful lot of questions need to be asked and then answered by you, we split up the session. You will have the opportunity to start off by saying what you want to say to us, but we will then deal with a number of different topics. The first is composition, which includes role and functions and the effect of altering composition on primacy and on the conventions. We will go on to elections and then to appointed Members—how you appoint them and how many there should be. We will then go on to the Lords spiritual, then transition, then disqualification and general provisions about membership and then miscellaneous. That, all told, will take us about an hour an a half, I suppose. Is that all right so far as you are concerned?

Mr Harper: It sounds absolutely fine.

The Chairman: Good. In that case, let us deal with it on that basis. I invite you please to say anything that you would like to say to us in opening.

Mr Harper: I am grateful, Mr Chairman. Given that there are so many colleagues here from both Houses with, I am sure, a huge number of questions across that breadth, all I want to say is that this Committee has a very specific task—it is a Joint Committee to scrutinise our specific proposals. I am delighted to be here today. Thank you for the invitation and for giving me the opportunity not just to answer questions about the specific proposals but to set out a little of our thinking about why we have set them out in the way that we have, to deal with some

of the concerns that people have. We are very much looking forward to your report and to listening to what you have to say about the specific details in the White Paper and the draft Bill. We look forward to taking those on board and then hopefully to bringing forward a Bill in the next session of Parliament. We hope to achieve elections on 7 May 2015, now that we have passed the Fixed-term Parliaments Act and we know when the next general election is going to be. That is all I wanted to say, Lord Richard, and I am happy to take questions from Members of the Joint Committee.

The Chairman: Thank you very much. Who would like to start?

Q2 Lord Hennessy of Nympsfield: Minister, if there is a consensus in embryo on this extraordinary Bill about this subject that has distracted people for over a century, it is perhaps that history teaches one thing and one thing only, which is that to try to take composition without powers is almost certainly fatal—it is certainly undesirable. As you know, we had a historical session—our very first session was evidence gathering. I think that it strongly emerged from that that it is delusory to split the two. The idea that composition changes will not affect powers is central to the Bill, but do you really think in all honesty, having sat at the feet of the great Vernon Bogdanor all those years and knowing the history as well as we do, that that argument is sustainable?

Mr Harper: There are two things. This has come up in the debates in your House and in the House of Commons when we were discussing the proposals. It is of course the case that when you change composition you will to some extent change the relationship between the two Houses. The relationship between the two Houses has changed already. It changed when the hereditary Peers were excluded and it has changed since the general election last year—now that the Liberal Democrats are part of the coalition Government, they no longer have the role that they had in the last Parliament as the swing voters, which is a role that, in my observation, the Cross-Benchers have taken on. I do not think that the Government's position is that there will be no change whatever in the relationship between the two Houses, but the statutory underpinning in the Parliament Acts means that the House of Commons remains the primary Chamber. The exact relationship will change, as it has, but the idea that we could now, today, set out the exact relationship and codify the powers on the way in which the two Houses work together and set those in stone is not realistic. Indeed, the Cunningham committee, when it set out its position on the conventions, did not think that codifying the powers and trying to set them out in that detailed way would be very helpful. I do not think that there will be no change. The relationship will evolve—indeed, a long transitional period is built into our specific proposals—but the House of Commons will remain the primary Chamber of Parliament, as is set out in the statutory provisions in the Parliament Act.

Q3 Laura Sandys: This follows on from Lord Hennessy's point but maybe takes a different angle. Obviously, Parliament is always very keen on maintaining its powers and ensuring that it holds Government to account. Do you think that these reforms might not be a zero-sum game and that there might be an enhancement of Parliament and an increased capacity to hold Government to account, or do you see this as being very much the status quo and the movement of powers from one corridor to another?

Mr Harper: I share the view—I know that you have set it out in the press recently—that there are specific things that a House of Lords could do. I was struck by what Lord Adonis said when the House of Lords debated this. He referred to some of the significant long-term infrastructure projects with which he had been associated when he was Secretary of State for Transport and responsible to the House of Lords—the third runway at Heathrow, high-speed rail and a decision about motorway construction. He pointed out that, despite the fact that he was the responsible Secretary of State, the House had not debated those issues when he had had the opportunity to be questioned on them in the House. One of the really important things that a reformed House of Lords could do with Members with single, lengthy, non-renewable terms would be to deal with some of those issues that perhaps we do not do brilliantly in the House of Commons—some of those long-term infrastructure projects and perhaps some long-term social projects, which take a number of years and several Parliaments to evolve. The House could hold Governments to account on how those evolve over time. I know that you set out some of those proposals yourself and I think that they hold a lot of water. They demonstrate that you can enhance the upper House and make a Parliament that together is better able to hold the Executive to account, which I know is what we all want to achieve here.

Q4 Ann Coffey: I am interested in the question of the proportion of elected and appointed Members. I notice that the description of the role of the appointed Member is to make a contribution to the work of the House of Lords that is not a party-political one. I wonder if you could expand on this, as it appears to me that elected colleagues bring experience to the House of Commons and a lot of them make contributions that are not party political; in fact, some of them make contributions that their parties would prefer they did not make. In some sense, there seems to me to be a slightly artificial division, so I wonder why this proportion is being favoured and what the downside is of having 100 per cent elected, when there would not be that artificial division.

Mr Harper: There are a couple of things. There is obviously a principled argument for 100 per cent election. It is certainly fair to say that, in the coalition Government, the Liberal Democrats start off from wanting 100 per cent while the Conservative manifesto proposal was to have a mainly elected House—I think that the general consensus in our party is that that is around 80 per cent. Two things struck us when we were drafting the legislation. First, it is generally accepted that the Cross-Benchers play a significant and valuable role in the House of Lords and our sense was to try to replicate that as best we could. If you look at some of the academic evidence, it is fairly clear that the party-political Members of the House of Lords vote with the party Whips almost, but not quite, as frequently as party-political Members of the House of Commons. The Cross-Benchers bring a set of experiences where they are not necessarily guided by that party Whip. We felt that that was an advantage, given the different role that we see for the House of Lords.

The second thing is that there is a theme running through the proposals to do with the balance between the two Houses. Certainly, some of the things that we have done mitigate the concerns that many colleagues in both Houses have that a more democratically elected House of Lords would challenge the supremacy of the Commons. One of the arguments for an 80 per cent elected House with independent Cross-Benchers appointed is that it would help to reduce the ability of the House of Lords to challenge the Commons as the primary Chamber. But there is also a very valuable role for Cross-Benchers, as I have seen in the debates on legislation that I have been involved with. They bring a different perspective. There are indeed people in the current House of Lords who, because of the roles that they have had in the Civil Service or the Armed Forces, would not be able to take up a party position and would effectively be excluded from the House of Lords. We have taken the view that it would be helpful for them to be able to participate.

Q5 Ann Coffey: Just to expand on that, the division for you is really to do with a whipping system rather than the differing experiences and background of people.

Mr Harper: I think that it is both those things. It is partly about independence. One of the things that we have tried to do with the different electoral system and single, non- renewable terms is to have a House that is more independent. There is not much point in creating an exact copy of the House of Commons—it has its strengths but it also has its weaknesses—so it is partly to have a more independent House. Cross-Benchers clearly do not have a party-controlled Whip. Sometimes, amazingly, they all seem to vote one way rather than the other but it is not a Whip that is a party one. The decision is often reached by them listening to the arguments and making their minds up completely neutrally. That has some merit but there are also people—this argument has been made powerfully in the House of Lords—who because of their backgrounds would not feel able to stand on a party-political ticket. There is a case that those sorts of people would still play a valuable role in the House of Lords.

Q6 The Chairman: Minister, could I follow up the point made by Ann Coffey, which you partially answered, on what effect you think the percentage of non-elected Members has on the argument about the primacy of the House of Commons versus the House of Lords? If your argument is correct, presumably the higher the percentage of appointed Members of the House of Lords, the more obvious it is that the Commons has primacy. Do you accept that as a principle and, if so, why do you think it should be 20 per cent rather than 30 per cent, or maybe even 40 per cent?

Mr Harper: The number is to make it clear that the House of Lords has to be predominantly or mainly elected to change its nature. That is why you are talking about having at least 80 per cent elected. In the last Parliament, there were of course a range of options given that people could vote on. I think they were from 40 per cent through to 100 per cent. It needs to be a significant number elected but there is a principled case for people being appointed to the House of Lords. It also helps with the argument for those who are particularly concerned about

primacy, because a House where there is a significant number who are not elected will find it more difficult to argue that it is more legitimate than, or as legitimate as, the House of Commons.

Q7 Baroness Symons of Vernham Dean: So part of the reason for sticking with the 80 per cent elected is really to undermine the electoral legitimacy, to the extent that it reinforces Commons supremacy. Is that what you are arguing?
Mr Harper: I am arguing that there are a number of reasons. I have set out one—
Baroness Symons of Vernham Dean: Yes, but it is one of the principal arguments.
Mr Harper: It is one of the arguments, yes. If you go through the White Paper, there are a number of things which we have done to enable a House that is more legitimate because people are there by election. I would not have thought it a terribly controversial proposition in the 21st century that people who make laws ought to be elected by those to whom those laws apply. But there are concerns in both Houses about the relationship between the two Houses and we have done a number of things that deliver legitimacy but recognise that Members of the reformed House of the Lords would not be as accountable.

Q8 Baroness Symons of Vernham Dean: Minister, is not the honest thing to do what the Cunningham committee said, which is to revisit the conventions between the two Houses if the House of Lords is to be elected? There was no argument about that when we came to consider the Cunningham committee report. That report was agreed nem con in both the Commons and the Lords, and it was unequivocal in saying that the conventions—I am quoting it—had to be revisited in the event of the Lords becoming largely elected.
Mr Harper: What I said in answer to Professor Lord Hennessy's response was that the legislative underpinning to the relevant powers between the Houses will remain unchanged. We do not propose to change that underpinning in the Parliament Act but I acknowledge that the exact relationship and the conventions will change over time. We are not proposing to have a big bang here where one minute you go from the existing system and have a 100 per cent or an 80 per cent elected House of Lords overnight. There will be a transitional process with a significant period when a number of existing Members of the House of Lords will be in the Chamber but gradually with a larger number of elected and appointed new Members, so those conventions will change over time. In our constitutional process, that is a more sensible way of doing it rather than us all sitting down today, trying to predict what that relationship ought to be in 25 or 30 years' time and codifying it in a very specific way, which the Cunningham committee suggested was not a very sensible idea. It said that the conventions ought to be revisited but, as far as I can tell from my reading of the report, it did not actually have any sense of what those conventions ought to be and how they should develop.
Baroness Symons of Vernham Dean: That is because it was beyond its remit. It was specifically told not to do that.
Mr Harper: Yes, but it specifically said that trying to codify the conventions and the way that the two Houses liaise was not a very sensible thing to do because it would restrict the flexibility that we have enjoyed in our constitutional processes.

Q9 Lord Trimble: We are talking here really about a House being 100 per cent elected or 80 per cent elected and being elected by proportional representation. We are therefore talking about a House where the Government will not have a majority. There is a clear distinction that you have to bear in mind between conventions, which are not binding, and law, which is. If those in this House, which does not have a government majority, decide to exercise their powers by rejecting Bills on Second Reading, what on earth are you going to do about it?
Mr Harper: Because of the way the system works at the moment, you are quite right that the House of Lords has often exercised a self-denying ordinance. But that is also the reason why the Commons has not needed to use the legislative underpinning very frequently. The whole reason why we do not have frequent use of the Parliament Act is exactly that the House of Lords and the House of Commons have a relationship which has developed. It seems to me that, if you change that relationship, the House of Commons may have to exercise the use of the Parliament Acts more frequently and you will have the Houses testing each other. That relationship will then settle down and a new set of conventions will develop, but legislative underpinning is still there.

Q10 Lord Trimble: Do you really think that the Government can carry through their programme when they have to rely always on the Parliament Act?
Mr Harper: No, but if I may say so from my experience of it I do not think that that is what would happen.
Lord Trimble: Your experience is no longer relevant once you move into the situation of a House elected by proportional representation. You have a really qualitative change in that situation and that will have consequences. Incidentally, you may also try to work out what the justification is for continuing with the Parliament Act when you have an elected House. The whole purpose of bringing the Parliament Act into existence was to give the elected House dominance over the hereditary House. When you no longer have a hereditary House, you have no justification for a Parliament Act.
Mr Harper: On that specific point about the relationship between the two Houses, all bicameral systems have to have some mechanism for dealing with disputes.
Lord Trimble: It is not about disputes. The first thing you have to have is usually a definition of the role, which you have elsewhere but which we do not have and probably cannot get because of our flexible constitution. If you do not have a definition of the role, how on earth do you manage the relationship? You are coming back always to the current legislative underpinning, but the current legal position gives this House the same powers as the other place, subject only to the Parliament Act.
Mr Harper: Yes, but the fact that the Parliament Act is there influences the relationship. Ultimately, it is because the House of Lords knows that on significant legislation the House of Commons can insist on things that the conventions are the way they are.
Lord Trimble: With respect, Minister, the conventions are the way they are because the unelected Chamber voluntarily decided to adopt them.
Mr Harper: But the conventions are there because of the legislative underpinning.
Lord Trimble: Again, Minister, the primary convention is one that came into existence in the late 1940s—that is, 40 years after the Parliament Act.
Mr Harper: But the position at the moment is that there is a legislative framework, which we are not proposing to change, where the elected House is able to get its way in terms of legislation. I will focus on that, as it is worth reminding ourselves that the purpose of the House is not solely legislation. That is clearly important but, to pick up the point that Ms Sandys made earlier, the House will do other roles that are not purely legislative. However, on the legislative process the House of Commons can ultimately get its way, which is why it is the primary House. It also controls supply, and that is also set out in primary legislation.
It seems to me that the Houses will evolve a relationship. Let me give an example. We have already seen since the election last year questioning of the Salisbury-Addison convention, on the basis that a number of proposals in the Bills that were in *The Coalition: Our Programme for Government* were not in either or both of the winning parties' manifestos. That is because we have a coalition Government and that has evolved since last year, but although we have had it tested on a number of pieces of legislation, sometimes almost to destruction, no one is suggesting—
Lord Trimble: But wait a minute.
Mr Harper: That is the kind of process which I am suggesting would happen.
Lord Trimble: That had happened anyway because the Cunningham report made it quite clear that what started off as the manifesto doctrine has evolved into this position where the Government were entitled to get their major Bills through. You cannot pin people down purely to a manifesto—things change, new issues come up and so on. That has not been a change simply since the coalition; it was there and was clearly referred to in the Cunningham report.

Q11 The Chairman: Could I ask a question immediately following that? Have you considered putting something in the Bill about this—for example, putting in statutory form the convention that the Lords does not divide on Second Reading?
Mr Harper: No, we have not—well, we have thought about it but we would be very reluctant to start legislating and putting into statutory form how either of the Houses of Parliament should conduct its parliamentary business. If we did that, and we were very reluctant to do it on either of the Bills that I have taken through, we would effectively open up the operation of both Houses to the courts and I do not think that is what we want to

do. As soon as you start setting out how each House legislates, that would be a big risk and we should leave that to the conventions.

Q12 Baroness Andrews: You seem to see the reformed House as a revising Chamber, as we are at the moment. We are confronted with the possibility of a House of 300, of which 60 would be appointed. The debate tomorrow on the National Health Service has 101 speakers, a third of whom have active experience in the health service. It includes, for example, 11 doctors and eight people who are working in PCTs, and so on. I am concerned about the capacity of this smaller House, with simply 60 appointed Members, if it is to be a revising Chamber. You referred, for example, to infrastructure projects and long-term social projects. Are you concerned about a loss of expertise and how do you think that it could possibly be contained or replicated?

Mr Harper: There are two questions there. One is about the size of the House and the other is about the types of people who would sit in it. To take the size of the House first, we came up with 300. Obviously, the existing House of Lords is rather larger than that but in terms of those who attend regularly I think that the number is about 400 on a daily basis—it has been over the last few Sessions. Our expectation would be that when the reformed House is sitting its Members would be full-time, so we felt that 300 would be able to cope with the workload. Clearly, it is for this Committee to test that. In terms of the evidence that you have had from others, if you feel that a different, slightly higher number would be more sensible, then please tell us that. Three hundred is not the number that has to be set in stone. There is no particular science around that number. We think that it is a sensible one that would get the business done, but there is clearly a lot of expertise in this room and I am very happy to listen.

In terms of the types of people and what they bring to the table, I do not agree with the proposition that people who are elected do not come with any expertise. We had this debate when we debated the House of Lords proposals. In your House, the upper House, I think it was Lord Howe of Aberavon who made a similar example to yours on the NHS. He said that when you have debates on the NHS you have PCT chairmen, chief executives and those who have been involved in the health service. Then I thought very carefully about Members of our House. We may have people in our House who, because they have been elected, have perhaps stopped their careers at an earlier time. However, in our House, we have people who are medical doctors, general practitioners—indeed, we have Dr Poulter in this room now—and people who are nurses or who have worked in the social care sector, so we have a lot of expertise in the House of Commons. I think that that was the crux of Ms Coffey's point earlier.

I do not hold that people who are willing to get elected do not come with any experience from their life beforehand and do not bring anything to the table. If you had a House of 300 people—240 of whom were elected and 60 appointed—I just do not accept that you would not have people there in a debate on the NHS who were directly experienced practitioners, or who had a lot of life experience to bring to those debates.

The Chairman: If I may, I will take two more on this particular tranche and then move on to the electoral system. Lady Young?

Q13 Baroness Young of Hornsey: Thank you, Lord Chairman. To go back to the 80/20 split again, do you think that there might be a danger that the 20 per cent who are appointed could be seen as having somewhat second-class membership of the House? Also, would the Government—or any Government—be happy were that 20 per cent to hold the balance of power over any particular issue?

Mr Harper: I do not think that that is a particular danger. Certainly, to take the House of Lords now, Members of the existing House have come there in a range of different ways. There are hereditary Peers, Bishops and life Peers. To my knowledge, the different types of Peers are not treated in a different way. For example, I do not think that hereditary Peers—

Baroness Young of Hornsey: But we are talking about election as a form of legitimation.

Mr Harper: I accept that but, if we have reformed the House, we have said that a number of people will be there by election but also that there will be an appointments system which we will have been set up for people who are not representing political parties. Personally, I do not think that that would be a problem. It is not evident in the evidence from other legislatures.

In answer to your question about whether the Government would be happy if they held the balance of power, I suppose that the obvious answer is: it depends on what they choose to do with it. A Government is always going

to be disappointed if they lose Divisions and overjoyed if they win them. I am not terribly bothered about what the exact mechanics are. I have had some experience of that, with different compositions of people arguing against propositions that my ministerial colleagues have been advancing. If you lose the Division, it is not a happy experience, but you listen to the debate and see how you need to respond to it. Personally, I do not think that that is a real problem.

The other very helpful thing is that, because we are going to have a transitional period, which we propose over three Parliaments, where you will have existing Members of the House of Lords, newly elected ones and newly appointed ones all serving over that period, that process will be much less of a risk than if you had a transition in a big bang overnight, as I suggested.

The Chairman: Dr Poulter?

Dr Poulter: I am happy to wait until the section on the voting system.

The Chairman: In that case, Mr Hunt.

Q14 Tristram Hunt: How much will the new Lords be paid?

Mr Harper: The proposal that we have set out in the White Paper is that they would be paid less than Members of Parliament but more than Members of the devolved Assemblies. We have not set out detailed financial proposals about how much the whole thing is going to cost because there are so many variables at the moment in terms of the number of transitional Members and whether you would pay them. That decision will depend on how many there were and for how long, but we think that that is an appropriate level of remuneration.

Q15 Tristram Hunt: We know that it is the Government's commitment to reduce the price of politics, so will the price be substantially less than for the current House of Lords?

Mr Harper: When we bring forward the Bill and we have some of those parameters defined, we will then be able to set out the costs. You will know, Mr Hunt, that we have already brought forward the reduction in the number of Members of the House of Commons, saving a significant amount of money—a proposal that your party opposed but that we supported—so, yes, overall we want to reduce the cost of politics.

Tristram Hunt: But will the new House of Lords cost less than the old one?

Mr Harper: We will have to set out the details when we know some of those parameters. At the moment, it is not really possible to make a good estimate because we simply do not know whether we will be paying all those transitional Members or how much we will be giving people for expenses or for staff members. We will set that out when we bring forward the Bill, so the House will have that information in good time when it scrutinises our legislation.

Tristram Hunt: In terms of the rights of current Peers to continue in post—

The Chairman: That is coming later.

Tristram Hunt: Is it? I shall save it for then.

The Chairman: Good. In that case, let us move on to the second tranche of the issues, which is on the elected Members: STV, length of terms, vacancies and the size of constituencies. Dr Poulter?

Q16 Dr Poulter: Thank you, Lord Richard. Minister, you are making a very good case so far but I am curious about the voting system that was decided on—STV. Obviously, there may be concerns about having a regional list system and perhaps about whether the role of the Member, if elected under STV, would be in conflict with that of a constituency MP. I am curious about why the regional list system was chosen for elections rather than a national PR-based system, which to me would, in a way, perhaps seem better.

Mr Harper: In terms of the electoral system, picking up the point that I think was made earlier by Lord Trimble about PR, the commitment that we have in the coalition agreement was to have proportional representation exactly to make sure that the Government did not have a majority in the House of Lords. That is important. In the existing House of Lords, that is not the case and I think that that changes the nature of the House. If you had two Houses with opposing majorities, the risk that Lord Trimble set out would be bigger, so that is important.

We then had to think about the kind of proportional system. It is fair to say that this is one of the areas where there was a disagreement on the Deputy Prime Minister's committee between the parties—the Labour Party preferred an open list system and we put forward the single transferable vote. We have said in the White Paper that we are open to argument on those two but we were clear that we wanted either STV or an open list, because

we wanted the voters to have the maximum choice of representatives. That is why we were against a closed list, where your place on it would be allocated by the party and, effectively, the party leaderships would pretty much determine who got elected. That is why we came up with the proposals that we have, which we have tried to set out to maximise both the proportionality and the ability for individual voters to select who gets elected.

Q17 Dr Poulter: Do you have any concerns that that is going to affect the relationship that a constituency MP may have with their constituents, on the basis that you will have a regional representative? That is something which I am sure we all may be concerned about on the basis of those regional lists.
Mr Harper: That is one thing that I know a number of Members in the House of Commons are concerned about—and a number of Members of the House of Lords who used to be Members of the House of Commons. That was one of the things that they set out in the various debates but, for a couple of reasons, we think that that will be a low risk. First, the regions that the Members of the House of Lords will be elected to are quite significant in size. Also, because they have to get elected but are not able to be re-elected, more of the focus of a Member of the House of Lords' time will be on scrutiny and legislation here, rather than on as many constituency responsibilities as Members of the House of Commons have. All those things will militate against that particular risk.

Q18 Dr Poulter: Just one last thing, Lord Richard. On that, the only other concern that there could be is that someone might use the fact that they have become a regionally elected Member to stand for the Commons later on. Would you envisage there being further safeguards in that case?
Mr Harper: That was the reason why we put into the proposals a period of time when you would have to have a gap between being a Member of the House of Lords and seeking election to the House of Commons. It is proportionate. It is not reasonable to ban somebody for life—and I do not think it would be allowed under the Human Rights Act—but it is a proportionate measure so that people who get elected to the House of Lords see scrutiny and revision of legislation, and contributing in other ways, as their job. They do not see the primary purpose of getting elected to the House of Lords as then to get elected to the House of Commons.

Q19 Oliver Heald: The history of debate about electoral systems in Britain has been against the background of the House of Commons, electing a Government, electing a Parliament in Scotland or electing the council and deciding who will be running it. Of course, that has led to all the arguments being, "We could have a decisive result with first past the post," or arguments about proportionality—it is only right and fair that a Government should have the support of a substantial and accurate proportion of the electorate. But of course that is not what we are talking about with the House of Lords or the second Chamber. We are talking about having a system that delivers individual Members to take their part in the House. It is not about electing a Government or deciding control; it is about finding the right people for revising legislation. If that is so, why is it necessary to have a system that, first, elects individuals and gives them a mandate and, secondly, elects them for an area so that they have a geographical focus under a system that is the main competitor to first past the post? You are setting up a group of people who, in the eyes of a lot of the electorate, will have greater legitimacy. They are elected by the voting system that a lot of the population would like to see for the Commons. They are elected for an area. They are individuals who have a mandate. Why do that when it is obviously going to change the relationship with the Commons?
Mr Harper: I would counter your proposition that STV or an alternative to first past the post for the Commons is extraordinarily popular by saying that that did not seem to be the result in the referendum that we had this year. I am not sure that that proposition stands. In terms of what we have proposed, we have set out a system in which we give voters the opportunity to have the maximum choice of candidates and parties. We give them the choice of individuals—admittedly, it is not incredibly likely that you will get independents elected, but STV is a system under which you maximise the chances of independent, non-party candidates being elected; it is the system under which that is most likely, although I recognise that it is not that likely, which is one reason why we want appointed Members.
We have chosen a geographical basis partly to counter one of the things that we get in the House of Lords at the moment, which is a massive skewing of representation towards London and the south-east and slight overrepresentation in Scotland, with massive underrepresentation in all the other parts of the United Kingdom.

If you look at the statistics, it is very clear that the number of Members from London and the south-east is more than double what you would expect on a proportional basis. So that proposal has a lot of merit. Those people who live in the other parts of the United Kingdom will, I think, get a much more evenly balanced set of representatives who are able to look at those parts of the world. Let us go back to the point that we were making earlier about the scrutiny of infrastructure projects. If you are to have a House that is to play a significant role in that, you want Members who represent those parts of the country in a fair and balanced way and you do not want them all skewed towards London and the south-east. One thing that is often said to be wrong with Britain is that far too much power and influence is concentrated in London and the south-east and that it should be spread more fairly across the UK.

Q20 Oliver Heald: Apart from the geographical point, is there any particular criticism that you have of the current membership of the House of Lords? Are there areas of expertise that you would want to see there? Are there people who lack skills? Would you like to see some more skills? Or is it really just a question of having democratic legitimacy?

Mr Harper: The fundamental reason is a legitimacy reason. Without in any way being critical of Members of the House of Lords, I do not buy the idea that people who have to get elected either are not capable of having life experience and experience of the world outside or do not have that experience. The fact is that, if you look at the House of Commons, although people who get elected a little bit younger obviously have not been able to reach the heights of their professions in the way that many Members of the House of Lords have, there is a very diverse set of people in the House of Commons who bring lots of life experience from a range of roles. I just do not buy the argument that you do not get that in an elected House.

Oliver Heald: So if the current membership was endorsed by the electorate, you would have no problem with that.

Mr Harper: No. I know that one or two Members of the House of Lords, including Lord Trefgarne, I believe, have said that they would think of being candidates for an elected House. If Members of the House of Lords stood for election and got elected, that would be absolutely fine. They would then carry the legitimacy of election with them.

Q21 Oliver Heald: Some countries have indirect election methods. Say that, at the time of a general election, each party has a list that sets out the names of their candidates for the House of Lords. We look at the national vote for each party and that is the allocation from your list—you get 45 per cent of your list if you get 45 per cent of the vote and so on. The public have the chance to see the list, but you do not set up rivals in constituencies. You do not give an individual mandate to each Member; you have an indirect system of election. Is that something that you would be prepared to look into and consider?

Mr Harper: The first problem with that is that, if you have a list—under that type of system, it would have to be a closed list, as you would not be giving people the opportunity to vote for individuals—you effectively give all the power to the party leaderships. You give them as much power as they have under the existing system, where all the party-political Members of the upper House are effectively appointees of their respective party leaders. Technically, people would be elected, but in reality I do not think that that would take us much further forward than we are at the moment.

Oliver Heald: But you said that there was nothing wrong with the people in the House of Lords apart from the fact that they had not had the stamp of approval from the electorate.

Mr Harper: But under your proposal, Mr Heald, all that would have happened is that the public would, in terms of the votes that they had cast for the House of Commons, have determined the number of people from each list, but the people who were on those lists would have been determined by the leaderships of the political parties and the voters would have had no role in that process at all. Frankly, I do not think that that would be an enormous step forward from where we are today, where the party-political Members of the House of Lords are indeed chosen by the party leaders.

Oliver Heald: In a general election campaign, if you put on your list people who are unsuitable—crooks or anything like that—it would damage your party in the general election, so it would have an effect.

Mr Harper: It may have an effect in that indirect method, but I do not think that parties would be proposing to have people quite of the nature that you are suggesting. You would be putting people on the list who were there

only by virtue of the choice of the party leadership and who would presumably be expected to do as they were told.

Q22 Baroness Scott of Needham Market: I want to ask about holding elections on general election day. I understand questions about voter fatigue and the cost of elections, as I have a local government background. Anyone who has ever tried to fight a local council seat on general election day will tell you that you get no oxygen at all for any issues other than those around the selection of the Government. My fear is that by doing this, the House of Lords election will be irrelevant and sidelined or, even worse; the electorate will become confused and think that somehow their vote for the second Chamber is linked to the formation of the Government. I wonder whether there is any openness in the Government to think about having elections to this new second Chamber on a different day.

Mr Harper: We thought about that quite carefully. There are several things. First, there is the issue around turnout and engagement, as well as cost, which is not an insignificant thing to be concerned about. Also, I do not buy the proposition that people cannot think about and make decisions about more than one thing on the same day. I would absolutely accept your point if you were trying to elect two different Governments. When we were considering the Fixed-term Parliaments Bill, we talked about the idea that you could be having a debate about the election of the United Kingdom Government and Governments in Scotland, Wales and Northern Ireland. We accepted that that would have the problem that you have just suggested—it would be very difficult to have two different narratives going on. Here we are talking about electing two Houses of the same Parliament, but to do different tasks. You are not arguing about two different Governments; you are arguing about voting for who you want to run the country. Much though we as Members of Parliament like to kid ourselves that votes are all about us, they are not really; they are all about who people want to run the country, although there is a little flexibility for our personal qualities, either positive or negative. But you would also be saying, "There is a second House of Parliament, which we want to scrutinise and revise legislation and to bring a longer-term perspective." If we give people a choice of individuals, as well as party labels, with the STV system—this is in answer to Mr Heald's question—I think that they would engage in that. I do not think that people are incapable of making those two decisions on the same day. Indeed, we had a little test of that earlier this year, when there was a lot of criticism that we were having the AV referendum on the same day as other elections. However, there does not seem to be any evidence that voters had difficulty in making a decision about elections in the devolved parts of the United Kingdom or in local government elections and making a decision in the AV referendum. They were perfectly capable of distinguishing between them and making a decision accordingly.

Q23 Ann Coffey: I was listening to your criticisms of the House of Lords in terms of how representative it is of the British population, but there are also serious concerns about how representative the House of Commons is of the British population and how we can encourage the House to reflect that diversity. I wonder if that was something that particularly concerned you as you were drawing up these proposals, as there is an opportunity in reforming the House of Lords to look much more closely at issues such as representation. At the end of the day, we in the Houses of Parliament are representatives of the people out there; we are not experts or anything like that. This is democracy. Looking at the proposals for the voting system, it is not clear to me how the STV system in itself will deliver elected representatives who make good the current shortcomings of the House of Lords and, indeed, the House of Commons. I wonder whether you would be prepared to give further thought to or explanation of how we might make a future House of Lords more diverse.

Mr Harper: That is a very good point and there are a couple of things that I would say. There is an irony that, in some areas, the existing House of Lords is actually more representative of the population. Thinking back to my time in opposition, when I was shadow Minister for disabled people, I know that one thing the House of Lords has done very well is to have a number of disabled Members who bring a great deal of experience. In the way it conducts its business, the House of Lords has demonstrated that it is more flexible in enabling some of those Members to participate than the House of Commons has perhaps been. I know there are a number of things, such as Members being able to continue people's speeches, which work very well. One thing that we do not want to do is to reduce the opportunities for a more diverse House.

The challenge for us—we debated this at length, both within government and when we had the Joint Committee—is that a number of mechanisms in place, particularly for dealing with gender, are ironically not at

all easy to deliver if you are going to have a system which maximises voter choice. For example, a number of people put it forward to us whether we were attracted to things such as zipping—having mandatory male and female candidates. Things like that work very well if you have a closed list and the parties basically give the voters no choice of candidates but have all sorts of methods of having a sort of mandatory diversity. The irony is that that then militates against voter choice and, in the end; we decided that those two things pulled in different directions and we went for STV.

A big opportunity for a more diverse House, in terms of gender, disability and ethnicity, is for the parties to take the opportunity that this will be a set of elections where you start off with one massive advantage. You do not start off with a bunch of incumbents, so instead of having a House of Commons which looks as it does—where you end up with all the people who are already there and then have to think how you encourage different people to want to be candidates—you are starting off with a House of Lords and elections to it where there is, potentially, a clean slate with a set of candidates. There may be some existing Members of the House of Lords who want to stand. The parties have to get their act together and have a more diverse set of candidates. That is a big challenge for the parties but something on which we would welcome thinking from this Committee.

Q24 Tristram Hunt: Minister, we know that you are very keen on redistricting. Why is it that the Electoral Commission will conduct a review of the number of Members per electoral district after every third election to the House of Lords, rather than after every election as with the Commons?

Mr Harper: We are not in favour of redistricting, in the sense of redrawing boundaries for the House of Lords. With STV, one of the things that we thought a much more sensible approach was to alter the number of Members in each region. The reason for doing it after three Parliaments was that that is the term that the Members will be elected for. We thought that that made sense but, again, the Committee might have particular thoughts about that. After pre-legislative scrutiny has finished, we are going to go away and commission some experts to look at what the detailed districts would look like and come back with their thoughts. That was our starting proposition and we are happy to listen to people if they have different ideas.

Q25 Tristram Hunt: Just briefly to return to my earlier question, do you regard the responsibilities and duties of the new Members of the House of Lords as being more onerous and responsible than those of Members of the London authority?

Mr Harper: I have not thought about it in terms of that comparison, but they will have fairly significant responsibilities. When the Houses of Parliament are sitting, they will be expected to be full-time Members and to take part in legislative scrutiny. Although they will clearly have far fewer constituency responsibilities than Members of Parliament, they are elected and people will contact and write to them, so they will have a big job of work to do. Trying to balance out exactly how those responsibilities weigh up is a very difficult task.

Q26 Baroness Symons of Vernham Dean: Minister, a moment or two ago you said that, at the time of the AV referendum, members of the British public did not have any difficulty in making a decision. You are absolutely right: when they were given the choice of first past the post or a new voting system, they voted decisively for first past the post. Do you not think it rather odd to say, "Well, let's forget all that; we will stick with what we've said," and put on one side the only time that the British public's views on their voting system have been tested? That seems to me a quite anti-democratic thing to do.

Mr Harper: Not at all. They were being asked about the voting system for the House of Commons.

Baroness Symons of Vernham Dean: Oh, come on.

Mr Harper: No, there is a very important point here. I can probably make the point as a Conservative in a way that my boss might not be able to, but there is a difference. If you are electing a Government, my own view is that the challenge with voting systems is that the system which you choose should be one that is weighted towards getting a Government with a majority, who are able to take decisions and where the voters are then able to make a judgment at the end of the term of office. If the voters think that the Government have done a great job, they can re-elect them and, if they have done a poor job, they can throw them out. But if you have a revising or scrutiny Chamber where you do not want the Government to have a majority, you need to use a different voting system. If you were to have first past the post for a second Chamber, all you would do is create a replica of the first Chamber and you would have one of two outcomes. Depending on when you had the elections, you would

either give the Government of the day a majority in the second House, in which case there would be little point in having one, or you would give the Opposition a majority. Lord Trimble's points would then have a lot more sway, because you would then set up a bloc in the upper House of people who were fundamentally opposed to the proposals that the Government were bringing forward because they were of a different political party. I think that is where that would be a risk. If you want a House where you do not have a majority, which is the current position, you need some kind of proportional system. You also want to elect it in tranches so that you do not pick a moment when a particular party may be at a high or low point in its fortunes.

Baroness Symons of Vernham Dean: So you think that that is a justification for putting on one side the decisive view expressed about elections to, I admit, a different House.

Mr Harper: Well, I think that is quite—

Q27 Baroness Symons of Vernham Dean: Let us take up the point about representation. As you yourself said a moment or two ago, the House of Lords already has proportionately more women than the House of Commons. It also has more black and ethnic minority members, more Muslims and more disabled people than the House of Commons. Therefore, the non-elected House at the moment is more representative than the elected House. Why would it be any different? Why would that change under your proposals?

Mr Harper: Let me go back to the question that you asked but did not let me answer about putting on one side the view in the referendum. The question that people were asked was very specific. It was about electing Members of Parliament to the House of Commons. It is generally accepted that people view the House of Commons as a place to which they elect their local representatives, yes, but fundamentally where they choose who governs their country. The best electoral system for that is, in my view, first past the post. That is what we had the argument about. They were also, of course, asked not whether they wanted first past the post or a proportional system but whether they wanted first past the post or AV—we can rewrite the debates about what should have been on the ballot paper. If we were proposing to have AV for the House of Lords, your argument might hold a little bit more water, but we also see a fundamentally different role for the House of Lords than for the House of Commons.

On your point about representation, there are two things. First, there is diversity in terms of the things that you mentioned about gender, ethnicity and disability. But I also take the view that we are interested in the views and beliefs that people have when they get elected, which do not necessarily map to any of those criteria. When I vote, I vote for a Conservative candidate and I do not care whether they are a man or woman, or whether they are disabled. I want to elect people who believe in the things that I believe in.

I want a diverse House with a range of people from different backgrounds. We have made some progress in the House of Commons—too slow, I admit—while in the Conservative Party we certainly made a significant amount of progress at the last election but we can make a lot more. In answer to Ms Coffey's point, the big opportunity for parties is that they have the ability to put up a new set of candidates for election where they do not have lots of incumbents, so in terms of the processes that they set up internally they perhaps have more ability to make a fundamental difference in the people that they choose to have standing for that Parliament than they have for elections to the House of Commons. I also think that what people believe and the views that they have when they get elected are important. That is about giving the public the opportunity to vote for them, which they do not have at the moment.

The Chairman: I have three speakers on the list at the moment and one question that I want to ask as well, so let us have the three speakers first.

Q28 Baroness Andrews: You have talked about the election, Minister, as being the first time when there would not be any incumbents. That is absolutely true, but of course the Members would be there for a presumed mandate of 15 years. Can you tell us whether any other second Chamber in the world has such a long mandate? I think that I found Liberia, at nine years. Also, what problems of accountability did you wrestle with when you were considering that length of mandate?

Mr Harper: The obvious answer is that 15 years is a fairly long period of time but a considerably shorter time than life, which is the length of time that Members of the House of Lords currently serve. It is a dramatic improvement as far as that goes. On the second point, we wrestled with accountability and one thing that came out clearly in the debate that we had in the House of Commons was that we were challenged on both legitimacy

and accountability. When I wound up that debate, I was very clear that, while Members of the House of Lords are going to be legitimate because they are elected, we do not pretend that they are going to be accountable in the same way as Members of the House of Commons, who can be re-elected. We were very up front about that but we think that, because you have a House with Members who are both legitimate and accountable, the fact that you will have a House with Members who are legitimate because they are elected but are less accountable because they cannot be re-elected is one of the things that will militate against that House being able to assert that it can wrestle with the Commons over primacy.

Baroness Andrews: But the logic of accountability would suggest that you would allow re-election.

Mr Harper: No. We have thought about this. I think there has been a sense since Wakeham about long, non-renewable terms. It is partly about trying to have a reformed House of Lords as a different kind of place from the House of Commons. The fact that Members do not have to get re-elected enables them to have a more independent view. It reduces the power of the Whips and increases the Members' ability to take a longer-term view of the world. Members of the House of Commons are frequently being criticised for being far too short term—because they are always thinking about the next election and are not able to take a long-term view when there are difficult decisions—so having long, single non-renewable terms is an advantage. It also carries this further advantage: one of the things that weighed with us is that it then militates against the House of Lords being able to challenge the Commons on primacy because its Members, while legitimate, are not accountable.

Q29 The Chairman: Might we not get rid of them if they do not turn up?

Mr Harper: We thought about that as well. Obviously, the House will have its own powers on discipline and sanctions. Clearly, it would be open to the House to take action not only in terms of membership but also in terms of remuneration if Members simply were not appearing and taking part in the proceedings of the House. Clearly that is always a risk. It is a risk potentially in any system where you have term limits, for example. Once someone has been elected and they are not going to be re-elected, it is a theoretical risk but it does not tend to occur in practice.

Q30 Lord Trefgarne: I was going to make a similar point. If they are elected for 15 years and not allowed to stand for re-election after that, what is to prevent them from, as you suggested, not diligently working away on their constituents' behalf but doing nothing at all?

Mr Harper: In terms of the democratic part of this, they have at least been chosen and elected by the people in the first place, rather than by the leader of their party, which is what happens with the vast majority of Members of the House of Lords at the moment. You could argue that there is an incredible risk at the moment. Members are appointed to the House of Lords for life. Those who are working Peers turn up and do the work, but Members are here forever regardless. Nobody can get rid of them. The evidence is that people who were appointed with the expectation of being working Peers turn up and work incredibly hard. Again, it is a theoretical risk, but I do not think that it is a practical one.

Q31 Lord Trefgarne: Just one further point. I think that you are saying that, in the new elected House of Lords, Peers will be able to vote in elections for the House of Lords, as I understand it.

Mr Harper: Yes.

Lord Trefgarne: In other words, they can vote for themselves.

Mr Harper: Yes, as we do in the House of Commons. It is always particularly pleasurable to be able to go along and cast a vote for oneself in a general election. It makes one feel better. One knows that one is going to get at least one vote in the bag, if no others.

Q32 Mrs Laing: Yes, at least you can be reasonably sure that there will be one vote cast in your favour if you vote for yourself—I am not referring to the Minister, of course. I am concerned about the muddled logic on the issue of voting systems, which I think Baroness Symons has raised very pertinently. The argument is that the second Chamber has to have democratic legitimacy and must therefore be elected. Let me follow on from the point that that election should then command democratic respect. As we have heard, a plebiscite with a good turnout—despite the fact that some of us said that there would not be—gave a decisive result in that consultation of the people, showing that they consider first past the post to be the most democratic way of election. Having a

different system for a second Chamber would do one of two things. Either the second Chamber does not have the democratic legitimacy of the House of Commons, because it is not elected under the system chosen by the people earlier this year, or it could be argued by those who favour a proportional system and insist that it has greater democratic legitimacy that the second House has greater democratic legitimacy than the House of Commons. In that case, the argument could then be put that that second House has the moral authority to challenge the authority of the first House. I am quite deliberately putting those different points of view, Minister, all of which would lead to a clash between one House and the other and could paralyse government.

Mr Harper: Let me pick up the first point, which I think was a continuation of the point that Baroness Symons made. The fact is that the public were asked a very clear question about electing the House of Commons. That is not a technical point; it was a clear point about how you elect the Government of your country. A lot of the arguments that we had in that debate were about how you elect a Government and how you make sure that you are able to get a Government that is able to take clear decisions. It is usually the case that first past the post delivers that—admittedly not this time, but I am not going to rehearse that. The point is that it was about a specific Parliament. Indeed, Members of the governing parties have just voted for a piece of legislation to establish police and crime commissioners, whom we are electing using the supplementary vote, which is rather closer to AV than STV is. You can argue about it if you want, but I do not think that that becomes illegitimate because we had a referendum on AV and first past the post for the Commons. I do not buy the idea that, because there was an AV referendum for electing the House of Commons, somehow PR is illegitimate for a different House of Parliament which has a different job to do.

On the point about whether it is more or less legitimate, you are right that some people take the view that a proportional system is more legitimate than first past the post. For those who argue that, the counters would be that, first, the House of Lords would be elected in tranches, so the House collectively will never have a more recent mandate than the House of Commons. Only a third of Members of the House of Lords will have been elected as recently as the whole of the House of Commons. Two-thirds will have been elected a long time ago—some five years ago and some 10 years ago. The fact that they do not have to get re-elected means that you have Members who are as legitimate but less accountable. A number of things in our proposals taken as a whole reduce the ability of even those who argue that a PR system is more legitimate seriously to challenge the fact that the House of Commons is the primary Chamber of Parliament.

Q33 Mrs Laing: I understand your answer, but it does not actually solve the muddle of the basic question. To go back to the basics, if the Chamber that is thus being elected is not, as you have just said, the Government—this is not the election of a Government to represent the people—does it require democratic legitimacy at all?

Mr Harper: It is not about who is the Government but it is about who makes the laws. You know as well as I know that Members of the House of Lords play a part in legislation. They frequently amend legislation. If you look at how often they change legislation, either directly or by influencing the Government to bring forward amendments, you could argue that they have more impact on what the legislation looks like than Members of the House of Commons in terms of the frequency with which amendments either from the Opposition or the Government Back Benches are accepted. Yes, they are not the Government but, in terms of making the law, Members of the second Chamber are very influential. The argument is that people who make the laws ought to be elected by those to whom those laws apply. That is the simple principle. It is not in essence more complex than that. Although they are not forming the Government, they are playing a very important role in how laws are made in our country and in how that Government is scrutinised.

Q34 Mr Clarke: The thought occurred to me when the Minister was speaking that, when we come to elections, we are going to be electing people for quite a long term. I have a bee in my bonnet on an issue where I might still be in a minority, which is when a Member was elected for one party but chooses to cross the Floor to another. I frankly do not like it. Also, they more or less end up in the House of Lords for some reason. Given the length of the electoral term that we are dealing with, has the Minister had time to give any thought and will he later give some thought to the issue of whether, if Members are elected to a certain party but then change, they should do as Bruce Douglas-Mann very honourably did and come back to the electorate to seek a renewal of their mandate? Or will they do as most others have done—Labour, Conservative, the lot—and cross to another party and sit there until the next general election?

Mr Harper: The most obvious answer to that is that we do not currently insist that Members of the House of Commons do that. I know that you argue that they should, but we do not have a rule that they should, so I am not sure that we should insist that Members of the upper House should do something that we do not. I think that your argument would be stronger if we were having a system where people were purely elected on their party ticket, but the single transferable vote system is the proportional system that maximises the ability of the voter not just to vote on party lines but to choose between different candidates. You could argue, as Members of the House of Commons do, that they are not just elected on their party label—this is a more convincing argument under STV—but that voters have had the ability to select between candidates. Therefore, if someone's views have changed over time or, as is often the argument, it is not their views or the arguments that they are putting forward that have changed but their party that has changed around them—this is the traditional argument for those who have crossed the Floor—that would hold more water under STV. Ultimately, we do not insist that people do it in the House of Commons, so we are not proposing that Members of the House of Lords have to do something that we do not insist that Members of the House of Commons have to do. I suppose that that is the straightforward answer to your perfectly sensible question.

Q35 The Chairman: I am told by the Clerks that we are now running 20 minutes past the time that I had hoped so, if I may, I will turn to the Lords spiritual, which is an issue that we want to have raised tonight. Then I want to talk about transition and then, possibly, about the Appointments Commission and ministerial Members, if we have time. Let us go to the Lords spiritual. Why are you proposing what you are proposing? Why 12, or any, and what do you do about other faiths?

Mr Harper: Again, this was one of those arguments that we tussled over. We made it very clear that, if we were to end up with a fully elected House, there would not be a place for the Lords spiritual and I think that that proposition is accepted by the Church of England. But because our proposal is for a mainly elected House with appointed Members, we thought it sensible to keep a role for the established church in England given where we start from. I think that there is a fair degree of consensus among other faiths that they want that faith representation to continue, so that is why we have proposed it. The reduction in number from 26 to 12 is because of the reduction in the size of the House. Again, 12 is not a number set in stone but we have come up with that and set out how we think that number would be reached in terms of who would serve.

The role of the Bishops would continue as now, so it would therefore be qualitatively different from that of the other Members of the upper House, in the sense that Bishops obviously continue to have their diocesan responsibilities. I know that at the moment, in terms of practical appearance, they tend to be able to serve for only part of the year and we would expect that to continue. That is partly why we do not feel it is the case that the reduction to only 12 is an increase in the proportion, which some people have characterised it as, given that they would not be appearing full-time as other Members do because of those diocesan responsibilities.

In terms of the representation of other faiths, if you go back to when this was last looked at, the difficulty is twofold. First, a lot of other faiths do not have a hierarchical organisational structure which would easily enable them to decide who was to represent them. Alternatively, in faiths where there is a hierarchical structure such as the Catholic Church, they are prohibited by their own rules for clergy from serving in Parliament. Because of all those practical difficulties, we have effectively stuck with a modified version of the status quo.

Q36 Bishop of Leicester: I know that we are under pressure of time so thank you for those thoughts, many of which echo the representations that the Church of England made to the Deputy Prime Minister. I want to ask about establishment. You have of course mentioned that if the Bill goes through as drafted and there were 12 Lords spiritual, the case for that would be undergirded by the present establishment of the Church. But if, as the White Paper discusses, that were to be amended to a fully elected House, and therefore no Lords spiritual, what impact do you think that would have on the establishment of the Church of England? What consequences might there be as a result?

Mr Harper: The first point is that the Government do not intend in any way to open the question of whether the church is established—I think we have enough on our hands to deal with in reforming the House of Lords. If you had a fully elected House and basically said that the only way people can be in it is to be elected, I do not think there is therefore a case for the Lords spiritual. In a sense, that would be self-evident and therefore does not open up any questions about establishment or otherwise, but having a partly elected House and not having any Lords

spiritual opens that question up far more. As I said, we were very keen to continue with the existing process. It is not universally popular but I think I am right in saying that it is supported by other faith organisations, who see the importance of a role for faith as more important than particular faiths being represented. I know that that is how the Lords spiritual tend to view their role in the existing House of Lords.

Q37 Bishop of Leicester: I am sure that that is right. What consultation or conversations with other faiths have you been able to have and how has that formed any views which you have arrived at so far?
Mr Harper: I think that we have had some at official level. Part of the point of having draft legislation open for scrutiny is exactly to listen to the details that people want. We set out clearly why we had reached the conclusions that we have and we want to listen to people's views, so I think we had some conversations at official level. We have this consultation process and we want to listen to what people have to say. If people come back with other ideas or practical methods, we would look at them, but I think that the commission in 2000 looked at this in quite a lot of detail and reached the conclusion that there were not really obvious, practical ways of representing other faiths in a reformed House of Lords.

Q38 Bishop of Leicester: I wonder whether I could ask one more question. In relation to the proposed 12, I think the draft suggests it would be the two Archbishops, the three senior Sees and then seven ordinary Members. Do you foresee flexibility in how that 12 might be composed emerging in due course?
Mr Harper: Yes. We set out a number—as I said, it is not locked in stone—and what we thought was a sensible proposal but clearly we want to listen to what the Church has to say about how it delivers its representatives and what makes sense. Part of it is about balancing their diocesan responsibilities and how they would carry out that role so, yes, we are absolutely open to listening to thoughts that the Church and others have on that.

Q39 Mrs Laing: There are clear advantages to having people of faith and those representing faiths in our legislature. I accept that the Bishops play an important role. However, at the moment we have a system where people of many faiths, and sects of faiths et cetera, have seats in the House of Lords and if those many faiths are not represented their voices are not heard in our Parliament. Under these proposals, either there will be a fully elected system whereby there will be no one of any faith—unless they stand for election, which many faiths outlaw so that it would be impossible—or, if there is a partially elected House and appointments, there will be only Bishops of the Church of England. I have to say, Minister, that it is absurd that in creating a new House in the 21st century there should be a place for 12 senior members of a church and no one else of any faith. It is insupportable and absurd. I speak as a Christian who wants to see our country being Christian, but that is irrelevant. This does not have logic.
Mr Harper: I think that there are two points. Let me take your second point first, Mrs Laing. In the issue about the Church of England there is clearly an argument, which the Bishop of Leicester raised, about establishment. The fact is that while some people agree with this and some do not, the Church of England is the established church in England.
Lord Trimble: Of England, not of the United Kingdom.
Mr Harper: I finished my remark by saying "in England". We had this when it was debated in the House of Commons and I was very careful to say "of England", recognising the difference—
Lord Trimble: Not the United Kingdom.
Mr Harper: No, I recognise that. We start from where we start from; Mrs Laing's point might not carry force if we did not, but that is why we set out the proposals that we have. In terms of other faiths being represented, whether from other parts of Christianity or other faiths, it seems to me that elected Members will have a range of faiths between them. If I think of the House of Commons, we have a range of Members who, between them, share a number of different faiths. Again, the idea that just because you are elected you do not come with a faith is just not right.
Mrs Laing: You may have a private faith, as many of us have, and probably speak and act from that point of view, but that is not the same as representing that faith in any kind of official way.
Mr Harper: Apart from the Lords spiritual, existing Members of the House of Lords who happen to have a faith background are not there by virtue of the faith that they represent. Well, they are not there formally in the sense of certain leaders of faiths coming with—

Mrs Laing: Surely the Chief Rabbi is there because—
The Chairman: Mr Harper.
Mrs Laing: I beg your pardon.
Mr Harper: The point is—sorry, but let me just briefly finish if I may, Mr Chairman—that if we were having a mainly elected House it would be perfectly open to the Appointments Commission to take into account the faith diversity of the country, in the same way as it is able to now, when thinking about whom it appointed.

Q40 Dr Poulter: Following up on what has been asked, if I may, there are two issues. First, the points being made are good points. When we are reducing representation, to favour one faith is a difficult argument to make. Secondly, however, if we are saying that on principle we want the Government to make a more democratically elected House—Minister, you just made the point that if we were going to 100 per cent elected there would not be a place there for anybody from the Church of England—why is it the case that we are maintaining some if we are going to 80 per cent elected? If we say that democratic elections are a very important principle, with some appointed Lords, why is it that this group is being preserved especially?
Mr Harper: Clearly, if we are saying that every Member of the House of Lords has to be elected, that would apply to every Member, but if we are saying that we are only going to have an 80 per cent elected House, then we have accepted that 20 per cent of that House can be there by appointment. It is not therefore a radical departure to keep some of the Lords spiritual. We have set out our case and I have heard the opposite case. I have had lots of Members of the House of Commons writing to me, putting the point of view that they do not want anybody and giving a slightly unfair characterisation that we are in some way a theocracy, along the lines of Iran. I think that that is wrong, but we have put forward our view and we will listen to what this Committee has to say. It is for the Lords spiritual to make the case for remaining in the House of Lords.

Q41 Dr Poulter: I think I agree with that. The point is: if we are saying, "Actually, we are going to have 20 per cent appointed", do you envisage that 12 of those places would be taken up by this small group that represents a small interest?
Mr Harper: No. We propose that the Lords spiritual would be supernumerary and on top of the number that we have said would be appointed, so we are not stealing from the 20 per cent for appointments.
Lord Trimble: So you have reduced the proportion from one-fifth to one-sixth, but it is still disproportionate.
Mr Harper: That is a perfectly good argument but, as I said, we are starting from where we are starting from and we have set out the proposals that we have. There is an argument in favour and there is an argument against. It will be very interesting to see whether this Committee can come up with a consensus on a better approach than the one we have adopted.
Lord Trimble: The consensus may be that we have a rotten system.

Q42 Dr Poulter: Just to clarify, Minister, is your position that this is a starting position and that it is now up to the Lords spiritual to make the case as to why they should be there?
Mr Harper: It is a draft Bill with the Government's proposals for what we think is a balanced package. We have set out the case for an 80 per cent elected House and dealt with that in the Bill, but we have said that we are open to listening to arguments for 100 per cent. We have set out the case for STV and said that we are open to listening on an open list. We have set out the case for why we think that having the Lords spiritual makes sense in that 80 per cent elected House. My understanding is that there is a fair bit of support from other faith groups. That may turn out to be an erroneous assumption, but that assumption is there at the moment and we will have to see what happens in the consultation responses. Presumably, those other faith organisations will come back and tell us whether they think these proposals are good or not.

Q43 Lord Hennessy of Nympsfield: Would it be an idea to make it explicit in the Bill that the Church of England will have 12 Lords spiritual so long as it is established? This is going to be a new settlement for the next 800 years—Mr Clegg seems to think so—is it not? You do not want to manufacture another statute on yet another House in any of our lifetimes. The Church of England may wish to disestablish itself, so if you added that would it not be a kind of self-raising sunset clause?

Mr Harper: I think that I have had enough experience of sunset and sunrise clauses over the past few months to last me a lifetime, Lord Hennessy. We finally managed to persuade the House of Lords that they were not a good idea on the last constitutional legislation that the House considered. However, on this legislation, if you were going to do something about the status of the Church of England, which we are not, you would need to do that through statute anyway. You could then deal with the issue of the Church's representation in the House of Lords. The Government's position is that we are not going to touch that one. I set out our position on establishment at the beginning, but if you ever decided that you wanted to tackle it, you could deal with it at the same time.
Lord Trefgarne: Lord Chairman, frankly, my questions have been asked already but I see serious difficulty with the proposal set out in the draft Bill. We need to represent a much wider range of faiths and I am afraid that that means fewer Church of England bishops.

Q44 The Chairman: Minister, before we leave this topic, I think that you said earlier that officials have undertaken consultations with other faith groups. If that is so, could we know which faith groups they have been consulting with and, broadly, what the result of that consultation was?
Mr Harper: I believe that I am right in saying that some conversations have taken place on an informal basis. I will find out the details and, if that has happened, I will write to you.
The Chairman: Write to us anyway and tell us what is going on.
Mr Harper: Yes, I will.
The Chairman: Thank you very much. Finally, we had better get to transition, as I do not think we have much more time to deal with any other topics this afternoon.

Q45 Lord Tyler: It may surprise you, Minister, and it will certainly surprise your MP colleagues around the table that, at present, Peers get untaxed allowances. This is relevant to the point about costs and, indeed, to the size of the House. If not now, I wonder whether you could examine at what point in the transition you anticipate that, with a mix of current and new Members, we should move over from untaxed allowances to taxed salaries. That has important implications for the whole cost of reform.
More substantially, what is the Government's position on Lord Steel's Bill, which could of course be an important part of the transition from where we are now to where we would be under the Bill? I think there is a lot of support around this Committee, and certainly in the Lords, for making some progress on the areas in Lord Steel's Bill which are, by common agreement, relatively easy to implement—not the issue of an Appointments Commission, which would clearly prejudge the Bill itself, but other issues such as disqualification, retirement and so on. There is broad support on those. Are the Government sympathetic to trying to do something about those so that we can make real progress on them in the interim period, before we are faced with a big Bill?
Mr Harper: Two things: in response to your first question, yes, when we bring forward a Bill and set out its detailed financial proposals, once we have made some decisions about transition we will obviously look at exactly the point you make about allowances and salary. It is interesting to note that it is possible for Members of the House of Lords to have a net income that is not significantly different from that of Members of Parliament, because of that element, if they turn up on pretty much every day that the House is sitting. We will set out some detailed financial modelling when we bring forward the legislation.
On your other point, our position on Lord Steel's Bill has been and remains that we already have in our proposals quite a lot of the measures that Lord Steel set out. His are obviously in the context of a fully appointed House and we do not think that legislating on them in an isolated way makes a great deal of sense. Also, on the idea that his Bill would somehow be an uncontroversial proposition—one that would get through the House of Lords and the House of Commons without any trouble at all—I do not think that that holds water, given its subject matter. I believe that that is shown by the significant number of amendments that it has already attracted. Given that we propose to bring forward legislation to do wholesale reform of the Lords in the context of a mainly or wholly elected House, spending a lot of time in the existing Session on Lord Steel's Bill in the context of a fully appointed House does not make a great deal of sense, I am afraid. But I know how appealing it is to Members of the upper House, given how many times it was mentioned in the two-day debate.

Q46 Gavin Barwell: Mr Chairman, can I beg your authority to ask a question on the Appointments Commission, given that we are pressed for time? We are not having a separate session with the Minister, are we?

John Stevenson: I would like to follow up with one on ministerial appointments.
The Chairman: Oh dear. In that case we will have to leave transition, which I would have thought was an issue that we wanted to explore at some stage.
Mr Harper: Chairman, obviously Committee Members' time is pressured but if it would be helpful I am perfectly happy, if the Committee wants, to come back and do another session with you, because this is a big subject and we have not been able to cover all of it. If it is helpful and the Committee wishes it, I am happy to do that so that you are not artificially truncating the questions. It is entirely up to you and your Members.
The Chairman: That is very kind of you and I think that we will take you up on that suggestion. You have been generous with your time this afternoon and we have had a good run around some of the issues, but there are about four or five major points that people would wish to explore with you. If we can arrange for you to come back relatively soon, I am afraid, because we want to get on with the evidence—you are, in effect, scene-setting—it would be helpful.
Mr Harper: That would be a pleasure.
The Chairman: In that case, Minister, it only remains for me—

Q47 Lord Rooker: That being so, could I ask the question that I gave notice of three meetings ago, when I was told, "Ask the Minister when he is here"? It is a very straightforward one, Mark, particularly for coming back. On Clause 2 of the Bill, can we see the department's instructions to parliamentary counsel? That is quite simple.
Mark Harper: I will take that under advisement and come back to you. That is a straightforward answer.
Lord Rooker: I know that you will have to take advice, but you have said no, basically.
Mark Harper: No, I did not.
Lord Rooker: You will go away and take some advice**.**
Mark Harper: I will take some advice.
Lord Rooker: It is a straightforward question; the advice must be there.
Mark Harper: I will go away and take some advice about whether I should give you the information that you require, then make a decision.
Lord Rooker: Thank you.
Lord Hennessy of Nympsfield: This is not yet covered by the Freedom of Information Act, is it, Mr Harper? It is not in the exempt area under that Act—not that we are threatening you or anything.
Mark Harper: I will go away and take some advice.
The Chairman: Thank you very much, Minister. We are obliged.
Mark Harper: A pleasure. Thank you.

Mr Mark Harper MP—supplementary written evidence (1)

Letter from Mr Mark Harper MP to The Rt Hon the Lord Richard (Chair) following his oral evidence on 10 October 2011

During my evidence session on Monday, I agreed to write to the Committee to clarify whether officials have had discussions with other faith groups. I can confirm that no such discussions have taken place.

Lord Rooker requested that the Committee be provided with the instructions to Counsel on Clause 2 of the Bill. I have now sought advice on the issue and can confirm that Instructions to Parliamentary Counsel are the subject of legal professional privilege. This position was upheld in the House of Lords in 2004 and, earlier this year, the Information Commissioner upheld a refusal to disclose instructions relating to draft legislation. Information which is the subject of legal professional privilege is exempt information under section 42 of the Freedom of Information Act and the Commissioner held in that case that the public interest in maintaining the privilege outweighed the public interest in disclosure. The Government agrees with that assessment in the case of instructions to Parliamentary Counsel generally.

I look forward to continuing to give evidence to the Committee on Monday and I am willing to engage with the Committee during the rest of prelegislative scrutiny of our Bill, if the Committee would find that helpful. I am copying this letter to all members of the Joint Committee and the Clerks.

14 October 2011

MONDAY 17 OCTOBER 2011

Members present:

Lord Richard (Chairman)
Baroness Andrews
Bishop of Leicester
Lord Hennessy of Nympsfield
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Baroness Shephard of Northwold
Baroness Symons of Vernham Dean
Lord Trefgarne
Lord Trimble
Lord Tyler
Ann Coffey MP
Oliver Heald MP
Dr Daniel Poulter MP
Laura Sandys MP
John Stevenson MP
John Thurso MP

Mr Mark Harper MP (QQ 48–88)

Examination of Witness

Mr Mark Harper MP, Minister for Political and Constitutional Reform

Q48 The Chairman: Minister, thank you very much for coming again.

Mr Harper: It is a pleasure.

The Chairman: We did not get anywhere near through this last time and some of us, particularly me, would like to go back to some of the issues that we had a quick look at last week. Let us start with transition. First, let us have your views on the sort of transition that you want, how you would like to see it effected, what you want to do about the existing life Peers and how you see numbers going up or going down in the transition period. There is a host of stuff that you have obviously been thinking about very hard and I would be grateful if you could set out your views.

Mr Harper: Sure. The first thing to say is that we are very keen—this is one of the points that we have emphasised—for there to be a transition from the existing House to the new one. We made it very clear in the draft Bill and the White Paper that we are not looking at an overnight, big-bang approach where you move from one to the other; we are very much looking for a period when a number of Members of the existing House of Lords will work with incoming Members of the reformed House of Lords. It will take three elections until you have fully transitioned to either an 80:20 or a 100 per cent elected House.

What we set out in the White Paper and the draft Bill as our preferred option was for a third of Peers in the existing House to leave at each election, when you have a new tranche of Peers arriving, but clearly there are other options. There is a more accelerated option, where you would see all but 200 Peers leaving at the time of the first election, which would get you down to that 300-Member House at that time. There would also be a more leisurely transition process, where you would see more Peers staying until the final election to the House. I suspect that how that actually works will be one of the things that exercises the mind of this Committee and both Houses when they debate our legislation.

Let me pick up your point about the size of the House. The number of Peers and how the transition process would work would be set using numbers that were in force when the Bill was introduced to the House of

Commons. Therefore you would be able to calculate how many Peers would be involved in the transition process when the legislation was going through Parliament, so that there was some certainty about it. Does that set out enough detail about our thinking or do you want me to expand a little further?
The Chairman: Do you have a particularly preferred option out of the three?
Mr Harper: Yes. The preferred option is the one that we set out in the Bill, which is to have a third of the existing House of Lords depart at each election, so that you get down to the 300-Member House at the time of the third election in 2025.

Q49 The Chairman: Let me raise one basic point with you right at the outset. For us to judge whether these proposals are sensible and which is the most sensible one, we could do with some actuarial evidence. I cannot imagine that you have produced this Bill without going through in some detail what the death rate among the life Peers in the House of Lords is likely to be and what the size of the life Peers group in the Lords would be at different periods. If that evidence is available, please could we have it? Otherwise we will have to reproduce it, which may take a long time.
Mr Harper: Sure. Let me have a look at that, Lord Chairman, and I will write to you. It is worth saying that I think we concluded, looking at the profile of Members of your Lordships' House, that just allowing everyone to stay until perhaps natural processes, should I say, dealt with transition would be likely to leave far too long a period and far too large a House. That is why we put in a transition process. I will have a look at the evidence that we have and write to you and set it out for Members of the Committee, if that is all right.
The Chairman: You must have some detailed evidence on it, surely.
Mr Harper: I have; I just do not have it immediately to hand. I will write to you and set it out for the Committee.
The Chairman: Is there any problem about our getting it?
Mr Harper: I do not think so, no. The evidence about the age profile of the House is information that the House of Lords Library has. Clearly, you can make assumptions about the transition that would then take place. I will have a look and take advice on the assumptions that we have used and I will write to you in short order, if that is all right.

Q50 Baroness Shephard of Northwold: Lord Chairman, I may have missed the answer to the question that I am about to ask, because I missed last week's session. I get the impression from the answer that you are giving, Minister, that people would go according to age.
Mr Harper: No. We have said how many Members would remain in the House and would go at each stage but, much as I believe happened when the House of Lords Act 1999 was passed, it would be a matter for the House to determine how those Members were selected, rather than for that to be set down in statute.
Baroness Shephard of Northwold: The actuarial evidence will of course be very useful and interesting, Lord Chairman, but it does not seem to be to do with age.
The Chairman: Not on option 1, but on option 2 it will be quite important. Option 2 is that all the life Peers stay here until the end of the process.
Baroness Shephard of Northwold: I am sorry. I missed this, which is why I asked the question. It will be a matter for this House.
Mr Harper: Yes. The legislation will set out how many Members, but it will be a matter for the House how they are determined. Members may have a view that it should be determined by age. There will also be views about whether the party-political balance is maintained over that period and questions like that will arise, but it should be a matter for the House rather than for the legislative process.

Q51 Lord Tyler: As I recall, the cross-party group that produced Jack Straw's White Paper had the benefit of some models of different versions of the transition, which demonstrated the size and cross-section of party support in relation to the ways in which different options might apply. Of course since then your work may have updated and finessed those calculations, but would it be possible to recirculate those graphs and that material, to show us what the implications are, with any commentary that you may want to add about any improved analysis that has taken place since?
Mr Harper: Sure. There is also the fact that the composition of the House has changed significantly. I will have a look at the information that we have and look at what was circulated by Jack Straw's committee. I will see

whether we have updated information. I will get the best available information and write to the Chairman and Members of the Committee.

Q52 Baroness Scott of Needham Market: To come back to the issue of how we reduce the numbers, while I accept that it will be a question for the House, nevertheless the mechanics of it will be extremely important, in terms of both people accepting the Bill and how the House functions. It seems to me that if one had particular rules, such as age or whatever, that would affect political parties differentially, depending on their age profiles, so you would have an issue about party balance. In your view, would it be acceptable if each political party and the Cross-Benchers chose their own route and, as long as they got to the number, you would not care? I am interested in that. I also have one specific question, which is around age. Are you confident that, if we were to use age to determine who should remain in the House, it would be lawful to do that? Are you confident that it would not be age discrimination?
Mr Harper: Let me take your first question. We specifically did not want to put in statute the rules for determining who remained a Member of the House because we did not want to open that up to challenge through the courts; we wanted that to remain a matter for the House. Clearly, whatever method you used would raise issues about party balance and there would have to be discussions among the parties to come to a satisfactory method of doing that, much as I understand happened when the hereditary Peers were excluded from the House. If the House chose age as a method of deciding whether people should leave, my understanding from the advice that I have had is that, yes, that would be lawful.

Q53 Oliver Heald: In the past, information has been made available from previous exercises about the average ages of Peers in particular party groupings and on the Cross Benches and about the average age at which Peers cease to attend the House. If you have any information of that sort, it would be very useful, because it gives us the opportunity to see how realistic it is to work on the basis of the grain of current behaviour.
Mr Harper: Absolutely. I will look at that. I know that we have access to some of that, but I also know that the House of Lords Library has done some analysis for individual Members. I also understand that it is working on a note on that whole issue, which may be of help to Members. I will certainly look at the information in the possession of the Government and circulate as full a note as I can to the Chairman and Members of the Committee.

Q54 Lord Trefgarne: Will you just clarify your thinking with regard to the elected hereditary Peers? Am I right in thinking that under your preferred option they will be treated just like life Peers, although, of course, the by-elections will stop immediately?
Mr Harper: Yes and they would be absolutely eligible to be transitional Members and to take part in that transitional process, in exactly the same way as the life Peers. That is correct.
Lord Trefgarne: But the by-elections would stop straightaway.
Mr Harper: Correct.

Q55 Lord Rooker: I saw some figures once showing that the attrition rate in the Lords was only 17 a year. You are quite right, Mark, that it would take ages if we waited for normal events to take their course. What is to prevent the Lords from doing this job itself in advance of this requirement? We have got to this preposterous size of the House. What is to prevent the Lords from, for example, imposing its own rules saying that people who have attended only, let us say, one day a week on average are no longer desired to attend? That would chop down quite a bit, to be honest. I am not really clear about this. You say that it will be up to the Lords to choose the method, but do we need this legal framework in order to do that or could we do something in advance? It seems barmy to me. We are too big anyway—everybody knows that—and average attendance is 450 a day for Question Time, or whatever it is, but we have people who hardly ever attend and there are some who have attended for decades but have not made a maiden speech. You ask yourself whether there is anything that we could do in advance. Is anything preventing us from doing this in advance or do we need primary legislation to do it?
Mr Harper: I think that it is the latter. My understanding is—and I have followed quite closely the debates in the House of Lords on the various procedures that have been put forward to allow retirement and so forth—that you can put in place procedures where people take permanent leave of absence, for example, but you need primary

legislation to stop them being Members of the House of Lords. It cannot be done internally. There are mechanisms that can be put in place and I know that the House of Lords is working to put in place effectively permanent retirement-like processes, but they do not stop people being Members of the House of Lords. You need primary legislation to achieve that—hence the provisions in the draft Bill.
Lord Trefgarne: None of the voluntary systems have ever worked.
Mr Harper: No. They do not stop people. People can say that they are not going to turn up, but they are still Members of the House of Lords.
The Chairman: As I understand it, you cannot get rid of people on that basis because of the Life Peerages Act.
Mr Harper: Correct. That is my understanding.
The Chairman: So you have to amend that Act in some way in order to do it.

Q56 Baroness Andrews: Forgive me, Minister, if I take you back to where you started. I may have missed this, but is there in the White Paper a statement of the principles that will govern transition? In order to make sense of these various judgments about age, capacity, continuity and so on, did you start by saying, "We must have this and this and we must achieve that"?
Mr Harper: No. There were clearly a number of big choices. You could have started with wanting to reform and doing it all in one fell swoop—elections to the whole House with an overnight transition. We did not think that that was a sensible way of going about things, particularly given that we have proposed staggered elections. If you are going to have some kind of transitional process, you have two extremes. You either have one where, at the first set of elections, you go straight to what we think the desired size of the House is—300 Members—so you exclude all but 200 existing Members and at each subsequent election you remove another 100, which means that you get very quickly to the desired number. At the other extreme, you would allow existing Members of the House to remain until natural processes took their course. We thought that the first one was too swift, on balance. The other one—allowing life Peers to stay until natural processes take their course—is likely to lead to a House that is too large for too long. The one we came up with—it was a judgment and a balance—was to remove a third of the House at each set of elections. We thought that that was an appropriate way of dealing with this. It would allow a significant number of existing Peers to work with new Members on, if you like, the cultural acclimatisation. That is one way of not throwing away the accumulated experience and processes that the existing House has, which both the public and the Government value. It would allow that to be communicated to new Members over the transition period. But it is a judgment and this Committee or others may take a different view. That was broadly the view that we came to. It is, if you like, the central approach.
Baroness Andrews: Absolutely. So it is really about maintaining sufficient quality, continuity and the capacity of the new House to understand its function. That is the guiding principle that you have been following.
Mr Harper: Yes. Given that we set out that we wanted the role of the House to remain the same—as a scrutiny and revising Chamber—we thought that that transitional process, with a fair bit of work between existing Members and new Members over a significant period, was a very sensible way of achieving that objective.

Q57 Ann Coffey: A lot of this discussion has been in terms of experience, but when you looked at the transitional period, did you also consider keeping the diversity that is clearly in the House of Lords? Someone last week said that more women are represented and there are more people with disabilities in the House of Lords. I hear what you are saying about not wanting to put it in statute and not wanting to dictate, but have you considered putting in something that indicates that you feel it important that, when that transition takes place, the diversity that is in the House of Lord and perhaps is not in the House of Commons at the moment should be preserved?
Mr Harper: Sure. That is a very good question. In the same way as you want to maintain the party balance through that period, you are absolutely right about this. We had a good discussion last week in response to a number of the questions that you asked about the diversity of the existing House of Lords. In an ideal world, you would want to maintain that through that period. You certainly would not want to reduce it. It would also be a good mechanism for encouraging each of the elected and appointed phases to maintain or preferably increase the diversity of the House across a whole range of sets of characteristics.

Ann Coffey: So if in looking at this we came up with the view that this was very important, would that be something that you would listen to in looking at the mechanisms and, in particular, at how the appointment system fitted in with the elections?
Mr Harper: Sure. We would certainly look at that. Obviously in terms of what we would want to set down in statute, in which the courts could interfere, we probably would not want to say any more than we have said, which is that it is a matter for the House, but clearly in terms of what subsequently happens and the way in which political parties would conduct those discussions, the points that you have set out around diversity would be very important. If setting out the principles of the two governing parties would help in that process, we would look to do that.
Ann Coffey: You said that you felt that the courts would not think it unlawful to discriminate in terms of age, so presumably it would not be unlawful to do it in terms of the representation of women, ethnic minority groups or people with disabilities—none of those things would be viewed by the courts as unlawful.
Mr Harper: I believe so. As long as you follow the right processes in making those judgments, I think that you can make those judgments in a way that is compliant with the legal framework, yes.

Q58 The Chairman: Sorry. I am a bit lost on that, if I may interrupt briefly. Are you saying that you can discriminate on grounds of gender, if you do the processes properly, but that you cannot discriminate on grounds of age?
Mr Harper: No. Let me pick up the point that Ms Coffey made about disability, which is the one that I know best from a previous role. You are allowed to take steps to make sure that you maximise the chances of people being able to be selected in terms of candidacy, for example. You are allowed to have a legitimate aim to make sure that you have a properly diverse House and you are allowed to take proportionate means—the tests in the legislation—to take those steps. So you are allowed to have objective criteria, which enable you to have a diverse House. If you conduct yourself in that way, I believe that you are then complying with the legal framework that is in existence.
The Chairman: I wonder if you could help us just a little more on this. Presumably, you have legal advice and opinions and all the rest of it from no doubt eminent counsel telling you what you can and cannot do.
Mr Harper: It might be helpful, Lord Chairman, if, having had the range of questions that I have had both from Ms Coffey and from Baroness Andrews, I looked at what we might be able to set out in a note for the Committee, looking back at what the House did when the hereditary Peers were excluded and setting out what we think the legal position is. That may be helpful for the Committee as it deliberates, particularly on the transitional processes.
The Chairman: Thank you. That would be helpful.
Mr Harper: I hesitate, not being a lawyer, to expand in any further detail on that subject.

Q59 Bishop of Leicester: I want to take us briefly back to the discussion about exclusion on the grounds of age. Do you think that the fact that there is a category of Peer—namely, the Lords spiritual—whose occupancy of the Benches is determined by age and always has been, or certainly since a retirement age for Bishops has been required, is a consideration that is material to your thinking about the transition?
Mr Harper: That specific point about Lords spiritual is not one that we factored into thinking about the transitional process for Peers in general. Now that you have raised it, I will go away and think about it, but it is not one that I had thought about in advance.

Q60 Baroness Symons of Vernham Dean: I am not sure that you are going to get an awful lot of help from the precedent of what happened over the hereditaries because of course they were not a diverse group. They were largely—in fact, I think almost entirely—men, and very few of them were from ethnic minorities.
Basically, my questions are going to be very similar to Ann Coffey's. To expand on what she said and your answers to her, there is another form of diversity that I think the House rightly prides itself on and is valued for: the diversity of the expertise that it commands. We rightly looked at this when we last met and points were made about people being able to acquire experience, but I wonder whether you think that the diversity of the expertise in-house is also worth safeguarding during the transitional period. We do not want to end up having excluded all

the educationalists and just be left with the people who know about local authorities, or to have excluded all the foreign policy experts and just be left with all the doctors.

Mr Harper: Not that, of course, since there is one sitting on your right, there is anything wrong with doctors. Your point is well made, though. That is why the House is in a better position to think through the transitional process. On the expertise issue, there are a couple of points. First, on our preferred proposal for an 80:20 House, where 20 per cent appointed Peers would be retained, those people who were being appointed for their expertise and to bring a non-party-political dimension could be appointed as Members of the reformed House. The Government have accepted that there is a valuable role for them. I said last week that I did not think that, just because you elect people, you somehow exclude them from having some experience. But I take your point that, as the House is thinking about how it selects the third who leave, it would be sensible, as you said, to ensure that you did not lose everyone in the House in that third who had experience in a particular area. That clearly would be sensible. Thinking about how you do the transitional process is a bit like three-dimensional chess: by the time you have looked at all the different factors, you are not going to come up with the perfect answer. It is going to be about getting the balance right, and the Government's view was that the House is going to be much more likely to do so than the Government would be if they tried to write a magic formula. That was the reason for allowing the House to come up with that answer, knowing how many Members it had to remove, with dialogue between the parties and between Members of the House, and letting it come up with the best way of doing that to preserve what people value about it.

Q61 Lord Hennessy of Nympsfield: Minister, your nice words about cultural acclimatisation—that the transitionals would somehow pass on the benefits through a process of osmosis—is charming, but strikes me as Pollyanna-ish. There is a whiff of "Kind Hearts and Coronets". The new thrusting elected people are going to see us transitionals as a bunch of old buffers. Yours is a nice thought and I appreciate it, but it is hugely wishful thinking. The question is a minor one. If you decide as a coalition that the new House will be called a Senate, will the transitionals who totter on be deemed to be Senators?

Mr Harper: There are a number of questions there. On your first point, I do not accept the premise. I would not necessarily say that existing Members of the House of Lords are not thrusting already. Looking at the age profile, it is reasonable to say that they are not all as young as they once were—that is an indisputable fact—but I have listened to many debates in the House of Lords and at times they seem quite energetic, so you are perhaps doing a disservice to existing Members. If you look at how the numbers are going to pan out, under our proposal you are going to have a significant number. In the first part of the transition you will have more existing Members of the House of Lords as transitional Peers than new ones. I would have thought it likely that a lot of what people value and the Government value about the way that the House of Lords conducts itself will be picked up and absorbed by the new Members, both elected and appointed, so I am not sure that I agree with your initial analysis. That therefore follows through to the second part of your question. We are probably just not in agreement.

Lord Hennessy of Nympsfield: But do you think it possible that we will be deemed Senators?

Mr Harper: As we set out in the White Paper, we deliberately did not choose a name because we did not want the discussion to end up being all about the name. From the debates that took place in the House of Lords and the evidence that has come in from outside, there appears to be a building consensus that the reformed House of Lords would be called a Senate and Members Senators. That is something on which no doubt this Committee will have a view, and the Government will listen closely. In terms of what the transitional Members are called, I think that this fits very much into the same areas as whether we decide that they all get paid. When we have an idea of what we are going to be looking at, we can make those sorts of decisions. Transitional Members will of course remain Peers and will have that title. It may therefore be thought to be moot whether they get another one on top.

Q62 Dr Poulter: Minister, to pick up on some points from earlier, age is an irrelevant factor to the contribution that someone can make. I hope that the grounds on which someone were to be excluded from sitting in the House of Lords or reformed Chamber would not come down to age. Nevertheless, is it not the case that, regardless of age, there will be those Peers who are currently contributing a lot more than other Peers who contribute a lot less to the day-to-day working of the House? The real issue, when we are talking about transition

and reducing numbers, is that there should probably be some self-selecting criteria about those who are making valuable contributions on a regular basis.

Mr Harper: Yes. Clearly one of the factors that the House can take into account is the extent to which people participate in debates and turn up for votes. I think that the average daily attendance is just over 400—just over 404 or thereabouts. That might be a very clear way to reduce the numbers quite significantly and meet the criteria in our middle plan in a very fair, easy and, as you say, self-selecting way: look at who does most of the work. That may work very well and be most agreeable to those who then left on the basis that they were here less frequently. I suppose that the only caveat to that would be the point that Baroness Symons made, that there may be Members—I know that this is the case for Cross-Benchers—who attend when their specialist subject is being debated and tend to be fairly restrained about sharing their views on things where they may not feel that they are an expert. Some aspects of that might be taken into account but you are right: attendance and participation may be thought to be among the more important criteria that the House comes to when it is making those transitional decisions.

Q63 Lord Trimble: First, I want to go back to something that Lord Hennessy said about acculturation and your response to that. In so far as we have any parallel for this, it is the changes that happened with regard to the exclusion of the bulk of the hereditary Peers. The argument for having a number of continuing elected hereditary Peers was very much along the lines of maintaining the traditions of the House. It was considered then that 92 were sufficient to carry with them the traditions of the House, and that is a much smaller figure than you are envisaging under any circumstances. I just want to remind you of that. In so far as we have any precedent, it points in quite a different direction from the one in which you are going.

I thought that it might be worth while to think about the new House from the perspective of those who are elected to it. Your preferred option appears to be to remove the current life Peers and elected hereditary Peers in blocks of one-third. I am just taking these figures off the top of my head. As you say, there are on average 400 people attending, and that means that the number of regular attenders is greater than that. Regular attenders are those who do not attend every day but come in two or three days a week or something like that. I think that they have a concept here of regular attenders. Certainly, the people who tick off the book have a heading for regular attenders and group them that way. It might be worth consulting people here to see how many regular attenders there are.

Say for the sake of argument that there were 450 regular attenders, although the figure will probably be a bit higher than that. If you are taking away one-third and our total number is approaching 800, you could then find that in the first tranche you had 450-plus continuing life Peers who were all regular attenders. This is quite possible; in fact, I think it is likely. To them you add on 100 persons—I am assuming for the sake of argument that you are aiming for a wholly elected House—who think that they are coming into a wholly elected House but find that they are outnumbered by four or five to one by these continuing persons. How do you think they are going to feel about that when you consider that they are coming in with a mandate that gives them authority but they are such a minuscule minority? I would have thought that this would create a very strange situation. If you are going to characterise some outcomes as extreme, that is an extreme one. The only moderate outcome that you can have, if your intention is to provide a wholly elected House, is to go straight to the 300 figure. Bear in mind that you will then have 200 continuing Members, which is more than double the number of continuing Members that there were after 1997. Is that not much more moderate than what you are proposing?

Mr Harper: To pick up the point that you made right at the beginning, it is for Members of the House of Lords to judge whether the continuing presence of the 92 elected hereditaries indeed added and brought what was expected.

Lord Trimble: Undoubtedly. That is a matter of faith.

Mr Harper: If that is the case, then our proposal, in opposition to what Lord Hennessy said, clearly does the trick in terms of transmitting to those Members who have been elected or appointed the good things about the House of Lords that we value. I am taking from this that you think that at least our premise is successful. If you follow it to its conclusion, effectively you are saying that actually we have too much acclimatisation and those new Members would effectively find that their wings were being clipped by existing Members. I would say that, given that they are all very smart people wanting to get elected, they are going to know that they are going to get elected to the House and there will be a transitional process. The whole point is that they are not getting elected to a

House where we are doing a big bang overnight; we are electing them to one where the role is a continuing one and where we want there to be some continuity—we do not want a big break or a big jump in the way that the House works. That is exactly what we are trying to achieve and I would have thought that that would be what they were expecting. We are going to set out clearly what both Houses have debated and set out, so I do not think that they are going to find that a shock.

Lord Trimble: Could I suggest then, even given your optimistic view of the unshockability of the elected Members, which I dissent from because I think that they will come in considering that they are somewhat special, that you think about it from the point of view of the public? In the first phase of the transition, you are going to have a situation where the elected Members are a very small minority; they could even continue to be a minority going into the second phase, because you are likely to have 250-plus continuing Members and they, even more so, are likely to be the regular attenders. Right up to the end of your transitional arrangements, the elected persons will be the minority. Then consider what would happen when the elected Members were continually outvoted. What do you think that the public, who had elected these people, would think with the prospect of a 10-year transition before the people they elected were able to exercise their mandate in a meaningful way?

Mr Harper: Clearly, if your argument persuades the Committee and it comes back to us and says that it wants a much more rapid transition—

Lord Trimble: I am interested in your response.

Mr Harper: We have set out in the Bill what we thought was a reasonable transition. There is an argument to be made that a rapid transition would be an improvement, and if Members want to make that argument to us then we will listen to it and be happy to bring that forward in the Bill. We set out what we thought the balance was; some people will be pressing us to go further and faster while others will be pressing us to go more slowly. I am pleased that you appear to be pressing us to go further and faster.

Q64 Lord Trimble: No. Speed does not come into this. The transition is 10 years under all the discussions that we are having, so it is not a question of being faster. I am just trying to think of it from the point of view of what the dynamic is going to be like in this hybrid House that will continue for 10 years, with the elected Members a distinct minority virtually the whole way through. Is this actually viable?

Mr Harper: There are two points to make. First, it helps to reinforce what I said last week when we were having the debate about the powers between the reformed House of Lords and the Commons. I explained then that we would expect the statutory framework to stay the same so that the Commons remained the House with primacy. There would be a development of the relationship between the two Houses, but I made the point then that we are talking not about an overnight transition but about one over time. The points that you have made about the gradualness of the transition support that argument because the House is not going to go suddenly from one thing to the other overnight.

My second point is that when we have the debate about the change in the House, the public are going to know what they are expecting, as will Members elected to the House. I do not think that it will come as a surprise to everyone. One of the big arguments that we will have will be about how that transitional process will work. When I say that some people want us to go faster, I am talking not about the period of time but about the effect. If you shrink the numbers of existing Members of the House of Lords faster, you will make that change more quickly. We listen to the balance of arguments, we will read the Committee's report and we will listen to what Members outside have to say. It is worth remembering that the public can give us their views. It may be that the public want us to go faster and further in this process than the view that you have set out and have fewer transitional Members. That is something that we will listen to. We set out a middle course that we thought struck the right balance.

Lord Trimble: This is the artificial exercise of creating two possibilities, describing them as extreme and then taking the one in the middle and saying that it is moderate. The view of whether something is a middle or moderate path will depend on the quality and the nature of the principles with which you approach the matter rather than just on creating this artificial construct. That is just an observation.

Q65 Laura Sandys: Following on from Lord Trimble's position, there is a hurdle to overcome: the clarity with which the public understand what the second House is going to look like, how it will relate to them and what they expect of it. We have divided our considerations into lots of little blocks, but everything is interrelated.

What am I voting for? What does that mean that my representative will do within the context of the secondary Chamber? If we end up with a long-phased process, that clarity is going to be a problem. The Committee will look at that, but we are constantly looking at these issues from the point of view of ourselves, the people who sit in these Houses. We also need to be very clear about what the electorate feel and what their relationship is with both the Houses. The other point is that there will also be an issue of transitional powers. If we are going to change powers and competences, when do those kick in—right at the beginning of the first tranche of elected representatives or as we get to the final stage, 10 years on? How will that materialise to the electorate? What will they be seeing and what will they be participating in?

Mr Harper: There are two things there, and in answering the first part of your question I will partly develop an answer to Lord Trimble's. Given how long this entire process has been in gestation and the number of goes that people have had at looking at it, although I start off by being quite a tidy person, I am fairly relaxed about a process of transition that does not all get done overnight, on the basis that that process may be quite lengthy but eventually you end up with the objective. The point has been made to me by those who have been involved in and keen on previous efforts at reform that if people had grasped those questions at that time, we would be quite a long way along the process of reform already. Some of them wish that they had grasped the opportunity at that time.

I am relaxed about the fact that it may take some time and I think that that would be the argument for the public. For those among the public who are keenest on reform, the process may be too slow for some but on the other hand, compared with the progress that has been made over the past century, it may seem fairly rapid to others. I will let people be the judge of that. So long as we are clear about what we are doing and what we hope to achieve, I do not think that that is a problem.

On your question about powers, there is a huge advantage to that transition. As Lord Trimble pointed out, under our central proposal there will be a significant number of transitional Members with the newly elected and appointed Members. Keeping what we value while having a more legitimate House is exactly our objective. Part of what we are trying to do is to have the changes that will inevitably take place regarding the relationship between the two Houses of Parliament, in terms of testing that relationship. We want that to happen over time as the balance between the Houses changes. If you look at our constitutional evolution, that is how we have tended to make changes in this country. We have not made big overnight changes; we have done things gradually, and that is a sensible way of going about things. It is most likely to be successful.

Q66 Laura Sandys: I have one other comment. From what you were saying, and obviously it is for the Chair to decide on this, one of the other aspects that this Committee will look at is the name of these representatives. I would have a major issue if the perception internationally of the word "Senator" were superior to "Commoner" or "Congressman". If we are going to have an understanding of the primacy of the House of Commons, one needs to be clear about what the name is going to be. There should be no misunderstanding about that relationship. "Senator" for me is a big issue.

Mr Harper: Your question partly illustrates why, for the purposes of the pre-legislative scrutiny process and consultation, we stuck with "reformed House of Lords" for that very reason. There are different views. If you look at the issue through an Atlanticist telescope, where people are familiar with the US Congress and the relationship between the House of Representatives and the Senate, that is a problem; people see Senators as the more senior of the elected representatives, although they do not control money. If you look in other parts of the world, though, "Senate" is a fairly common name for an upper House and does not necessarily carry the same connotation. It may be that the Committee judges that in our country, because of its links with the United States, "Senate" carries those connotations, which militates against the House of Commons being seen as the primary Chamber, and maybe the Committee will think that another name is more sensible. That is partly why we thought that it was helpful for the Committee to have the chance to have a deliberative process and to come back and recommend a name to the Government.

The Chairman: I think "Senator Richard" has quite a nice ring, actually.

Q67 Ann Coffey: In option 2, a large House of 1,000 Members is envisaged. I wondered if you had done any work on finding out what resources would be needed and the cost of such resources to support that large numbers of Members—space on seats, offices, accommodation, toilet facilities and so on. I know that the Houses

of Parliament are exempt from health and safety, but you would not want facilities to drop below the minimum required by law, so I wondered if you had done any work on that and whether those costings were available to us.
Mr Harper: Not specifically. I have two points. One reason why I think reform is essential is that you do not have to plan very far forward on the current basis for constituting the upper House until you get to a House with that many Members in it. If you just work through one or two changes of Government, with Governments wanting to rebalance the position, it will not be long before we have 1,000 Members of the House of Lords again. The second point, as I said in my answer last week when I was asked about whether transitional Members would get paid and about the costings, is that because there are so many variables at the moment it is quite difficult to make those assessments.
Ann Coffey: Not in terms of toilet facilities.
Mr Harper: Once we have made a decision about the size of the House and the transition process and we bring forward legislation, people can start looking at the consequences of that. They are of course only transitional costs—admittedly, for a lengthy transitional process—rather than a permanent outcome, but those things will need to be looked at. We can plan for it once we have a little more certainty about the shape of the House.

Q68 The Chairman: Looking at the various options that you have, the size of the transitional House is obviously something that the Government are concerned about. Can we take it that there will not a burst of new creations once the new Bill comes in?
Mr Harper: Once the legislation was on the statute book, the Government would be in a position where we would be looking forward to the plan to have the first elections in 2015.
The Chairman: And they will not create any more Peers.
Mr Harper: Until that position, though, under the coalition agreement, as you know, the Government reserve the right to create new Peers to get a House of Lords more in line with the result at the most recent election.
The Chairman: You cannot have it both ways, Minister. You cannot say that you want to cut the House down but at the same time reserve the right for yourselves to beef it up.
Mr Harper: The fact is that this Government, like previous Governments, want to slightly rebalance the number of Peers in the upper House to be more reflective of the election result. We still have only 40 per cent of Peers.
The Chairman: You have a huge majority. The coalition has a massive majority.
Mr Harper: No, we have 40 per cent of Peers in the House of Lords. What you are saying is true if you pretend that the Cross-Benchers do not exist, as I know the opposition Front Bench do when they have this strange concept of "political Peers", but certainly, in my experience of the legislation that I have been responsible for, I have not noticed that the Cross-Benchers have a self-denying ordinance of never turning up and voting. In my experience they have participated extremely keenly in both debates and the Division Lobbies. If you look at the House as a whole, the coalition has around 40 per cent of the Peers and the Conservative group is still the second largest. The Labour group remains the largest party group in the House of Lords, so it is not unreasonable for the Government to reserve the right to continue creating Peers until reform has been achieved.

Q69 Baroness Andrews: It is tempting to pursue that, but I will not. Where do you see the risks for transition, Minister, especially in relation to your preferred option?
Mr Harper: When you say "risks"—
Baroness Andrews: I mean the risks to an effective House and to continuity.
Mr Harper: If those Peers who were in the transitional group—to pick up the point that Baroness Symons made—were not those who contributed to the House, and if the House had not done a good job of ensuring that they were the Peers who did the work, had the experience and brought that diverse range of views, clearly there could be a risk. My sense is that letting the House decide the balance of those in the transitional pool is right. I have a great deal of confidence that the House will make a sensible decision and that those Peers who remain through that quite lengthy transitional period will be those who are able to communicate that—through osmosis, biorhythms or whatever phrase Lord Hennessy is keen on—to the new Members, so that we keep what is valued and valuable while ending up with more legitimate Members.
Baroness Andrews: So you see no risks regarding, for example, the various options on the size of the House.
Mr Harper: That is one of the things that we will have to look at. We have taken what we think is a middle course—accepting that that may be an unfair way of putting it, to pick up Lord Trimble's point—but there are

extremes on either side. In the first set of elections you could go straight down to 300 Members. Maybe people think that that is much more sensible. You could suggest that a larger number of Peers stay for longer. Our approach was to take a third out each time, balance it out and not allow the House to get too big but to allow sufficient existing Peers to be there to ensure that there was a degree of continuity. That was a judgment and we think that it achieves a good balance, but it may be that members of this Committee and others take a different view. We are happy to listen to that view.

Baroness Symons of Vernham Dean: I infer from what you said that the three options that you have laid out are not the only options that you are willing to consider. If we came up with an idea that you have not had an opportunity to examine in great detail at this stage, that would not be ruled out if you thought that it was a sensible option. Is that right?

Mr Harper: Absolutely. As I say, we have come up with our own middle course and two other options, but there are a range of options. If the Committee comes up with something that we have not thought of which achieves the objectives, we are very willing to consider it.

Q70 Baroness Symons of Vernham Dean: We have looked at the question of about hybridity; Lord Trimble went into it in quite a lot of detail. The question that preys on my mind is this: take someone like you, Minister, a bright young chap, who is very ambitious—would you stand for the reformed House of Lords when, even if you had put all your effort into election and you were elected, you were still in the second Chamber? When you go through hybridity under this system, how do you stop the House of Lords becoming the third choice after the House of Commons and the European Parliament?

Mr Harper: I do not necessarily share your view about why people go into public life.

Baroness Symons of Vernham Dean: I have not expressed a view. I asked you about your own position and how you stop people thinking of this as a third choice. You have the place that really does the business, then the place that does the business in Europe—and then you have this other lot.

Mr Harper: From my own position, just putting that to one side, I am happy being a Member of the House of Commons; I worked jolly hard to get there. I shall keep asking my constituents to keep sending me back and I hope that they do. This House has a particular role as a scrutinising and revising Chamber. In much the same way that the quality of people who agree to be life Peers is very high, I see no particular problem with people who want to perform that scrutiny and revision role.

Interestingly, quite a lot of Members in the House of Commons look at the way that the role of a Member of Parliament has changed. We always have this tension between our constituency role—what some people, though not me, would call our super-councillor role, involving case work and being in the constituency more than used to be the case—and our parliamentary one. That pressure perhaps stops you from being able to focus on your parliamentary duties. I think that there are people who would find both the legislative process and the process of holding the Government to account, but not having the same level of constituency pressures, quite attractive. It would suit certain people of very high quality. If you had people who really wanted to do that job, it would suit them very well.

Q71 Baroness Shephard of Northwold: If that is your view on the role of an elected Member of the second Chamber, where is accountability? I am bound to say that you have driven a coach and horses through my assumption of what the Government wanted to achieve with this legislation. I thought that the point of elected people was to make them accountable to those who elected them. We have had questions from Lady Andrews about the risks of transition. If you take a practical example, in the county of Norfolk there are 13 Members of the House of Lords. One is a Lord spiritual, there are hereditaries and the rest are appointed. Take some of those out through natural causes and you have an elected Senator, or whatever; surely you would not want the whole thing to be discredited after the first set of elections where you confuse the electorate. Confusion of the electorate is the enemy of accountability and transparency. What you are suggesting introducing with the whole thing, but certainly at the transitional stage, is utter confusion for the electorate. The Member of the second Chamber has a different name. Do we go for him or her about a hole in the road? Whom else can we go to? You have absolutely driven a coach and horses through the clarity, as I see it, of the whole structure with what you have just said.

Mr Harper: I will say a bit about the issue of legitimacy and accountability. We had a big debate about this last week and I made the point that we think our proposals, with single non-renewable terms, deliver the objective of

more legitimate Members, but I was upfront in accepting that, as people could not be re-elected, they would not be as accountable as Members of the House of Commons.

Baroness Shephard of Northwold: May I interrupt you there? What do you think the attitude of the public will be to someone who is elected but not really quite as accountable as some other elected people, including, for example, parish councillors, who have shorter terms?

Mr Harper: If I may finish, I will come back to that. There are two reasons for that. One is that there has been a consensus over the past few years that you want people with non-renewable terms because you are not trying to create a replica of the House of Commons. The second is that we would say that this is one of the arguments that militate against the elected upper House arguing that it can compete with the primacy of the House of Commons. Both those things are dealt with by having long, single, non-renewable terms. We had a lengthy debate about that last week, we had a debate about it when we were debating these proposals in the Commons and I know that you debated it in the Lords.

On the clarity issue about who does what, I may be wrong but a lot of constituents are already not very clear about which tiers of elected people do things. I know that there is a lot of confusion in two-tier authorities about what county councils, district councils and parish councils are responsible for. It seems sometimes that Members of Parliament are responsible for absolutely everything. To pick up Baroness Symons's point, people are not very clear about what Members of the European Parliament are actually responsible for versus the position of national Government. I do not think that we would be making the position any worse and, as we have this debate, it would be sensible if we could be clear about what the role of the Lords was.

One of the important points is to set out the relationship that we expect electors to have with their Members. For example, it may be sensible to say to people, "Your Member of the House of Commons is the primary elected Member—the one to whom you would go in the first instance if you had a problem with a government department. Your first port of call would not be your Member of the upper House." We may want to set that out, and I know that members of this Committee have set it out elsewhere. I do not think that that would lead to people being confused.

On Baroness Shephard's point about her county, one of the points that we touched on last week was about the regional disparities in representation. At the moment London, the south-east and Scotland are heavily overrepresented in the existing House of Lords compared with what you would expect based on population, while all other parts of the country are hugely underrepresented. Your county is probably very fortunate, in that respect, to have so many Members of the House of Lords.

Baroness Shephard of Northwold: Thank you, Minister. I am bound to say that you have not convinced me in the very least. You seemed to me to be arguing that the public are already confused and, in order to make them less confused, let us have yet another tier of elected people but they will be really second class and they will not be the people to go to. That seems to be the argument that you have just advanced.

Mr Harper: I do not think so.

Baroness Shephard of Northwold: I do think so.

Mr Harper: It is that people have distinct roles and we have to set out clearly what they are. The role of the House of Lords is to be a scrutiny and revision Chamber, and we should explain to people that that is what we expect its Members to do.

Baroness Shephard of Northwold: I do not think that it is a recipe for clarity or, therefore, accountability.

Q72 The Chairman: I was going to raise this point later, but in view of the past few questions this is probably the right time. Fundamental to the Government's approach, it seems, is their view of what the House of Lords ought to be doing—what the role of the Lords is. Half a dozen times tonight, you have used the phrase "a revising role". Do you really see that as the sole or main purpose of the House of Lords—that it is there to do things that the House of Commons has not done because you do not have time to look at Bills properly, to dot the i's and cross the t's and to correct the grammar of Bills when they come up from the Commons to the Lords? Do you see the Lords as having any kind of political role, or is it merely there as a legislative complement to the House that has primacy—namely, the House of Commons?

Mr Harper: It would not be fair to say that the existing House of Lords in its scrutiny and revision role only dots i's and crosses t's. That would be to understate hugely what the existing House both does and is able to do. There are two parts to its role. There is the legislative one, not to be underestimated, of being a Chamber that carries

out the process of scrutiny and revision. As I said, I would not undersell that, certainly in terms of the legislation that I have been responsible for, which has been very much improved. We changed the guts of what is now Section 2 of the Fixed-term Parliaments Act, based on the contributions that we had in the debates in the House of Lords, including, among others, from two former Speakers. That is not an unimportant role for the House.
We touched on the other part of the role last week—that is, scrutiny and holding the Government to account. I set out some of how I thought the House's role might develop, picking up some of the points that Ms Sandys has made in public debate, looking at the long-term infrastructure and policies that affect social change. One of the things that we are often criticised for in the House of Commons is having too short a time horizon because everyone has to worry about the next election. If Members have a single non-renewable term of three Parliaments, they can take a much longer-term view. They can take evidence, produce reports, advise Government and question Ministers using that much longer-term time horizon. That is incredibly valuable and would counterbalance what it is fair to say is a political system that is often too short-term and does not look at the long-term consequences of those decisions. That is a criticism that has been made of all Governments and this is an important task that a reformed House of Lords could carry out. Did that answer your question?

Q73 The Chairman: No, but thank you very much. Well, it does not really answer the question. What I am very interested in, which I think is in some ways fundamental to this whole discussion, is what place you see the House of Lords occupying in the whole parliamentary framework and in the job that Parliament as a whole has to do. Do you see it as a proper legislative Chamber or as something that is not as proper as the House of Commons? Do you see it as a legislative Chamber that is real but inferior to the House of Commons? Do you see it as legislatively complementary to the House of Commons? These are distinct views that you can have and I am not at all clear what the Government want of this second Chamber. This is one of the problems that we have. I do not know what you want the reformed second Chamber to be. Is it to have constitutional equality with or inferiority to the House of Commons, or do you see it as performing functions that are complementary to the legislative process that goes on in the other place? These are pretty fundamental questions.
Mr Harper: If we just take the legislative piece of that argument, which is the one on which people tend to focus—probably they over-focus on it, as the House does other important things—the House is a part of the legislature. I read the debates carefully when the Lords debated our proposals. I think that Peers were guilty of underplaying their role in suggesting that the role of the House was just to give the Government friendly advice from time to time, which they were completely free to take or otherwise. That is not the House's role. It is a part of the legislature. Legislation has to pass through both Houses. That is the role that we want it to continue to have. Ultimately, the Commons, using the Parliament Act, has the ability to get its way on most areas of legislation and it controls supply. We want that to continue, but otherwise the House of Lords will remain a full part of the legislative process. The phrase that we use in the White Paper is "scrutiny and revision" but I was not using that in any demeaning sense. That is what the House's role is now and it does it very well.

Q74 Lord Rooker: Can I put it another way, Mark? I have not done the calculations on this and I have been here for only 10 years, but I suspect that half the time might be for what we could call raw scrutiny. Surely we have a role as part of the inquest of the nation, the same as the Commons has. We have debates on day-to-day issues that are nothing to do with revising. We hold Ministers to account—some departments more than others, as there is obviously a range of expertise here. In that role, there is almost equality. Otherwise, the Commons has absolute power. Part of the reason why we are here is to stop absolutism—we will take some evidence on that later. Do you see our role as being the big-picture role, including the scrutiny and revising—asking the Commons occasionally to think again—which is a very important role? We do too much repetition, by the way. We should do more revision than repetition and I think that our procedures should be adjusted for that. Do you envisage and embrace the wider political role, with a small "p", that we undertake today as part of Parliament? Do you see that both in the transition and when there may be a fully elected or an 80 per cent elected House?
Mr Harper: Absolutely we do. We have made provision in our proposals for the House of Lords to continue to have Ministers in it and for those Ministers to be held to account by Members of the House of Lords. There is an alternative model, where you would not have Ministers there and you would have Commons Ministers appearing and being held to account, but holding Ministers to account, which I mentioned briefly in my answer to the Lord Chairman, is a very important part of what the House of Lords does today through Questions and

Statements, as well as the legislative process. That is a role that we absolutely see continuing in the future, as well as debates other than those on pieces of legislation.

Q75 The Chairman: I am sorry to have strayed back to the role, but I thought that it was important, in view of some of the answers that were being given, that we try to establish the Government's view of what the role of the House of Lords ought to be, so thank you for that. Let us turn now to the Appointments Commission. There are various issues on this. Should the Appointments Commission criteria for nominating Members be in the Bill? What will the Appointments Commission criteria be for nominating Members?
Mr Harper: Again, this was an issue on which we did not think it appropriate to set out all the criteria in the legislation. We set out the fact that we thought that the Members who were appointed should be non-party political. We are very clear in the legislation that anyone who has a party label should get elected. The role of the Appointments Commission should be to appoint those who effectively are Cross-Benchers, to use the current parlance. We did not think it helpful to try to come up with a range of criteria that you would set down in legislation and would then be set in stone. We thought it more sensible to have the Appointments Commission set out the criteria—to publish them and no doubt to consult on them—for the basis on which it would make those appointments.
The Chairman: So there is nothing that we can look at at the moment as to what the criteria would be when the Appointments Commission is set up.
Mr Harper: No.
The Chairman: You mean that it is starting off with a clean sheet. It is not building on the existing Cross-Benchers but starting off with a tabula rasa, with 20 per cent of the House to appoint. A number of questions seem to me to arise from that. One is who picks who is on the Appointments Commission.
Mr Harper: There is already a process set out for making public appointments today. The first criterion is people who want to be on it and then you have an open process that you go through, in which those people are interviewed and are appointed.
The Chairman: But they are not appointed; they are recommended for appointment. Who actually does the appointing?
Mr Harper: The detail of who does the appointing is in the legislation. We have set out that you cannot be a Minister, you cannot be a Member of the House of Commons, but you could be—in fact, we want this—a person who is experienced in how the existing House of Lords works. So you could be a Member of the House of Lords and there would be the normal public appointments process for them to be appointed.
The Chairman: The Prime Minister presumably has to put his chop on it, doesn't he? Does it not go to the Prime Minister? The process produces a number of names.
Mr Harper: But under the existing public appointments process, there are processes where names are given to Ministers—Ministers formally do the appointing, but they do not play an active part in choosing names. For example, the Government have recently appointed members of the Boundary Commission for Wales, but Ministers did not choose those; they were given names by an independent appointments process. They formally appointed them but they did not select them, in that sense of the word—there was an independent appointments process.
Lord Trefgarne: But they could reject them.
Mr Harper: Theoretically, yes, because there is ultimately a person appointing them. But in appointment processes where it is important for there to be openness and transparency and in particular for there not to be party-political shenanigans, Ministers normally accept the names that are proposed.

Q76 Bishop of Leicester: I would like to pick up some of our earlier discussions about the need to ensure diversity in this House and some of the discussion from last time about what some members of this Committee see as the anomalous position of the Lords spiritual—the only guaranteed spiritual presence in an upper House. I note from your letter to the Committee that the Government have not yet had the chance to consult other faiths, but I think that when that consultation takes place you will hear a great deal about the need to ensure that there is space for those who bring spiritual and religious leadership into the House and that that is diverse. Do you think that it would be helpful for a statutory duty to be laid on the Appointments Commission to ensure that all the faith communities are proportionately represented in a reformed upper House? For the avoidance of doubt, let

me say that that would certainly be in line with the representations that the Church of England has consistently made on Lords reform.

Mr Harper: To come back to the point that you made at the beginning, I was asked last time whether we had consulted with faith groups. I wrote to members of the Committee to confirm that this time we had not. The reason for my confusion last time was that, in the various previous iterations of the Lords reform process, those consultations had been undertaken. The royal commission—the Wakeham commission—had set out a lot of the practical problems with coming up with representatives of different faith organisations. That was why I inadvertently thought that we had redone that consultation process, but I set the position out clearly for the Committee. It may well be helpful to give the Appointments Commission a range of statutory duties, although it was not something that we set out in the draft Bill. All that we have set out so far is that it would have to publish its criteria and how it would go about making the appointments, but it would set out what those were. Clearly, if the Committee thinks that, in order to make sure that certain aspects of diversity are covered among those appointed, it would be helpful to give the commission a range of duties, we would absolutely listen to that. We certainly have not ruled it out but, in the first instance, we thought it helpful not to lay out a set of detailed criteria in the legislation.

Q77 Lord Hennessy of Nympsfield: Minister, how well do you think that the existing Appointments Commission has worked in its 10 years? Do be candid. I declare an interest as somebody who came in that way, but I am a tough old boot and you can say what you want.

Mr Harper: If the basis of your question is why we are setting up a statutory commission—

Lord Hennessy of Nympsfield: No. It is how well you think it has done—an audit.

Mr Harper: The honest answer to that question is that I have not really thought about it in the sense of looking at all the Peers who have been appointed on the recommendation of the existing Appointments Commission and making an assessment of their quality, however one would do that. The fact that you got here through that route means that it clearly has much to recommend it.

Lord Hennessy of Nympsfield: How very kind. Thank you.

Q78 Baroness Andrews: Following on from Peter's question, Minister, there would be high expectations of this new Appointments Commission, because you are appointing 60 Members of the new House. One thing that we have wrestled with on the present Appointments Commission is, frankly, a lack of transparency, a lack of accountability and a lack of control over numbers and choices, with absolutely no idea about what people are going to be recommended at what intervals and in what numbers, so did you think of just starting from scratch and getting rid of all this? We have Members of the House of Lords involved, we have the Prime Minister involved and we might even have the monarch involved. Was there another model?

Mr Harper: A number of the things that you set out as reasons why some people may judge that the existing Appointments Commission does not work as well as it might are things that are dealt with in its remit in our legislation. In terms of how many people it has to appoint and when it has to appoint them—that part of its job—that is going to be set out in the legislation. The Appointments Commission will have a very clear remit to appoint a certain number of Peers on a certain timetable, so it will have a very clear job of work to do. We have set out that the criteria will be published and will be therefore be transparent. People will therefore be able to assess the extent to which it had met those criteria in the appointments that it had made. Obviously on the first tranche of appointments it is very much starting with a blank sheet of paper, for want of a better phrase, because the appointments will happen in tranches, in the same way as the elections do, but it will make the first set of appointments and then, before it makes the second set of appointments for the next tranche, it will have some evidence of how the first set of appointments has worked out. The Prime Minister's role in recommending the appointment of those Members to Her Majesty the Queen is simply to facilitate the process in the traditional way; it is not to choose the Members. It is very clear in the legislation that he has to recommend to Her Majesty the Queen the names that he has been given. He has no ability to alter those names or to add to them in any way; it is purely to keep the existing constitutional processes in place.

Baroness Andrews: Would you consider, in the interests of greater transparency, putting the criteria into a statutory instrument or even on to the face of the Bill to give greater confidence?

Mr Harper: That is one argument. It is not what we chose to do in the draft Bill but, equally, the Government have not made a decision not to do that. The danger, I guess, is that if you are setting out criteria in primary legislation, you are setting it, if not in stone, then fairly unchangeably—you are making it difficult to change it. People may judge that that is not helpful, particularly since you are then not going to be able to modify it easily as you judge whether it has worked out. Your argument about perhaps putting in a power to set it in secondary legislation, which would be easier to modify, may be something that we can think about. We certainly have not made a decision to set our minds against it. On that particular issue, we will very much listen to what the Committee has to say.

Q79 Lord Tyler: If the Government are persuaded that the target number of 300 at the end of the transition is on the small side for a whole number of reasons—the workload, good representation, gender balance and all the other issues—would their position be that if, for example, we and others were recommending an increase to 450, which is accepted as being the working population at the moment, they would wish to retain the 80:20 split? That is, you are not saying that you would want just 20 people appointed each time; you would want the proportion rather than a number to be the determinant for the balance between elected and appointed. Have I got that right?
Mr Harper: Yes. It is very much the percentage. We touched last time on the number that we reached of 300. I was asked—forgive me, but I forget who asked it—whether we thought that we had the capacity right with 300. I said that our assessment was based on the number of those who regularly turn up, allowing for the fact that the expectation is that, when the House is sitting, this would be someone's full-time job, which offset it to some extent. Clearly, that is a judgment and there may be an argument about that, but it is the proportion that is important, not the exact number. So, yes, if the House was slightly larger, we would stick with the 80:20 percentages.

Q80 The Chairman: Sorry to interrupt again, but let us come back to the criteria for a moment. What sort of criteria would you expect the Appointments Commission to apply and operate by?
Mr Harper: For the appointed Members—those not with a party-political attachment—you are looking at people who, to pick up Baroness Symons's point from earlier, are going to bring the requisite experience and people who have professional skills from their previous employment. This may well be part of the process where, for example, those who have held particular offices may get into the reformed House. It may be that people feel that those who have held certain offices—Chief of the Defence Staff or senior civil servants—should be appointed, but it may be that they do not. But it seems to me that those are the kinds of things—people's previous experience—that might be considered. This may be something that militates against setting this out in statute, whether primary or secondary legislation, but the commission may want to look at filling in gaps in experience in the House. For example, once you know what your elected contingent, for want of a better word, will look like, the commission may want to make sure that the House is representative across a whole range of criteria. It may wish to appoint more people in those various categories. It seems to me that there is a danger in making this too specific, as you could tie people's hands for a long period. There may be some benefit in being flexible and in the Government not being too prescriptive about what they want to see, allowing the House, through the Appointments Commission, to make some of those judgments.

Q81 Baroness Symons of Vernham Dean: Minister, this question about the nature not so much of those doing the appointing but of those who are appointed needs probing a bit more. In the paper, you say that this group would make a contribution to Parliament as independent non-party-political voices. I think that somewhere else you say, "Well, of course, past or present party-political activity or affiliation doesn't necessarily preclude selection." Would you say, in fact, that if you had been a member of a political party and had sought election, you would be less likely to be suitable for appointment by the Appointments Commission? Is that a reasonable inference to draw?
Mr Harper: It is a reasonable inference, but again it illustrates why allowing the Appointments Commission to have its own criteria is sensible. For example, there are people who have had a very clear affiliation with a political party for a period; they have then performed a role that has meant that that has not been the case and afterwards they have been appointed to the existing House of Lords as Cross-Benchers. I am thinking, for example, of former Speakers, who have been members of political parties but, when they take up that office, cease

to have a party-political role. The tradition is that when they are appointed to the existing House of Lords, they are appointed as Cross-Benchers. They have had in their past a very clear political affiliation, but they have then put that to one side and behaved in a completely neutral party-political manner, and over time no one questions their lack of partisanship. You would not want to say that if someone had been politically active in the past it ruled them out; it would be a judgment call for the commission to make, looking at them in the round. If they were an active, current party-political person, they probably would not want to be a Cross-Bencher, but equally they would be the sort of person for whom it would be more appropriate to get elected. It is a judgment that has to be made.

Baroness Symons of Vernham Dean: But do you not see that there might be a risk of narrowing the pool of people from whom the parties would draw their people to be elected? For example, we have in the House at the moment two very eminent authors of detective novels. They are both great. One sits on the Conservative Benches and one sits on the Labour Benches. I do not think that their party-political affiliation was particularly obvious to anyone at the time and both might well have been suitable candidates for the Cross Benches, but I rather doubt that they would have been suitable candidates for election to the party Benches. What I am trying to probe a bit further is this: do you not see that by categorising in this way, we narrow the pool from which the parties on each side would draw their Members? They would necessarily be politicians who stand for election, not people who have affiliations and get drawn into the work of the House of Lords and choose to sit for one party or another. You change the character entirely, is what I am saying—you get less breadth in the party representation.

Mr Harper: Let me just deal with the point about the Cross Benches. I do not think that it is a problem for the Cross-Benchers, but I take it that your argument is that fewer people, and people with a narrower range of experience, would be willing to stand for election. My view is that it is always dangerous when you take existing Members of the House who take a party Whip and say, "Would those particular individuals have been prepared to seek election?" because you can always find some people who would have been and some who would not. In the generality, I just do not buy the argument that people who are prepared to seek election do not bring a lot of experience with them.

Baroness Symons of Vernham Dean: That is not the argument that I am making. That is the argument that we had last week; I am making a subtly different one this week.

Mr Harper: I know. I am just trying to take it on a bit. I take your point that there may be existing Members of the House of Lords who take a party Whip and make a valuable contribution, and those particular individuals or people like them might not have been willing to seek election. That may be true, and I do not necessarily seek to challenge whether it is, but it does not follow from that that there would not also be an equally large pool of people to draw from who bring a lot of life experience and have an equal contribution to make to those whom you have mentioned and who would be prepared to seek election. We have a country with 60 million people in it, so I do not think that you are necessarily narrowing the pool of talent.

Baroness Symons of Vernham Dean: No, but what you are doing is reinforcing the sort of tribal politics that we see down the other end of the corridor. We do not have the same sort of tribal politics up here—it simply is different. Anyone who spends any time observing how the House of Lords works would know that that is the case. You are on the Conservative Benches, where there will be doctors; there are doctors on our Benches and I very much doubt that they would stand for election. That is a personal opinion of mine and it is challengeable by other people, but I think that within their parties those people provide leavening arguments. It is not just "The party right or wrong"; it is much more a question of arguing about the merits of, particularly, the things where they have expertise. This is just a point that I put to you. Baroness Andrews put to you the points about risk and I put to you that this is another risk: that you will make the House of Lords look like a rather pale and pathetic version of the House of Commons, instead of the rather rich body that it is because its politics is less tribal.

Mr Harper: It is interesting that you say that. As far as the party-political Members of the House of Lords are concerned, I am not sure that the evidence actually supports the contention that Members are less tribal, for want of a better word. If you look at the extent to which party-political Members of the House of Lords vote with their party Whips, the academic evidence that I have seen is that those Members vote with their Whips almost as often as Members of the House of Commons—not quite as often, but not a great deal less. I have seen a paper from the Political Studies Institute—I think I have got that right—that suggests that there is not a great deal of difference. This may not be a cheering thought for the Government Chief Whip in the House of Commons but Conservative MPs appear to be almost as rebellious as Conservative Peers. That may not be a good thing if you are the

Government Chief Whip. For party-political appointees, this may have been different in the past, but the evidence suggests that they vote with the Whip almost as often. The thing that militates against that in the House of Lords is the Cross-Benchers, who do not have a party Whip. It is also, to pick up Baroness Shephard's point, one of the reasons why I think that single, non-renewable terms are valuable; they allow Members of the House of Lords to have less of a focus on the Whip. They do not have to be reselected or re-elected, so Members of the reformed House of Lords will be less susceptible to some of the powers of patronage and pressure that occasionally are brought to bear on Members of the House of Commons.

Q82 Lord Trefgarne: Is not the explanation, Lord Chairman, that Peers who do not want to follow the party line just do not turn up? Very few of them will actually vote against the Whip; they just do not turn up to vote in favour. But that was not the question that I was going to ask. I want to ask whether there would be any merit, from the appointments perspective, in having one or two categories—for example, the ex-Chiefs of the Defence Staff—who were appointed more or less ex officio.
Mr Harper: That may be sensible, but again I am not sure that we would want to be that prescriptive in legislation. It would of course be open to the Appointments Commission to set out that one of its criteria would be that there may be certain roles where it felt that people would bring something to the table, such as a great deal of experience. It might not want to make it quite as automatic as an ex officio or post-office-holding appointment, but it may wish to make that a criterion. Looking at some of the roles that people play and people in the House of Lords who have held some of those senior public posts, I think that they bring a great deal of experience and are often the ones who are used as examples of people who bring particular subject knowledge.
Lord Trefgarne: Although you have been silent on these criteria, the Appointments Commission could set them out and publish them.
Mr Harper: Yes, it could. Again, the range of questions that we have had on the things that ought to be taken into account when appointing Members suggests that not setting the criteria out in legislation, whether primary or secondary, is a good thing because there is a lot of debate about what they are. They may not be unchanged over time, but as long as the process is transparent and the commission has consulted on the criteria, as public bodies do, and published them so that everyone knows what they are, the commission then has the option to change them over time as the world changes, and indeed the House changes. The commission will have the advantage of that extra element of flexibility rather than having it set out in statute.

Q83 The Chairman: But the timing is wrong, isn't it? The Appointments Commission is not going to have time to set out its criteria and take views from the general public before it publishes them. As I understand it, when the first election takes place to the House of Lords, within 14 days of the first election the Appointments Commission has to recommend 20 people to the Prime Minister as ordinary appointed Members. The country will not know at that stage what the criteria are that the commission is going to apply in order to produce the 20. It cannot have done it before the election, because it will not exist.
Mr Harper: Once the legislation has been passed by Parliament saying that there is going to be a reformed House of Lords and setting out the basis on which that will happen, there is no reason why the legislation could not set up the Appointments Commission and enable it to do that work of setting out what its criteria will be, consulting on it and being in a position to go, and then the commission could appoint them afterwards. That seems to be the way that this would work.

Q84 Oliver Heald: On Baroness Symons's point about narrowing the pool for the political Peers, if you look at the electoral system that you are suggesting, you will remember my criticism that if you elect a person for a particular area then you are giving them a rival mandate to the Commons. In terms of narrowing the pool of political Peers, though, if you think of someone such as PD James, and recently we have had appointments to the House of Lords of people such as Fiona Shackleton, a leading lawyer, and you can think of many others—Ander Lloyd-Webber, and so on—these are people with a national profile; they are national treasures, almost. Are such people going to want to have to be elected for a region and, at least notionally, to have to represent it? They are national figures, not regional ones.
Mr Harper: I do not really want to get into debating individual Members. If someone is taking the party Whip and wanting to play a party role, it is not unreasonable to expect them to get elected. As to whether or not they

would want to, again, you can pick individual existing Members of the House and question them about whether they would or would not, but if you are looking at the question as a whole, then the people who carry that national profile would be exactly the sort of people—someone like the people you have mentioned, who are well known and have a profile, whom people might well choose for their personal qualities as well as their party label—who, under a single transferable vote system where you maximise the choice for the voter, would have the best chance of getting elected. Indeed, people like that who did not want to take a party Whip would also have a chance of being elected as independents. I cannot remember why we got into this last week, but one of the reasons why we prefer STV to the open list is that, to the extent that it is possible with electoral systems, it maximises the chances of an independent being elected. I would be careful not to overstate that, because it is difficult, but that system certainly maximises the chances. The sorts of people whom you have mentioned—people with a national profile who are well known for their contribution to other areas of public life—are exactly the people who could stand in an STV election as an independent and get elected because of the fact that they are well known and people would vote for them. That would bring something else to the house—having elected Members who also were independents and free of a party Whip.

Oliver Heald: Really, I am back on Baroness Shephard's point. If you are a member of the public and you vote for someone in your region, you are going to expect them to stand up for your region because they represent it in this House. There are people in the House of Lords who are not thought of—at the moment, at least—as a regional person; they are national figures. Why do they have to take on the burden of representing a region? Why cannot we have a national list?

Mr Harper: You lead very quickly there to having a national list. On the merits of having a list, I was certainly clear last week that the Government are not at all in favour of a closed list where the party leadership effectively chooses the names on the list. Effectively, that gives too much control to the parties and actually does not move us a great deal further forward than we are at the moment. We have party lists already, chosen by party leaders; that is how party-political Members get into the House of Lords now. We are open to an open list, where voters have some ability to re-order people. The reason why we went for a regional basis was that, if you are going to give voters the ability to make some of those decisions, you need to do it on a basis that makes sense. It may be that, if you put people with a national profile on a large national list of names, voters could spot Andrew Lloyd-Webber or whoever. In most cases, though, if you did it on a national basis, you would have a very long list of candidates, and the realistic likelihood that voters would be able to make any assessment of their individual qualities—

Oliver Heald: The point that I am making is that you are describing the House of Lords as being a place that revises and scrutinises—you have explained your thinking there—and nowhere did you mention representing the regions, yet the system that you have for selecting the membership here, apart from the appointments, is regionally based. You are electing people to represent a region and then there is no role for them here. Do you see my point?

Mr Harper: I do. I take your point, although I will not develop it further, about whether there are people with a national profile who also do not have any affinity with a region. I do not know those individuals personally but I suspect that they are all from somewhere, they live somewhere and they have some affinity with a particular part of the country. I do not think that they would necessarily be averse to representing it, in that sense. I think that they would have a role here. If I just pick one of the examples that we discussed last week, there was one thing that a Member here said that the House does not do well. Lord Adonis made a point about transport infrastructure. He made the point that, when he was Secretary of State in the House of Lords, he made three significant decisions about transport infrastructure, and he gave those examples. Those were exactly the sorts of questions on which Members of the reformed upper House with a regional dimension would be very well placed to bring their regional representation to the fore—to ask questions, for example, about whether High Speed 2 adequately delivered benefits to the part of the country that they were from or whether it delivered benefits only to certain parts. There would very much be a role for that. Indeed, in the points that Lord Rooker made about the role of the House of Lords in holding Ministers to account, it would be for those representatives to think about how government policy was affecting the part of the country that they represented and to ask questions accordingly. I think that that regional aspect would have a role in a reformed upper House.

Oliver Heald: So they would have a constituency role.

Mr Harper: Yes, they have constituents. The relationship is different because they do not have to get re-elected. Clearly, one thing about the clarity of the roles is who your primary contact would be, but they will get correspondence and questions and they will have a relationship with those constituents.

Q85 Laura Sandys: To pick up the point that Mr Heald and Baroness Symons were talking about, I do not know whether the Minister also feels that there are a lot of people from diverse backgrounds who are very talented and who look at going into the House of Commons but actually back away from it because of the more onerous responsibilities, in many ways, of the constituency side and what one would call a six-day week, minimum. Such people would very much welcome the opportunity to be elected to a role that had more boundaries to it and was potentially based in one location rather than in two. I do not think that, just because the highly talented people in the House of Lords would not want to be elected, there is not a whole cohort of people who are put off being elected because of the role of a Member of Parliament but whom this House would suit in a very different and positive way.
Mr Harper: I think that that is right. There are people who would welcome a parliamentary role and would like to take part in the legislative process—holding the Government to account, as Lord Rooker says—but who may not want the very heavy pressures that there are on the role of a constituency Member of Parliament. I do not think that that in any way makes Members of a reformed House of Lords second class. It is a different role—part of the same Parliament but complementary, to pick up the phrase that the Lord Chairman used earlier. There will be people with different skill sets who would actively prefer to get elected to the reformed House of Lords in preference to the Commons because it is a role that would more suit them. I think that a lot of people would find that attractive, much as there are existing working Peers—assuming that people are not forced to be Members of the House of Lords—who presumably have not, for whatever reason, wanted to get elected to the House of Commons but are interested in politics and political life and in participating in Parliament.
The Chairman: They might have been in the House of Commons and come out.
Mr Harper: That is entirely true. There are of course rather a lot of people—an increasingly large number—who have been in the House of Commons.

Q86 Lord Norton of Louth: You make a point about party voting in the Lords. The first article published on the subject was mine and I think that you are absolutely correct, but it misses the point about the nature of the House, as we do not vote as often as the Commons does. Votes are rare; amendments carried by Divisions are very much at the margins in terms of the totality of the number of amendments carried each Session in this House. That is because the House proceeds largely by way of negotiation—voting is an admission of failure to achieve your aim earlier. That consensual nature is very much at the heart of the way in which the House operates. Do you not accept that competitive elections will fundamentally change the terms of trade between the parties? Just to pick up on the point that you made about Members of the two Houses and what you said last week, are not the provisions in the Bill for a gap before you can seek election to the Commons an admission that the Government in effect assume that the first XI will go to the Commons and that people coming to the Lords will be those who have failed to make it into the Commons but want to?
Mr Harper: Let me deal with those two points. The first point around the nature of elections would be strong if we were proposing to have Members of the upper House who had to seek re-election. If you had to seek re-election, you would indeed start some of the processes. It was one reason why we wanted long, non-renewable terms. So, yes, you have to be competitive to get elected, but once you are here you are not continually striving to be re-elected, which means that you are able to have that slightly greater sense of detachment than you would have if you were striving to get reselected and then re-elected.
Lord Norton of Louth: But you are elected essentially on a tribal basis. That commitment is there and you will say, "Look, I was elected on this basis." That is the essential point, not whether you are seeking election. Lots of Members of the Commons do not seek re-election, but it does not stop them being the same as any other Member.
Mr Harper: I am not entirely certain. I can only judge from looking from outside. Given that most Members of the existing House of Lords and most new Members who are appointed are appointed by their party leaders presumably because it is expected that they will broadly support the views of their parties, I am not certain that you change the nature that much in terms of people's behaviour. I am glad that you, with rather more academic

weight, support my contention that certainly in Divisions the existing party-political Members are almost as tribal as Members of the House of Commons. I take the point, though, that you divide less frequently. Again, I think that part of that is exactly why we want a transition to the new House. You want some of the current ways of doing things—the things that people value and the sense that you can perhaps have a better debate—to be communicated to new Members, so that you keep what is good.

Lord Norton of Louth: Quickly on that point, have you done a study of transitions elsewhere? A lot of this debate takes place almost on the basis that we are starting on a fresh sheet and that there is not an existing institution, but that is very different from a transition from an existing institution to a new one, so I wonder whether you have done any studies on that.

Mr Harper: I think that I am right in saying that we have looked at that briefly, but we have not done a huge amount of work on it. Let me check what officials have done. Perhaps, Lord Chairman, I could write to the Committee and let you know about that. I will certainly take it as an indication that I should go away and look at what literature is out there about transition and moving from one to the other.

The Chairman: I think that we can leave that block of issues on transition and the Appointments Commission—perhaps we have exhausted them for the evening. There are two other points that I wanted to raise with you. The first is ministerial membership and I think that Lord Rooker has a point on disqualification.

Lord Rooker: My point on that was only that, if we started discussing it, I would have to declare an interest, as I think that I am one of those who would be excluded from membership under the Bill. That is all.

The Chairman: I beg your pardon. Mr Stevenson has a question.

Q87 John Stevenson: On ministerial Members, there is a lot of talk of having 300 Members in the new House, but in fact you would have elected Members, appointed Members, possibly Church of England Members and ministerial Members, so you could have more than 300. What sort of numbers are you thinking about? Also, is there any provision for or has any thought gone into having shadow Ministers as well, which would give an opportunity for the Opposition to put forward Members? Can the elected Members be Ministers? Can the appointed Members be Ministers? Probably most fundamental of all, will these Ministers who are appointed by the Prime Minister have the vote, as that could be critical to the make-up of the House?

Mr Harper: I shall try to answer all those. There is no limit in the draft Bill on ministerial Members but in the thinking that we set out in the White Paper we very much envisaged this as a limited number. We are not looking at this as a mechanism for the Prime Minister to appoint a significantly large number of Ministers, either to have a very large number of Ministers per se or to do exactly what I think you are alluding to, which is to change the balance in the House. Our proposal is that they would be full Members with a vote, but it would be a limited number. It was mainly to give the Prime Minister the opportunity to bring people in to serve as Ministers who have a particular range of skills, as has already happened in the past, but with the important proviso that they remain Members of the House only for the period of time that they are a Minister. Unlike what happens now, when someone gets appointed and made a life Peer to become a Minister and they become a Peer for the rest of their lifetime even if they are a Minister for only five minutes, these Members would be Members only while they were Ministers; when they ceased to be Ministers, they would cease to be Members.

You are right in your assumption that they would be on top of the existing membership of the House. I think that we said in the White Paper that we would be open to putting in a limit. I understand that there is no limit to the number of Ministers who can be Members of the House of Lords at the moment if they are unpaid; the only limit is on paid Ministers. The Committee may want to toughen that up and tie our hands so that there is a number in there, but we made our intention quite clear in the White Paper that there would be a limited number. We are not looking at this as a backdoor way of putting people in. We said that the number would be limited. People may want some kind of formula or number in the statute and clearly we would be open to that.

John Stevenson: Let me just come back with two quick points. Has any thought been given to having shadow Ministers, so that the Leader of the Opposition could nominate X number of Members of the new House as well? Secondly, do they need to have the vote? From the electorate's point of view, there should be clarity as to how many voting Members there were for that House.

Mr Harper: On your last point, we said that they would be Members and we assumed that they would be Members with the same rights as everyone else, so we had not specifically looked at that point. Since the objective of all the things that we have set out is for the Government not to have a majority in the House—having PR,

having transitional elections and so on—clearly that is something that we would want to think about. I guess that it comes down to whether there is a limit on the number that you can appoint, because that would—
John Stevenson: Or if there are appointed shadows.
Mr Harper: On the appointed shadow Ministers, we have not provided for that. We had kept open the possibility of someone being a Minister, in the sense that that is a formal role in which you serve in government and you therefore have to be accountable. We have not made any provision for the Opposition to be able to do likewise. They would have to draw their resources from their existing pool of talent.

Q88 The Chairman: You cannot help us a bit further on "limited", can you? What sort of limited figure are you thinking of? Give us a ballpark figure.
Mr Harper: It was purely to make clear the nature of them—in other words, this is not a backdoor way of allowing the Prime Minister to appoint people to the House as Members of the House. It is very much to leave him or her with the opportunity to bring people into government who we think ought to be Members of the House in order to be accountable. We said "limited" to make it clear that that was the nature of the role, rather than this being some nefarious method of skewing the political balance. Clearly, it would be open to put in either a number or a formula, so that it was very limited, but we put in "limited" just to be clear about the nature of it, so that this was not seen as some crafty way of packing the House.
The Chairman: There is a statutory limit on the number of government Ministers who can be paid.
Mr Harper: Correct.
The Chairman: Are you therefore envisaging that the Lords ones should primarily be unpaid?
Mr Harper: The only reason why I referred to that was to make the point that there is no limit at the moment on the number of unpaid Ministers. Let me just give some background, because I think that this is important. Clearly one of the things that we will decide during this Parliament, and to some extent it depends on the decisions that Parliament takes on this, will be, as you will know—I think it was debated quite heavily in the House of Lords as well as in the House of Commons when we were passing the Parliamentary Voting System and Constituencies Act, which reduces the size of the House of Commons—whether we should also change the Ministerial and other Salaries Act to reduce the number of Ministers. I know that people did not believe us—that is the nature of things; people said, "You would say that, wouldn't you?"—but, given that we were bringing forward proposals on House of Lords reform, we said that before we made a decision we needed to look at the two Houses together to determine the right size for the Executive in each House. Because the House of Commons does not shrink until after 2015, we can make that decision during this Parliament. So the answer to your question to some extent is that, depending on the shape of the new House, the Government may well then bring forward proposals to tie their hands around the overall size of the Government and the relative size of the payroll vote in the two Houses.
The Chairman: Thank you, but would you not accept as a principle that Ministers ought to be paid?
Mr Harper: Most of them clearly are, but I can also see why there might be perfectly sensible reasons why you might want to make someone a Minister and they would be perfectly happy to serve without being paid because they had their own financial resources and that would be a saving to the taxpayer.
The Chairman: But what if they are not happy and you are doing this only because you are over the limit in the Act?
Mr Harper: If they are not happy, they can of course turn down the Prime Minister's kind invitation to serve in Her Majesty's Government. It is not compulsory.
The Chairman: So one of the grounds for being a Minister in the future is that you can afford to be a Minister without being paid. That cannot be right.
Mr Harper: Most Ministers are paid, although there are a number of Ministers who are not. I am not privy to the conversations that the Prime Minister had with those Ministers when he asked them to join the Government, so I really do not know the basis on which they were invited to join, but I am not sure that it would be sensible to rule out the concept of unpaid Ministers. There is a different question about whether it is done for a legitimate reason or whether it is a way of getting round the limit. As I said, one thing that we have left open through this Parliament is, depending on what ends up happening with House of Lords reform, what the statutory rules should be around the size of the Government or Executive and all the other parts of the payroll vote that are not currently controlled by any rules anyway—Parliamentary Private Secretaries and other types of post. We have

been pretty straight with people. We said that we would look at it during this Parliament, depending on the shape of these proposals.

The Chairman: Thank you, Minister. As we are no longer quorate, I will have to adjourn the Committee.

Mr Mark Harper MP—supplementary written evidence (2)

During my evidence session on Monday 17th October, Oliver Heald asked about the link between the age of members of the House of Lords and their attendance. In my letter of 3 November, I agreed to write to you again when we had undertaken a more detailed analysis of the available information.

I attach a detailed analysis of those who attended the House in April to June 2011 by age. The figures for attendance are taken from the claims for daily attendance allowances by members of the House of Lords which are published monthly by the House of Lords.

I am copying this letter to all members of the Joint Committee and the Clerks.

8 December 2011

ATTENDANCE BY MEMBERS OF THE HOUSE OF LORDS BY AGE
Taken from the expenses claims from April—June 2011. The House sat for 39 days in this period.

All tables do not include senior members of the Judiciary, Lords Spiritual, those on leave of Absence, and one MEP. They do include those who were suspended.

In all tables, other includes members who were suspended, officeholders, DUP, UUP, UKIP and Independent Labour and Independent Conservative members

Total Membership end June 2011—Actual Numbers

Age Range	Total Number of members	Conservative	Lib Dem	Labour	Cross-bench	Other
90s	15	5	1	2	7	
80s	117	37	8	31	35	6
70s	248	72	25	80	62	9
60s	256	63	34	88	58	13
50s	98	31	18	29	16	4
40s	28	7	5	11	5	
30s	2	2				
	764	**217**	**91**	**241**	**183**	**32**

Percentage of members of each party group in each age range

Age Range	Total Number of members	Conservative	Lib Dem	Labour	Cross-bench	Other
90s	2 %	2.3 %	1.1 %	0.8 %	3.8 %	
80s	15.3 %	17.1 %	8.8 %	12.9 %	19.1 %	18.6 %
70s	32.5 %	33.2 %	27.5 %	33.2 %	33.9 %	28.1 %
60s	33.5 %	29 %	37.4 %	36.5 %	31.7 %	40.6 %
50s	12.8 %	14.3 %	19.8 %	12 %	8.7 %	12.5 %
40s	3.7 %	3.2 %	5.5 %	4.6 %	2.7 %	
30s	0.3 %	0.9 %				

Breakdown of Peers recording a zero attendance—Actual Numbers

Age Range	Total Number of peers recording a zero attendance	Conservative	Lib Dem	Labour	Cross-bench	Other
90s	8/15	1/5	1/1	1/2	5/7	
80s	23/117	6/37	1/8	6/31	9/35	1/6
70s	12/248	2/72	0/25	2/80	7/62	1/9
60s	10/256	2/63	1/34	4/88	2/58	1/13
50s	4/98	0/31	0/18	1/29	1/16	2/4
40s	1/28	0/7	0/5	1/11	0/5	
30s	0/2	0/2				
Total	**58/764**	**11/217**	**3/91**	**15/241**	**24/183**	**5/32**

Percentage of members of each party group in each age range

Age Range	Total Number of peers recording a zero attendance	Conservative	Lib Dem	Labour	Cross-bench	Other
90s	53.3 %	20 %	100 %	50 %	71.4 %	
80s	19.7 %	26.2 %	12.5 %	19.4 %	25.7 %	16.7 %
70s	4.8 %	2.8 %	0 %	2.5 %	11.3 %	11.1 %
60s	3.9 %	3.2 %	2.9 %	4.5 %	3.4 %	7.7 %
50s	4.1 %	0 %	0 %	3.4 %	6.3 %	50 %
40s	3.6 %	0 %	0 %	9.1 %	0 %	
30s	0 %	0 %				
Total	7.6 %	5 %	3.3 %	6.2 %	13.1 %	15.6 %

Breakdown of Number of peers attending on fewer than 19 days, i.e. less than 50 % attendance—Actual Numbers

Age Range	Total Number of peers attending on fewer than 19 days	Conservative	Lib Dem	Labour	Cross-bench	Other
90s	12/15	3/5	1/1	2/2	6/7	
80s	54/117	14/37	4/8	10/31	22/35	4/6
70s	66/248	22/72	2/25	11/80	25/62	6/9
60s	74/256	16/63	3/34	21/88	30/58	4/13
50s	28/98	5/31	3/18	10/29	7/16	3/4
40s	11/28	3/7	2/5	4/11	2/5	
30s	0/2	0/2				
Total	245/764	63/217	15/91	58/241	92/183	17/32

Percentage of members of each party group in each age range

Age Range	Total Number of peers attending on fewer than 19 days	Conservative	Lib Dem	Labour	Cross-bench	Other
90s	80 %	60 %	100 %	100 %	85.7 %	
80s	46.2 %	37.8 %	50 %	32.3 %	62.9 %	66.7 %
70s	26.7 %	30.6 %	8 %	13.8 %	40.3 %	66.7 %
60s	28.9 %	25.4 %	8.8 %	23.9 %	51.7 %	30.8 %
50s	28.6 %	16.1 %	16.7 %	34.5 %	43.8 %	75 %
40s	39.3 %	42.9 %	40 %	36.4 %	40 %	
30s	0 %	0 %				
Total	32.1 %	29 %	16.5 %	24.1 %	50.3 %	53.1 %

Peers who attended 27 or more days, i.e. at least 75 % attendance—Actual Numbers

Age Range	Total Number of peers who attended 27 or more days	Conservative	Lib Dem	Labour	Cross-bench	Other
90s	3/15	2/5	0/1	0/2	1/7	
80s	51/117	17/37	3/8	21/31	9/35	1/6
70s	134/248	35/72	17/25	57/80	23/62	2/9
60s	132/256	23/63	25/34	56/88	20/58	8/13
50s	54/98	17/31	13/18	17/29	6/16	1/4
40s	9/28	1/7	3/5	4/11	1/5	
30s	2/2	2/2				
Total	**385/764**	**97/217**	**61/91**	**155/241**	**60/183**	**12/32**

Percentage of members of each party group in each age range

Age Range	Total Number of peers who attended 27 or more days	Conservative	Lib Dem	Labour	Cross-bench	Other
90s	20 %	40 %	0 %	0 %	14.3 %	
80s	43.6 %	45.1 %	37.5 %	67.7 %	25.7 %	16.7 %
70s	54 %	48.6 %	68 %	71.3 %	37.1 %	22.2 %
60s	51.6 %	36.5 %	73.5 %	63.6 %	34.5 %	61.5 %
50s	55.1 %	54.8 %	72.2 %	58.6 %	37.5 %	25 %
40s	32.1 %	14.3 %	60 %	36.3 %	20 %	
30s	100 %	100 %				
Total	**50.4 %**	**44.7 %**	**67 %**	**64.3 %**	**32.8 %**	**37.5 %**

Peers who attended all 39 days in the quarter i.e. 100 % attendance—Actual Numbers

Age Range	Total Number of peers attended all 39 days	Conservative	Lib Dem	Labour	Cross-bench	Other
90s	1/15	0/5	0/1	0/2	1/7	
80s	9/117	4/37	0/8	5/31	0/35	0/6
70s	33/248	9/72	5/25	17/80	2/62	0/9
60s	23/256	2/63	7/34	8/88	3/58	3/13
50s	12/98	3/31	4/18	5/29	0/16	0/4
40s	3/28	0/7	1/5	2/11	0/5	
30s	1/2	1/2				
Total	82/764	19/217	17/91	37/241	6/183	3/32

Percentage of members of each party group in each age range

Age Range	Total Number of peers attended all 39 days	Conservative	Lib Dem	Labour	Cross-bench	Other
90s	6.7 %	0 %	0 %	0 %	14.3 %	
80s	7.7 %	10.8 %	0 %	16.1 %	0 %	0 %
70s	13.3 %	12.5 %	20 %	21.3 %	3.2 %	0 %
60s	9 %	3.2 %	20.6 %	9.1 %	3.2 %	23.1 %
50s	12.2 %	9.7 %	22.2 %	17.2 %	0 %	0 %
40s	10.7 %	0 %	20 %	18.2 %	0 %	
30s	50 %	50 %				
Total	10.7 %	8.8 %	18.7 %	15.4 %	3.3 %	9.4 %

Mr Mark Harper MP—supplementary written evidence (3)

During my evidence session on Monday 17th October, I agreed to write to you on a number of issues.

You asked for details of the size of the House under our proposals for the transitional period. I attach a paper which sets out our assumptions on the 3 options in the White Paper for the number of peers who would remain during the transitional period.

Oliver Heald asked about the link between the age of members of the House of Lords and their attendance. We do not have readily available information on this issue. We do have information on the age profile of the current House of Lords provided by the Library. This is attached. I have asked officials to undertake a more detailed analysis of the attendance statistics and will write again to you with that information.

You asked about whether the use of protected characteristics such as age, sex or race could be used when selecting transitional members. Paragraph 3 of Schedule 6 to the Equality Act 2010 has the effect of removing peers from the protection of the Equality Act when they are initially appointed. i have received legal advice that, in our view, it would follow that it would be permissible under the Equality Act 2010 to make use of protected characteristics such as age, sex or race when selecting transitional members. To put this issue beyond doubt would require an amendment to the Equality Act 2010. We will, of course, consider such an amendment should the Joint Committee recommend it. Further, were the House of Lords to choose their transitional members through an election, the Equality Act 2010 would have no application, because of section 52(5) of the Act.

I look forward to continuing to give evidence to the Committee on Monday. I am copying this letter to all members of the Joint Committee and the Clerks.

7 November 2011

Paper setting out the Government's assumptions on the 3 options in the White Paper for the number of peers who would remain during the transitional period.

Transitional arrangements

The Joint Committee on the draft House of Lords Reform Bill sought further information on the numbers of peers who could remain in the House of Lords during the transition to a reformed second chamber, taking into account the expected death rate among peers.

Transitional arrangements on House of Lords reform

1. The transition would take place over three elections, with 100 new members elected, or elected and appointed, at each election. Hereditary by-elections, and the link between membership of the House of Lords and the award of a peerage, would cease at the start of the transitional period.

2. The options (which are described in more detail in the Government's White Paper) are:

Option 1 (Government's preferred option)

3. Existing hereditary and life peers would be reduced in thirds at each election to the reformed House of Lords.

4. In the first transitional period the maximum number of transitional members who may be selected to remain is to be two thirds of the number of peers entitled to receive writs of summons to attend the House of Lords on the day the final bill is presented to the House of Commons. In the second transitional period the maximum number is to be one third of that original number, selected from the transitional members for the first period.

5. The number of hereditary and life peers in the present House of Lords is 804[1]. Only one of the 804 is not entitled to receive a writ of summons as a serving MEP. Assuming that there is no change in the number of peers entitled to receive a writ of summons between now and introduction of the draft House of Lords Reform Bill in the House of Commons in the second session of the current Parliament, a maximum of 535 existing members would be entitled to sit in the first transitional period, and 268 in the second transitional period.

Option 2

6. All eligible members (those entitled to receive a writ of summons, and who do not meet the grounds for disqualification of transitional members at clause 42 of the draft Bill) would be permitted to remain in the reformed House of Lords until the dissolution of Parliament immediately prior to the third election. No selection process would be needed.

7. The numbers of peers at the start of transition could be higher or lower than the present number. However for the purpose of calculating the numbers remaining during transition it is assumed that the 803 peers who would currently fulfil the eligibility requirement under the provisions of the draft Bill would continue to do so at the start of transition and that this number would not rise or fall. 803 peers would therefore be entitled to sit at the start of the first transitional period.

8. Over the past 10 years a total of 188 hereditary and life peers have died[2]. Over a similar period the number of hereditary and life peers in the House of Lords has averaged 705[3]. This represents an average death rate of 2.67 per 100 peers each year. If this rate of attrition stays constant there would be 701 transitional members remaining at the start of the second transitional period. There would be 613 immediately before dissolution of the last Parliament of the second transitional period, who would all cease to be members the following day.

9. The figures do not take into account any members leaving under the resignation provision in the draft Bill. Additionally the rate of attrition may in reality be higher in the second transitional period as the average age of peers increases. The current average age of members of the House of Lords is 69[4]).

Option 3

10. 200 members of the existing House of Lords would remain at the time of the first election to the reformed House of Lords. They would be reduced to 100 at the time of the second election. All would leave on the day of dissolution of the last Parliament in the second transitional period.

	After 2015 election			**After 2020 election**			**After 2025 election**		
Option	existing peers	new members	**Total**	existing peers	new members	**Total**	existing peers	new members	**Total**
1	535	100	**635**	268	200	**468**	0	300	**300**
2	803	100	**903**	701	200	**901**	0	300	**300**
3	200	100	**300**	100	200	**300**	0	300	**300**

Cabinet Office
November 2011

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1 Figure includes 24 members on leave of absence, one who is suspended, 13 disqualified as senior members of the judiciary and one disqualified as an MEP. (The disqualification which applies to senior judges ceases once they retire as active judges, and the disqualification which applies to MEPs ceases when they cease to be members of the European Parliament).

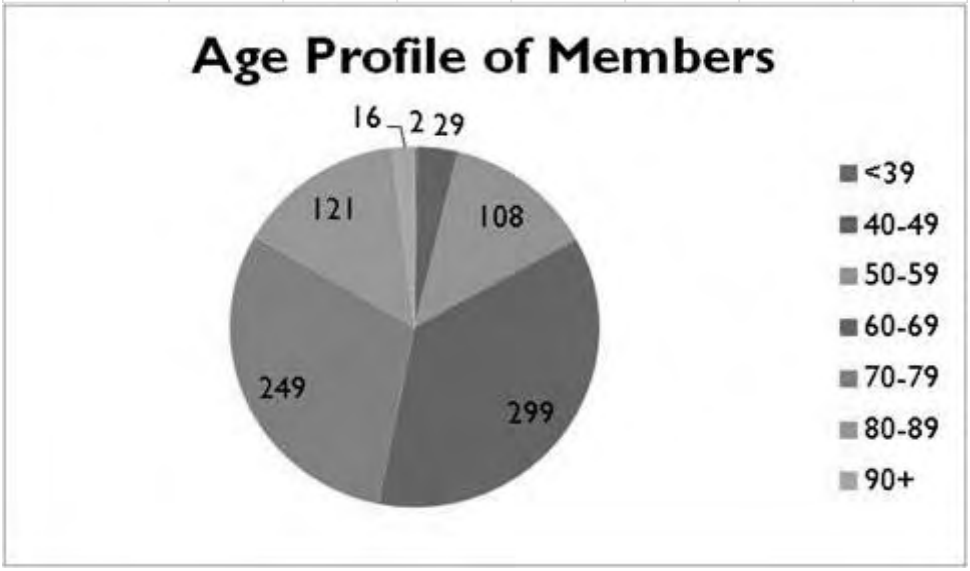
2 Between 26 October 2001 and 26 October 2011, 172 life and 16 hereditary peers died. Source: House of Lords Journal Office.

3 Using information from Figure 2, p 7 of Meg Russell and Meghan Benton (March 2010) *Analysis of existing data on the breadth of expertise and experience in the House of Lords*. London: The Constitution Unit, UCL. This shows that, subtracting the 26 Lords Spiritual and 1 MEP, but including suspended members, those on leave of absence, and those who are disqualified as senior members of the judiciary, the number of peers in January of each of the 10 years since 2001 was 683; 665; 650; 678; 701; 721; 723; 716; 708; and 804. This is an average of 705 peers.

4 As at 12 October 2011, source: http://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-members/

Age ranges represented in the House of Lords.

	Age Range						
	<39	40-49	50-59	60-69	70-79	80-89	90+
Total Peers	2	29	108	299	249	121	16



The information is correct as of 12/10/2011

Source: House of Lords Library

MONDAY 24 OCTOBER 2011

Members present:

Lord Richard (Chairman)
Baroness Andrews
The Bishop of Leicester
Lord Hennessy of Nympsfield
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Baroness Symons of Vernham Dean
Lord Trefgarne
Lord Trimble
Lord Tyler
Baroness Young of Hornsey
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Tristram Hunt MP
Mrs Eleanor Laing MP
Dr Daniel Poulter MP
Laura Sandys MP
John Stevenson MP
John Thurso MP
Malcolm Wicks MP

Professor Vernon Bogdanor (QQ 89–115)

Examination of Witness
Professor Vernon Bogdanor, King's College, London

Q89 The Chairman: Professor Bogdanor, thank you very much for coming. We are very grateful that you have come in order to give evidence to us this afternoon. Perhaps I could ask a general question to start us off, so to speak. What effect do you think that a wholly or mainly elected House of Lords would have on the relationship between the two Houses of Parliament and the primacy of the House of Commons? I suppose that consequential up that is another issue that one can discuss with it. To what extent are the Parliament Act and the Commons control of supply sufficient of themselves to maintain the primacy of the Commons in the event of a more assertive upper House?

Professor Bogdanor: Thank you for inviting me, Lord Chairman, and thank you for your first question, which is a very wide one indeed. My answer would be that a wholly elected or largely elected upper House would either seek more powers or seek to use the full powers that the present House of Lords already has but rarely uses, and I think this would be a challenge to the supremacy of the House of Commons.

The summary of the Government's proposals in the draft Bill suggests that no change is proposed in the constitutional powers and privileges of the upper House, once it is reformed, or to the fundamental relationship with the Commons, which remains the primary House of Parliament. It suggests that primacy rests partly in the Parliament Acts and in the financial privilege of the House of Commons. I do not think that is quite correct because the Parliament Acts have been very rarely used since 1911. It seems to me the primacy of the Commons rests on the fact that it is an elected and representative body and the Lords, as at present constituted, is not.

But, of course, with an elected Lords the upper House also would say it was an elected and representative body and had a good mandate to challenge the Commons, even perhaps a better mandate, because the upper House

would be elected by a proportional method of election and that would mean, some would say, that it was more representative of the electors than the House of Commons, which is elected by first past the post. I must say, as a supporter of proportional representation, that it does seem to me peculiar to propose that the revising Chamber be elected in that way, whereas the Chamber that chooses the Government continues to be elected by first pass the post. It seems another confusion in the proposal.

Q90 The Chairman: Thank you. Could I follow that with one other question? In your paper you make the point that the Parliament Act of 1911 was enacted in response to the change in the composition of the House of Lords and that once you had changed the composition you had to have some Act that, to a certain extent at any rate, governed the relationship between the two Houses and ensured that the Commons was the primary House. If you could do it in 1911, why cannot you do it in 2011?
Professor Bogdanor: I am not sure that is quite a correct interpretation of what I said, with respect, Lord Chairman. I think the Parliament Act of 1911 was needed because the Peers did not understand the significance of the great Liberal election victory of 1906 and continued to use tactics that might have been acceptable beforehand but were not acceptable after 1906. In other words, the House of Lords could be said to be abusing its powers. I do not think it is argued today that the House of Lords is abusing its powers.
The 1949 Act was passed for a different reason, I think, which was to enable the Labour Government to nationalise the iron and steel industry, although in the end it was not needed for that purpose. But again it is fair to say in the late 1940s no one suggested that the House of Lords was abusing its powers with regard to the legislation of the 1945 Labour Government. That was the first majority Government of the left since the Liberal victory of 1906 and, by contrast with 1906, the Lords, I think it is fair to say, did not abuse their powers. They had learnt the lesson of that earlier period.

Q91 The Chairman: Yes, but what about the central point, which is that if you could legislate to determine the relationship between the two Houses in 1911, whatever the motivation for it, why cannot you do it in 2011?
Professor Bogdanor: Indeed, certainly, Lord Chairman, you could legislate to the relative powers of the House of Lords and the House of Commons. That is not, as I understand it, in the Government's proposal, but if you are suggesting that this is a consequence of the Government's proposal I would certainly agree with that. The difficulty, of course, is that it would be illogical to suggest that an elected Chamber should have fewer powers than the current non-elected Chamber. I suspect there are not many in the Government who would want to give the upper House more power than it has at present but I think some would want to restrict the power of the House of Lords.
Perhaps I might say that I once asked a former Lord Chancellor whether the previous Government, the Labour Government, in its proposals for reform wanted a stronger House of Lords or a weaker House of Lords and he replied that the Government wanted a more effective House of Lords, which I think perhaps avoided the question. But it would, it seems to me, be illogical to have an elected Chamber with fewer powers than the current non-elected Chamber.

Q92 Ann Coffey: It was very interesting in the paper the point that you were making about the elections to the Lords being on a more proportional system and therefore, people would believe, a better system of election. That, to some extent, is not tested out with the British people because in a recent referendum they clearly did not believe that the alternative vote, which was seen as being a more progressive system, was better than first past the post, so they settled for first past the post as the system they preferred. So that assertion to some extent is untested, I think, in it being a better system, because by whom is it perceived to be a better system?
I thought it was very interesting in your paper when you were talking about other Assemblies that had two Houses and how they resolved their difficulties. There is plenty of concern by people that in fact the House of Lords will become stronger, will look to its elected mandate and will be more challenging for the House of Commons. Do you think that, in case that happened, it would be better to write into this Bill some kind of procedure for resolutions that does not just depend on conventions from the past and the belief that it will not happen?
Professor Bogdanor: Yes, I think that would be needed. I think otherwise the danger would be of gridlock in government. It might be worth looking perhaps at some of the provisions of the Australian constitution. The

Australian upper House, a directly elected upper House, does have powers over finance. Differences are settled by joint sittings in Australia but the Australians have the advantage from that point of view, which we lack, that they can dissolve the upper House. In Britain the only way of overcoming the opposition of the upper House, other than the Parliament Act, is a mass creation of Peers, and I think that is an important difference. But I very strongly agree with what you say, that you will need some institutional mechanism to resolve differences between the two Chambers.

Q93 Lord Trefgarne: If, despite your misgivings and maybe ours too, this Bill became enacted roughly as now before us—anyway these provisions—would it be possible, do you think, for a Government to secure the passage of its programme simply by relying upon the Parliament Acts and the financial privilege restrictions as necessary?
Professor Bogdanor: An elected House of Lords, determined to use its powers, could clearly ruin a Government's programme in the last year of a Parliament and if it used its powers over secondary legislation could make it, at the very least, extremely difficult for a Government to carry out its programme, because my understanding is that the upper House retains an absolute veto over secondary legislation. That was not dealt with in the Parliament Acts. I would not like to be a Minister in charge of getting legislation through Parliament with an elected Chamber determined to use all the powers that the House of Lords currently has.

Q94 Lord Trefgarne: Presumably some more effective dispute resolution mechanism could be invented, for example as they have in the United States.
Professor Bogdanor: Indeed, but I think one of the difficulties with dispute mechanisms, some sort of joint sittings, is that it becomes very difficult for the ordinary citizen to know who is responsible for decisions, because they are taken, in effect, in a third Chamber that is not directly accountable to the public. People may berate their MPs for decisions that are made, but the MPs will then say, "It was not our fault, it was made in a joint sitting," and similarly—
Ann Coffey: A bit like a coalition Government.
Professor Bogdanor: Well, possibly. You may berate your elected Members of the House of Lords, but they would say, "Well, it was not us, it was in the joint sitting." There is great scope for buck-passing and lack of accountability in those mechanisms. Of course, that is true in Congress. It is also true in Australia, I believe, and in Denmark.
The Chairman: Better than ping-pong or not?
Professor Bogdanor: Well, yes. In the last resort currently the House of Lords gives way and everybody today knows that MPs are accountable to their constituents for legislation that occurs. The Lords at present acts as a revising Chamber, asks the Government to think again, and if in the last resort the Government does not think again and are not willing to think again the Lords give way, but with an elected upper House the Lords becomes not a revising Chamber but an opposing Chamber.

Q95 Tristram Hunt: Professor Bogdanor, when we put exactly those series of points to the Minister, he said two things. He said, first of all, that we have the Parliament Act, which is, as it were, the nuclear option; that provides the context within which decisions will be made and, even if it is not utilised, the fact that it exists sort of defines the parameters for the interrelationship between the Houses. Secondly, he said that the interrelationship between the Houses, during the course of the 20th century, went through a number of different periods and there was a bit of tussle and a bit of to and fro and then they sort of settled down and we were all happy. Do you have faith in those sorts of options for the future of the interrelationship of the Houses, or does this mark such a seismic change that such faith would no longer hold such credence?
Professor Bogdanor: I think those elected to the upper House will want to use their powers and to use their powers to the full. This would mean that much legislation would be delayed for a year and, if the powers remain the same, some secondary legislation will be vetoed. It is now very rare indeed for any secondary legislation to be rejected by the House of Lords. It happens in a few pathological cases, but it could become quite regular with Members who are elected. Under proportional representation it would be unlikely for the Government to have a majority in the upper House and therefore Members would be elected to oppose the Government.

If you take, for example, a general election like 1997, which Labour won by a landslide on 42 per cent of the vote, in an election to the Lords, presumably, nearly 60 per cent of the Peers would be Conservatives or Liberal Democrats opposed to the Government, so the Lords would become an opposing Chamber and I think those elected would want to show that they were opposing the Government. There may be an analogy with the European Parliament after 1979, after it was directly elected, which immediately began to use the powers that had hitherto been dormant and later managed to obtain very considerable extra powers for itself. It now has, in effect, powers of co-decision with the other bodies in the European Union. I think that is an interesting analogy perhaps worth pursuing.

Q96 Lord Hennessy of Nympsfield: We have had the final version of the Cabinet manual today, part of which you had a hand in framing, and it has an interesting passage on the existing constitution, as the Cabinet Office and the Government understand it, in terms of Lords/Commons powers. It says, if I can read it, Chairman, "The House of Commons has primacy over the House of Lords. It is the democratically elected institution of the United Kingdom and the Government derives its democratic mandate from its command of the competence of the Commons. The two Houses of Parliament acknowledge various conventions governing the relationship between them including, in relation to the primacy of the House of Commons, financial privilege and the operation of the Salisbury-Addison Convention." The footnote they have to source Salisbury-Addison refers to the 2006 Joint Committee of both Houses on the conventions and that very document said explicitly, if I remember, that if there were to be a wholly or partially elected House the conventions would have to be revisited. Do you not think that is rather an odd way of putting it for Her Majesty's Government? I am asking you not because you are a surrogate for the Minister but because you know about these things.
Professor Bogdanor: You rightly mention the Joint Committee on Conventions, which I think I quoted in my evidence. It said exactly as you suggest, that if the Lords acquired an electoral mandate then its role as a revising Chamber would be called into question and, should further proposals come forward to change the composition of the Lords, the conventions between the Houses would have to be examined again. The Salisbury convention, of course, rests on the fact that the Lords should not thwart the will of the elected Chamber, but if the Lords is also an elected Chamber what happens to that convention? I think you are absolutely right in drawing attention to that proposal.

Q97 The Chairman: Sorry to interrupt. I am never quite sure what the role of the Chairman is in this sort of situation but if there is a point that I feel intensely anxious to raise, if you do not mind, I will. You just said the conventions would have to be revisited; of course they would. Could it not be statutorily enacted that the Lords do not oppose Bills at Second Reading?
Professor Bogdanor: Yes, Lord Chairman. One could, of course, statutorily alter the relationships between the two Houses and possibly put the Salisbury convention into statute. But that, as I said earlier, would commit the illogicality of saying that an elected Chamber should have fewer powers than a non-elected Chamber and the fewer powers that it has the more difficult it would be to get people of ability to stand for it. There is a great deal of talk these days about it being difficult to get candidates for local government because, so it is suggested, local authority has been denuded of important powers. I think the same would apply to an upper House that has been denuded of power and influence. Although I think it would be possible to impose further statutory limitations on the powers of the Lords, the greater the degree of limitation the less likely it is that people of ability would wish to stand for such a Chamber. It would be very difficult in any case, I think, for independents or Cross-Benchers. They might stand for election but under our particular electoral party system they are very unlikely to be elected. I think you would find that people of first-rate ability might not be willing to stand for the upper House.

Q98 Oliver Heald: We have tended to have debates in this country about electoral systems in the context of the House of Commons and finding a way of producing a Government and so we argue for first past the post on the basis that it produces a clear result mostly. We argue for proportional representation on the basis that it would more adequately reflect the will of the people as regards its Government. Do you think that that is the right frame of mind to look at the best way of producing a group of people to revise and fulfil the functions of the House of Lords? In other words, are we allowing a discussion, which we have had in the context of the House of Commons, to infect a rather different proposition and issue?

Professor Bogdanor: I think it depends what one means by revision. If you mean by revision simply asking the Government to think again, then it may be argued that the current House of Lords performs that function very well. If you mean more than that by revision—if you mean the chance to alter the nature of an elected Government's proposals—then some form of election may be needed. As I said earlier, it does seem peculiar that the Chamber that chooses the Government should be less representative than the Chamber that is set up, as it were, to oppose the Government. It just seems very peculiar.

Q99 Oliver Heald: I remember that in 2007, having been on the working party with Jack Straw and Lord Falconer, we went to the Commons Chamber to argue about various options. There was a strong feeling in the Commons that it was wrong to set up a dual mandate—in other words, to have a person elected to represent an area with a representative role—and that if you did that you would be setting up a second Chamber which had much more authority and arguably, if proportional representation were used, which was elected by what many people would see as a better system; not me, but you, for example. What is your view of that?
Professor Bogdanor: It seems to me that to have an effective elected second Chamber you need some basis of representation for it that is different from that of the first Chamber. That is moderately easy to achieve in a federal system, in principle at least, but not so easy to achieve in a system that is non-federal like our own. A further worry I have about the reform is that it will introduce the West Lothian question into the upper House, because people will ask why Scottish-elected Peers should have votes on matters to do with English education and health when English-elected Peers cannot vote on Scottish education and health. So it implies a federal system, in a sense, when we are very far from having a federal system. We have an asymmetrical system of devolution. That is why I find it very difficult to think of a good answer as to how an elected upper House should be chosen.

Q100 Oliver Heald: A lot of people are quite complimentary about the current House of Lords. They say that it works well, that is has quite a good mix in terms of the various communities in our country, sex, race and so on, and that it does the revising function well. Is there something that could be accommodated by introducing a little bit of the disinfectant of democracy through, say, an indirect electoral system, where perhaps the proportions who vote in a general election could be represented from lists in the upper House?
Professor Bogdanor: It seems to me the great advantage of the Lords, as at present constituted, is that it evades the dilemma that I mentioned in my previous answer of finding some alternative principle of representation. It seems to me that a good deal of the work the Lords does, particularly in Select Committees, is not the sort of work that would naturally appeal to people who stand for election. I am thinking of work of, for example, the Select Committee on Science and Technology, the work on the European Union, which the House of Commons, I believe, does less effectively than the House of Lords, and the work on delegated legislation that is highly technical. You have the advantage of people with great expertise in these areas, which you might not get with an elected Chamber. So there is a sense in which the current composition of the Lords evades the dilemma that faces all democracies about how to choose an effective second Chamber and acts, in a sense, as an adjunct to good government by providing expertise on some very complex and perhaps unglamorous matters that need to be dealt with.

Q101 Oliver Heald: If one was to find a system that involved indirect election but would allow similar people to those who are currently in the House of Lords to continue to do their work as satisfactorily as they do at present, might that be a happy solution?
Professor Bogdanor: I find it difficult to think of a system of indirect election that would achieve that happy outcome.
Oliver Heald: Let me give you a possible idea of this. Before the general election, the parties publish lists of good people whom they would like to see in the second Chamber, and this might be done by thirds, as suggested by the Government. Then the general election happens and 45 per cent vote Conservative, some lesser proportion for the other parties, and 45 per cent of the Conservative list is then appointed for the next period to the House of Lords and you do that by thirds at general elections. You would not have those individuals elected for an area. It would be a national list. It would be the same sort of people, but of course if somebody who was dodgy or in any

way wrong was on your list as a party it would affect the general election. So it is likely that there would not be any problems with the candidates on the list. I am thinking of something like that.

Professor Bogdanor: Would that system have any advantage over the current method by which the party leaders choose working Peers for their parties? Would such people have any more legitimacy than the current working Peers? It seems to me a roundabout way possibly of achieving the same result, but I do not think the electorate would say, "We now feel represented in the Lords because of this."

Q102 Oliver Heald: No. Well, that is what we are trying to avoid, isn't it?

Professor Bogdanor: I think that all the time one is trying to resolve two contradictory propositions. The first is that there should be a Chamber that is somehow elected and has a mandate. The second is that it should be so qualified that it does not in fact have a mandate. That seems to me contradictory.

Oliver Heald: Thank you. Sorry I went on so long.

Lord Trimble: Let me take you back to the Australian example that you mentioned and which you discuss in paragraph 26 of your paper. I am referring here now to the issue of dispute-solving mechanisms. You criticise that, saying: "Decisions would be reached through negotiation between representatives of the two Chambers in a forum remote from public scrutiny". That would be true where you had delegations from the two Chambers but it would not be true of joint sittings of the two Chambers because they would be sittings with all the Members of the lower House and all the Members of the upper House entitled to be there, with things done on the record and then voted on. Does that not indicate that having joint sittings of the two Chambers is an effective dispute-resolution mechanism?

Professor Bogdanor: The Australian legislature, of course, is smaller than ours, but you could, in theory, have joint sittings of the 300 Members of the new upper House and the 600 Members of the House of Commons and they could reach decisions. Yes, if you did not have a delegation, that would avoid the problem of buck-passing and lack of accountability and you would then achieve some outcome through a public vote.

Lord Trimble: Yes. It might interest you to know that that was the proposal—

The Chairman: Sorry, a Division has been called. I think that we will have to vote. I will adjourn for eight or nine minutes and let us hope that we can get back by then.

The Committee was suspended for a Division in the House of Lords.

On resuming—

Lord Trimble: I was just going to say that the provision for joint sittings of the upper and the lower House did not apply just simply to Australia. It also applied between 1922 and 1972 between the Senate and the House of Commons in Northern Ireland and you may be interested to know that the Senate was indirectly elected on a mechanism not that different from the one mentioned.

Q103 Laura Sandys: One of the things that is interesting about this debate is that some people—not you, Professor, but others—always look at it as if we have a perfect system in place today. If we are looking at reform and we are looking at obviously setting up two Chambers, both elected but with clarity of primacy of one, is it not possible to develop a system, whether it be through convention or protocol, that established that primacy? May I make one other point? If we had a reformed House of Lords that was elected, do you not see the possibility of Parliament itself increasing its capacity rather than just moving power from one Chamber to another? It often seems to me that it is always regarded as being the deficit of one Chamber for the benefit of another. It strikes me, as a new person to this place, that there is a lot more that Parliament could do and possibly should do that would be very rewarding for somebody who is elected.

Professor Bogdanor: Yes, indeed. Thank you very much. I think the first question to be asked would be what powers you want the reformed upper House to have. I think it would be very difficult to have those powers regulated by convention, because they take time to become effective. So I think you would have to have some form of statutory provision and, as I said earlier, the probability or possibility is that the statutory provision would be such as to make the upper House have fewer powers than it has at present.

Q104 Laura Sandys: Can I just pick up on this? The point is that you are still maybe looking at the fact that Parliament only uses the powers that it currently has. When you start to look at other opportunities—scrutiny, being active in relation to the Executive—do you not see that this is an opportunity for Parliament as a whole to increase its powers?

Professor Bogdanor: Yes, indeed. There might be further scrutiny but I think there would probably be less technical scrutiny of the kind that the present House gives to European legislation, delegated legislation and subjects such as science and technology, and perhaps more of what one might call political scrutiny—in other words, more opposition to the Government. It seems to me that the consequence would be that it would be more difficult for Government to get legislation through, which some people may think a good thing and some people may think a bad thing. Sometimes it depends on whether you support the Government or do not support the Government. My own personal view, for what it is worth, is that it would mean that we had worse government rather than better government. There would be a danger of gridlock. It would be difficult to make rapid decisions, which are especially needed in the world of globalisation, and it would give us worse government. But I completely understand that there is an alternative point of view.

Q105 Bishop of Leicester: I wonder if I could tease out a little bit more with you how you understand the correlation, if any, between electoral legitimacy and the likelihood of extra powers being claimed by a reformed upper House. Do you think, for example, that there might be a relationship between the extent to which the upper House would claim powers and the proportion of the upper House that is appointed rather than elected? If, for example, you adjust those proportions, say to 50:50, do you get something that moderates itself in a different kind of way?

Professor Bogdanor: I think that someone who is directly elected would claim a different sort of legitimacy from someone who is not and would wish to use powers that may have hitherto remained dormant. I think the role of the non-elected Members would change because I think any vote carried by the non-elected Members would be regarded as less legitimate than a vote carried by the elected Members. On matters of serious party-political controversy, there might be pressure on the non-elected Members not to vote or not to disturb the proportion to the elected Members. I think the role of the non-elected Members—the appointed Members—would not remain the same in such a Chamber.

Q106 Bishop of Leicester: How would you see that working out during the period of transition when, under what is proposed by the Government, those proportions would change over time?

Professor Bogdanor: At some point, when the elected Members became the preponderant numbers in this House, I think the role of the non-elected Members would begin to change. There would be pressure on them not to upset the political vote, as it were.

Q107 John Stevenson: To follow on that theme slightly, a specific aspect of the Bill relates to the appointment of Ministers by the Prime Minister. At present there is no limit on the numbers that could be appointed. There is no reference to the possibility of shadow Ministers being appointed by the Leader of the Opposition. Those who are actually elected or appointed could become Ministers and at present it would appear that Ministers who are appointed by the Prime Minister can vote. I would be interested in your observations and comments on that in relation to how the Chamber would work.

Professor Bogdanor: Presumably in an elected Chamber more Ministers could be appointed from that Chamber, although the Government would still be primarily responsible obviously to the House of Commons. But there would be no objection, I take it, to more Ministers being appointed from the upper House, and no doubt provision would be made for Ministers in the upper House to answer questions in the lower House. There would be no insuperable objection to that. From that point of view, from what you are suggesting, you would have a wider talent pool, possibly, from which to choose Ministers.

John Stevenson: Do you think it would be a good idea that those Ministers who are appointed by the Prime Minister, who are not elected or otherwise appointed, should have the vote? Should Ministers who are appointed by the Prime Minister, but who are not necessarily elected to the Chamber and have not come through the Appointments Commission, have the vote?

Professor Bogdanor: I see. Should they have a vote in the upper House?

John Stevenson: Yes.

Professor Bogdanor: I think I would require notice of that question.

The Chairman: I think you can have eight minutes now.

The Committee was suspended for a Division in the House of Lords.

On resuming—

Q108 Baroness Young of Hornsey: We have talked a lot obviously about the technical aspects and the legal aspects of this Bill and the issues behind it. I am also interested in the electorate. In your written evidence you say that personal contact between voter and Member will be minimal. I guess that is mainly because of the size of the constituency, but I wondered whether you thought there were any other factors that might come into play in that relationship as well. Perhaps you could expand on that a little bit. Also, could you say whether you think it is important and/or necessary for the electorate to have a full understanding of what the different roles of the different Chambers are?
Professor Bogdanor: Thank you very much. I think size is a crucial factor and that with a constituency of 500,000 it is difficult for people to get to know their representatives. I think that is true for representatives of the European Parliament. I think I would find it difficult to name my MEPs, and perhaps some others would as well. Of course this would have the advantage that you have a system of choice with a single transferable vote, which enables you to preferentially list candidates. I suppose it will not matter too much if people are not aware what the function of the upper House is, and if you are having the election the same day as the general election turnout will be higher, obviously, than it would be if you were having it at some intermediate point. Some people may be confused and some people may say, as I suggested earlier, that a House that is elected proportionally is more legitimate than a House that is not. A supporter of proportional representation might say that if you have an upper House elected 100 per cent by proportional representation you could then abolish the House of Commons. So I think there would be a problem about legitimacy.

Q109 Baroness Young of Hornsey: You say that it does not matter to a great extent whether or not the electorate know who does what, but in terms of whom you want to speak to about a particular issue or particular problem surely there should be some sort of knowledge.
Professor Bogdanor: I imagine that electors would have no trouble in continuing to consult their constituency MP over problems they might have with housing, education or whatever. I do not expect that would cause difficulties. I imagine that representatives elected to the upper House would not be constituency representatives or seek to trespass on the functions of Members of the lower House.
Baroness Young of Hornsey: So there would not be much trouble then by—
Professor Bogdanor: I would hope that would not cause a difficulty.

Q110 Baroness Symons of Vernham Dean: At the beginning of your evidence you said that primacy was because of the democratic mandate and not because of the Parliament Acts, and you said a moment or two ago that if the upper House were elected 100 per cent by PR you could abolish the House of Commons. Is it important for the Commons to maintain their primacy if there is a means of resolution of disagreement between the two Houses? Are we just chasing something that really does not matter in terms of democracy?
Professor Bogdanor: We are talking about a value judgment here. It is perfectly possible to have a democracy with two Chambers that are co-equal or nearly co-equal, or at least with an upper House much stronger than the present one, and the consequence of that, you may say, is that legislation will get more scrutiny—not so much, as I said earlier, the technical scrutiny that the Lords gives it, but political scrutiny. There will be more political discussion and debate, with more delay in passing legislation, and it is a value judgment of which of those systems you prefer. The danger of the one system is the famous comment of Lord Hailsham—"elective dictatorship". The danger of the other system is gridlock and worse government.
It is worth pointing out, perhaps, that those who in 1911 and 1949 favoured a reform of the composition did so because they were broadly against reforming Governments and because they wanted to delay change. I was asked earlier whether we could not reform our system satisfactorily. Of course we can, but people who sought social and economic reform in 1911 and 1949 did not want to reform the composition of the Lords because they did not want to rationalise it. Those who wanted to rationalise it did so primarily because they wanted to prevent change, or what they saw as too rapid change. So in the end one has to make a value judgment that is correct. I would only suggest that reformers have to face up to the fact that the primacy of the Commons would be in danger if you had a wholly or partially elected upper House.

The Chairman: I have four Members who wish to ask questions: Lord Tyler, Mr Thurso, Malcolm Wicks and Ann Coffey. Perhaps you can do so very quickly. I want to hear Professor Bogdanor say something about the size of the House, too, and I think we will have to finish this session by 10 past, so we have about eight minutes.

Q111 Lord Tyler: You have made a number of references to the electoral mandate that a reformed House would have, and in passing you also said that in 1997 60 per cent of those elected would have been Conservatives and Liberal Democrats and therefore would have been a challenge to the Commons. I think you would accept that that is most misleading in terms of both the Bill and all the other proposals that have ever come forward because, first, there would never have been all elections at once. It always would have been in tranches. Secondly, under the Bill at least, it would only be 80 per cent—80 per cent elected—so a tranche of one-third of the House would be no way 60 per cent of the reformed House. Do you accept that the various safeguards that have been built into the Bill, which replicate those that were in the Straw White Paper, will never, under these proposals, provide a direct challenge to the primacy of the House of Commons?
Professor Bogdanor: No, I do not accept that because although, as you say, under the proposals in the Bill in 1997 one-third of the elected tranche would have been elected, namely 80 Members, the strength of the opposition parties—the Liberal Democrats and Conservatives—in that election would embolden them, together with the other Liberal Democrats and Conservatives already there in the upper House, to overrule the Labour representatives in that House. If the non-elected Members—the appointed Members—tried to stop that, they would be accused of acting illegitimately and of overriding the wishes of elected Members. So, as I said earlier, the role of the non-elected, appointed Members would change and presumably in those circumstances the Liberal Democrats and Conservatives would have a majority in the House.
Lord Tyler: But you will have seen all the work that was done for the Straw White Paper.
The Chairman: You have four minutes.

Q112 John Thurso: May I ask for a very short answer to this question, so that I may ask a quick supplementary? Is the summary of your evidence in paragraph 29 that broadly the status quo is as good as it gets?
Professor Bogdanor: That would be a reasonably fair summary of my position. I am very sympathetic to the proposals in Lord Steel's Bill.
John Thurso: Why, therefore, going back to the question that Laura Sandys put, should we be so concerned about the primacy of the Commons and so disregard the primacy of Parliament?
Professor Bogdanor: Because there is an argument for saying that people, when they elect a Government, seek to secure certain ends through government and that a Government that is too weak to achieve much is as great a danger to democracy as a Government that rides roughshod over people's feelings. If you look at very extreme examples—and I hasten to add that I am not implying any analogy with this country—such as the Government in the Great Depression in the interwar years or the Fourth Republic Government in France, they collapsed because they were too weak, not because they were too strong. So I think one has to be very careful to secure a balance between electing a Government that can achieve something and electing a Government that is properly accountable.
Laura Sandys: Do people not elect parties not Governments, technically?
Professor Bogdanor: In theory we elect constituency MPs but in practice we normally elect a Government; 2010 was very much an exception under our present system.

Q113 Malcolm Wicks: This is a subject, as we are learning, which has at least 100 years of history, a number of committees of inquiry, many voices over those years, inevitably much precedent convention and much complexity, leading many people to basically argue it is all too difficult. Many experts will tell us why we cannot make progress. You are telling us that probably this is as good as it gets. If one looked at this from the outside, could one not say, "Yes, there are complexities but basically some of it is quite simple"? We have to make up our minds about the respective roles of the two Chambers. We have to make up our minds whether we think, as most of us would, that the Commons should have primacy. We then need to draft a statement about what that means. Yes, there are some complexities there. It will keep a few lawyers busy and experts busy for a while but we can draft a statement. If in 10 or 15 years the statement is outmoded, as with other legislation we can re-legislate. We should probably then put the statement in statute so it is absolutely clear that, however the second Chamber is

elected, the House of Commons—not least because the people of Britain have rejected AV, much to my disappointment—has primacy. Can we not sweep aside some of the complexity and history and just have some clarity?

Professor Bogdanor: Yes. My argument has been not that this is an extremely complex matter such that great constitutional brains are needed to resolve it, but that it is illogical to propose a second Chamber in a non-federal state when you have no alternative principle of representation on which it is based. It is not that it is an extremely difficult problem to solve. It is that the problem cannot be solved in the terms in which it is put unless you first turn Britain into a federal state, when there is an answer, as the Australians and Germans and other federal states have found. The reason why no reform has been achieved in 100 years is not that it is a very difficult issue; the reason is inherent in the nature of the issue, in my opinion.

Q114 Ann Coffey: Do you not think it illogical to have a non-elected House of Lords and do you not think the public would think that that is not sustainable in the 21st century, and therefore that is something that we have to grapple with and find a way of overcoming? What your evidence has convinced me of, more than anything, is that we certainly need to put into statute, in any Bill, the relationship between the House of Lords and the House of Commons. If there was a referendum and it was referendum day today, on whether people want an elected House of Lords, I think there would be overwhelming support in the country for it. It is interesting that we have not mentioned the public—nor indeed have you mentioned the public in the evidence you have given.

Professor Bogdanor: Let me say that I think a referendum would be the right way forward on this issue because all three parties, as I understand it, proposed an elected Lords in their election manifestos in 2010, so there was no way for the voter to indicate his or her opinion. I think it would be right to hold a referendum on this issue, which I think is a greater change than the alternative vote system that has been rejected. On the other part of your question, I think there would be a contradiction if an unelected Chamber sought to exercise major legislative powers, as the House of Lords did before 1911. But given the restraint that the House of Lords normally exercises, I think that theoretical contradiction is not met with in practice. As I said earlier, I think the work of the Lords enables it to evade the problem of devising an effective second Chamber in a non-federal state.

Ann Coffey: One of the consequences, which is why I feel quite strongly about it, is that one of the statutory instruments that the House of Lords vetoed was to do with a local matter, which was to do with casinos in Manchester.

Professor Bogdanor: It is very rare for the Lords to veto secondary legislation and before 1999 I think it could have been said that there was a convention that the Lords did not reject secondary legislation. I do not know whether that still is a convention but I think the fact that this is an issue, and the fact the Salisbury convention has come under question, is an illustration that even from the comparatively limited reform of 1999 a reformed Lords would seek to exercise more power and would have more authority, as the post-1999 Lords has more authority, I think, than the pre-1999 Lords. It is a question of how much authority you wish the second Chamber to have.

Q115 The Chairman: Thank you very much. One minute on this. How big do you think the House of Lords should be? The Government proposes 300. Do you think one can run the House of Lords on as little as that?

Professor Bogdanor: I think that if it was reformed 300 is not a bad number, but it seems to me fair to say that in the House of Lords as at present constituted there may be people who contribute a great deal to it without being able to attend very frequently and therefore there is a case for a larger Chamber. For example, and this is a purely hypothetical example, if the President of the Royal Society happens to be a Peer he may have many other things to do that prevent him from coming very frequently, but when he does come his contributions seem to me to be very important and no doubt would be preserved in a reformed Lords. Otherwise I think 300 is not a bad number were a reformed Chamber to come about.

The Chairman: Thank you very much indeed. Thank you for having come and having been generous with your time. I am afraid that we have messed it up a bit at this end, but if votes are called we have to vote. Thank you very much indeed.

Rt Hon Peter Riddell (QQ 116–142)

Examination of Witness
Rt Hon Peter Riddell, Institute for Government.

Q116 The Chairman: Thank you very much for coming. You have seen the nature of the Committee because you have been sitting there for half an hour.
Peter Riddell: I have a better view now.
The Chairman: You know the sort of issues that are disturbing us, so perhaps I could ask you straightaway: do you think you can preserve the primacy of the House of Commons by some kind of statutory mechanism or some kind of provision in the Bill itself?
Peter Riddell: I think the current Bill is defective. Clause 2 is the major flaw in the Bill because all it does is state, "Because we believe it to be so, it will be so." I think that is completely fallacious because the actual statutory limitations are pretty limited—the absolute bar on amending designated finance Bills and the one year suspensory veto—but beyond that it is custom and practice and what Professor Bogdanor referred to as the self-imposed constraints. I do not believe that those are sustainable under an altered composition of the House. How much can be put in statute? I think there would have to be quite a bit more than is at present in the draft Bill for it to work. It may well lead in time to new conventions but it is very difficult to create, devise and initiate them. I looked at the evidence that Mark Harper gave a week ago and the week before. He said that there is likely to be increased use of the Parliament Act and each House testing each other. That relationship will then settle down and a new set of conventions will develop. I think there is a lot of hope in that and you could have a very bruising interlude. I think more has to be stated. There probably has to be, as Lord Trimble was saying, some kind of resolution mechanism, such as the one in the US Congress. I do not believe the current conventions are sustainable if you move to a predominantly or wholly elected House.

Q117 The Chairman: You could enact, could not you? For example, the House of Lords does not vote on Second Readings of Bills that have passed the Commons.
Peter Riddell: You get into quite difficult territory there as specifying what one House does and does not do. I know it applies on finance measures, but what about saying no to Bills? Do you want a reserve on constitutional measures, for example? Also, on Second Readings, as we saw two weeks ago with the NHS Bill, there are all kinds of delaying tactics that can be proposed that do not involve voting on a Second Reading but have a similar effect—referral to a Committee or something like that, looking back at delays on the Bill affecting the senior judiciary in 2004.

Q118 Mrs Laing: I share your concerns as set out in your paper about the—I am sorry, Tom was saying something.
Mr Clarke: I am sorry. I was trying to catch the Chairman's eye for later. I do apologise.
Mrs Laing: I beg your pardon. This room is so big that I thought I was perhaps speaking out of turn because I could not make eye contact. I beg your pardon. Sorry, I am wasting time now.
I share your concerns, Mr Riddell, as set out in your paper, so eloquently put, about the relationship between the two Houses, and just because it says in the draft Bill that that will not change does not mean that it will not change because it is based on convention, and we ought to accept that point. Can I take you further on that? If in fact what evolved from the draft legislation before us is a House of Lords that has equal democratic legitimacy to the House of Commons and therefore becomes a mirror image of the House of Commons, is there any point in having a second Chamber at all?
Peter Riddell: When you say "has equal legitimacy", is it perceived legitimacy or is it claimed legitimacy? I think there are lots of arguments there. I certainly think, referring back to something that Professor Bogdanor said, that any elected Chamber has to be elected on a different basis from the House of Commons. It may well lead to claims of equality and legitimacy and I think there are some very big issues here. However, this is what you can state in statute. The primacy of the House of Commons can be maintained on financial measures as now, and I assume that would continue. That is, after all, pretty central in the history of Parliament and the practice of

Parliament, as you well know. I think on other measures it will become quite difficult, and that is why I think it has to be stated in any legislation what the limitations are on the practical relationships between the two Houses, because as stated at present I think it is unworkable and would lead to conflict and certainly would lead to claims of equal legitimacy. A lot of that is claims and perceptions, because there is not an absolute on this obviously.

Q119 Mrs Laing: I suggest that it is a mistake to look at changing one part of our system of government without looking at the whole of our system of government as a whole. If the balance between the two Houses is changed, then are we not changing the whole system of government?
Peter Riddell: I think there would be a lot of consequentials on that. There is also an issue, which is in a sense defending the privileges of Parliament. Once you have something in statute, would the courts become involved, for example? There are a number of quite big issues there—and that goes to the core of my evidence. Merely because the Government says in its White Paper that the present conventions will all apply, it does not mean they will and it will be destabilising. Indeed, as Mark Harper admitted—he used the phrase, "use of the Parliament Act more frequently"—that would be extraordinarily destabilising for any Government.

Q120 Mrs Laing: Is a likely consequence of all this that it would take the Government a lot longer to get its Bills through Parliament and therefore might we possibly see a very much reduced programme of legislation?
Peter Riddell: I would not like to speculate on the latter. Of course, you can build into any Act, and there were proposals by a working group of Labour Peers a few years ago that there should be a time limit for the Lords to consider Commons-originated legislation. You can always build in timetables on that to limit the time in which legislation is considered, and I think that would be highly controversial. Whether it would have an impact on the quantity of legislation, I am always a sceptic. When anyone says, "We are going to do fewer Bills", we just have to look at each Queen's Speech.

Q121 Lord Tyler: I appreciate obviously you are not speaking on behalf of the Institute for Government and indeed Lord Adonis would take a completely differently view from yours—
Peter Riddell: Not necessarily. I am not necessarily speaking pro or con an elected House. I am just saying what the consequences of it would be.
Lord Tyler: I understand. The point I wanted to make was the institute has been, I think, remarkable in indicating how incompetent and inefficient Parliament is at present as a whole, both Houses, in dealing with the Executive's legislative programme. I wonder whether you would like to speculate as to whether Robin Cook was right in saying that Lords reform is not a zero-sum game; it is possible for both Houses to raise their game in terms of scrutiny of legislation and of executive action so that Parliament in relation to the Executive is more effective. That would seem to fulfil some of the objectives of the Institute for Government.
Peter Riddell: I am glad that our mission statement is fully appreciated, Lord Tyler. I think it could do, but equally a lot of the objectives of improving the scrutiny of legislation and improving scrutiny of government could be achieved at present without changing the composition of the Lords. I think it could be a result of it, but the way to achieve better scrutiny does not lie in necessarily changing the composition. I think it is a separate subject. Having more joint working between the Houses, you and I have often discussed that over the long term in my Hansard Society role and your role there that can be done. I do not think it is necessarily related to the composition of the second Chamber. It could be improved by that, but I think it is something that can be improved now and should have been.

Q122 Lord Tyler: But given the elective dictatorship that was referred to in the previous session, and its impact increasingly in the House of Commons—although, of course, as we speak it may be unravelling—would you not accept that that is the context in which we have to look at this issue, as a holistic problem for the whole of Parliament, rather than its being one House always against the other?
Peter Riddell: I agree you have to look at it holistically. I think the elective dictatorship went out a long time ago, as will probably be demonstrated at 10 o'clock this evening, and has been true throughout this Parliament, which has had more rebellions by government Back-Benchers in the first 16 months of Parliament than any previous one. I think "elective dictatorship" is a bit of a passé phrase. But you have to look at the balance between the

Chambers, and that is the essence of my evidence. As I say, it applies whether you carry on with a predominantly appointed House or have a predominantly elected House. It applies on both aspects.
Lord Tyler: And a zero-sum game?
Peter Riddell: No. It does not have to be zero-sum game. No, I agree with you.

Q123 John Stevenson: This is obviously about the relationship between the two Houses and a lot of people are quite excited about the possibility of the House of Lords being more assertive and having more power, or using the powers that it does have. Could it not be argued that a more assertive House of Lords would be a good thing? Looking at it in the long term, the House of Commons will retain the power to choose the Government of the day and the Government will come from there. So the issues of debate between the two Chambers are about legislation. Ultimately, if there is gridlock, the House of Commons can win because of the Parliament Act, so there is always a way through any gridlock that there may be. Let me just add that if you have a worst-case scenario where everything is breaking down, ultimately a new Bill could be brought in and put through to change the relationship.
Peter Riddell: Yes, but that is pretty nuclear, what you are talking about. The Parliament Act, I think, on average since 1949 has been used every five or six years. It has speeded up a bit in the last 15 years but not much.
John Stevenson: Do you not think that new conventions would emerge simply because there would always be that threat of the use of the Parliament Act?
Peter Riddell: I think you would have such a period of instability that it should be built into the legislation and the approach—the recognition that the past conventions do not apply. They are already being tested in this Parliament. We are not talking about a stable position. I do not think there is a status quo. It is a very unstable position now whatever happens. What I am saying is that it would become more unstable and probably not sustainable. I do not think any Government could operate on the basis of a threat to use the Parliament Act as a regular basis other than the very exceptional use that has been made of it on some very unusual Bill, not the regular routine Bills. The balance between the Houses, I think that it is not just legislation, it is also scrutiny. What would be the impact of the change in the second Chamber? I do not agree with the absolutists who say that all expertise would go and all that, especially if you had a mixed, 80:20 Chamber. There is no reason to believe that the people who were elected, although they may be a different type of person, would not be able to exercise that scrutiny through Select Committees.

Q124 Mr Clarke: The paper that Mr Riddell presented includes the very interesting paragraph 9 and I wondered if I have understood it correctly. It deals with reconciliation but on the second line it talks about two Houses each claiming to seek—
Peter Riddell: Sorry, it should say "speak for the people". It is my misspelling.
Mr Clarke: So we have that right then. It is "speak for the people". Can I jump then to paragraph 14 and raise the issue of ageism, which you have quite properly addressed in the paper. It says, "Proposals for a moratorium on new creation risk leaving an ageing Chamber and excluding talented new Members". In view of what you said elsewhere about America, do you feel that they have the same emphasis as we have here about getting young people in? Would not Senator Mitchell and Senator Kennedy be regarded as people who were still making a very good contribution?
Peter Riddell: They were elected. It is up to the constituents. The late Senator Ted Kennedy was elected and re-elected and that was the view of the citizens of Massachusetts. If at whatever age they are elected, fine.
Mr Clarke: Is there not a minimum age?
Peter Riddell: There is a minimum age for a Senator of 30, yes. But my point is the problem for the House of Lords now is finding a way to reduce the size. That should not be done by freezing membership, because in that way you stop new talent coming in and so on. It is to find mechanisms, one of which I suggest—I have other ideas on it too—for reducing the current membership. But on election, whatever age it may be, elect them. You have some very distinguished colleagues of mature years on the Labour Benches in the Commons, Mr Clarke, and no doubt their voters think they still have considerable merits. That is fine. We should not be ageist on that at all. I am not arguing that at all.

Q125 Baroness Scott of Needham Market: Wearing your Hansard Society hat and thinking about how the voters view this, do you agree that the voters make it clear where they see primacy by the fact that they turn out to vote in significantly larger numbers on a general election day than they do for anything else? Is there some way in which that expression of what they think is important—that is, electing a Government—can somehow be translated into primacy, turning a sort of moral primacy into an actual primacy? The second point is that there a concern about having elections on the same day because, in a sense, you are conferring a kind of second-hand legitimacy on voters for the second Chamber.

Peter Riddell: I think that you have put your finger on it because I think the turnout is to do with the Government. It is not particularly, however much the MPs think it is, on MPs' merits that people turn out enthusiastically to return them. I think it is Government, and that is why you get a higher turnout. It is as simple as that.

The same-day argument is a problem, I think. It goes back to the democratic legitimacy point. As you know as a former councillor, it is not much fun standing for the council on the same day as a general election. It is a pretty secondary matter. There is ticket splitting, and I have seen some analysis suggesting that there is about 20 per cent ticket splitting in some parts of the country. You might get ticket splitting and that might be regarded as healthy. I think it is very difficult having it on the same day, but equally your point is valid. If you have it on an ordinary first Thursday in May, when you have the council elections, the European elections or whatever, turnout will fall substantially whether or not you are piggy-backing on it.

But I think you do get the problems, even with phased thirds, of the most recently elected. If it is a STV system, say, as proposed in the draft Bill, the STV people will claim more legitimacy than first past the post if they happen to be Liberal Democrats or Greens or whatever. There are problems on that, absolutely, but I think that possibly general election day is the only practical way to do it to get a reasonable turnout. But it would be quite difficult in some regions. It is quite interesting. Baroness Shephard made a point last week. She saw it from the Norfolk perspective. Who would be the representative of Norfolk? I think there are difficulties on that score. I think the practical thing would be that the constituency MP would still come first and there would be, "Oh yes, we are also voting for the second Chamber."

Q126 Baroness Symons of Vernham Dean: Let us go back to the question of the size of a future elected House of Lords, which the Government has proposed at 300, although Mark Harper made it clear last week that that might be variable. As individuals, last week we had a minor discussion about what people should be called and whether the implication of being a Senator somehow conferred some special status. It is not so much what the House of Lords is called that concerns me. It is that if you have 300 people elected for 15 years and 600 people elected for five years, it does seem to me as individuals that the 300 elected for 15 years are over that period going to have a lot more clout than the ones who are elected for five years, 600 of them. I just wonder whether you think that is a completely misplaced conclusion or whether you think there is some validity in it.

Peter Riddell: Remember, a very high proportion of the 600 elected every five years get re-elected. About two-thirds of them, leaving aside the boundary changes and all that, can normally expect to be re-elected, and they will of course on the whole have longer careers because of not having a 15-year cut-off. I think the issue that was debated with Mark Harper of legitimacy versus accountability is a good one—claim legitimacy through election, but if you are elected for 15 years without any discipline at all, what will happen on accountability? I think there are some quite interesting issues there which I know people raise about changing party and all that stuff. I think it is quite difficult. Will people say, "I've got elected, now I can do what I want to do"? That may be asserted as wonderful because it is demonstrating independence. It could also be interpreted as perversity and maverick and all that, so you have a difficult balance there. On the whole, I am in favour of a single, non-renewable term, possibly 10 years. That would argue for a 50:50 basis of election but I do not think someone elected for longer than a five-year period could really claim more legitimacy, because of the nature of the Commons.

Q127 Baroness Symons of Vernham Dean: But would not that mean that the House of Lords would automatically only have rather older people? Who is going to take a 10-year or 15-year chunk out of a career to sit in the House of Lords at the age of 30, say, and be kicked out at 45, or even at the age of 40 and be kicked out at 55? It seems to me to be an extraordinary thing to think that anybody would want to do.

Peter Riddell: I wonder on that. I think it might be a rather healthy thing that people regard themselves as having a period as a legislator and then go off and do other things. You might say an unhealthy aspect of the Westminster system is that it is regarded so much in career terms. Various MPs have stepped down in their late 40s and 50s and gone on to do other things, some quite successfully, for all kinds of reasons. I think that is rather healthy, that instead of staying on—it is the converse of Mr Clarke's point—to their late 60s or 70s, they get out in their late 40s or 50s. I do not see any harm in that.

Q128 Lord Trefgarne: I want to pick up the point that you made earlier about whether it is impossible to enshrine, for example, the Salisbury convention in legislation. Would it not be possible to say that the Salisbury convention applies except in some categories of Bills, such as extending the life of the Parliament or some other serious categories of that kind?
Peter Riddell: I think it is possible to do it. What I am saying is the issue has to be addressed. One category one might look at, Lord Trefgarne, is constitutional measures. I know there are problems defining what is a constitutional measure but the same problem applies on finance measures. As has been seen in the last year or 18 months, it is not always possible to define them as clearly as everyone would agree, with the Speaker's certificate. But if you had a similar thing on constitutional measures, that would give the second Chamber additional power I think you could enshrine some of the Salisbury convention. You could also build into legislation the length of time that a Bill is in the House, or something like that. I think you could address that.

Q129 Dr Poulter: I have a couple of points to raise. First, you raised what the Minister said last week about the Parliament Act being used more frequently. Is it your view that you would see a more fractious relationship under the current proposals between the two Chambers?
Peter Riddell: To go back to the last question from Lord Trefgarne, that is why I regard the current Clause 2 as defective. There would be a very fractious relationship. There would be claims of more legitimacy by the second Chamber. There are also issues about the transitional phase, but essentially there would be claims of more legitimacy. There would be more resistance—the ping-pong would break. I know there are conventions about how often ping-pong can be done. You would have many more problems. That is why this has to be addressed, I think, in any legislation. To rely on the Parliament Act is just completely unworkable for a coherent Government.

Q130 Dr Poulter: Whenever there is a period of transition there is always a period of difficulty with transition fractiousness in some environments or more difficulty with new arrangements coming into place. In respect of that, would you say that by drafting legislation in an effective way—by ensuring that the roles of the two Chambers were well defined—that would help to avoid that sort of fractious relationship and the need to use the Parliament Act?
Peter Riddell: I think there are limits to the definition but I think they have to be clearer than now and more explicit than now.
Dr Poulter: But that would be a helpful step?
Peter Riddell: Yes, absolutely. I do not think you can over-restrict, but you have to have fairly broad parameters because Bills vary in lengths and controversy and all that stuff. I saw some raised eyebrows when I said that you could limit the time the second Chamber would have a Bill. It would have to be fairly long and that would be to prevent a complete obstruction, but I think you would have to be more explicit than now. I think it is unavoidable if a new system is going to be made to work and then to have new conventions growing up because you are fundamentally altering a lot of the century-old assumptions about the relationship between the Houses.

Q131 Dr Poulter: I just want to pick up very quickly, if I may, on one other point. Lord Tyler made the point that it is not necessarily a zero-sum game in reform. I think that was a very good point. There is a legitimate concern about the attendance of some Members of the current House of Lords. Would it not be the case, in terms of having effective scrutiny, while accepting the role of Cross-Benchers and what they can bring to the House of Lords, that having a House that is committed to turning up on a regular basis in its composition is quite a good step in the right direction?
Peter Riddell: I am not sure I should answer that one.

Dr Poulter: It is clear from the attendance records that some people do not turn up very regularly.
Peter Riddell: I know exactly what you are getting at. The working assumption has been for some of the appointments to be the Cross-Bench Peers—Vernon Bogdanor gave the example of Lord Rees of Ludlow, who was President of the Royal Society, and whose contributions are extraordinarily perceptive, but he is not expected to vote on the Education Bill all the time. Sometimes the occasional seems to be taken to extremes by, let us say, some of the more celebrity Peers whose appearances are infrequent to probably a question of non-recognition of who they are, but now one understands that there are expectations for the new Cross-Bench Peers that they do turn up more and so on. I think there is also a cycle here that after all, because they are life Peers, there is a certain point of age when people are not going to come so often, and this is where some form of stepped-up retirement is desirable.

Q132 Dr Poulter: I am sure we can all accept the fact that some Peers will contribute and provide a very useful contribution—while turning up infrequently, when they do turn up they can provide that contribution. But I think if we are looking at having consistency and quality of legislation and we want to have good scrutiny, there is a case—I do not know if you agree with this—that we would like those people who are scrutinising to be committed to scrutinising on a regular basis.
Peter Riddell: Absolutely. If you move to a predominantly elected House, which after all would be paid—leaving aside ambiguities about the way the allowance system works now, which is a whole different area—and that is recognised in the Bill, even if the figures are not there, that would involve a much greater time commitment, merely by definition. It is an interesting question: what would be expected of the 20 per cent appointed, if you had an 80:20? What would be the expectations there? I think that so far that has not been sufficiently addressed.

Q133 John Thurso: Is it not the case that the current settlement in the way in which both Houses operate is quite young in that a great deal of haphazard changes have taken place that have affected the way we do business, particularly knives, guillotines, things like that? So how we operate today is at best 15, 20, 25 years old.
Peter Riddell: And it is constantly changing. I think the impact of the 1999 legislation and the creation of the coalition introduced changes. That is why I say one is not talking about a status quo; one is talking about an unstable position anyway. The point I make at the beginning of my evidence is that a lot of these issues have to be addressed even if you retain a predominantly appointed House, because it is unstable and it is evolving. I agree with you there.

Q134 John Thurso: One of the impacts of that is that the sheer volume of legislation—the number of Acts of Parliament that get passed in any given Session—has been rising inexorably over the last 20 or 30 years. We have sort of replaced effective scrutiny of the Administration, the Executive, with legislative incontinence. Is that the way we should be going? Should we not be looking at creating a Parliament that spends less time legislating and more time scrutinising?
Peter Riddell: I would agree with that, but that is completely separate from the Bill. It is desirable in its own way.
John Thurso: Is that not an effect of where the Bill is going, that by making it more difficult to legislate it would focus our attention on scrutiny rather than putting the whole game into legislation?
Peter Riddell: All I can say is I have heard those aspirations many times in the past and they are never fulfilled.

Q135 Bishop of Leicester: I wanted to pick up your intriguing speculation about the ultimate destiny of this Bill in paragraph 12 of your evidence, where you regard it as highly unlikely that it is going to be enacted. You go on to say that there is a strong argument that a fundamental constitutional change should be subject to a referendum. I wanted to invite you to speculate with us about the consequences of a referendum and whether you endorse the view that I think Ann Coffey put earlier that there is overwhelming electoral support for an elected upper House and whether you think that would be the consequence of a referendum on this issue further down the track.
Peter Riddell: Looking at the report which the Constitution Committee of the Lords did on what should be subject to a referendum, I think changing the second Chamber and, to go to all the points that have been made before, therefore changing the balance and looking at it in a holistic way should be subject to referendum. I also agree with Professor Bogdanor that this is far more important than the AV Bill. But we also have to bear in mind

what happened with the AV referendum, which was basically a vote on the coalition. It was not really a vote on AV, it was a vote on people's views about the coalition, and that is always liable to happen with any referendum. They are a vote on extraneous political circumstances.

If I may take up Ann Coffey's earlier point when she was questioning Professor Bogdanor, opinion polling evidence is totally contradictory. People say, "Yes, we want an elected House because we believe in election" but they also say they want to retain the expertise of the Cross-Benchers and they want independence. To be frank, it is an issue that 99 per cent of the public have not thought about or addressed. The polling evidence shows terribly shallow political engagement—the Hansard Society does an annual audit of political engagement. Knowledge about what the Lords does is pretty low, and knowledge of what the Commons does is pretty low too. I think people have contradictory views on it.

I think there should be a referendum because it is very important but, as for predicting the result, you have to say what are the political circumstances at the time and what would it be fought on. It also depends on which way the parties line up. The AV referendum was almost certain to go down when you had only one party enthusiastically in favour, one lukewarm and one hostile. So we do not know what the balance would be.

Q136 Lord Hennessy of Nympsfield: Peter, I was very struck by the force with which you said, "I do not think there is a status quo. It is very unstable now." It is quite plain from the thrust of your evidence that you do not think the Bill before us is a solution to the question of the House of Lords, as it has been posed since 1911. So what is the Riddell solution? What is the cunning plan? You have a sense of urgency about this. It has been quite plain this evening. You do not think we can hang around but you do not like what is before us.

Peter Riddell: I think there are two answers to that. One is that Clause 2 of the current Bill has to be addressed—the relative powers between the two Houses have to be addressed. Even if you fully believe that either 100 per cent or 80 per cent are elected, I do not believe it is workable unless you address the Clause 2 problem.

Point two is that in practice, for all kinds of obvious political reasons that are familiar to everyone round the room, I think that the current Bill is unlikely to be carried in the current Parliament, but there is a need to address some obvious problems in the Lords, notably size. There are other issues, such as the fact that you have two convicted prisoners returning to be Members of your House, which is a disgrace. There are issues like that, which have always been put off. They should be tackled.

There is also, I believe, the Appointments Commission issue. Of course, my evidence was written before Lord Steel's debate, the debate on Friday, which I read. I think Lady Bracknell would call it probably rather extreme reading and too shocking, but I read it. Dropping the statutory point, I understand why Lord Steel has done it for both tactical reasons and other reasons. I think the issue is not whether you should convert the current commission into a statutory one, but does it have the power of appointing the political Peers? That is the issue. I think the Appointments Commission should do broadly what it does now, which is probity for political Peers and appointing the Cross-Benchers, but it should be kept more accountable than it is now. It is just odd to have an unofficial committee doing that. So you would have that.

The other thing where I would be much more radical is break the link between the peerage and membership of the second Chamber. At present, there are many more hereditary Peers—people with a perfect entitlement to hereditary peerages—who are not Members of the House of Lords now. Of Lord Trefgarne's colleagues, only 92 remain. There are many, many more outside. I would break that connection, which I think incidentally would for ever solve the loans for peerages and cash for peerages problem, and would be a step towards recognising reform of the second Chamber, which would not in any way affect existing titles if people care to use them or the position of hereditary Peers, which is a separate one.

Q137 The Chairman: Could I ask a question on the Steel Bill, since you have raised it? If the Appointments Commission is taken out of it, there is not very much left, is there? There are the hereditaries you are dealing with and the criminals—

Peter Riddell: Sorry, the issue I left out was retirement. Basically, the Lords are entitled to retirement. As far as I understand, only two Peers have opted for permanent retirement. I think you have to have a compulsory scheme—you need that anyway to amend the 1958 Act—and I would have a compulsory retirement scheme. The Steel Bill proposes that this be done by attendance, or you have elections.

The Chairman: It is not in the Bill.

Peter Riddell: I would have that in addition to the Bill, I am saying, Lord Richard.
The Chairman: I am sorry. I was talking about the Steel Bill because people have been talking about the Steel Bill almost as an alternative to the Bill that is in front of us.
Peter Riddell: No, I do not think it is an alternative. What I am saying applies whatever happens to the big Bill, the Bill in front of you, which you are considering. Given that I think politically it is unlikely to pass before the election, the Steel Bill should be taken up probably by the Government and augmented in the way that I was suggesting. To answer Lord Hennessy's point, whatever you do you have to have a version of the Steel Bill. I would have an augmented version of the Steel Bill.

Q138 Lord Trimble: I want to go to the issue of election and the methodology there. Proportional representation is suggested. That results in very large constituencies and with constituencies of that size it is going to be very difficult for the independent candidate to register with the electorate. In fact, the elections are likely to be similar to the way in which European elections are conducted, where there is a greater predominance of party, and it is the party that gets the person elected because the individual is not going to have the support and the machine to register with people, unless of course that individual already has a very high profile. The result of this, I am suggesting, is that you are going to get an election dominated by party candidates with the occasional celebrities. But when you come to look at the selection of the party candidates, the party will know that that person is in for a 15-year term and does not have any sanction, as that person does not come up for reselection and so they cannot be sure that that person will adhere to the party line the whole way through. Trying to get someone who will adhere to the party line, then, is going to be the primary consideration for selection. So we are going to get people who are dedicated party hacks and who are not likely to exercise any independent judgment.
Peter Riddell: It is surprising the difference between when people are selected and how they behave when they arrive here. I found over my many years when I was a political journalist watching people in the House of Commons that people whom they might have thought would be suitably controlled turned out rather different in practice. On your size of constituencies, Lord Trimble, my calculation is, if you go on a third, and given a maximum size of 300, even if it is all elected, the minimum constituency, even under first past the post, would be six times the size of a parliamentary seat, by definition. If you operate PR it is probably going to be much bigger—as you say, the European election parallel is about 30 times the size of the parliamentary seat. But I think you would have that problem anyway. What you say is they try to maintain loyalty. As I say, that can often break down in practice.
Lord Trimble: From a political party, and people who manage political parties, that is going to be the overriding consideration. The odd maverick might get through or a person might change, but it does not hold out much prospect for having a high-quality House.
Peter Riddell: I think you are being too censorious there because I think, looking at the selection for the House of Commons, that people on the whole are always going to be selected because they are going to be loyal supporters. They do not always turn out to be. There is an unpredictable element between selection, election and subsequent behaviour.

Q139 Ann Coffey: I was very sad to hear that you think that what I did in my constituency in an assiduous way did not bear any relation on my election at the general election. I think it is quite important that part of the constituency issue is that people do believe that they make a difference and it is part of that individual accountability.
Peter Riddell: Yes, but the primary motive is government.
Ann Coffey: I understand that. I just want to believe something different. But I was interested in this issue about size. If we are going to have a House of Lords that is 300, how do we have enough regional representatives so regions are properly represented and how do we make sure that the diversity of the public is also represented? How can we bring that together with a House of only 300?
Peter Riddell: I think 300 is too small—not for that reason, for a different reason. If you are going to have a House, which everyone says they want, which is able to maintain the scrutiny function, it needs to be larger, although not dramatically larger. Even if it is, to go back to one of the earlier questions, I think you probably need 450 full-time Members, or something like that, because otherwise I just do not think you have the number

of men and women to do it. You need more to do that. Diversity is an argument in favour of probably STV because proportional systems can produce more diversity. I agree that the record under first past the post, as you well know, has been pretty minimal and it has essentially been an appointed House that has produced a more diverse second Chamber—it was the method of appointment that achieved it, not elections. I think there is a tension there, absolutely. There is a tension between election and diversity, and just the same applies on the point of getting expertise from someone.

The Chairman: I have four questioners on the list. We were supposed to be having an adjournment from 6.45 pm to 7 pm and Dawn Oliver was supposed to start at 7 pm. What I would suggest is we go straight on and perhaps she can start at about 7.10 pm, in which case the four questioners have two and a half minutes each.

Q140 Tristram Hunt: Do you regard the ambition to have, following on from Ann, a greater regional diffusion of power as one of the potential upsides of the Bill—that is, not having such a concentration of Peers from London and the south-east?

Peter Riddell: Perhaps because I have been a Londoner since I was six, I do not necessarily regard that as such an enormous priority. Professor Bogdanor made a good point that most countries where there is a vibrant second Chamber are regionally based—obviously Germany, the US and Australia—and reflect a federal structure. We do not have a federal structure. We are not likely to have a proper federal structure for a very long time, and ours is totally asymmetrical, with England being 85 per cent of the UK. So I think it is to secure more regional voices rather than regional representation. I think that would be an undoubted advantage. However, sometimes I am sceptical of London-based people going out and rediscovering their regions. If you look, for example, among your fellow new entrants in your House, they may have been born outside London but they have spent most of their careers in London. One can be a bit sceptical about that.

The Chairman: May we break, please?

The Committee was suspended for a Division in the House of Lords.

On resuming—

Q141 Lord Norton of Louth: Perhaps I could bring you back to two of your paragraphs. In paragraph 9 you refer to the relationship between the two Chambers and say that there needs to be some additional or different dispute resolution to that which exists at present. I wondered what form that would take and how that would work out. To come back to paragraph 4, you refer to Clause 2 as it presently stands as a nonsense and you have just alluded to the fact that there is a statutory reference to primacy but no definition. So I am wondering how you feel that would play out in terms of how you define primacy. The same clause, of course, makes reference to conventions. We have occasionally had an attempt to convert a convention into statute, but is this not the first time there is actually a reference to conventions in statute? What are the implications?

Peter Riddell: I bow to you on the latter point, Lord Norton, but I think it is a classic use of the phrase, "Because we say it is so it will be so". I think that fallacious. We all know what is laid down in the Parliament Act 1911 as amended in 1949—that is clear—but the conventions are not. The conventions, by definition, evolve; they depend on an agreement. My belief is that that agreement will undoubtedly be undermined. It has already been undermined after 1999 and with the creation of the coalition. So merely stating the existing position is a purely circular point. That is why I say either there has to be—which I think is improbable—an informal agreement between all parties on what the conventions mean or, as I said to Lord Trefgarne, more has to be included in the statute itself about how the relationship between the two Houses would be governed, because otherwise I think it will be even more unstable.

On the reconciliation mechanisms, there may be something like what happens in the US Congress. Lord Trimble asked Professor Bogdanor whether you would have the two Houses meeting together. I do not think that is feasible, but I do think you could have a system like that of the US Congress. They nominate in relation to the party balance in each House and then they meet and try to produce a reconciliation. Then it has to be subject to a vote in either House. It is going to be pretty cumbersome but I do not see any easy alternative to it.

Lord Norton of Louth: No. Of course, 1911 was the alternative to the suspensory veto, actually having a joint sitting, although there were fewer numbers on the Lords' side, but it foundered in part for the reason you have just touched on of reaching an agreement of what the numbers would be.

Peter Riddell: I favour more the US example but, again, it illustrates the difficulties. I think they are dealable with. My point goes back to what I was saying to Lord Tyler: you just have to recognise that those problems exist and address them, otherwise it could be very unstable between the Houses. I think an important point is the Commons feeling that it could be interpreted as an act to weaken the relative power of the Commons. That is quite an important aspect of the debate. It is not a zero-sum game, but if you get a more assertive Lords holding up legislation, more Members of the Commons will say, "Hold on, they are breaching the previous understandings because they are on a different basis and they are a more difficult House to deal with." It need not be like that, but I think that is why these problems have to be addressed before you legislate.

Q142 Laura Sandys: In many ways what we have now with conventions and the way Government uses those Chambers creates some very sort of perverse actions. For example, there will be Members of Parliament who will put forward amendments and those amendments will be overturned in the House of Commons and the Minister will get up and say, "Don't worry, this will be dealt with in the House of Lords." When you start to look at the public perception of this, what it conveys to the public is this wonderful House of Lords, totally independent, fantastically innovative in the amendments that it comes forward with, and this rather sort of patsy House of Commons that has no mind of its own and merely just follows the Whips. That is because that is how Government uses those Houses; it is not to do with either House. But if we were looking at an elected Chamber, it would, in many ways, normalise that relationship. As I say, I think in the public's mind the House of Lords has primacy over the House of Commons in perception and reputation. Do you not see that real reform might readjust that?
Peter Riddell: Yes, a lot of what you have described is to do with time. The Minister gets up and says, in the Report stage, which is undoubtedly under guillotine with all the things in the Commons, "I have not got time to get it right now but I'll make sure it's put right in the Lords." I agree that is a very fair point.
Laura Sandys: It is very bad. It is very bad to have the Commons—
Peter Riddell: I could not agree more. It is bad, but that goes back to a point Lord Tyler made about the problems of dealing with legislation. That is a problem that has to be addressed anyway, whatever you do with composition. I think that should be tackled anyway but it certainly would have to be tackled if you had a change in composition and a different Lords.
The Chairman: Thank you very much. We have finished our list. We have not finished our questions but we have finished the list of people whom we had to speak. Thank you very much for coming and giving us your time. It was very helpful indeed.
Peter Riddell: A pleasure.

Professor Dawn Oliver (QQ 143–165)

Examination of Witness
Professor Dawn Oliver, Master Treasurer of the Middle Temple.

Q143 The Chairman: Professor Oliver, good evening and thank you very much for coming.
Professor Oliver: Thank you for inviting me.
The Chairman: We are greatly obliged to you. I wonder if I can start off by asking you the questions I have already asked of the previous two witnesses, to get, perhaps, your reaction to it. Do you think the Parliament Acts and the Commons control of supply are sufficient to ensure the primacy of the House of Commons? Do you think the conventions can be put into statutory form so that that underlines the primacy of the House of Commons?
Professor Oliver: I do not think the Commons control of supply and the ability of the Government to resort to the Parliament Act themselves guarantee or could guarantee the primacy of the House of Commons if we have the sort of reformed House of Lords that is under consideration. The trouble with conventions is that they evolve. What they do is they reflect the general opinion in the House of Commons or the House of Lords, wherever those conventions are operating, for the time being. So writing them down cannot possibly guarantee that for the next five or 10 years the same considerations will underpin the way in which the Houses want to

behave and what they want to do at present. I think the conventions, the Salisbury convention and so on, depend largely on the fact that the House of Lords knows jolly well that it does not have democratic legitimacy—that is why it more or less follow the convention—but if the House of Lords knew that it did have democratic legitimacy I do not see why it would feel it necessary to obey the convention.
The Chairman: Except that one of the two Houses has to have the primacy and one does not have to have the primacy.
Professor Oliver: I suppose it depends in a way on what the subject matter is. Well, I do not know that one does have to have the primacy. We are used to the idea that one House has primacy but I do not think in all countries one House always has primacy over the other. I am not a good enough comparative lawyer to tell you that but—

Q144 Baroness Symons of Vernham Dean: May I pick up that point? I think a few of us reacted at that point—far be it from me to disagree with the Lord Chairman but I shall. Surely the point is that if you have mechanisms that resolve the differences between the two Houses you overcome the point of primacy. You do not necessarily have to be in a permanent gridlock if you have ways to help to resolve the difficulties, and there are ways used in other constitutional set-ups. I think it brings us back to the point that we seem to be accepting, or a lot of the arguments seem to accept, that there has to be the primacy of the House of Commons. It seems to me that those that want to see elections in the House of Lords are stuck with an argument that says, "Well, we must not make the House of Lords too democratically elected in case the primacy of the House of Commons is challenged." You have the difficulty then of whether the elections to the House of Lords are more important than the primacy of the House of Commons. It is the primacy of the House of Commons that has to go if you really want elections in the House of Lords. Sorry, that is more of a statement but I guess I am wondering whether you think that that is a fair analysis.
Professor Oliver: I think I do, yes. I cannot see how the Commons could assume that the Lords would always accept its primacy if the Lords was wholly or very substantially elected, especially on PR.

Q145 Lord Tyler: I wanted to revert to a question that you may have heard a previous witness asked about the regional discrepancies of the existing House. You may remember that the Wakeham commission put down as one of the main roles of the second Chamber that it should provide a voice for the nations and regions of the United Kingdom at the centre of public affairs, and that was emphasised elsewhere in the Wakeham commission report. Apart obviously from the fact that we are, in age terms, very unrepresentative—I am, I think, still about the average age, which is very alarming—the discrepancy of the London-centric nature of the House is obviously a problem. I think our previous witnesses were suggesting that somehow either this was not a problem or did not need addressing, or that we could only address it within a federal constitution. What would your view be?
Professor Oliver: I think it can be faced up to outside a federal system. In fact, the Wakeham commission suggested that there should be a limited number of elected Members of the reformed House who would be elected from the regions. So you do not have to have a federal system in order to have regions represented. I do think representation of regional interests is important. A point, though, is that any reformed House of Lords is not going to do everything that people want it to do, so there may have to be trade-offs between regional representation, diversity and so on. But in principle I think some kind of regional voice—I think "voice" is the word we chose to use on the Wakeham commission in quite a lot of contexts—is important.

Q146 Lord Tyler: In that context there was also some comment about the size of the House, in terms of workload, the nature of full-time parliamentarians and so on. Again, am I right in thinking that the Wakeham commission thought a bigger House was necessary on all those grounds?
Professor Oliver: Yes, the Wakeham commission recommended 550. I think an important point is that we were not recommending a fixed number of 550, and I think having a fixed number is undoubtedly going to cause all sorts of problems, so around 550. But our recommendation was that they should be part-time, so 550 part-timers. I do not know how that compares with 300 full-timers, but part-time is different.

Q147 The Chairman: You were talking a moment ago to Lord Tyler about regional representation. As I remember the Wakeham commission, and perhaps I do not remember it wholly accurately, you did not want

indirect elections from the regions—in other words, letting local authorities, so to speak, nominate somebody to come up here. What you wanted was direct elections in the regions. That is right, isn't it?
Professor Oliver: Yes, it is.
The Chairman: That is what you were talking about when you were talking to Lord Tyler.
Professor Oliver: Yes. Just so that people realise what our thinking was, we were recommending that about 80 per cent of the House should be party-politically aligned people; of those, some but not all would be elected for the region and the others would be appointed by an independent Appointments Commission.
The Chairman: Yes, I see.

Q148 Lord Trefgarne: One of the shortcomings of the Parliament Act is, of course, that it cannot be used for secondary legislation. Do you think that should be corrected if we are going to move forward in the way that is now proposed?
Professor Oliver: What, so that the Government could force through statutory instruments if they were not agreed to by the—
Lord Trefgarne: So the House of Lords could no longer reject them as it can now.
Professor Oliver: I am not myself aware of a strong case for that. My understanding is that when—it does not often happen—the House of Lords rejects a statutory instrument the Government goes away and redrafts it and tries again. But I am probably very ignorant about whether this causes serious problems or not.
Lord Trefgarne: I think it has been suggested that if we were reformed, as is proposed, we would more regularly seek to overturn secondary legislation.
Professor Oliver: I suppose if that was the case then there might be a case for giving the Lords only a delaying power.

Q149 Lord Hennessy of Nympsfield: Dawn, can I ask you a human question and then go into a wider one?
Professor Oliver: A Cuban question?
Lord Hennessy of Nympsfield: A human question.
Professor Oliver: Sorry.
Lord Hennessy of Nympsfield: The Wakeham royal commission was exemplary, because you slogged around the country, you had surveys and so on—a huge amount of effort—and yet you fell into the Bermuda triangle that this question of Lords reform always involves for everybody who has tried to tilt at it since 1911. We are just the latest group to go into that Bermuda triangle, so we have a kind of solidarity. But yours was a huge enterprise, so perhaps you could allude to that. Also, if I could make you a one-person royal commission now, Tommy Cooper-style—"Just like that"—what would the Professor Oliver solution be to the question of the House of Lords if you could just do it?
Professor Oliver: Remember that I am a constitutional lawyer and that the proper scrutiny of legislation is very important to me. I do not want to be evasive. I think that a much reduced, wholly appointed but with a lot of politicians in it House of Lords would do the business. The alternative would be to abolish it and to create a new institution, a statutory institution, which would have members in it with expertise and so on, whose main function would be the scrutiny of legislation, not necessarily against party-political criteria but against the criteria of human rights, constitutional issues and inappropriate delegation of legislative power—broadly constitutional and international obligations criteria. I am sorry I could not give you a one-off answer.

Q150 Lord Hennessy of Nympsfield: So it would be a house of experts who would test out, almost as if they were officials or technocrats, the output of the House of Commons. It would be a technocratic solution, your one, the alternative?
Professor Oliver: I suppose it would be, yes. But my thought is, since you have asked me and it is a hobbyhorse, that obviously such a body needs to have some kind of clout. It cannot make it impossible for Government to govern but we would not want to be in a position where the Government says, "That was very interesting, I am getting on with the job." So the thought would be that this independent body would produce its report, so before the Government could take its Bill to the next stage in the single-Chamber House of Commons it would have to respond to the concerns expressed by this independent body—let us call it a scrutiny commission. That would take a couple of weeks here and there and so on, and that would force the Government and the House of

Commons to recognise when there are, let us say, broadly constitutional issues and that kind of thing, or technical legal issues of course, where you would say, "This is not going to work because it does not take account of some bit of the law."

Q151 Lord Hennessy of Nympsfield: I am trying to think of any existing body that would be a model. All I can think of is the Order of the Golden Fleece in Burgundy. It is a nice title, the Order of the Golden Fleece. One would not mind that.
Professor Oliver: There are a few slightly similar organisations. One of course is the French Council of State and the equivalent bodies in Italy, Spain, Greece and so on—independent bodies that scrutinise legislation and report on their constitutionality and workability but in a non-political way. Then in New Zealand there is a body called the Legislative Advisory Committee, which is non-statutory but also reports to the Government and to their single-Chamber Parliament on, broadly, the constitutionality, workability and so on in a non-political way of the New Zealand Government's Bills.

Q152 The Chairman: Can I ask a purely factual question? How does the Conseil d'État in France work, given the fact that you have two Chambers?
Professor Oliver: How does it work?
The Chairman: Yes. Does it perform anything like the sort of function either the House of Lords performs at the moment or indeed your—I have forgotten—scrutiny commission?
Professor Oliver: Let us call it a scrutiny commission. It does not matter what we call the thing I have in mind. The Conseil d'État is only a very approximate parallel. Half of its activity is as an administrative court, and I am not suggesting that at all. But part of what it does is to report to the French Government, and its reports are published and it indicates its concerns on constitutionality, workability grounds and so on. It does not have the sort of clout, delaying power and so on that the House of Lords has and that the scrutiny commission that I have dreamt up would have. So I am just trying to show that there are other countries in which you have independent bodies participating in the legislative process. France, Spain and so on are very proud of their Conseils d'État and no one says, "Isn't it a disgrace that an unelected, independent body of experts has an input into the legislative process?" It is something they are proud of.
The Chairman: Are their second Chambers elected?
Professor Oliver: Their second Chambers are elected, yes. But, of course, I do not want to be simplistic about this. The fact of the matter is that not New Zealand but the other countries have written constitutions and they have supreme courts or constitutional courts that can set aside laws that are inconsistent with their constitution. We rely virtually entirely on intra-parliamentary scrutiny of legislation to try to prevent "unconstitutional" laws being passed, or badly thought out laws being passed. That is something that the Commons does its best to do, but Members are very busy with constituencies and so on. It is something that the Lords does rather well. You do not hear people saying that the Lords—I am not saying it is perfect—is hopeless always at revising legislation. That is not said. I think probably people think that, given that we do not have a constitutional court—and I do not want us to have a constitutional court and a written constitution—we have to have really good ways of preventing the sort of laws that I am talking about from coming on to the statute book.

Q153 Lord Norton of Louth: You probably heard Peter Riddell's evidence. He described clause 2 of the draft Bill as presently constituted as a nonsense. Would you agree with that assessment and are there pitfalls we should be aware of or potential pitfalls, given the language of that clause? What would you recommend should happen to the clause? Should it be omitted? Should there be some alternative?
Professor Oliver: I do not think there is much harm in putting it there. It is a symbolic statement of a wishful thought, really. I do not think there is anything damaging about that and it is probably a wishful thought that ought to be kept in people's minds, but I do not think it is enforceable.
Lord Norton of Louth: So what is the point of Clause 2? You are suggesting it is aspirational.
Professor Oliver: It is aspirational, I suppose, yes.
Lord Norton of Louth: Would you say that is a normal practice for statute?
Professor Oliver: Not in this country. Usually if we have something in the statute, legally it is enforceable in the courts or enforceable somehow.

Lord Norton of Louth: So you do not think the courts could do much. This could not be subject to judicial review in terms of reference for either primacy or conventions, could it?
Professor Oliver: No, I do not think so.

Q154 Lord Trimble: I was just thinking, in a slightly cynical mood, that the primary purpose of Clause 2 is to lull the House of Commons into thinking that there is no substantial change taking place, and I do not ask you to comment on that.
There was discussion earlier about the question of being of a representative nature, regionally and with gender balance and all the rest of it, but of course if you have elections then you will have a regional representative nature and you will solve the problem by the representation of the regions and all the rest of it. The downside of that is that we know what happens at elections: the people are selected and they are selected on criteria that do not produce a representative body. This is how the appointed House of Lords has got a better gender balance and a better ethnic balance than the elected House of Commons. If you have an elected House of Lords, in terms of representativeness in those categories, isn't it going to be more like the Commons than the present appointed Lords?
Professor Oliver: Yes. The only way around it, and I do not recommend this at all, is to regulate the way in which the parties select the people whose names they put on the ballot paper or the list, for example to encourage them or require them to produce a gender and ethnic balance. I am not suggesting it. All I am saying is that I think what Lord Trimble has said is absolutely true and the only way, which I do not recommend, of getting round it would be, as I say, to regulate the—
Lord Trimble: Even if you tried to regulate, how can you regulate the selection of candidates? How could parties produce the result to meet the requirements and the regulations without the parties gaining control over the selection of candidates to a much greater extent than they have at the moment?
Professor Oliver: That is one of the many reasons why I am not recommending it, but I think that putting it that way helps to get one's head around the problem and the fact that there is not really a solution to it.

Q155 Baroness Young of Hornsey: Part of what I was going to ask has been elicited by Lord Trimble, but the second part of what I wanted to ask you was around this 80:20 split that has been proposed and whether you think that there somehow would be less legitimacy for those who were appointed as the 20 per cent as against the 80 per cent elected, and if so what kind of implications would there be from that?
Professor Oliver: I do not think it need affect their legitimacy because one of the things they could say is, "Well, it says in the Act we have to have 20 per cent", so the fact that they are there because the Act says they should be there goes some way to legitimating them. But the other point is that it is extremely unlikely, I think, that in any vote all the appointed people would have voted on one side. They are quite likely to split; that is what independent people tend to do. So you would not really be able to pinpoint, "You, particular independent person, it is your fault we lost the vote" because they will just be in with the party political members. So I do not, myself, think that it would undermine their legitimacy as a group, particularly if they were, of course, distinguished people with expertise in something.

Q156 The Chairman: Do you think 80:20 is the right split?
Professor Oliver: We need to know why the 20 per cent are there and, of course, it is partly so that there should be elements of expertise, voices from disabled and so on, people who otherwise tend not to get elected. It is also to try to guarantee that the Government of the day will never have a majority. If we get further coalitions and they are bigger then you might need more independent people to deprive a future coalition—or, of course, if there is an enormous swing in favour of one party—of a majority in the House.
This is something I want to say, and I am not 100 per cent sure it is in answer to your question, but what was put to the Wakeham commission, and I find very convincing, was that the presence of a substantial number of independent people in the House affects the way in which debates are framed. If a Government does not have its own majority and it needs to persuade some independents, and maybe the little tiny parties as well, to vote, it is going to have to put its case on an evidence base, in rational terms and so on. It cannot just rely on whipping, party loyalty, ideology and so on. But I think that does not work unless you have a substantial number. At the

moment I think 23 per cent of the House of Lords is independent. I used my calculator on that. I do not know where that gets us to know that. It does not mean it is the right number.

The Chairman: Just following that through, the implication of that—the way in which it would have to work—is that you have an almost equality, a broad equality, between the two major parties; in other words, no one party, or indeed coalition of parties, has a very large majority in the House of Lords. I think you are agreeing with that. Thank you.

Q157 Baroness Symons of Vernham Dean: That last argument is a very powerful one; and certainly if you are in government in the Lords, you are looking constantly to the Cross-Benchers to ensure that you are not just making party political points—that you are making points that will appeal to the non-politically aligned. It is an enormously important part of why we have the Cross-Benchers now. That does not really answer the question of why we need the cross-benchers in the future. My own concern is that they are there to bolster the argument about primacy of the House of Commons. I do not mean in the Cross-Bench sense, I mean in the 20 per cent not elected sense. If you have 20 per cent non-elected then it is much easier to argue that the Commons should maintain their primacy because they are more legitimate by 20 per cent than the Lords.

Professor Oliver: That obviously is a strong political argument in favour of—

Baroness Symons of Vernham Dean: Can I ask you just to step away from what your gut feeling is over whether it is right as it is at the moment? There obviously is a big swathe of feeling. Ann Coffey made the argument earlier on, and I think she may well be right, that if you held a referendum on this issue everybody would see the words, "Can I vote for—" and think, "Yes, thank you very much, I want to do that because that is democratic and the other thing is not". So let us suppose we had an unelected House of Lords. You have said a whole range of things about why the Government's ideas are not very good. Could you pick out a couple of things that would make that more acceptable to you if the House of Lords were to be elected?

Professor Oliver: What else could happen besides having a wholly elected House of Lords?

Baroness Symons of Vernham Dean: What would the other safeguards need to be that would make an elected House of Lords something that you would feel easier about than the sort of Bill that we have been presented with? Would it be the sort of thing that we talked about in relation to a mechanism to solve the differences between the Houses? Would it be that it would be 100 per cent rather than 20 per cent? We have been asked to look to improve this Bill. We cannot just say, "We do not like it at all, thank you very much, take it away". What we have to do is try and think about whether it is improvable and, if it is, how could we do it.

Professor Oliver: Right. Focusing on an entirely elected House of Lords, the only thing I can think of is that in addition to a wholly elected House of Lords, there should be a separate, smallish, statutory scrutiny commission whose reports on the things I was talking about have to be taken seriously and taken on board.

Q158 Lord Tyler: Can I suggest one other possibility? You said earlier that you would favour, I think, a larger House; that you would have more part-timers; if you use STV there is more chance, as Professor Bogdanor was indicating earlier, for independents to be elected than if there is a party list; there is better chance of getting a gender balance, and better chance of diversity in a bigger House. You said, I think, that Wakeham suggested 550 or around that figure. So would that not be an improvement on the current Bill?

Professor Oliver: 550 full-time paid or 550—

Lord Tyler: No, as you said, some could be part-time.

Professor Oliver: Yes, 550 wholly-elected part-timers might be better. I would have to think harder about it.

Lord Tyler: And 550 80:20 split, with all those other advantages?

Professor Oliver: My concern would be whether it should be 25 per cent. It is just thinking about the balance if you are going to have coalition Governments or other Governments that have benefited from a big swing, so that a party or a government has a majority.

Q159 Dr Poulter: I just wanted to clarify, Professor Oliver, earlier on you raised some concerns about the democratic legitimacy, or shall we say the primacy, of the Commons, if there was a wholly elected second Chamber. Would you say that having a Chamber that is 80 per cent elected and 20 per cent appointed helps to maintain that primacy?

Professor Oliver: It would be something that the Government or the Commons could point to as if it undermined the legitimacy of the second Chamber. But, as I have said, in practice I think it would not make much difference because the independents would split. You would not be able to point to the particular independents as being responsible for the Government not getting its measures through.

Q160 Dr Poulter: You raised that concern about the primacy of the Commons over the second Chamber and you made the point that you felt that if there was a wholly elected second Chamber, as Baroness Symons questioned you, that would potentially undermine that primacy in democratic terms, in your view. I am not saying that I necessarily share that view, but nevertheless, would you say having that balance—that 80 per cent and 20 per cent—helps to maintain the fact that one Chamber is not wholly democratically elected whereas one Chamber is, or the Commons is wholly democratically elected and the second Chamber is not, and that helps to maintain that argument about primacy?
Professor Oliver: Arguments about primacy are made by different people, so it would help as far as Government is concerned—
Dr Poulter: You have given this argument. I am just asking you now to consider that scenario as opposed to the scenario that was outlined earlier.
Professor Oliver: I think a Government could say, "Look, only 80 per cent of them are elected and 20 per cent of them are unelected so you ought to support whatever the Government wants to do". The opposition parties in the House of Commons or in the second Chamber would say, "Oh, but it's in the Act and therefore it's all right". I do not think there is one view about primacy. There are arguments that different people will advance in support of their thought that the Commons does have primacy or that it does not. So all I am saying is it is argument some people could rely on.
Dr Poulter: Absolutely. I think that is a much fairer point, but earlier on you stated a much clearer position about primacy when arguing the 100 per cent issue and you have now sort of retracted that argument, that these are political discussions to be had in the circumstances of each case, I suppose. Is that a fairer—
Professor Oliver: Yes.

Q161 Dr Poulter: Yes, thank you. I think that is a correction to the earlier point that was made when you discussed it with Baroness Symons.
One other point I wanted to pursue is the issue of how you view the current House of Lords as a scrutinising Chamber. Do you think it is effective, or how could it be improved?
Professor Oliver: It is not perfect but I think that it has been very effective, particularly through the work of the Constitution Committee, the Delegated Powers Committee, the European Union Committee and sub-committees and so on. I think those bodies are very good at highlighting concerns that they might have about legislation and so on and I think they carry authority. Often that is found by the House to be persuasive, and of course it can be picked up on by, usually, opposition parties in the House of Commons. So my sense is that it does it rather well.
Dr Poulter: If you say there are certain things we need to improve in the House of Lords in terms of this function of scrutiny, what would you say they would be? How could things be improved?
Professor Oliver: There are various things. For example, I have suggested, and I think it has been thought about, that it would be helpful if the committees developed scrutiny standards so that they made it clear what they were looking for when scrutinising either all Bills or certain types of Bills. The point about scrutiny standards is that they are taken on board by the Government upstream and by parliamentary draftsmen and by departmental lawyers who will say to themselves, "The Delegated Powers Committee or the Constitution Committee is going to be very, very concerned about whatever—e.g. retrospective legislation,—so we had better either decide this is definitely what we want even if it is going to run into trouble or think of another way of drafting the Bill so that we avoid those difficulties".
Dr Poulter: So you are saying effectively you are making that set-up a little bit more professional, if you like.
Professor Oliver: Yes. That would, of course, take some of the politics out of it if you have agreed advanced standards that could be developed by the committees.

Q162 Baroness Scott of Needham Market: Could I ask you for your view on the presence of Bishops in our legislature, either currently or as proposed in the draft Bill?
Professor Oliver: Well, I was the person on the royal commission who felt that there should be no ex officio religious representation in the House of Lords at all. My view was, and is, that if there are appointed people there then it is perfectly legitimate to appoint people on merit who give voices to particular religious beliefs and, come to that, to atheists. I am an atheist myself. I would be sorry if there were no atheist points of view in the second Chamber. But I do not see a case myself for any ex officio religious representation, including the Church of England.

Q163 Lord Trefgarne: Could I just pick up on that point? There are in some views, including mine, too many Bishops for sure, but they do represent the Church of England, which is still, for the moment, the established church. Does that not make the position rather special?
Professor Oliver: I do not think the idea of establishment necessarily means that the church in question has to have representatives in the second Chamber. The Church of Scotland is sort of established and it does not have representatives in the second Chamber.
Lord Trefgarne: It should have.
Professor Oliver: The royal commission invited—I have forgotten who it was from the Church of Scotland, to come and give evidence to us. Their view was they would want to look very hard at the second Chamber before they decided whether they wanted any of their people in there.

Q164 Oliver Heald: I have heard the expression, "If it ain't broke, don't fix it", and listening to your comments you seem to think that there are many good things about the second Chamber and the way that it works. Has your thinking changed at all since the royal commission and, if so, in what ways?
Professor Oliver: I do not think that it does not need fixing and the royal commission was not saying that it does not need fixing either. I think it is far too large. I think there is no reason, except as a sort of a hostage against further reform, for keeping the hereditary Peers in there, and I think the appointment system needs to be put on a formal basis. So I am not saying it ain't broke.
Oliver Heald: Has your view changed at all since the royal commission, because after all it was, what, 11 years ago? There has been a lot of water under the bridge in terms of debate and discussion. Are there any matters on which your views have changed over the years?
Professor Oliver: Not very substantially, no.

Q165 Baroness Symons of Vernham Dean: Can I just come back to this point about religious representation. I would agree that the Church of England should not be the only ex officio representatives of organised religion, but when so much of what we deal with in terms of what is happening not only overseas—just thinking about the situation in the Middle East, in Afghanistan—but here at home as well, and how contentious religion is, do you not see any value in having representatives of organised religion, at least to give advice about what the realities of the religious position is, in the same way that it is helpful to have doctors talking about what is going on as experts in, I do not know, cancer or heart disease, or educationalists talking about what is going on in schools and universities?
Professor Oliver: What I was concerned about was as-of-right ex officio representation. If we end up with a wholly elected House of Lords there would not be any Bishops in there. If we have a partially appointed one, then the Government's proposals are that there should be 12 Bishops. My position is if you are going to have appointed people then it does make sense to have some people appointed there who will give voices, if you like, to various religions. What am I trying to say—
Baroness Symons of Vernham Dean: There is more than one organised religion in this country and it is not just Christian. There are obviously Muslims and Hindus and a range of other—
Professor Oliver: Yes. The royal commission was recommending that there should, I think, be 16 Church of England Bishops, five representatives from other Christian denominations and five people from other religions. I think the concern about that is that not all other religions have a hierarchical structure, so it would be very difficult to decide who that person should be. I would foresee difficulties if there were only five because we have in this country many religions other than Christianity that would want to be represented. My thought was that if

you are going to have appointed Members then the Appointments Commission could, among other things, take account of people who would be well able to do this, and without changing the terms of the debate, because I do not think it would be very good if the House of Lords was referred to chapters in the Bible or religious text on the lines that, "God says that this is what we must or must not do, and for that reason we should all vote for or against it". So I do not think that would be appropriate at all. So, appointed people who can give voices to important aspects of our society, yes. Ex officio Members, no.
The Chairman: Thank you very much indeed, Professor Oliver. That was terribly useful and very helpful indeed.
Professor Oliver: Thank you for listening to me. I have enjoyed talking.
The Chairman: Thank you for waiting so long.

Professor Vernon Bogdanor—written evidence

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1. The preamble to the Parliament Act of 1911, which has no force in law, made three statements.

- The first was that `it is expedient that provision should be made for regulating the relations between the two Houses of Parliament'. That was a justification for the Parliament Act.

- The second was that `it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot immediately be brought into operation'. That was an aspiration.

- The third was that `provision will require hereafter to be made by Parliament in a measure effecting such substitution for **limiting and defining the powers of the new Second Chamber**, but it is expedient to make such provision as in this Act for restricting the existing powers of the House of Lords'. (My emphasis) That was a consequence of the aspiration being fulfilled.

2. The first statement deals with powers, the second with composition, while the third recognises that powers depend upon composition.

3. The 1911 and 1949 Parliament Acts dealt solely with powers. The 1911 Act provided for the first time, statutory regulation of the powers of the House of Lords. The 1949 Act reduced the delaying power. Neither the Liberal government in 1911 nor the Labour government in 1949 sought to rationalise the composition of the Lords. They did not want a chamber which might prove even more effective in frustrating the wishes of an elected government than the hereditary chamber had been.

4. More recently, however, reformers have concerned themselves with composition, as with the Life Peerages Act of 1958 and the House of Lords Act of 1999, removing all but 92 of the hereditary peers from the House of Lords.

5. The draft bill seeks to reform solely the composition of the Lords, and not its powers. s2 of the draft bill provides that;

> 'Nothing, in the provisions of this Act about the membership of the House of Lords, or in any other provision of this Act,
>
> (a) affects the status of the House of Lords as one of the two Houses of Parliament,
>
> (b) affects the primacy of the House of Commons, or
>
> (c) otherwise affects the powers, rights, privileges or jurisdiction of either House of Parliament, or the conventions governing the relationship between the two Houses'.

6. This assurance was reiterated in the House of Commons by Nick Clegg, the Deputy Prime Minister, on 17th May, col. 160. He insisted that `powers should remain the same and as long as the mandate, the electoral system and the terms of those elected in the other place are different, the basic relationship between the two Houses can remain

constant'. Paragraph 7 of the White Paper on Lords reform declares that `The Government believes that the change in composition ought not to change the status of that chamber as a House of Parliament or the existing constitutional relationship between the two Houses of Parliament'.

7. But, in the House of Lords, on the same day, Lord Strathclyde, the Leader of the Lords, took a different view, declaring that—col. 1277—`There is a rationale for an elected House. It is to give legislators in this House the authority of the people who would elect them, to make the powers of this House stronger and to make this House more assertive when it has that authority and the mandate of the people. The noble Baroness said that it would have more political power and I think that is right. It is one of the essentials of doing this. All of us who are in favour of an elected house would recognise this'. Later he said—col. 1279, `it would mean a more assertive House with the authority of the people and an elected mandate', since—col. 1282 `when a second Chamber took a decision with the backing of the electorate it would be more authoritative and would have greater impact on another place and on the Government of the day'. Therefore,—col. 1283 `with an elected Chamber the relationship between the two Houses would change'.

8. Who is right—Nick Clegg or Lord Strathclyde?—those who wish to reform the Lords seek to introduce the principle of direct election. This is bound to give greater legitimacy to the second chamber, just as, when direct elections to the European Parliament were introduced in 1979 that Parliament gained greater legitimacy and became more assertive, until it now has the power of co-decision on most legislation emanating from the European Union. Yet reformers do not want the second chamber to have too much legitimacy or too much power since that might threaten the primacy of the Commons.

9. The draft bill seeks to resolve this conundrum by severely qualifying the principle of direct election. It proposes for members of the second chamber:

i) An elected term of 15 years.

ii) Staggered elections.

iii) A prohibition on re-election.

iv) A prohibition on members of the new second chamber from standing for election to the Commons for at least one full term after their term in the second chamber ends.

v) Retention of an appointed element—even though in a predominantly elected chamber, any vote carried by the appointed members may come to seem as less legitimate than one carried by the elected members.

vi) A different method of election—proportional representation rather than first past the post. There are, of course, many who believe that proportional representation yields greater legitimacy than first past the post. Paul Hayter, Clerk of the Parliaments, told the Joint Committee on *Conventions of the UK Parliament*, `it can be argued that the greater the proportion of elected members the stronger the mandate. If the Lords were elected by a proportional system they might even claim a superior mandate'. [5] It is odd that the chamber to which the government is accountable will be elected by a less representative system than the chamber intended to scrutinise and revise legislation. Perhaps supporters of proportional representation will come to propose a 100 per cent elected second chamber so that they can then call for the Commons to be abolished!

10. These six provisions are intended to qualify the legitimacy of the reformed second chamber. But, at the same time, they qualify its accountability. Part of the purpose, after all, of having elections is to be able to remove representatives who prove unsatisfactory. That is not possible in the case of a representative elected for a single 15 year term who cannot stand again. In addition, the more the provisions for election to the second chamber are hedged with restrictions, the less will people of ability be willing to stand for election. Thus, although the members of

5 HL 265-II, HC 121-ii, p. 84, para. 33.

the new second chamber will claim democratic legitimacy when they confront the Commons, they will lack one important element of such legitimacy, viz. accountability.

11. Is it possible to adopt the principle of direct election and yet preserve a second chamber with the same `powers, rights and privileges' as the present House of Lords, rather than one which claims greater `powers, rights and privileges'?

12. The *Joint Committee on the Conventions of the UK Parliament* took the view that it was not possible. It stated in para. 61 of its report, `if the Lords acquired an electoral mandate, then in our view their role as a revising chamber and their relationship with the Commons, would inevitably be called into question --- should any firm proposals come forward to change the composition of the House of Lords, the convention between the houses would have to be examined again.'[6]

13. Nick Clegg, in introducing the draft bill, declared that the primacy of the Commons was assured through the Parliament Acts. But the Parliament Acts have been used very rarely. The 1911 Act was used only three times. The 1949 Act has been used only four times. In any case, the Parliament Acts do not apply to secondary legislation, on which the Lords retain an absolute veto. Despite this, the Lords hardly ever reject secondary legislation. That is because, by convention, they defer to the elected chamber.

14. The Lords have acted with restraint since 1911, not primarily because of the Parliament Acts, but because of convention. Until recently, at least, the Lords have felt bound by the Salisbury convention, which provides that they should not reject legislation foreshadowed in a government's election manifesto. Presumably, however, those elected to the new second chamber would have their own election manifestoes, and would claim a mandate based on those manifestoes. The Salisbury convention would be gravely weakened. It might well not survive.

15. An alternative rationale for the primacy of the Commons is that the government of the day enjoys the confidence of the elected chamber. But, with an elected second chamber, it is always possible that the government, while enjoying the confidence of the first chamber, might not enjoy the confidence of the second, the chamber elected by the more representative electoral system.

16. The conventions regulating the relationship between the Lords and the Commons are unlikely to survive an elected chamber. The third paragraph of the preamble to the 1911 Parliament Act recognises this in suggesting that, for a chamber constituted on a `popular' basis, new proposals would be needed `for limiting and defining the powers of the new Second Chamber'. But the government has made no such proposals for limiting and defining powers of its proposed `new Second Chamber'.

17. The reason is clear. Proposals to limit the power of the new second chamber would commit the absurdity of giving an elected chamber less power than the current unelected House. As Lord Strathclyde said on 17th May, col. 1277, 'if I were to propose that an elected Chamber should have less power than an appointed House, that would begin to look ridiculous'. Moreover, the weaker the powers, the more difficult it would be to secure people of ability prepared to stand for election. It is often said that it is difficult to secure good candidates for local government because local authorities have been denuded of so many powers. There might be the same difficulty with a directly elected second chamber which is denuded of its powers.

18. Direct election, however much the principle is qualified, is likely to make the second chamber more powerful. The upper house would become an opposing rather than a revising chamber. When the Lords earlier this year sought to hold up the Parliamentary Constituencies and Voting bill, one commentator complained that it was acting like an elected chamber.

19. The preamble to the Parliament Act was inserted largely to mollify the Foreign Secretary, Sir Edward Grey, who favoured an elected selected chamber. But the Liberals seem to have regarded the Act as a final settlement of the relationship between Lords and Commons. Lord Carrington, President of the Board of Agriculture in the Liberal government, wrote in his diary in 1911 `We have won, and the battle is firmly over. I firmly believe the House of

6 HL 265 and HC 1212, 2006.

Lords **as it exists** is safe for another 80 years. There is no real interest in the country with regard to the Reform of the Upper House'. [7] [My emphasis] That was a perceptive verdict. Certainly the Liberal government made no attempt to fulfil the intentions of the preamble. As Halevy says, the Liberals `preferred limiting the powers of the House of Lords to altering its composition'.[8] How wise they were. For governments that have sought to reopen the issue have been compelled to grapple with a question which has no answer, namely how, in a non-federal state, the electorate is to be represented in two different ways in two different chambers.

20. In 1999 a collection of essays on second chambers, entitled *Senates*, was published. In the introduction to the essays the editors declared that second chambers are `essentially contested institutions'.[9] By this they meant that few democracies were content with their second chambers, and that many were engaged `in an apparently incessant dialogue about how they should be reformed'. Amongst the range of democracies they studied, Germany appeared to them `to be almost unique in having no campaign that seeks to reform the upper house'. Germany, however, is no longer `almost unique', and there has arisen in recent years a vigorous campaign to reform the Bundesrat, the German second chamber, which, it is argued, has served to block necessary labour market and social security reforms. Indeed, one of the key proposals of the Grand Coalition, led by Angela Merkel, which ruled Germany after 2005, was to reform the Bundesrat as part of a wider reform of the German federal system.

21. The reason why so many countries are unhappy with their second chambers is that there is a problem of a very fundamental kind in creating a second chamber in a modern democracy, especially in a non-federal state. A second chamber needs to be based upon an alternative principle of representation to that embodied in the first chamber. But what is that principle to be? How can the same electorate be represented in two different ways in two different chambers? The first chamber, to which of course a government in a parliamentary state is responsible, represents the principle of individual representation. What alternative principle should the second chamber represent? In the 19th century, in a pre-democratic age, it was not too difficult to find such a principle. Many second chambers, including the House of Lords, exemplified the principle of giving special representation to the claims of heredity or the claims of the landed interest. But a rationale of this kind is of course quite unacceptable today.

22. The problem seems easier to resolve in a federal state than in a unitary state, but Britain of course is not a federal state. Even so, in most federal states, second chambers represent less the interests of territory than the interests of the political parties which are strong in a particular territory. In Australia, for example, the Senate represents less the interests of the Australian states than of the state parties. A Senator from New South Wales sees herself less as a representative of New South Wales than as a representative of the Liberal or Labour parties in New South Wales, and votes, in general, in accordance with the party whip. In almost every democratic legislature, party rather than territory predominates.

23. When the Senate in Australia is controlled by the opposition, it acts as a forum for the opposition. That was what occurred in 1975 when the Labour government introduced two appropriation bills into the Senate, which was controlled by the opposition, Liberal party. The Senate voted that the bills not be further proceeded with until the government agreed `to submit itself to the judgment of the people', exactly the same claim that the House of Lords had made in 1909 when it refused to pass Lloyd George's `People's Budget'. In Australia, a disagreement between the two chambers can be resolved, under s 57 of the Australian constitution, through a double dissolution, a weapon that is not available to a British government. But Prime Minister, Gough Whitlam refused to dissolve, and was in due course dismissed by the Governor General, precipitating a constitutional crisis whose effects continue to resonate to this day.

24. The crisis of 1975 in Australia was of course a unique event, but, since then, the Senate, which is elected by proportional representation, has often been controlled by minor parties. The former Prime Minister of Australia,

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7 Quoted in Christopher Ballinger, *An Analysis of the Reform of the House of Lords, 1911-2000*, Oxford D. Phil. Thesis 2006, p. 98.

8 Elie Halevy, *History of the English People in the Nineteenth Century*, vol. vi, Ernest Benn, 1952, p. 318.

9 Samuel C. Patterson and Anthony Mughan, eds. *Senates: Bicameralism in the Contemporary World*, Ohio State University Press, 1999, p. 338.

Malcolm Fraser, has argued that the Senate `is running the risk of making Australia ungovernable'.[10] Under the premiership of Kevin Rudd from 2007 to 2010, the Senate blocked the government's proposals for a private health insurance rebate, and three times blocked the government's carbon pollution reduction scheme. This damaged Rudd's standing with the electorate since he was criticized for backing away from a key election commitment on climate change.

25. In the United States, there is the risk of gridlock when the Presidency and Congress are controlled by different parties. In Australia, there is the risk of gridlock when the House of Representatives and the Senate are controlled by different parties. In Britain, there would be the risk of gridlock between the Commons and the Lords, and the country would become more difficult to govern.

26. In Australia, if a double dissolution does not resolve a deadlock, it can be resolved by means of a joint sitting in which the House of Representatives, as the larger of the two chambers, will normally be able to outvote the Senate. The need for similar machinery might prove even more necessary in Britain since, by contrast with Australia, the government is unable to dissolve the second chamber. But joint sittings of the two chambers, or, more likely, of delegations from the two chambers, to achieve a compromise on government legislation, might create, in effect, a third chamber of parliament. Decisions would be reached through negotiations between representatives of the two chambers in a forum remote from public scrutiny. There would be a danger of buck-passing and avoidance of clear accountability. In any case, the public would be kept at bay from the decision-making process. Therefore, paradoxically, a directly elected second chamber could prove a retrograde step from the point of view of democratic accountability by further insulating parliament from the voter.

27. The Australian example is typical of directly elected second chambers in that its Senate provides a home for a second set of professional politicians differing in hardly any respects from those sitting in the House of Representatives. Many criticize the House of Commons as being too dominated by the party whips. In a reformed second chamber, however, the constraints of party discipline might be even stronger since the constituencies will be so much larger than those of the House of Commons, and so personal contact between voter and member will be minimal. That will make it difficult for voters to ensure accountability, even apart from the fact that there is no incentive for members elected for a single fifteen year term, to make themselves accountable. There seems indeed little public demand for a second chamber composed primarily of party politicians of a similar type, but perhaps of less ability, than those who sit in the Commons.

28. In addition, a directly elected second chamber would introduce the West Lothian question into that chamber. It would be asked why Scottish elected peers should be able to vote on English laws when English peers could not vote on Scottish laws on domestic matters, since these had been devolved to the Scottish Parliament. A directly elected second chamber could, therefore, give added momentum to the centrifugal forces seeking to pull the United Kingdom apart.

29. The Lords as at present constituted evades all of these dilemmas since, not being elected, it can make no claim to be a representative chamber, and therefore can never challenge the primacy of the Commons. It can ask a government to think again, but it cannot check a determined government with a firm majority. Perhaps one should not ask for more from a second chamber than this.

30. There are, then, very good reasons why no government since 1911 has been able to fulfil the aspiration expressed in the preamble to the Parliament Act. These reasons are inherent in the logic of parliamentary government. A government seeking to tamper with that logic does so at its peril.

23 July 2011

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10 Quoted in John Uhr, `Generating Divided Government: The Australian Senate', in *Senates*, p. 100.

Rt Hon Peter Riddell—written evidence

1. The draft House of Lords Reform Bill is deeply flawed. In this submission, I will limit my comments to two main areas: first, the powers and role of the House of Lords and relations with the House of Commons; and, second, the broader reform process. Most of my comments apply whether or not the second chamber remains largely appointed, or wholly or partially elected. I will not deal with other important questions raised by the Joint Committee such as the method of election, terms and transitional arrangements. My views are based on my experience as a writer on constitutional issues (both as a political journalist for three decades until mid-2010 and as an author of a number of books about Parliament); as chairman of the Hansard Society since 2007; and, currently, as a Senior Fellow of the Institute for Government.

Role of the House of Lords and relations with the House of Commons

2. The underlying reason why several previous attempts to create a partially or wholly elected second chamber have failed has been the inability to resolve the question of the relationship between the two Houses. Members of the Commons have been reluctant to create a second chamber which, as a result of election, might see itself, and be seen, as having more democratic legitimacy and therefore become a potentially powerful rival to the Commons, and a challenger to its supremacy.

3. The Government White Paper and the draft pretend that this question does not exist. The White Paper states that: 'The Government believes that the change in composition of the second chamber ought not to change the status of that chamber as a House of Parliament or the existing constitutional relationship between the two Houses of Parliament'. It then notes approvingly how the existing conventions 'have served the relationship between the two Houses well and they represent a delicate balance which has evolved over the years'. Clause 2 (1) of the bill states that nothing in its provisions affects ' (b) the primacy of the House of Commons, or (c) otherwise affects the powers, rights, privileges and jurisdiction of either House of Parliament, or the conventions governing the relationship between the two Houses'.

4. As stated, this is nonsense. Merely stating that the current relationship and conventions are desirable and will continue does not mean that they will. The key word here is conventions. Much of the day-to-day relationship between the two Houses is governed not by statute, but by patterns of behaviour and assumptions expressed in conventions which have developed, and changed, over the past century and more.

5. The statutory limitations on the power of the House of Lords are set out in the Parliament Act of 1911, as amended by the Parliament Act of 1949. These arise out of the rejection by the Lords of the 1909 Finance Bill (giving effect to the Lloyd George Budget), in defiance of resolutions of 1671 and 1678 establishing the primacy of the House of Commons on taxation and supply. The 1911 Act removed the right of the Lords to amend money bills and limited its ability to obstruct and delay other legislation approved by the House of Commons. However, invoking the Parliament Act is a cumbersome and infrequently used procedure.

6. In practice, most of the relations between the two Houses are governed by conventions. The underlying assumption is the primacy of the House of Commons as the sole democratically elected chamber. However, the operation of the conventions has changed over the past twelve years. Since the passage of the 1999 Act removing all but 92 of the hereditary peers from the House of the Lords, members of a predominantly appointed House have been more willing to challenge, and defeat, the government of the day. Moreover, since the May 2010 election, and the creation of the Conservative/Liberal Democrat coalition, there has been considerable controversy over the application of the Salisbury –Addison convention on so-called 'manifesto' bills. Many of the measures in the two coalition agreements of May 2010 were not in both parties' manifestoes, and some in neither. I will not pursue this point here, except that it underlines the contingent and evolving nature of the conventions.

7. A wholly or largely elected second chamber would fundamentally alter the working of these conventions whatever the Government White Paper and the proposed bill say. The point was made forcefully by the Joint Committee on Conventions in their 2006 report: 'If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again'. (A revealing parallel is that when the European Parliament switched in 1979 from being an appointed to an elected chamber, its members started demanding more powers.)

8. Members of an elected chamber would feel they had a strong right to challenge the Commons, at least on non-financial legislation, since both Houses could claim democratic legitimacy. It would be no good referring to the intention to preserve existing conventions, since the new chamber would, in time, be wholly different in attitudes and approach from the old one. By definition, conventions are unenforceable and only work is there is a shared understanding and acceptance of what they mean.

9. In the absence of such agreement, there would be a risk of in-built confrontation and conflict between the two Houses, each claiming to 'seek for the people'. There would then have to be some formal adjudication or reconciliation mechanism, which would take longer than the current procedure for 'ping pong' between the two Houses. Parliament would have to consider new mechanisms like the conferences of the Senate and the House of Representatives in the USA which are created to reconcile differences between the versions of legislation adopted by each House.

10. The above analysis is not an argument for or against an elected second chamber, but, rather, a recognition that the present draft bill does not take sufficient attention of the impact that fundamental changes in composition would have on relations between the two Houses.

11. Any change in composition involving a substantial reduction in the number of distinguished outsiders appointed both as party political and crossbench peers would also affect the contribution made by the second chamber. At present, the claim of the Lords to be a revising chamber rests not only, politically, on the absence of a majority for the governing party, or now parties, thus permitting the amendment of bills, but also on the extensive expertise which enhances scrutiny of legislation and ministerial actions. The removal of many, if not most, of the peers with such expertise would weaken this aspect of the second chamber's contribution.

Broader Reform Process

12. The draft bill is the latest in a series of comprehensive reform plans to be produced by both the Labour Government and the coalition since the 1999 Act. This involves the same all or nothing, in practice nothing, strategy that has meant that immediate problems facing the House of Lords are not tackled in the search for agreement on a long-term plan. It is highly unlikely that any comprehensive reform on the lines of the draft bill can be enacted in the current Parliament, in the view of the scale of opposition not just in the Lords but also the Commons, the problems with invoking the Parliament Act, and the dangers of disrupting and losing other Government bills. There is also a strong argument that such a fundamental constitutional change in the relationship between the two Houses should be subject to a referendum. The implications are more far-reaching than the proposed change to the Alternative Vote system of electing MPs which was rejected in May 2011.

13. The Joint Committee should therefore consider an interim measure along the lines of the bill introduced a number of times by Lord Steel of Aikwood, including the end of by-elections on the death of any of the 92 hereditary peers (turning the existing ones into life peers), establishing a statutory appointments commission, and the automatic expulsion of peers sent to prison.

14. The key issue is, however, the ballooning size of the House of Lords which is creating an unwieldy chamber. The proposals so far agreed by the House for voluntary retirement by taking permanent Leave of Absence are likely to have only a tiny impact. Proposals for a moratorium on new creations risk leaving an ageing chamber

and excluding talented new members. Any interim bill should involve a compulsory retirement scheme, probably like the scheme adopted in 1999 for hereditary peers whereby each group, including the crossbenchers, elected those who should remain. This would be a total for each group proportionate to the current balance and in line with the overall reduction in the size of the Lords. This would be both more practicable and acceptable than fixing an age limit or a retrospective time limit. However, future appointments should be made for a fixed term of, say, 15 years. In time, this would reduce the number of aged members in the House.

15. More radically, short of a move to a fully or partially elected House, the Joint Committee should consider ending the connection between membership of a second chamber and honours. The 1999 Act ended the connection between the peerage and membership of the House of Lords. That could be extended with new creations, who would become ML, member of the Lords. That would not affect existing members of the Lords, or hereditary peers not among the 92, unless they chose to adopt that style. Any Prime Minister would be free to recommend to the Sovereign that the honour of peerage should be awarded to some outstanding people, who would not have the automatic right to sit in the second chamber, though some might separately be appointed as MLs. Such a change would probably end any allegations about loans for peerages and the like.

10 October 2011

MONDAY 31 OCTOBER 2011

Members Present

Lord Richard (Chairman)
Baroness Andrews
Lord Hennessy of Nympsfield
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Baroness Shephard of Northwold
Baroness Symons of Vernham Dean
Lord Trefgarne
Lord Tyler
Baroness Young of Hornsey
Ann Coffey
Oliver Heald
Tristram Hunt
Dr William McCrea
Laura Sandys
John Stevenson

Dr Meg Russell (QQ 166–195)

Examination of Witness
Dr Meg Russell [Constitution Unit, UCL]

Q166 The Chairman: Dr Russell, thank you very much for coming. We are grateful to you for giving evidence to us. I wonder before we start questions whether you would like to make a short statement on the scope of what you would like to tell us.

Dr Meg Russell: Thank you very much for inviting me. Perhaps I should say something about my background in this area. I have been working on the House of Lords and its reform for the past 13 years at the Constitution Unit at University College London. My first major intervention was a book published by Oxford University Press 11 years ago, looking at lessons from other bicameral systems for the reform of the House of Lords. That was when the Royal Commission was sitting, to which I acted as a consultant. Since then, I have done a lot of research on the House of Lords as it is now, in particular the way that it has been changed by the 1999 reform, including the impact that it has on legislation, changes in the party groups, the contribution of the Cross Benches and the way that the Chamber is viewed by people both inside and outside the House. I have surveyed Members and the public; I have studied debates, voting records and other things. Throughout that time, I have also contributed regularly to debates on reform, because it has never really been off the agenda. Most recently, I have gone back to international lessons and written two things. One was a chapter for a pamphlet by the Constitution Society, which focused largely on the compositional elements of the Government's proposals. The other was the written evidence that I submitted to you, largely on the powers aspects.
Summarising my position on the Government's proposals, I would say three things. First, if your objective is to create a largely or wholly elected House, the Government's proposals are broadly sensible. They include some very important elements such as long terms of office, non-renewability of terms, proportional representation in the second Chamber and, crucially, the inability for Members to immediately stand for the House of Commons. All those things are critical.

With respect to powers, we have been engaged in a long debate about composition of the second Chamber for the last 12 years or so. The powers of the second Chamber have been much less discussed. There, the Government has not done its homework quite so well on what international lessons teach us. If the House of Lords' composition is reformed to make it an elected Chamber and it therefore starts to make greater use of its formal powers, my written evidence to you says that it will become one of the more powerful second Chambers in parliamentary systems around the world. That is not necessarily a bad thing, but we should go into it with our eyes open.

Finally, both British history and international experience teach us that second Chamber reform is very difficult to achieve in practice. The Government's proposals are very full and very ambitious, and it will be difficult to achieve agreement on them. I am increasingly concerned that some urgent things need doing with respect to the House of Lords which continuously get left because we are waiting for the perfect package of reforms and not getting on with the urgent business.

Q167 The Chairman: What things are getting left? You said that some things were continually being left. There is a Division in the Commons. We have an eight-minute gap.

The meeting was suspended for a Division in the Commons.

The Chairman: Dr Russell, before we throw it open to the Committee for questions, could you expand a little on the international side? There are two issues that the Committee might be interested in. One is the comparison as far as powers are concerned. How does the House of Lords compare with other bicameral legislatures? Secondly, one thing that I am certainly interested in is conflict resolution if there is a row between the two Houses. How do you resolve a problem which may then arise between the two? I would be grateful if you could let us have your views on that.

Dr Meg Russell: I went into some detail on both those issues in my written evidence and I cannot promise to remember all of that detail. What I said on powers was that there are quite a number of second Chambers around the world which have absolute veto powers over all legislation and are essentially coequal with the lower House, but most of those are concentrated in presidential systems, not parliamentary ones. In presidential systems, you have a greater separation between the legislature and the Executive. The Executive do not depend in any way on the confidence of the legislature, so a powerful legislature is not such a threat to the Executive.

The House of Lords, of course, has an absolute veto on the roughly one-third of Bills which start their passage there. That puts it in an unusual category among parliamentary systems such as ours. There are only five other parliamentary systems where the upper Chamber has an absolute veto, and then only on some Bills in some cases. Among that larger group of parliamentary systems where the upper House does not have an absolute veto but something like a delay power, again the House of Lords' powers are relatively great compared to other second Chambers. In fact, it is quite common in other parliamentary systems for the second Chamber to have a delay power of only one, two or three months and even to be able to be overridden immediately by the lower House. That might seem quite shocking to us, as that is significantly less power than the second Chamber has here.

Your second point was about resolution mechanisms. I go into that in the paper to some extent as well. There are all sorts of mechanisms which exist. In some cases, a second Chamber veto requires a supermajority—a two-thirds majority, for example—in the lower House to resolve. I am not sure that that was what you were getting at. At the end of the paper I talk about the presence of Joint Committees to resolve disputes between Chambers. That is a slightly different issue from the powers, because if you have a Joint Committee which brings together Members of both Chambers to negotiate compromise, those Committees exist within the broader context of powers of the upper House. You can have a Joint Committee which negotiates, but the compromise goes back to both Chambers and the second Chamber retains a veto, or you can have a Joint Committee in a system where the second Chamber is weaker and where effectively the lower House can accept the Joint Committee's proposals and override the upper House at that point. There is a whole variety of systems, but Joint Committees are quite common. That is one of the strong things that came across from my paper.

Q168 The Chairman: Can I ask you a question on the first of those points? Is there any relationship between how long a second Chamber can delay legislation and whether it is elected, nominated or mixed?

Dr Meg Russell: Oh, dear. There were so many complications in writing this paper and so many things that you could have commented on. I flag that up in the tables on purpose. There is an early table in the paper—I think it is Table 2. I am sorry, but I think that actually you are taking me beyond the paper, because I focus only on the powers of the elected Chambers. I was quite keen to narrow down my scope in that way, but I think it is fair to say that there is a positive relationship between greater powers and greater democratic mandates. Those Chambers which are elected tend to have greater formal powers.

Q169 Lord Norton of Louth: I should like to pick up on a point you touched on but did not include in the paper which is extremely important from our point of view, because we are concerned not just with what exists elsewhere but with moving from one situation to another—transitions within an existing system. Very little research has been done on that. Do you want to expand on the point that you were making in your opening comments about the problems of moving from one system to another, or one second Chamber to another, within an existing framework?

Dr Meg Russell: One of the points that I made in my opening remarks and have made repeatedly in writing is that second Chamber reform is very difficult to achieve. All around the world, even where second Chambers are elected, they tend to be controversial institutions because they get in the way of elected lower Houses and elected Governments. It is quite common in other places for there to be reform campaigns to change the upper House; what is much less common is for those reform campaigns to succeed. So in terms of transitions, there are rather few examples to draw on. The key one that I would draw on is this House of Lords in the last 12 years since the 1999 reform, when few people would have predicted the extent to which the Chamber has become more confident and assertive in pressing its concerns on Government, simply as a result of changing from one set of unelected Members to a set of unelected Members who are arguably more legitimate. That has had quite a fundamental effect on the relations between the Chambers. That is probably the best indication that, if the Chamber is considered more democratic, it will make greater use of the powers that it has.

Q170 Lord Norton of Louth: So your point would be that there is very little empirical material that we can draw on in terms of lesson-drawing.

Dr Meg Russell: As I said, the best lessons that can be drawn are from here. International lesson-drawing is very difficult, as you know, Lord Norton, because everywhere is so different—different political cultures, different party systems, different histories and so on. It is always rather dangerous to try to import lessons from other places, but we can look back on our own recent history and see that the House of Lords feels a lot more confident and assertive than it used to when the majority of Members were hereditary.

Q171 Oliver Heald: You will be aware that in the Commons particularly there is concern about a dual mandate; that is, that a representative in the House of Lords is elected for an area by a voting system that many consider to be the main competitor with first past the post. Are there any examples you can point to internationally where what is proposed by the Government is happening and there is a second Chamber which is 80:20, which has STV for the 80 per cent, and which is regional and so on?

Dr Meg Russell: Not precisely. As I said in the paper that I sent as written evidence, there are plenty of examples around the world of mixed Chambers where there are some elected Members and some appointed Members—some of them quite close to home, in Ireland and Italy, for example. There are quite a few of those. The closest comparison for this country is the bicameral system in Australia, which, apart from the absence of appointed Members, is very like the set of proposals that the Government is making. Members there are elected notionally by STV, although in its operation it is rather more like a closed list. They represent large geographical areas. They serve two lower-House terms. Members of the lower House meanwhile are elected on a majoritarian system—it happens to be AV rather than first past the post, but the result is very similar. The Chamber is very powerful on paper and very effective in practice. Of course, the Australian system was based on the Westminster system and maintains some of our traditions and culture. So Australia is a very good place to look for an example of where we might be going.

Q172 Oliver Heald: In terms of Europe, the best example would be Italy, would it?

Dr Meg Russell: Italy in many ways is a poor example. It has a powerful second Chamber which is elected and has a sprinkling of appointed Members, but one of the points that I have made repeatedly in my writing is that, when one looks at the relations between two Chambers, it is probably more important to look at the difference in party balance between the two Chambers than at whether the upper House is elected or appointed. In Italy, you have a very powerful upper House with an electoral mandate, but there is very little tension between the two Chambers because they are elected on very similar electoral systems with very similar results. Therefore, the partisan friction is not there most of the time.

Q173 Oliver Heald: One option is indirect elections, which used to happen in Northern Ireland for the Senate. What proportion of countries has a mainly or partly indirectly elected second Chamber?
Dr Meg Russell: Those figures are in Table 1 of the paper.
Oliver Heald: That seems to show 16 directly—
Dr Meg Russell: 16 wholly directly elected, two with a mix of directly and indirectly and 11 that are largely indirectly elected and minority appointed. So, quite a lot.

Q174 Oliver Heald: And would they avoid the dual-mandate problem?
Dr Meg Russell: I am not sure what you mean by the dual-mandate problem.
Oliver Heald: You have a Member of Parliament in the House of Commons representing an area, and side-by-side there is a Member in the House of Lords representing the same area, one elected by, in this case, first past the post and the other by STV.
Dr Meg Russell: What I and most academics mean by "indirectly elected"—I have heard it used here in a slightly different way in your previous evidence sessions—is that those elected to the second Chamber are elected by another group who were themselves elected. For example, in France and Ireland you have local councillors involved in the election of second Chamber Members. So those second Chamber Members therefore do not have an electorate in the sense of the citizens. They may represent an area but if they are answerable to anybody, it is other elected members in another body. That is quite common.

Q175 Oliver Heald: In Northern Ireland, what used to happen was the result of the general election would produce one House, which would then vote for the other House in the same proportions.
Dr Meg Russell: That sounds rather like the system that still operates in the Republic of Ireland. I see David Trimble shaking his head. The Members of the Dáil, if I remember rightly, are involved along with local councillors in an electoral college that selects the majority of Members of the upper House. But, because virtually all those Members are elected on a party ticket, they become very partisan elections. I come back to my point that party balance is key to determining the relationship between the two Chambers. In Ireland, the second Chamber is rather weak in formal terms, as indicated in my paper, but it is also pretty weak in practice because the Government tends to have a majority there. That is partly because there are number of government appointees.

Q176 Oliver Heald: If we wanted to go and see a good indirectly elected Parliament or look into it more, what would be a good example?
Dr Meg Russell: When I did my international study, I am not sure that the examples of indirectly elected Chambers that I chose were particularly good ones. South Africa is quite interesting because it has some elements of the Westminster model. India, too, is quite interesting for a similar reason, but I have never visited either of those countries. Germany I count as an indirectly elected system; it is a very effective bicameral system with a highly federal upper House where the Members are chosen by members of state governments. But of course that could not be replicated here because we do not have a federal system or state governments. When it comes to the idea of implementing indirect election in this country, who would be the electors? We have a rather patchy system of sub-national government—we have a Scottish Parliament, a Welsh Assembly, a Northern Ireland Assembly and a London Assembly, but outside those areas no regional government, only local government. To my knowledge, the Scottish Parliament, the Welsh Assembly and others have not expressed any interest in electing Members of the second Chamber, and there is not a very strong rationale for them doing so.

Q177 Oliver Heald: So if you just wanted to reflect proportions in a general election, rather than House of Commons Members choosing, each of the parties could simply present a list before the general election and the proportion of the list would then be the proportion of the popular vote, which would be a closed-list system. Is that something that you have come across in any country?

Dr Meg Russell: I heard you present that model to previous witnesses. It quite nicely illustrates one of the complexities of the questions of second Chamber reform. At the end of the day there is something of a blurring of the lines between election and appointment. A system such as the one you describe, where Members of the second Chamber are chosen based on general election votes from closed lists predetermined by the parties before the election could be seen as a system of closed-list election or simply as a system of appointment. In the end, there is very little difference between the two. The singer Billy Bragg has made a proposal similar to that over the years, and I must say I have never liked it. The primary reason is that if you try to present it, as he has done, as a democratic system, an election system, and you say to people, "You are going to the ballot box today, on general election day, not only to pick a local MP but also to determine what the balance in the second Chamber should be", you are not asking them a fair question. Some people vote tactically in general elections for local reasons, but they might not necessarily want their vote to go to the same party in the second Chamber. It is very hard to deny people a second ballot paper in a situation such as that, should they wish, for example, to vote Conservative or Labour in the local constituency but they might like their votes to go to the Greens or UKIP for the second Chamber. That should be their right, I would have thought.

Oliver Heald: That has its own difficulties, obviously.

Q178 Lord Rooker: Dr Russell, can I take you back to one of the points you started with, on the issue of the Bills that start in the Lords, meaning that the Lords' powers are different, and then bring you right up front to the very point that the Chairman raised about conflict resolution? You are right, one-third of the Bills start here and they are pretty low-key. I can recall some important Bills starting here: the Climate Change Bill, Police Reform Bill of 2001 and of course the Public Bodies Bill, which is fairly controversial, started here this year. If the draft Bill we are looking at does not alter the relationship—Clause 2 says that it has to stay the same—and we end up with an either 100 per cent or 80 per cent elected second Chamber inheriting those powers but the Members do not like the arrangement, what is there, in the way that you have looked at the two Houses, to stop the Members of the second Chamber blocking every Bill from the Lower House to force the use of the Parliament Act every time and slowing down the Bills that start in this place in order to achieve a negotiated settlement with the other Chamber to reform the Parliament Act to give them the powers? Is there anything to stop them doing that? To follow up the Lord Chairman's question, are any of the countries that you have mentioned like the UK, without a written constitution? The conflict resolution is there and the Houses' Joint Committees are there, but most countries have a written constitution with a set of rules that stops the Supreme Court getting involved. In the scenario that I have raised, what is then to stop our Supreme Court getting involved in conflict resolution when we do not have a written constitution? Sorry to put it that way, but I see the two things as directly connected.

Dr Meg Russell: On the second point, I am sure that you know that we are very unusual in the world in not having a written constitution. Most countries do, and indeed that is where I researched my paper from, being able to read those constitutions in order to work out what the formal balance of powers was between the Houses. What it is in practice may be quite different, as I said in respect of Italy; if they are controlled by the same party, you can have all the powers in the world but that may not make the second Chamber a powerful one. So on your second point, we are very unusual.

On your first point, I suppose that one could ask what stops the House of Lords doing that now. This has come up in previous evidence sessions. In truth, what limits the House of Lords' de facto powers is not the Parliament Acts but convention, culture and, in particular, the views about the legitimacy of the present membership of the House of Lords, which can be thrown back in the faces of House of Lords Members every time by Members of the House of Commons claiming that the elected House must get its way. If you had an elected second Chamber, those arguments would not hold in the same way. But one of the things that I have learnt in my study of other countries, and Australia is a pertinent example here, is that the House of Lords and the Australian Senate show that it is not as simple as unelected, illegitimate and powerless on the one hand and elected, legitimate and powerful on the other. The House of Lords has gone from one unelected House to another unelected House, and has become more powerful in the process. In Australia, and the same would apply in some other countries, they

have an elected House, elected on the same universal franchise as the lower House, but the lower House still has primacy, not because the upper House cannot block Bills—it can—but largely because of legitimacy arguments. Members of the second Chamber in Australia are argued not to be as legitimate as Members of the first Chamber because they serve longer terms of office and represent enormous geographical areas. There is also a large degree of disproportionality in that representation, in that states that have very small populations have the same number of representatives as states that have large populations. Hence that classic term, used by an Australian Prime Minister, that Members of the Senate were "unrepresentative swill". Members of the lower House there do their best to argue that the primary House is the more legitimate one in Australia, despite the fact that both Chambers are elected. There are a number of things in the Government's proposals that seek to create that kind of situation—the long terms of office, the non-renewability of terms, the renewal in parts and so on—and those aspects of the proposals are very important.

Q179 The Chairman: Are they elected on the same day in Australia?
Dr Meg Russell: They are usually elected on the same day, but only half the upper House at once. They then have this unusual conflict resolution mechanism whereby if everything cannot be resolved amicably a general election is called, the entire Senate is elected on the same day as the lower House and all of them begin with a fresh mandate.

Q180 The Chairman: Has that ever happened?
Dr Meg Russell: Yes, it has happened several times—six or eight times in the last 100 years.

Q181 Baroness Andrews: You have shown in your paper how diverse and complicated other Chambers are. In the final sentence of your article, you say: "What this article has demonstrated is that a reformed House of Lords left with its existing powers, if it chose to use these more freely, would be one of the most powerful such chambers amongst parliamentary democracies. For examples of how this could change British politics reformers might look to countries such as Australia, Germany, Italy, India, Japan, Switzerland and Thailand". Is it possible to summarise what they would find?
Dr Meg Russell: Yes, that statement was a bit of a hostage to fortune: I realised that when I was writing it. I have to say that some of those systems I know very little about. I know next to nothing about Thailand. I know much less than I should do about India, Switzerland and Japan. I gave the example earlier in the paper of Japan and the extent to which there has been government instability as a result of vetoes by the second Chamber there. That is because of their peculiar resolution mechanism that requires a two-thirds lower House majority to override the upper House. It creates an enormous problem for Governments who do not have a two-thirds lower-House majority—which is the case most of the time. That is not something that I would recommend, and I do not think that it is something we are contemplating. As I mentioned, Germany has a powerful, strongly bicameral system that is also strongly federal and therefore not very comparable to ours. As I mentioned, the Italian system is not to be recommended because the two Chambers are too similar, but it is a nice illustration of the fact that you can have strong powers on paper that are not used in practice due to party balance. I have already spoken about Australia, so that is probably as much as I can I tell you. But I invite you to get people to do research on the other countries if you want to know more.

Q182 Baroness Andrews: There is one thing that I would like to know. When you have a powerful second Chamber, more similar to ours, are the powers created with the creation of that second Chamber or are they acquired? Is there an accrual of powers and greater contestability as the Chamber has evolved?
Dr Meg Russell: That is an interesting question and I am afraid that I do not really know the answer. I would say that in most cases they were created as part of a constitutional settlement. Clearly, a lot of European constitutions are post-war constitutions that set down the membership and powers of the Chambers at the same time. It is probably more common to have membership reform than to have powers reform, but I cannot be absolutely certain of that because I have not done the research.

Q183 Baroness Andrews: Is that because it is the easy option?

Dr Meg Russell: Yes, probably. Of course, we have a flexible constitution in this country. House of Lords reform is not easy by any means, as everybody around this table knows, but none the less constitutional reform is easier in this country than it is in many others, where there are all sorts of special mechanisms to change the constitution. Sometimes you can get membership reform without having to make constitutional changes, whereas powers reform requires constitutional change.

Q184 Baroness Andrews: Does that lead you to think that if the Bill were pursued, we would need to codify the conventions?
Dr Meg Russell: The formal powers are codified in the Parliament Acts. They are governed more by conventions but also by the membership of the House rather than necessarily by the Salisbury convention. That is the main constraint on the use of powers at the moment.

Q185 Lord Hennessy of Nympsfield: You mentioned more than once the difficulty of reforming second Chambers across the international picture, but particularly here. As you know better than anybody, here it seems to produce an instant combination of paralysis and anguish whenever we are faced with it. That does not quite describe this Committee, but you know what I mean. Your experience includes being a special adviser to Robin Cook when he was Leader of the House and going round the houses with him on all this. If Nick Clegg took you on one side and said, "Look, you've got a lot of background here. I am faced with a House of Lords of 870 people, or whatever it is, with 800 years of practice at creating a resistance movement. What ingredients can I drop into that dark pool of resistance that might unfreeze this and produce fluidity?", what would you tell him? Would you tell him to forget all about it because it is not that easy and simply cannot be done just like that? Or have you got a cunning plan lurking in your head that this time would give it a chance of happening?
Dr Meg Russell: One thing that I would tell him is that he is mistaken if he thinks that the House of Lords is the main block to reform. The House of Commons has been the block to reform in the past, as it was in 1968. It is too easy to think that the people who are going to stand in the way of this reform happening are Members of the upper House rather than Members of the lower House. There is also public opinion, which is terribly split and complicated on these issues. You might want to ask me about that, although I have written about it and you have probably seen what I said.
My advice would be that, as I have already said, international experience and history teach us that big bang reform does not happen. Reforms that have happened in this country in the last 100 years are small, piecemeal reforms that have dealt with the most obvious, urgent questions on which the broadest consensus can be gathered. There are good reasons for proceeding in a gradualist fashion. One is the purely pragmatic argument about big bang reform: the bigger the package, the more things there are in the package for people to oppose, and the more ways in which it can be unravelled in amendments and so on. Also, the bigger the change the more unpredictable the result. As I said, the change to the House of Lords in 1999 had a bigger effect than perhaps we might have predicted. My advice would be to proceed in small steps, one at a time, and to stop and look at the effects of each reform as it happens—for pragmatic and also serious political reasons.

Q186 Lord Hennessy of Nympsfield: Give us the first steps, please.
Dr Meg Russell: There are a number of urgent things that need doing with the House of Lords. The most obvious problem is that the Prime Minister formally retains absolute patronage powers over the Chamber in terms of how many people enter, when they enter and what the party balance is between them. That is quite indefensible in the modern age. The size of the Chamber is also a major problem; it is in danger of spiralling out of control. Those things are problems for how the House of Lords functions and for its relationship with the House of Commons, but they are also problems for the image of the House of Lords and therefore for the image of the British Parliament as a whole. I do not think that unlimited patronage powers and an ever-growing membership do either Chamber of Parliament any good.

Q187 Baroness Symons of Vernham Dean: When you mentioned the urgent things in your opening statement, I thought you were going to expand into some of the issues covered by the Steel Bill. One of the arguments we have had around the Table is exactly the one you cited at the beginning—that there is a worry that by making

some reforms you put off the big reform. What are your thoughts on the Steel Bill and the issues dealt with there? They cover in part some of the things you have just mentioned but they go a little further than that.

Dr Meg Russell: My immediate proposals would be slightly different from the proposals in the Steel Bill. I would like to see a cap on the membership of the House with no appointments being made until vacancies occur beneath that cap. Appointments could be regularised to maybe once every year or once every couple of years to fill a batch of vacancies. It should be quite clear how the division is made between the parties. The most defensible division among a batch of appointments is to say that 20 per cent will be independent and the rest will be between the parties on the balance of general election vote shares at the last election. One of the problems with the system that we have at the moment is that the coalition has this commitment to make the balance in the House proportional to general election vote shares at the last election. As I have shown in another paper, *House Full*, that is completely impossible. You need to have 350 more appointments to achieve the 2010 balance. You will probably get there, with a House of 1,200 Members, just in time for the next general election, when it will need to change again. So balance is needed among each batch of appointees. Then there are other things such as introducing retirements, breaking the link with the peerage and perhaps even, after all that has happened, introducing a first batch of elected Members. But there are plenty of things you can do before that which are in line with the Government's proposals, perhaps even introducing fixed terms for appointments. I am sorry; I think I may have strayed a bit from your question.

One of the things that I have been saying repeatedly for years ad nauseam is that some of the things that need doing to the House of Lords in my view can be done without any Bill at all. The Appointments Commission, which I think most people accept is doing a reasonably good and professional job of picking independent Members, is, of course, completely non-statutory. The Prime Minister could give more of his patronage powers to the Appointments Commission at any point simply by writing it a letter.

Q188 Baroness Symons of Vernham Dean: Can I take you back to the point that the Lord Chairman made at the beginning—again, some of my colleagues have picked this up—about resolution procedures when two Houses are in disagreement? In your very interesting table one cannot help noticing that a lot of these are fairly new democracies. Can I ask you about the United States, which I suppose is the one that most of us would recognise as being the most formalised and in some senses most powerful? Can you give us any indication of how many times that formal reconciliation procedure is invoked? Obviously, I do not know whether it is twice a year or whether it is in constant session, trying to regulate between the two Houses in the United States. What happens when they do not finally reach agreement? How does that get resolved?

Dr Meg Russell: First, I have to apologise, because I am no expert at all on the United States, but I am sure that that information will be readily available.

Q189 Baroness Symons of Vernham Dean: It is the one that captures most people's imagination and possibly makes people most anxious about what we are talking about because a lot of our colleagues are extremely worried about the whole idea of a very powerful Senate.

Dr Meg Russell: As I said before, there are two things. There is the existence of a Joint Committee and then there is the framework of powers within which that Joint Committee exists and you cannot separate the two entirely. Clearly, in the United States, they have a Joint Committee mechanism, but at the end of the day nothing will pass unless it has been approved in identical terms by the House of Representatives and the Senate. In some other systems you have a Joint Committee which makes recommendations. For example, in France, as I say in the paper, there is very little incentive—again, not a system that I would recommend—for Members of the lower House to compromise because if the Joint Committee fails to reach agreement, the lower House can just pass the Bill on its own. So, it is not just a case of the presence of the Joint Committee; it is the framework of powers within which it operates.

I think that Professor Bogdanor raised a fair point when he gave evidence to you last week about one of the problems with these Joint Committee mechanisms. In many ways they are very sensible and pragmatic in that they take things off the Floor of the House and get people round a table where they can have a conversation, but in some places—I think the US is one of them—those Committees get accused of being a third Chamber of Parliament and, of course, it is a less transparent way of reaching agreement. I have to go through *Hansard* and

try to understand what is going on when there is ping-pong. It is not an easy business but at least it is on the record. When you have a smaller group of people behind the scenes doing the fix, it is arguably less accountable and less transparent. That is the downside to that kind of arrangement, although it has practical advantages.

Q190 Baroness Symons of Vernham Dean: They can compromise, though. They do not have to go all with one House or all with the other House. It is a bit like ping-pong where we can try to find a middle ground as we go through it.

Dr Meg Russell: As I say in the paper, the devil is in the detail of how these Joint Committee systems work. They vary quite a lot. For example, in some systems they can come to any deal they want on the entire Bill, which means that where there has been a disagreement on the Floor, they can trade with something in a different part of the Bill. In other systems, they are confined to dealing only with the clauses where there is disagreement. You can design a system to suit your purposes. You could have a Committee inquiry entirely on the pros and cons of different Joint Committee arrangements.

Q191 Ann Coffey: Initially, you said that there was part of this Bill that you thought was quite positive and quite good. Bearing in mind that we are looking at the draft Bill, what do you think needs to be done to it that has not been particularly well thought out, or needs to be added to make its objective work? Secondly, I was going to ask you about your unanswered question on public opinion. What do you think the public consider as being involved in reform of the House of Lords?

Dr Meg Russell: I will have to remember to come to that at the end because they are two quite separate questions.

Q192 Ann Coffey: That is why I thought I would get them in both at once. The third question is: do you think that the powers that each House has should be put into some sort of statute? Do you think that would be the start of a written constitution and that that might also meet with some resistance from the Commons?

Dr Meg Russell: I am sorry, I think that I may have overlooked that question when somebody asked it earlier. In terms of what is right and wrong with the Government's proposals, I have indicated some things that I think are right in terms of composition. Some of those things are quite controversial, which is why I am saying it is important that you know that people who have thought long and hard about these kinds of things think that they are right; for example, long terms of office, non-renewable, a chamber renewed in part, that members cannot stand for the House of Commons for a long time.

In terms of what is wrong with the Government's proposals, I think there are various levels at which you can approach that question. One thing which we have already gone into and has come out strongly in previous evidence sessions is that I think they are not being realistic about the extent to which changing the composition of the House will alter the balance between the two Chambers and encourage it to make greater use of its powers. Clause 2 of the Bill is a fiction; it is pretty meaningless. That is one thing. In terms of composition, where I think they have broadly got it right, I have a few concerns. In line with Lord Tyler, I am a bit concerned that 300 would not be an adequate number to do the work of the House as now. It is questionable whether you want all Members to be full time. I am a bit concerned that the four-year quarantine period—as some people have called it—before standing for the House of Commons is not long enough. The Royal Commission proposed 10 years. In the paper that I wrote for the Constitution Society, which I see some of you have in front of you, I gave some horror stories from Canada of people who have hopped between the two Chambers. There are similar horror stories in Ireland. In thinking about—

Q193 Lord Trefgarne: Why is that a horror story?

Dr Meg Russell: In Ireland the Second Chamber has become a launch pad for political careers for ambitious young politicians who try to make a name before—

Lord Trefgarne: Senate.

Dr Meg Russell: The term "senate" is what most Second Chambers are called. Whether they are called "Senate" or not, this is part of the thinking with respect to Second Chambers in most countries of the world. The name comes from the term "age" or "wisdom". I think that the benefit of most Second Chambers is that they have a more mature, reflective, longer-term approach.

Lord Trefgarne: Thank you very much.

Dr Meg Russell: It also weakens the integrity of the two separate Houses if people are jumping between them. One thing that happens in Ireland is that people will be in the Senate and they will at the same time be nursing a constituency in the lower House in order to prepare to run for lower House election afterwards. With the four years, if you think about the fact that political parties pick their candidates often several years before the forthcoming general election, you could potentially be an upper House Member nursing a constituency in your region. This is what happens in Australia and it is rather similar to what happens in Scotland and Wales with the list members, who tend to focus their attentions on marginal seats within their region. They go for publicity, set up offices and get coverage in the local press in order to benefit their party—it is not necessarily because they are going to run; it may be that somebody else from their party is going to run. If they spend a term doing that and then stand down from the upper House and can be selected a year later for the next general election, I do not think that is healthy. I am sorry, I am digressing rather.

You have touched on the membership issues and what could be improved in previous evidence sessions. I am concerned that the power of the Prime Minister to appoint Ministers directly to the reformed House is ill defined. Despite what Mark Harper said when he spoke to you, all the good intentions may be there but if the numbers are tight between the parties in the upper House, any Prime Minister is going to be very tempted to use that power to stack the numbers for his party. That is a worry to me.

I am not sure that the transition is carefully enough thought through. I was very concerned by the scenario that Lord Trimble gave when you questioned the Minister about the possibility of the active House becoming bigger in the short term rather than smaller. I am not sure that the Government have thought that through. More generally, as I have already said, the package of reforms is very ambitious and it might be more sensible to go for a step-by-step reform.

On your question on public opinion and what the public want, this is very complicated. Peter Riddell said this to you when he gave evidence. There was a very interesting *Times* poll—I suspect he wrote the question—several years ago where members of the public were asked whether they wanted a largely appointed second Chamber in order to maintain independence from the parties et cetera. Two-thirds of people say yes, they want that. You then ask them whether they want a largely elected Second Chamber in order to have democratic legitimacy and, within five minutes, two-thirds of the same people say yes. So I think that the public are very split on this because it is a complicated question.

One of the tricky issues facing you is that there is a good pragmatic reason for not tinkering with the powers of the House of Lords in this reform, because, as I said, the bigger the reform gets, the more difficult it is to agree. But also, the idea of changing the composition without changing the powers worries a lot of people. I do not agree with what Vernon Bogdanor said when he spoke to you, that you cannot make it at once more democratic and weaker in formal terms. I do not think that there is a contradiction there. I think that you could reduce the powers to a blanket delay of six months or a year on everything; I think that the powers are rather messy at the moment. The question would be political, which is: are the public prepared to see a weakening of the powers of Parliament in exchange for the introduction of elected Members? I am not sure that they are, because they have complex views on this issue. I think that I have answered your question about powers.

The Chairman: I have two people left on the list and we are way out of time. If there is an overriding necessity for Lady Scott and Mr Hunt to ask their questions, we will have them, but two minutes each.

Q194 Baroness Scott of Needham Market: I have a quick question about hybridity. With your experience of the Lords, how do you think a hybrid House would work in practical terms? Do you think that those appointed Members and Bishops would be seen as lesser mortals in a reformed House?

Dr Meg Russell: This is another interesting question which I have heard at previous sessions. At one level, who knows? A lot of this is utterly unpredictable. A lot of it has to do with particular events that might happen, and particular storms that might blow up in the media or between the parties. But I do not see any necessity for there to be a problem of the appointed Members being held up to be less legitimate. You might have expected that, in the last 12 years, we would have heard a lot about how the hereditary Peers have been the ones to swing the balance of votes. I have heard nothing about that, and I watch the House of Lords quite closely. On top of which, I am not sure—again because public opinion is complex and conflicted—that members of the public would necessarily disagree with the appointed Members being the arbiters. Legitimacy comes with election, but legitimacy can come also with being an independent expert. One of the things which people value, and the polls

show this, with the current House of Lords is the presence of independents and the presence of experts. I am not sure, in an argument between the elected partisans and the appointed independent experts, who the public would think was the more legitimate. It is quite unpredictable.

Q195 Tristram Hunt: Dr Russell, you have mentioned culture shift, how the interrelationship between the Houses is closely related to culture and the fact that the Parliament Act is not called upon except as a last resort. Do you think that the Government's policy takes any account of the change in the culture of politics which we are seeing on both sides of the Atlantic, whereby that journey towards consensus is no longer there because of the nature of political parties and the growing antagonism between them—leaving aside the coalition? The American model, based on gentlemen in the late 18th century agreeing things, is not there in a modern political system. The British model, of gentlemen in the mid-20th century agreeing things and playing by the rules, will not necessarily be there in a future model. So this nice notion from the Minister of everyone stepping back and taking a deep breath is politics moving in a different direction from where the legislative framework for the interrelationship between the Houses might be.

Dr Meg Russell: I have said over and over again that the key thing is party balance. In most, if not all, developed democracies that have bicameral systems, it is that which fundamentally determines the relationship between the two Houses. Does the Government have the numbers in the upper House? These are the terms in which they talk in places such as Australia and Japan. When it comes down to it, it is a battle between parties. In terms of the way that politics is moving, and connected to the previous point—this may seem an absurd thing to say—there is a way in which the House of Lords could be viewed as curiously modern, because in the drift in politics in recent years we have seen an effort to get things out of the hands of elected politicians and into those of independent experts. I have said in the past that one of the big things that hold the House of Lords back—a lot of people would think that this was trivial—is the wearing of ermine and robes at the Queen's Speech. If you were to do away with that, this place would seem peculiarly modern in some respects.

The Chairman: Thank you very much indeed. That was a fascinating piece of evidence. We are very grateful to you.

Dr Meg Russell: Thank you for inviting me. I am sorry for taking up so much of your time.

The Chairman: I think that you underestimate the value of the smoke-filled room when it comes to ping-pong, if I may say so. But thank you very much; it has been very helpful. We have learnt a lot.

Dr Alan Renwick (QQ 196–221)

Examination of Witness
Dr Alan Renwick [Reading University].

Q196 The Chairman: Alan Renwick, thank you very much for coming. We are most grateful to you. I wonder before we start the questioning whether you would like to set out some of the major issues as you see them. I know that you have written a paper, which has been very helpful and very useful. We have also read your long paper.

Dr Alan Renwick: Yes, there is the short four-page paper that I have submitted as evidence for the Committee and then the rather mammoth, not very brief briefing paper that I wrote for the Political Studies Association, which I have here and which I think the active creatures at the Association have circulated to all members of the Committee. The evidence for the claims that I make in the short paper is, I hope, all to be found in the original Political Studies Association paper. I want to highlight four issues that I raised in the short paper that I submitted for evidence: Commons primacy; the effects of the reforms upon expertise, experience and independence within the House; the effects of having a full-time salaried Chamber; and the issue of accountability in the proposed second Chamber.

A lot of passionate but rather inaccurate statements have been made on the subject of Commons primacy. The proposed second Chamber would certainly—or almost certainly; as close to certainly as we can be—be more powerful than the current second Chamber by virtue of the greater democratic legitimacy that it would have, but it also seems pretty clear to me that the primacy of the House of Commons would be maintained for two reasons. First, the Parliament Acts would remain in place, so that ultimate stop on the power of the second Chamber would remain. Secondly, conventional constraints would also remain, for several reasons. The first of those reasons is that the focus of politics would remain on the House of Commons. It would still be where the Government was based, the exciting set pieces of politics would still take place there and elections would still primarily be about choosing who was in the Commons, so the whole focus of politics would remain there. Even if we had two fully elected Chambers, equal in their legitimacy, the focus of British politics and of the British political culture, in which the notion is very deeply entrenched that the Government with a majority in the House of Commons for the most part should get its way, would survive. The conventional constraints would also exist because, as we all know, various limits are created in the proposals on the legitimacy of the proposed second Chamber in the shape of the long, non-renewable, staggered terms and because of the appointed element.

It would also be in the interests of at least the two main parties to maintain some kind of convention similar to, but probably a bit weaker than, the current Salisbury convention. Neither the Conservative nor the Labour Party wants to have a strong second Chamber, even when it is in Opposition, because it wants to get into power after the next election and having a strong second Chamber would run against that. Clearly there would be short-term temptations but the general trend would be in favour of the two main parties wanting to maintain some form of constraint.

The final reason for thinking that convention would still remain to some degree is the evidence from Australia that Meg Russell has already mentioned. The Australian House of Representatives retains primacy over the Senate, despite the fact that in some ways the Senate is more powerful than the proposed second Chamber in the UK would be.

So primacy would be maintained. The House of Lords would almost certainly be more powerful than at present, and there is a debate about whether or not that would be desirable. If you simply want a technocratic reforming Chamber, that would probably not be desirable. If you think that there should be rather more friction in our governing processes than there is at present and the capacity of the second Chamber to make the Government's life a bit difficult should be increased, then it strikes me that the proposed solution is a good one. I happen to take the second view. Having majority Governments elected on 35 per cent of the vote then able to do largely what they want is not a terribly desirable way of running a democracy.

You will be relieved to know that the three remaining points are rather briefer than the first one. That was all on Commons primacy. With regard to the effects of the proposals on expertise in the second Chamber, again, a lot of concern has been expressed that expertise would be lost in the second Chamber. It strikes me that the

proposals would not clearly have that effect. One point is that the appointed element would remain. A second point is that the STV electoral system is the best proportional system for allowing some independents to be elected and I would be very surprised, given the fact that British voters like having independents in the second Chamber, if no independents were elected under the proposed system. Thirdly, much of the expertise comes from former MPs. I noticed in their evidence to this Committee that Simon Hix and Iain MacLean produced the figure that 199 of the current Members of the House of Lords are former MPs—around one-quarter of the total membership and of course rather a larger proportion of the active membership. I do not quite see why it would not be the case that many of those people would stand for one further election in order then to sit in the second Chamber for a period of 15 years.

The biggest problem comes with whether the partisan, non-professional politicians would want to stand for election. There is a danger of loss here, but we should not extrapolate too quickly from the sorts of elections that we are used to to the sort of election that we would have for the proposed second Chamber and presume that the sorts of people who do not currently want to stand in elections as we have them would not stand in these elections. To stand for election for a Chamber where you will not be involved in a life of constantly seeking re-election and playing party politics, and where in order to stand you do not really have to cultivate a local constituency, is a very different thing from standing in the elections that we have. Many people who want to play a part in debating the legislation of the country would be interested in standing for this Chamber, even if they loathe the thought of standing in our current Commons elections.

The third point is the effect of having a full-time salaried Chamber, which has not been talked about much in the debate at all. I have been glad to see that some Members of the Committee seem concerned about this. That is far more likely to change and limit the sort of people who might seek membership of the second Chamber than the proposed changes in composition. Are the MPs who go into semi-retirement, and who give much service to the Lords at present, really going to want to commit to 15 years full-time? Many would not. Similarly, why on earth would we want our outside experts to give full-time service for 15 years? If we want them to retain their expertise, it is desirable that they should retain their outside activities. I suggested in the paper that we should consider some kind of system based on payment for turning up each day rather than a full-time salary.

On accountability, the proposed system creates no accountability mechanisms for any of the Members. This has benefits in terms of freeing people from the Whip and from the need to seek re-election. As I have suggested, that is likely to have effects on the sorts of people who might run, but clearly it also has disadvantages. At the extremes, we might imagine a situation where some people never show up and, under the proposals, take their pay cheque at the end of each month—and that is all there is to it. On balance, I agree with what Meg Russell just said, that non-renewable terms are a good idea, but you could introduce some element of accountability by saying that there are some circumstances in which Members would perhaps, after five or 10 years, have to seek re-election in order to serve out the remainder of their term, such as if they failed to turn up more than some minimal level, which would need to be decided; if they were found guilty of misdemeanours; perhaps if they switched party; or perhaps if they were subject to a recall petition. The particular circumstances would need to be decided, but that would provide a kind of stop against the worst abuses that could arise from a lack of accountability without removing the overall pattern whereby the gains to be had from non-renewable terms are achieved.

Q197 Baroness Young of Hornsey: I have two slightly different questions. The first is that a number of witnesses—I think it would be fair to say most witnesses so far—have cast doubt on the viability of Clause 2 regarding the exercise of power and a potential change of relationships. I wonder what you thought about that and whether you think that the powers of elected Lords would be increased incrementally, and if so whether you think that at some point that would have to be codified or whether you think it would need to be embedded in the Bill right now. The second question is about what you have just been talking about—the minimum service requirements that you referred to in your paper as a way of mitigating some of the negative effects of lack of accountability. Would you envisage these applying right across the board to elected and appointed Members and, indeed, to Bishops, were we to take that route in the 80:20 split?

Dr Alan Renwick: Regarding Clause 2 of the Bill, it is clearly the case that changing the composition of the second Chamber would change the nature of the conventions over time. Clause 2 is a fine aspiration but I do not think it has any real meaning. I would not favour stating or enshrining in statute something like the Salisbury

convention. It is desirable to have some flexibility there. It would be sensible preferably for a resolution of both Houses to agree a statement, essentially affirming something like the Salisbury convention. The Australian Senate equivalent of *Erskine May* has a statement that the Senate should be careful in using its powers and might have regard to things such as whether a measure was contained in the Government's manifesto before deciding how to use those powers. I think it would be sensible to have something like that written down.
With regard to the minimum service requirements, yes, I think those would sensibly apply to the appointed Members as well as to the elected Members. If you had some sort of reference-back mechanism, you could have reference back to the Appointments Commission after five or 10 years to see whether, despite low attendance, they think that nevertheless it would be desirable to keep this person. There may be good reasons for low attendance for a period.
With regard to the Bishops, obviously my preference would be to get rid of them.

Q198 Lord Hennessy of Nympsfield: Why obviously?
Dr Alan Renwick: Well, to have guaranteed representation for one denomination of one religious faith that covers only part of the United Kingdom is wholly indefensible. It may be a prudent short-term expedient, but I cannot see there is any other justification for it than that. I recognise that if the Bishops are retained within the House, they have a different sort of role from other Members. Under the proposals, they would not receive any form of salary, for example. I do not have a strong view on whether they should be subject to the minimum service requirements that I am suggesting.

Q199 Laura Sandys: I am really interested in the functioning of the overall Parliament—both Chambers together. There are many issues. We talk very much about the ability of the second Chamber to stop primary legislation. It is very much the top-line powers that we talk about. Any increase in those top-line powers would not necessarily be coming from the Commons, would they? They would be coming from the Executive, and would in many ways enhance the overall power of Parliament rather than diminish it. One other point that I was hoping to ask Dr Russell as well is whether we can see an enhanced Parliament with one of the Chambers being more effective in looking at, say, the secondary legislative sanctions or the scrutiny sanctions? We only ever talk about the Parliament Act and the Salisbury convention, as if those were the only powers and exercise of parliamentary activism that we have. I do not know whether anybody has done work on showing where a Second Chamber could maintain its secondariness, but expand its capacity to cover other areas of potential parliamentary work.
Dr Alan Renwick: Yes, I think those are all extremely good points. With regard to enhancing the power of Parliament as a whole, I completely agree with you that the power would move from the Executive rather than from the House of Commons, as such. The House of Commons has increasingly, particularly since the 2010 election, used its powers more effectively than it had in the past. I would have thought that it would be perfectly possible for Members of the Commons to act in concert with Members of a Second Chamber in doing that.
I think Lord Tyler has used the terms "zero sum" and "positive sum" in past sessions. This is most certainly a positive sum scenario, where the power of Parliament as a whole can be increased. Yes, I completely agree also that there are things that the Second Chamber can do well that the first Chamber is always going to struggle to do. The second Chamber would be expected to find it easier to take a long-term perspective on issues and might be able to pursue inquiries looking at the long term. I see no reason why the second Chamber, as proposed, would not be able to retain the sorts of areas of expertise that it has at present, for example with regard to the EU. A number of Members could be appointed to pursue that purpose and Members who are elected who do not have the burdens of constituency work could focus on particular areas. So I absolutely think that there is scope for that.

Q200 Lord Tyler: You have, I think almost uniquely, made a study of the full-time Parliamentarian suggestion in the White Paper and the Bill. Very few other witnesses have even referred to it, but you have looked at it in some detail. Can I tease out whether you think a larger House, increased from the 300 suggested to, say, 400—which I think is what most previous studies have suggested, and 400-plus in some cases—would enable at least some of the Members, whether elected or part time, not to be full-time Parliamentarians, but to keep their feet still in the real world? Do you think this would be an advantage?

Dr Alan Renwick: Yes. If you have a full-time Chamber, then 300 is a sensible number. If you have some expectation that some Members will serve more part-time, then increasing the number to something like 400 or 450 makes a lot of sense.

Q201 Lord Tyler: To take your analysis a step further, do you think that would be more popular? Do you think there is a great steam behind having full-time parliamentarians at both ends of the building?
Dr Alan Renwick: In public opinion, I do not think most people think for two minutes about the House of Lords, I am afraid. The issue is not what people would make of that suggestion now; the issue is what would be the reputation of such a House, were it to be created, and would the reputation of a House containing part-time Members with outside expertise be likely to be greater than that of a House containing solely full-time Members? We cannot know, of course, but it seems plausible to me to think that the reputation would be greater. Meg Russell mentioned the evidence earlier on. We know that people like having independent voices in the Chamber. It seems plausible to suppose that that would translate into greater support for a Chamber that made it easier for such people to serve effectively.

Q202 Lord Tyler: And I want to go just one step further. You have looked at different electoral systems. Would you also accept that 400 or 450, whether 100 per cent or 80 per cent elected, enables you to have sizeable multi-Member constituencies where there is a better chance of getting gender balance, diversity and indeed even better party representation? I think if we were having only 80 elected in each tranche, there would only be four Members elected from Wales, for example, which clearly would be likely to lead to a very disproportionate system.
Dr Alan Renwick: Yes, it is normally said that, with single transferable vote systems, you need a constituency electing about five Members in order to have decent proportional representation. Once you go above more than about seven Members, you start to have problems with having so many names on the ballot paper that it becomes quite difficult for voters to get a handle on the choice that they are being presented with. The Bill proposes constituencies containing between five and seven Members, so it is in the right range. That sort of size, five to seven, would provide as good a balance in terms of gender at least as you are likely to get with a larger constituency. Whether you get adequate representation of ethnic minorities in constituencies of that size would be more problematic.

Q203 Lord Tyler: But if only 80 Members are elected in each tranche, that is almost identical to the number of Members elected to the European Parliament, which I think many people do not feel is sufficiently representative.
Dr Alan Renwick: Well, it is a different electoral system, of course. The European Parliament has a closed-list electoral system and, frankly, no one has a clue as to who the people are on the list. So the parties do not have much incentive to provide a decent balance of people on their lists. If you had a single transferable vote system or an open list system, more attention would be paid to who was on the list.

Q204 Lord Trefgarne: Is it not inevitable that if the Bill that we are now considering eventually reaches the statute book more or less as is proposed the new House will use its existing powers much more frequently right up to the limit, campaign for more powers if it can get them, and challenge the various traditions that there are? In that circumstance, will the Parliament Act be a sufficient protection to the House of Commons?
Dr Alan Renwick: I do not see any reason to expect that they will try to use their powers up to the limit, because I do not think that it would be in their interests to do so. Given our strong attachment in the UK to the notion of majority government founded in the House of Commons, I think that politicians who pushed too far, too frequently, in the second Chamber would be criticised for it and suffer reputational damage in consequence. As I said in my opening remarks, at least the two main parties do not have an incentive to do that. You can see, for example, that the Conservative Party maintained its firm support for first past the post throughout the years after 1997 despite the fact that, for the foreseeable future, a more proportional system would have been to its advantage. It did not move remotely in the direction of considering first past the post, partly for principled reasons but also because it wanted to get back majority power. It wanted to play politics in terms of winning majority power and governing as the sole party in power. I see every reason to think that the same would apply to

the second Chamber, just as that is one of the factors leading to constraint in the Australian Senate. It is not just speculation on my part; this is one factor that constrain the Australian Senate.

Q205 Lord Trefgarne: Mr Harper appeared to say that he thought that the Parliament Act would need to be used more regularly.
Dr Alan Renwick: I am sure that that is right. I am sure that the House of Lords would use its power more than it does at present and would sometimes take things all the way to the Parliament Act, but I do not think that we need imagine a scenario in which the second Chamber leads to paralysis in government. Politicians in the second Chamber and ultimately the leaders of the opposition parties in the Commons would suffer if they were to impose paralysis in that way. They would draw back from taking that too far. Life would get tougher for the Government—that is clear—but it would not become impossible.

Q206 Baroness Andrews: As we have heard from Meg Russell, we have a very powerful second Chamber here. We do not use our powers. If we had been an elected House when the AV Bill or the fixed-term Parliaments Bill was before us, there would have been many incentives for this House to use its powers, because we genuinely believed that those Bills were misguided and constitutionally dangerous. I am not persuaded by your assertion that a lot of politicians, elected on a different basis for a different period of time, would have any reason for limiting their powers when it came to those sorts of issue.
Dr Alan Renwick: Yes, those might well be issues where the second Chamber would insist. I am not suggesting for a moment that the powers of the second Chamber would not be greater. I am sure that either the Parliament Act would need to be invoked more often or the Government would have to back down more often. We have extraordinary concentration of power in the UK. We have most of the time single-party-majority Governments; we do not have federalism; we do not have a particularly strong system of courts; we do not have a written constitution. In most countries, all these things constrain the Government. I do not think that we should be worried by that sort of activism from the second Chamber.

Q207 Baroness Andrews: If I may pursue that. We have already had the beginnings of a discussion about what needs reforming and whether it should be Parliament as a whole as opposed to the House of Lords. I am not quite sure whether you agree with the Government that a reformed House of Lords would be a revising Chamber or whether you see it as an opposing Chamber. Either way, it seems to me that the two caveats that you included, which relate to the inability of the new House to hold the Government to account and the length of term, are such major contradictions that I cannot see that they would serve well either a revising House or an opposing House.
Dr Alan Renwick: What was the contradiction?
Baroness Andrews: The first contradiction that you pointed out was that the new House would not be accountable, because of the length of term. The other was that a full-time salaried Chamber would discourage the best candidates. Those two seem to be absolutely essential requirements for an efficient House, whether it is an opposing or a revising Chamber.
Dr Alan Renwick: That is true. I am not here in order to support the Government's proposals. I think that they need those changes in order to become desirable. You used the dichotomy that Vernon Bogdanor has used several times, including last week, between a revising Chamber and an opposing Chamber, which strikes me as being false. There is great variation in what a revising role might be. At one limit, you can have a second Chamber that merely tidies things up and finds mistakes in the legislation that the first Chamber has been far too busy to notice, so there is simply that technocratic role, or you can have a Chamber that has a delaying function and is able to say to the House of Commons and the Executive based there, "Hang on. Think again. Think further. Consider further perspectives. Persuade us more that this is really a desirable course to pursue". That further aspect of what might be called a revising Chamber—I would call it a delaying power—has been contained in proposals for House of Lords reform all the way back to the Bryce commission in 1918.

Q208 Baroness Andrews: But that is what we have; that is exactly what we do.
Dr Alan Renwick: Absolutely. It has always been accepted that the House of Lords should provide some grit in the process of government. It strikes me that it would be desirable to have a bit more grit in the process of

government. It is not an issue of principle on which we are disagreeing; it is a matter of how much grit there should be. It seems to me that, given our very centralised system of power, a little more grit might be a good thing.

Q209 John Stevenson: Referring to your long paper rather than your short paper, I shall pick up on three specific points. First, do you think there should be a minimum age for representation in the second Chamber, or is that just something that we should ignore? Secondly, should the number of ministerial appointments be limited? Should people who are elected or appointed be allowed to become a Minister? And should Ministers have a vote on legislation? Thirdly, picking up some of your earlier comments, do you think a 15-year term is correct or do you think it should be shorter, and somewhere in the region of maybe 10 years?
Dr Alan Renwick: On the age limit, there is of course an age limit of 18 in the proposals. I do not see any reason for going above that. It is quite unusual in international comparison. Most second Chambers have a higher age threshold, but given the—

Q210 John Stevenson: I was thinking of the argument that if you had an older age, it might attract somebody who has already had a career and is maybe in later life looking to do something different.
Dr Alan Renwick: Sure, I would certainly welcome such people into the Chamber, but equally I would not exclude people of a very young age. I think it would send out the wrong signals at a time when it is very difficult to get young people engaged in politics to impose a higher limit. Vanishingly few such people would be elected anyway, so the symbolic effect of having a higher age limit is the most important factor to take into account there.
With regard to Ministers in the House of Lords, you asked a number of questions. I do not have a problem with elected Members or those appointed through the Appointments Commission serving as Ministers. I guess the concern might be that you get people wanting to pursue a political career in government entering the second Chamber, whereas the desire is to have people who want to participate in the process of scrutiny in the second Chamber. Given the non-renewable term and the quarantine period following, it would not be an optimal way to pursue a ministerial career to go into the second Chamber as I propose. So I do not think that is a very big danger. The merit of having a presence for the Government and people who can take the views of the second Chamber to the Government and vice versa is quite significant. It is often talked about in Australia, where they have had a lot of debate about this issue.
I think there is a problem in the draft Bill with the proposals for the Prime Minister to be able to appoint Ministers. There should be either a cap on the number or a restriction such that these people cannot vote in the Chamber. Previous suggestions to have ministerial appointments have tended to favour a cap. For example, the *Breaking the Deadlock* document that Lord Tyler produced, with others, in 2005 proposed, if I remember, four such appointees per Parliament. Something like four or five serving at any one time would seem like a sensible limitation. There are currently more than 20 Ministers in the House of Lords. If all of those were people who had been appointed by the Prime Minister, that makes a material difference to the overall composition of the Chamber. That strikes me as undesirable.

Q211 The Chairman: I am sorry, I do not follow that. The 20 Ministers in the Lords at the moment include the government Whips, and they are appointed by the Prime Minister.
Dr Alan Renwick: Sure, but I am talking about whether these should be people who are appointed by the Prime Minister to the House of Lords in order to take up their posts within the second Chamber, or whether they should be elected Members of the second Chamber, or Members of the second Chamber who are appointed by the Appointments Commission.

Q212 The Chairman: But you are against the first, are you?
Dr Alan Renwick: I think it is perfectly fair to have some people who are appointed by the Prime Minister in order to serve as Ministers, but if the Prime Minister can appoint 20 extra people, that makes quite a big difference to the overall composition of the Chamber.

Q213 John Stevenson: But if they were not allowed to vote, it would be immaterial how many he could appoint.

Dr Alan Renwick: Yes, the alternative is not to give them a vote in the Chamber. I do not have a view on which of those two paths would be preferable.

Q214 John Stevenson: And just the last point about the term, should it be 15 or 10 or something else?
Dr Alan Renwick: I do not have a strong view on that. I think 15 is fine, but 10 or 12 would also be reasonable. I suppose I would tend to favour taking smaller steps from the status quo rather than larger steps, and therefore a 15-year term is a sensible move from the current life term.

Q215 Dr McCrea: Do you think the Government proposals enhance accountability to the people? And if not, what are you suggesting?
Dr Alan Renwick: I think the proposals offer no accountability to the electorate, because there is no scope for the electorate to express a further view on the merits of a person after they have been elected. That is clearly a disadvantage in the system. It should be said that any proposal can be evaluated against many criteria and those criteria will conflict with each other, so it is impossible to come up with an optimal solution. The proposal as it stands goes all the way in the direction of not having accountability and rather encouraging independence of spirit among the Members of the second Chamber. It seems to me it goes a little bit too far in that respect. In the second Chamber it is sensible to prioritise the independence of spirit over the accountability, but to go so far that you can have a Member who never turns up and who cannot be removed for 15 years seems to me absurd. There has to be some sort of mechanism in some circumstances.

Q216 Dr McCrea: You have mentioned a number of times these independent voices in the second Chamber. Would the current proposals ensure that there would be more independent voices within the second Chamber? And how do you know that that is the will of the electorate in the first place?
Dr Alan Renwick: Obviously I do not know the will of the electorate, although we have Peter Riddell's opinion polls suggesting that there is an interest in independence in the second Chamber. With regard to whether the second Chamber would create more independents, do you mean more independents than at present? I do not see any reason for thinking that the elected Members would be more constrained by the Whip than they are at present. If you are appointed by the leader of your party, you have some level of loyalty to that person; you have some notion that you ought to follow the Whip. Of course, the evidence is that the vast majority of Members of the House of Lords at present follow the Whip the vast majority of the time. Similarly, under the proposals there would be some sense of loyalty towards the party. I do not see any reason to think that would be particularly greater or lesser than it is at present.
Whether you would have the election of actual independents, people who are entirely independent of party, is very difficult to predict, but as I suggested, it seems reasonable to me to suppose that if the British voters do, as they say, like having independents, then they would elect some independents to the second Chamber.

Q217 Baroness Shephard of Northwold: We heard from Meg Russell that there is an incompatibility between what the public appear to want, according to the Peter Riddell poll—that is, they want independents, but they also want accountability achieved by election. Can you remind us of what you said towards the end of your introductory remarks. I think I might have misheard or misunderstood.
Dr Alan Renwick: I might have been rather boring you.
Baroness Shephard of Northwold: It seemed to me that you were saying that if people were elected for a 15-year term, they really need not take any notice of what the public wanted. That is how I heard what you said, and there appear to be nods from other people who have been elected or who are elected. In which case, what is the point? You must have reached a view on this. I quite accept that it is a question we are all asking ourselves. Have you reached a view on whether there is any point in being elected when, because you have a 15-year term, you are not accountable, and you are elected without taking any notice of what the public needs? Or am I really misrepresenting what you said? I do not want to do that.
Dr Alan Renwick: There would be a danger that some Members would decide that this is a fine source of income that they get without needing to do terribly much. I am a rarity among political scientists in having quite a lot of faith in people who enter politics. I think that most of the people who would want to stand for election to this Chamber would do so because they are committed to the activities of the second Chamber and would want to

make a full contribution. I think that danger would be small, which is why I suggest that there should be some kind of limit, just in case some Members of the second Chamber go rogue, as it were, but I do not think it is going to affect very many Members.

Baroness Shephard of Northwold: Would you agree, however, that the whole thing is a bit difficult? It seems to me that that is what you were saying. There is a tension between being accountable and having a long fixed tenure, with no check from the electorate that has elected you for 15 years. Is that not rather incompatible with what we have come to understand by democratic accountability?
Dr Alan Renwick: The proposals offer no accountability. However, the desirable effects of that will tend to outweigh the undesirable effects. I think they will do so overwhelmingly, because I think most people will want to do a good job if they are elected or appointed to this Chamber. I simply think that to have no mechanism to protect against the odd individual who does not do that seems rather foolish.

Q218 Baroness Symons of Vernham Dean: When you were talking to us earlier on, you said that you thought that Members of the House of Lords who did exercise their powers up to the limit would be heavily criticised for doing so. I was intrigued by that, because to the best of my recollection, the time when the House of Lords pushed its powers to the very limit by sending back the Bill under the Labour Government for 90 days' detention without trial—they did it five times, which is the longest that I can remember, and I have sat here for 15 years—the press thought it was absolutely splendid and the House of Lords was wreathed in congratulations. That was the non-elected House of Lords.
Dr Alan Renwick: Yes, sure. Sorry, I did not mean to suggest that there would always be criticism if the House of Lords took things very far. I intended to say that if the House of Lords did this again and again in a way that became disruptive of the overall business of Government, I think it would be likely to be criticised, unless of course the Government was so unpopular that public opinion was rather more strongly behind the House of Lords, in which case I do not see terribly much problem in the notion that the second Chamber in that scenario should be exercising greater influence. The desirable feature of keeping things quite flexible in exactly what the conventions are as to what the second Chamber does is that the second Chamber can be responsive to public opinion. If the second Chamber were to push too far on an issue where the Government had opinion behind it, or if it were to push so far in general that the Government cannot get its business through, then I think you would see criticism. If the second Chamber were simply to take up a popular cause—sorry, that sounds too populist, but if it was with public opinion—then great. That seems to me to be a desirable check on the majority Chamber and the Executive.

Q219 Baroness Symons of Vernham Dean: Thank you for that. The second point was the point you were making about Ministers in the House of Lords who were directly appointed in the way that we were discussing not being allowed to vote. Do you not see a contradiction that Ministers would be getting up trying to persuade the House to vote one way or another, but they would not be able to vote themselves?
Dr Alan Renwick: No. I can see that it might look inconsistent but Barack Obama, for example, seeks to persuade Congress, but he does not have a vote. Of course, that is in a presidential system.

Q220 Baroness Symons of Vernham Dean: Yes, but that is not a parliamentary system.
Dr Alan Renwick: But so what, really? Why should we insist that we should have a very, very pure system in which everyone who is in government also has a vote in the legislature? I think it is desirable that they have a connection with the legislature and that they should go there and speak in the legislature and hear from it, but why should it be necessary for them to have a vote as well? It is not clear to me that there is a reason for that.
Q221 The Chairman: Dr Renwick, thank you very much indeed. I think that was a stimulating session and I am grateful to you.
Dr Alan Renwick: Thank you.

Professor Sir John Baker and David Howarth (QQ 222–249)

Examination of Witnesses
Professor Sir John Baker and **Mr David Howarth** [Cambridge University].

Q222 The Chairman: Gentlemen, thank you very much for coming. You know the inquiry on which we are engaged. Before we start the questioning, would you like to say something about the general scope of your views on the issue? Perhaps, Sir John, you could go first and then Mr Howarth you can go afterwards.
Sir John Baker: Thank you, Lord Chairman. The main purpose in my writing the letter, which I take it led to my being summoned before the committee, was to challenge the widespread assumption that the House of Lords must be elected as a requirement of democracy. That seems to me to be quite a serious fallacy given the unusual nature of our constitution, which has no parallel anywhere else. The reason is that introducing elections would not mean that Members of the House would be selected by the people: they would, I suspect, be chosen mostly by political parties. That is admittedly a guess, but I imagine that a candidate without substantial means, unless very well known to the public already, would not be brave enough to stand and certainly would not be elected. If that is right, Members of the House would either be very wealthy, or famous media personalities, or they would be chosen by party committees deciding on party grounds. Voting for them would therefore also be coloured by party politics. That system works perfectly well for electing to the House of Commons, because that is our way of choosing a Government under the party system, but I suggest that it would not necessarily be a suitable way of choosing a second Chamber. If the result were a House of the same party complexion as the House of Commons, then there would likely be no check at all on the Government: if they could control both Houses. I am not suggesting that that would always happen, but it could. Even if the Lords, having become elected, were of another political complexion from the Government, they might become the wrong sort of check, in the form of constant attempts to stop government proposals on party grounds and with the encouragement of an electoral mandate to do so. Perhaps that might produce desirable deadlocks on occasions, but it would divert energies from the proper role of a second Chamber. So what is that? I presume that everyone agrees that it is vital in a democracy that legislation should be scrutinised and challenged with a certain detachment, not just to improve verbal clarity but to make sure that the Government of the day do not in their enthusiasm for decisive action infringe those basic principles which in almost every other country in the world are embodied in writing and enforced by judges. The democratic mandate does not override those unwritten principles of the constitution because they were never put to the electorate. We have seen during the past 10 years how important the House of Lords has been in identifying and effectively stopping quite serious constitutional slippage, such as proposed legislation ousting the jurisdiction of the courts to review things done illegally, or giving the Government power to make any law they wish without an Act of Parliament. Select Committees are very good at keeping an eye on those things, but we saw the previous Government on several occasions reject the constitutional warnings of Select Committees, including those two examples that I mentioned, and it was the House of Lords in each case which saved the rule of law after the House of Commons had declined to do so.
I would suggest that this essential role does not require the sanction of the ballot box to give it legitimacy any more than the judicial role, because the House of Commons can insist on the last word if the Government are willing to face down the embarrassment of being seen to act unconstitutionally. It would be quite different if the Parliament Act were not in place, but the House of Lords cannot ultimately prevail if the House of Commons insists on passing bad law. I would finally suggest that, far from being inconsistent with democracy, an appointed House of Lords might, in a crisis, be the last defender of democracy. It is not unthinkable that, some time in the future, a Government might propose to extend their life indefinitely on grounds of national emergency. It would then be vital for an independent House of Lords to ensure that such a measure, even if seen to be necessary, would at least be reversible. An elected House of Lords, if it happened to support the party in power, might not be able or willing to do that. We would then have a perfectly legal dictatorship.

Q223 The Chairman: I wonder whether I could raise a general point with you just to start. There seems to be an implicit assumption on your part that the introduction of what you call "party politics" into the second Chamber is a bad thing. I do not see how you can legislate, pass laws, without having a party structure and, indeed, party politics in the second Chamber just as you have it in the first. How could you do it without having

the system of party structure in the House of Lords, with Whips and all the rest of it? I do not see how you can legislate in the same way. I do not see how you can legislate at all unless it is done properly.

Sir John Baker: All I am suggesting is that that works reasonably well at the moment. Peers who are appointed have shown a certain independence which the Commons certainly does not. To compare the two Houses, the Commons when warned about constitutional outrages, even if no one speaks in favour, in the end votes in favour because most of its members are dependent on the Government for their prospects if not actually their employment. Whereas in the House of Lords, no doubt most of those present have political views, but they are not subject to the Whip in quite the same way as an elected Member. There is a different dynamic if you are answerable to an electorate and a party which has put you there.

Q224 The Chairman: I am sorry, I should have asked Professor Howarth before I launched at Sir John.

David Howarth: I agree with your point about party politics, Lord Chairman. Thank you for inviting me. I suppose that I am here for exactly opposite reason to that of my learned colleague: I am here to give an equal and opposite reaction. I can promise an opposite one, perhaps not an equal one. Contrary to what John said, I believe that people who take part in making new law need to be elected in some sense; they need to have been chosen by the people, either directly or indirectly, to gain political power. Undoubtedly, there are other forms of authority that people can gain. John has the authority, the magisterium, of a teacher and a scholar; I am busy trying to regain it: Tristram has probably lost it. It is a different sort of authority from political power. I am very sceptical about the expertise argument on the same lines. It is a different sort of authority. The question for me about the expertise in the Lords is not whether they should be experts—it is a very good thing if Members of Parliament are experts—it is which experts, and why these experts and not other experts. There are lots of experts in the world. The question is how some experts get to be legislators. The answer to that at the moment is political patronage, which is not a sufficient ground. John's main theory, as I understand it, is that there is an analogy between the authority of judges and the authority of the present House of Lords, and some people do argue that. But, again, it is not the same sort of authority. Lawyers know that judges make law, but they do so as an accompaniment, a necessary side effect, to their primary task, which is to decide cases and adjudicate on individual disputes. There is nothing else that the House of Lords does. It does not have a primary task which means that it has accidentally to make some law on the side. Its job is to take part in the legislative process. For that reason, I do not think that it can take up the same sort of authority that the judges have. I support the democratisation of the House. Lord Chairman, you asked me what my general reaction was to the Bill. I share Lord Hennessy's view that there is a big problem here of talking about composition without talking about powers. Lord Hennessy said the other day that it was a historical problem and that people who have tried to reform composition without talking about powers have come a cropper. It is also a bit of practical advice that, if you want to design an institution, you should first work out what you want it to do and then decide who should be in it. Engineers usually ask, "What's the spec? What are we doing here? What's the problem we are trying to solve here?" My problem at that point is: what kind of things could a second Chamber be for and what could it be doing? The Government seem unable to make up their minds between a number of different theories. We know that they are against a particular theory; they are certainly against the idea of checks and balances—you can read that all the way through the Bill and the White Paper. The checks-and-balances theory is rejected. But of the other two common theories of what second Chambers are for, the revising and scrutiny role—which, as Alan Renwick said, is a variety of different things—and the complementary role, those are very different roles. The Government claim in different parts of the White Paper that they are in favour of both of those, which seems to be incoherent. If you take the revising role at its weakest, which is to check whether proposed legislation is drafted in line with the policy that it purports to be furthering and whether the policy is coherent enough to be turned into legislation, that is a function of the Office of Parliamentary Counsel—it is just being done in public rather than in private and it is very technical. That kind of role, a very weak role, could easily be performed by a council of state; it does not need a House of Parliament to do it. As Dr Renwick said, you could add more grit to that; you could add the delaying power of scrutiny. "Scrutiny" has various meanings. Some of them are purely technical, but some are about political challenge. The question is twofold. On the one hand, political challenge is what the Commons does; that is its main purpose in life. As for the delay, why do we want that? What is it for? If you want the second Chamber to have a very weak role, yes, you can say, as John said, that it need not be elected, but you can go further and it need not exist at all. What is the point of such a thing being a House of Parliament; it may as well be, as I believe some people have

suggested in the past, a French-style council of state. If, on the other hand, you want it to be complementary—not to go as far as checks and balances, but to be complementary—something has to be done that has not been done yet. I know that this will cause some distress among Members of the House of Commons, but in order for the second Chamber to be complementary to the first Chamber, you have got to say what is wrong with the first Chamber. Since no one seems to be able to admit that there is anything wrong at all with the first Chamber, we do not get that debate off the ground.

Q225 The Chairman: Oh dear. Do you want to tell us what is wrong with the first Chamber?
David Howarth: I fear that two Members have to go at 7 pm.
The Chairman: You have three minutes.
David Howarth: There are two things that I would point to. The first is that, for the reasons that Dr Renwick mentioned, it is not very good at conferring legitimacy on legislation. Under the first past the post electoral system, the central role of the Commons of sustaining the Government—that is what it is for; it is like an electoral college that carries on for five years—means that we end up with an electoral system that produces majorities from a minority of the vote, and the representatives in the Commons of the majority of the voters usually end up voting against the Bills that go through, although that is different now under the coalition. I do not think that confers democratic legitimacy on the legislation it passes.
The second thing that the Commons does very badly is holding the Government to account, especially on spending. If you look at the financial procedures of the House, they are comical in how little discussion there is of the spending of vast amounts of money. The Consolidated Fund (Appropriation) Bills go through without debate; standing orders do not allow them to be debated at all or amended, and all the stages happen at once. If that is scrutiny and holding the Government to account, then we need to think again.

Q226 Lord Rooker: In some ways, it is all about the Executive getting control of Parliament. The House that they do not control is the House of Lords, but they do control the Commons. I declare an interest as a Minister in both Houses, with my Secretary of State having been saved by the Lords on more than one occasion. Both your essays in *The End of the Peer Show* were my summer reading on the beach, and I came back and said, "We ought to find out the views of these two gentlemen, as it were". Obviously I have since read your letter. I wanted to explore something that I explored with one of our earlier witnesses today about conflict resolution when it comes to the powers that the Lords have now but do not use because we are not elected so we defer to the Commons. We are almost a sub-committee of the Commons, in a way; it is almost a unicameral system with a revising sub-committee that happens to be called the House of Lords. I put to you the point that I put earlier: if we get an elected House, notwithstanding that a few Bills can start here, that decides that it wants to change the conventions—this legislation clearly does not change anything—but says, "Hang on, we're elected—we've got a mandate, however you care to describe it", and chooses to use the powers here to force the Government to use the Parliament Act so legislation takes longer to get through. Under our system where there is no written set of rules for conflict resolution because there is no written constitution, what is to stop the Supreme Court getting involved? Then it is a question of who gets appointed to the Supreme Court and whether they are for or against the Commons or the Lords, a bit like America where candidates are asked, "Are you for or against abortion?", so the argument will shift elsewhere. What is to stop that happening with the Bill in its current form, saying, "We think it'll be OK; we don't need to change the rules between the two Houses but we want the Lords elected"?
David Howarth: Article 9 of the Bill of Rights. That is the technical answer. Courts are not allowed by law to question what happens here. There are problems with recent court decisions, which I could go on at great length about, which seem to undermine that principle somewhat, and in the end the judges do what the judges do, but they are not a constitutional court in the German or American sense.

Q227 Lord Rooker: But the hypothetical situation we are talking about is not the same as now. We would have a second Chamber elected by popular mandate where I am envisaging constant conflict because it wants to get some powers from the Commons—some powers on finance, maybe, or power of delay. It does not accept rules and conventions here that we do not use. Why should it? It is elected. So there is constant conflict in that sense. I am describing chaos. What is to stop that happening? That conflict is implicit in the legislation. In fact, in the debate we had, Paddy Ashdown—I am not misquoting him—envisaged that it would be good to have conflict

between the two Houses. If we had constant conflict like that, are you saying that the courts would not find a way to lever their way into this?

David Howarth: They did not in the constitutional crisis before the First World War when there were similar, although not exactly the same, constitutional struggles between the two Houses. The courts did not intervene then, and I do not think the judges would have much of an appetite to do that. We might disagree about the substance of whether conflict is a good or a bad thing—I think it is a good thing; for once, I agree with my former leader—but I do not think there is a danger of the courts getting involved. I do not know whether John thinks so.

Sir John Baker: Not at present, certainly, although judges have certainly hinted in the recent past that they may well set aside the concept of parliamentary sovereignty if necessary, so in a different context they might start reviewing legislation if unconstitutional legislation is passed.

David Howarth: In fact, the danger there is if you have the two Houses always agreeing and threatening to take away fundamental legal protections, like the protection of judicial review. It is at that point that the courts start thinking, "Well, we might turn everything on its head". I think that would be a bad thing, though. What we need are judges who understand democracy as well as politicians who understand the rule of law.

Q228 Baroness Scott of Needham Market: I want to ask a different question of each witness. I want to ask Professor Sir John Baker what his evidence is for the political independence of the House of Lords. As someone who spends most of my time here, most Divisions simply take place with people voting along political lines—there are very few occasions when people do not. I am wondering what I have missed about this mythical independence that I have not seen in 11 years.

I wanted to ask David Howarth a different question. We do not really know how the relationship between the two Houses will change, although we can consider different options. I wonder whether one of the results might be that the Government might legislate less.

Sir John Baker: I am not suggesting that the House of Lords is or should be politically independent in the sense of being able to frustrate the policies of an elected Commons. I am talking about cases where a perhaps overconfident Government do not pause to think whether the way in which they are carrying out their policies might infringe principles that would be included in a written constitution if we had one. I can give two examples if you wish. The first is quite famous: Clause 11 of the Asylum and Immigration Bill 2003, which provided that there should be no appeal or judicial review in respect of decisions by the new tribunal whether for want of jurisdiction, error of law or breach of natural justice. That clause was opposed by Lord Irvine as being contrary to the rule of law; it was subject to strong attacks from Professor Bogdanor and others; Lord Woolf, the serving Lord Chief Justice, said that it was fundamentally in conflict with the rule of law; Lord Mackay opposed it as obnoxious; and it was condemned by the Constitutional Affairs Committee of the House of Commons as unprecedented. None of that had any effect. There was a spirited debate in which no one spoke in favour of the Bill except one junior Minister who had been sent along to do so, and 35 Labour MPs voted against—but the Commons voted for it, even with is as much opposition as you could possibly have. I am not sure that it went to a vote in the Lords but it was widely understood that Lord Irvine intended to speak against it there and it would almost certainly have been defeated, and it was withdrawn. It was the Lords that secured that, not the Commons.

The other example is the Legislative and Regulatory Reform Bill 2006, which would have given the Government the power to amend, repeal or replace any Act of Parliament simply by making an order. That was said to be potentially helpful in reducing red tape. The press were taken in by that and the Opposition were taken in by that—they did not notice the small print—until the sheer enormity of it was drawn to public attention, I am proud to say, by six silly professors, as we were called by a Member of the Lords. The defenders of the Government argued that this was just overzealous draftsmanship and it really was intended to reduce red tape, but it was nothing of the kind. As I am sure my fellow witness can affirm, because he was much involved in trying to make amendments to it, the Government fought hard to preserve the clause and would not accept amendments, for instance, to preserve fundamental liberties. The House of Lords Constitution Committee woke up to what was happening and said that this would markedly alter the balance between Minister and Parliament, but even then the Government wanted to push ahead. They said that of course they would not abuse the new power, it would just be useful to have it: that is when people outside Parliament start to worry. It was the House of Lords that saved the day, not the House of Commons. The Government had rejected the advice of the Select Committee while the Commons played no role at all.

So the two Houses function very differently. Even though the House of Lords has a great many politicians in it—please do not think I am against politicians—the ethos is different.

David Howarth: I was intimately involved in the Leg and Reg Bill. In fact, I was the Member of Parliament of the six silly professors. John's account of it is accurate to some degree, but my memory is rather different—that we did destroy the Bill in the Commons. We argued and argued. The committee was a delight; for the first and last time, all the sketch writers turned up to the Bill Committee and wrote unfriendly profiles of Jim Murphy. By the time that the Bill got back to the House on Report we had already destroyed it, and the Lords just came in and gave it the final blow. It helped—it must have been Richard Holme who chaired the Constitution Committee—that the two Houses were working together; that helps in these situations. The important fact about the House of Lords that was useful in all the negotiations was the one that Meg Russell kept referring to and that we have to bear in mind: who has the votes? That was purely it. In theory, the Government could have used the Parliament Act to get the Leg and Reg Bill through, but we had won the debate. There were also all sorts of problems within Government; there was a missing Secretary of State so junior Ministers who were technically referring directly to the Prime Minister were having to take decisions and were slightly paralysed in their ability to do so. Because of those conditions, that Bill was never a candidate to be Parliament-Acted through.

To answer Baroness Scott's question, I hope that one effect will be that there is less legislation. One of the best ways to stop legislation is to have no majority in both Houses.

Q229 Ann Coffey: I agree. One of the irritations for Back-Bench Members of the House of Commons is when they can see, as a Bill going through Committee, that it is just not going to go anywhere, but the Government refuse to make the amendments that they need to in the Commons and take those amendments in the Lords, which gives the House of Lords attributes that it does not necessarily have and undermines the Commons' legitimacy. That is a very irritating thing to watch; I have watched it several times over the years. Bearing in mind that we are looking at a draft Bill, what do you think should be changed to achieve the Bill's outcome, regardless of what you think about whether we should have elected, appointed or whatever? What do you think the Government may have got a little bit wrong, and what could be done to improve part of the Bill?

David Howarth: My main problem with the Bill is that I do not know what the Government want to achieve. They keep giving mixed signals about the purpose of it—there will be no change at all, or we might be moving backwards towards an even more feeble version of a revising Chamber. For once I agree with Vernon rather than May on this; it would be ridiculous to introduce a democratised element in the House of Lords for the purpose of reducing its powers. That does not make any sense at all. It is possible to do it but it is a silly idea. I do not know what the Government want to do. The main purpose of the Bill appears to be to get it through both Houses without telling people what it is for. You need to be careful about what you say as a Government; if you say that this is going to be a big reform, the Commons start to complain that its primacy—

Ann Coffey: I understand that, but—

David Howarth: If I were doing this Bill, I certainly would not have Clause 2. I am in a group of anti-Clause 2 people; the clause is just silly.

Q230 Ann Coffey: Why?

David Howarth: Because it cannot change the world. If you have elected people in the Lords, they will start to feel more legitimate in many respects than the existing Members and will start to do stuff. All Clause 2 says is that nothing in the Bill changes the situation, but that does not mean that the world does not change. The world will change.

The second thing is that if you were doing this seriously, you would think about the Parliament Act. I do not think that you would change Section 1 of the Parliament Act, which is about money—the big thing that the Government control in the Commons—but you might want to think again about the extent of the delaying power and about what kinds of Bill might be blocked.

I would have 100 per cent elected membership, and I would certainly not have any bishops, for reasons previously discussed. I am fine with STV; it is a great system. I would either put a limit in the Bill on the number of Ministers—certainly not leave it to the Prime Minister's "do by order", which seems a very strange thing to do—or take away their votes. I have no problem with taking away the votes of Ministers who are Members.

I think I am with Lord Tyler on the issue of how many Members and whether they should be part-time or full-time. Because of the events of 2009, we in this country have become obsessed with the idea that everyone paid to be involved with politics has to be full-time. In the long term, that is very destructive. We need a bigger House and we need to assume that people are going to do it part-time. Frankly, I would pay them less and expect them to do less.

Sir John Baker: For what it is worth, I agree entirely with David about his first two points and his point about full-time membership.

Q231 Dr McCrea: Should the Members of the second Chamber be elected to have themselves in place before the people and therefore have personal legitimacy, or is it the popular mandate of the party? If it is the latter, they as individuals now have the mandate of the individual. How are we going to change the situation? The popular mandate of the party would be from the two main parties. How should it suggest to them that if there is a problem in the Commons, the Whips have the final say in the Commons because they will do as their party Whips tell them? That is what they are going to do in the House of Lords. How will that situation be better than the present situation? As a matter of fact, I have seen more revolts in the House of Lords than I have seen in the House of Commons.

David Howarth: It will be better in the sense that it will encourage people to use the powers that they have, to go back to the previous conversation. It depends whether you think it is a good thing that the Lords use the powers that they presently have even under the Government's rather stay-at-home version of change. When it comes to the party against the individual, there is always a balance between whether it is the party or the individual being elected in particular constituencies at particular times. A good thing about STV is that it makes it easier for independents and party dissidents to get elected, and if dissidents get elected they might think it is their job to defy the Whips. I suppose that it will remain the case in the Lords, if you have this very long term and no re-election, that Lords whipping will stay much the same as it is now. A friend of mine—I will not say which party he is from—is now a Lords Whip. He said to me the other day, "Whipping in the Lords is a bit like John Le Mesurier playing Sergeant Wilson in Dad's Army; instead of ordering people about, he would say, 'Would you mind awfully stepping over here?'". There is that sort of tone to it.

Q232 The Chairman: Sir John?

Sir John Baker: I thought the question was aimed at David.

The Chairman: It was principally aimed at both of you.

Sir John Baker: I do not think the situation would be better.

Q233 Lord Hennessy of Nympsfield: Just to follow up a point of Jeff Rooker's on the Supreme Court, I may be entirely wrong about this but I think it will break though the crust of getting involved in politics, if you look, for example, at Lord Steyn's opinion on the Hunting Bill and the application of the Parliament Act. He indicated, did he not, that if it was a question of abolishing the Lords he thought it would not wash. Also, it has the job, as the Judicial Committee of the Privy Council, which has now gone into the Supreme Court, of having to adjudicate on the concordats of devolution, which will become intensely political. I understand about the Bill of Rights and all that, but that was just a comment.

I was going to ask Sir John where his extremely interesting and alarming sense of peril about the position of the British constitution comes from, but by and large he has covered that ground. I have a question for you, David: the thrust of your paper is that we Brits are not very good at seeing these things as a system; we take this bit but never think about the knock-on effects of the rest and that is terrifying, looking at Parliament as a whole. I think that you think we should get through that, and I think we should too. So how do we do it? Where do we start? Give us the blueprint for a systems approach in which we can locate this relatively minor matter of what happens to the future House of Lords?

David Howarth: The first thing we have to do is divine what is wrong with the Commons. The Commons has to be honest with itself about its defects. As soon as you do that, you break through the mental barrier that there is in this area of reform. Beyond that, it is a question of taking seriously the idea of being complementary. I am a checks and balances person myself, but if you are going to take the idea of being complementary seriously, you

have to think of it as a system between the two Houses. It is what the two Houses do together that constitutes the political system and the Parliament. We must not just think about one by itself.

Q234 Lord Hennessy of Nympsfield: A bit more, perhaps? A bit of a roadmap?
David Howarth: I do not do roadmaps. If you are asking me to put on my Jonathan Powell wig and give you tactical advice for your reform, I could do that.

Q235 Lord Hennessy of Nympsfield: I want a grand scheme.
David Howarth: That would be advice of a rather different kind. What would Jonathan Powell do? I suppose that the answer is to keep this thing bubbling under, cause a crisis in which the Lords are on the wrong side of public opinion and ram the reform through very quickly at that point.
The Chairman: A bit of political engineering.
Baroness Shephard of Northwold: I thought they did that with hunting.
David Howarth: Absolutely. I hope this sounds familiar to some people.

Q236 Baroness Shephard of Northwold: I have a question for Sir John. It relates to his article in this publication. On page 97, he says: "In the case of Lords reform … there is … no indication whatever of public opinion". Apparently there had been some polls in the Times based on two questions posed by Peter Riddell. I think that political parties will claim, because they had all suggested reform of the House of Lords in their manifestos, that the issue has been put before the public. I would like your comments on that.
Sir John Baker: That is rather illogical, isn't it? If every party puts the same policy in their manifesto, how can one vote against it?

Q237 Baroness Shephard of Northwold: You certainly make that point, but you go on to say: "Constitutional reform should not be a matter of brute force, because the constitution does not belong to the government but to the people". Would you like to expand on that?
Sir John Baker: As I said earlier, in almost every country in the world there are written constitutions that lay down certain basic principles that no Government should be allowed to override—for instance, the rights of minorities and the rule of law. We do not have a written constitution, but it would be a shame if we could not say that there were nevertheless certain fundamental principles in this country that ought to be observed. That was the sense in which I meant that it is not for the Government, simply because they have been elected to power, to say, "We can ride roughshod over all these traditions of the past". It is wrong to say that they have been elected to do so because the electorate were never asked that question.

Q238 Baroness Shephard of Northwold: If you were a Government and you wished to pursue the issue of Lords reform, how then would you gauge public opinion?
Sir John Baker: It would be good if there were more discussion in public, certainly. The press have been very negligent in all matters of constitutional reform, so I am not sure how much knowledge there really is among the public at large. I have given the occasional public lecture on these topics and I have been stunned by people coming up and saying they had no idea that these things were happening.

Q239 Lord Trefgarne: Not a referendum?
Sir John Baker: I do not believe in referendums because you can never frame a question in a way that is not slanted. Whenever you are faced with a single question in a referendum, you immediately want to say, "Well, yes if this, but no if that". I am not sure how you could frame the question.

Q240 Baroness Shephard of Northwold: Would you think it more legitimate if one party said it was in favour of Lords reform among the rest of its manifesto commitments and another did not?
Sir John Baker: I think my general point about the importance of the constitution is such that perhaps the mandate argument should never be used to support a change in the constitution simply as an act of power—simply because you have a majority of one, or even a larger majority. It is a problem though—how do we entrench or preserve those constitutional principles when we have no machinery for doing so? The courts might

step in and do it. Personally, I think it would be far more satisfactory if Parliament could do its utmost to minimise that possibility by getting legislation right in the first place; it is terribly expensive to launch judicial review proceedings, and until you do you do not know what the law is.

Q241 Baroness Symons of Vernham Dean: David Howarth, when you were talking earlier, you said that the House of Lords was now appointed on the basis of political patronage, which you described as not sufficient grounds. You then went on to applaud the method of indirect elections, which, when that was examined a bit more, sounded tremendously like a marginally more sophisticated version of political patronage. I wondered why you thought one was more acceptable than the other when it is arguable that one is just a sophisticated form of political patronage but actually it is not more democratic.
David Howarth: I should be clear that I am in favour of direct election—100 per cent directly elected. It is just that the only other system that has ever tempted me along its road is the French Senate, a superb institution, which consists of people elected by people who are elected. The most sophisticated electorate in the world is not the Labour Party conference; it is the electorate to the French Senate. If you are going to have a different sort of politician, that might be a way of doing it, but my own first preference is for direct election.

Q242 Baroness Symons of Vernham Dean: Thank you. Sir John, to take up Lady Shephard's point, it was actually impossible to participate in the last general election without voting for a party that wanted Lords reform. Surely that is the long and the short of it—if you did not want Lords reform but still wanted to vote, you had to give assent, albeit tacit and unwilling. You had no choice.
Sir John Baker: That is my point, yes. There is no mandate.

Q243 John Stevenson:: My question is particularly directed at you, David, particularly as you have been a Member of Parliament before. The Government could have looked at composition and powers but have decided to look purely at constitution and effectively ignore powers excepting the existing powers. I suspect that that will lead to a more assertive House of Lords. It will probably lead to a better organised House of Commons; indeed, the Government might get their legislation better organised and better drafted. I suspect that there will be greater use of the Parliament Act as well. In time it will probably settle down regarding conventions and so on, but undoubtedly there will be unexpected consequences—things we have not thought of. I have already been thinking about one or two. For example, you might see increased representation of other parties in the second Chamber. Are there any things that you think could emerge from this legislation?
David Howarth: Ah, now you really do want tactical advice. If the Lords were to start thinking about its powers and the Government lost procedural control of it, all sorts of things might happen. The most radical would be refusing to allow government Bills to start in the Lords. Why should that not happen? Why should the Government get the benefit of that? The control of time is the big battle in Parliament, all the way through. so you could think about that. Or, as the elected Members grew in number, people might start to think about conventions about who votes on what and try to meet the objection about legitimacy by saying, "Only elected people vote on that one". All sorts of things might start to happen in five, 10 or 15 years' time.

Q244 Oliver Heald: I would like to ask Sir John Baker a question. In looking at the proposition for grand reform of the sort that the Government are suggesting, Dr Russell said that she was a bit nervous about this and felt that there was a case for a series of smaller steps that would improve the way in which the current system works before countenancing anything more major. She talked about things like appointing at regular intervals, selecting even the political nominees using the Appointments Commission to ensure that the people concerned had particular qualities and, perhaps, introducing a retirement age. That would be a slower and more modest approach but one that she felt had a better chance of happening. What is your view about that balance between a grand reform and a more gradualist approach?
Sir John Baker: As you might guess, I am deeply concerned about what is essentially gambling with the constitution, because it is irreversible. We can all speculate about things that might happen in 10 years' time. Constitutions are for the long term. All sorts of things might happen, such as different sorts of election landslides that might occur 15 years from now. We not know, and it is a terrible risk to take if we do not know, especially if

we have not thought about the relationship between this reform and other aspects of the constitution. So I would very much be in favour of the measures that you have outlined.

Q245 Oliver Heald: So more of a "modest steps" approach?
Sir John Baker: Yes.

Q246 Oliver Heald: And when you think about the history of this country and the way in which it has developed—you are a great expert on the English legal system and a great admirer of the way in which English common law has evolved over time—do you have any views about the overall constitutional approach that the country has taken over many centuries? Is there something that you would like to say about the British way of doing things—or the English way, even?
Sir John Baker: We have not really had a system for doing it, have we? That is part of the problem that we face at the moment. It is easy to say, as I do, that we should think about the constitution as a whole, but as to how one does that—there was talk some years ago of a constitutional convention, but the mind boggles at how it would work. There would be so many different views that it would be difficult to know how to resolve them. We have just allowed things to evolve, and one can take a view that that works.

Q247 Oliver Heald: I think you are diametrically opposed to David, aren't you? David is very much for the Big Bang gradual reform and you are not.
Sir John Baker: That is quite correct.

Q248 Oliver Heald: But he is right about the Legislative and Regulatory Reform Bill?
David Howarth: You and I were on the Committee.
Oliver Heald: Yes, we were on the Committee together.

Q249 Baroness Andrews: On the question of the whole-Parliament approach that Peter raised, you seem to be in agreement that the main problem lies with the Commons. Sir John, you made this rather startling statement in your written piece: "Although the Commons has the undoubted primacy in most ordinary affairs, it cannot be the business of the Commons to tamper with the only effective check on their power—that is, on the otherwise absolute power of the Government which they support". I would like to know whether David agrees with you, but I am also wondering what the implications are of what you are saying. Should they tamper? Were they to do so, what would be the only controls that you could see on that?
Sir John Baker: That was really a reaction to the remark made by Mr Straw under the previous Administration, referring to the difference between the two Houses on what should be done about Lords reform, that in a democracy it is for the Commons to push through its view and never mind the Lords' view. That seems to be quite wrong on a matter of such constitutional importance as this question, simply because the Commons by its very nature is working hand in hand with the Government. That is the way our constitution works. If there is to be any check on Government—if one assumes there should be some sort of check—it cannot be just the Commons. If the Commons is allowed to remove such checks as there are, we do not have a constitution at all in that sense.
The Chairman: For once, the Division is fortuitous.
David Howarth: Saved by the bell.
The Chairman: Thank you very much, gentlemen. I am bound to say I thought that was a stimulating subject, and I thoroughly enjoyed it.

Dr Meg Russell—written evidence

1. House of Lords reform is once again on Britain's political agenda. The Conservative/Liberal Democrat coalition government formed in 2010 has announced its intention to replace the currently unelected second chamber with one that is largely or wholly elected. In May 2011 it published a white paper and draft bill to achieve that end.[11] These proposals are controversial, and provoked a mixed reaction when presented to the two chambers of parliament a month later.[12] The next step in the process is for a joint committee of both Houses to consider the proposals, and report in spring 2012. This may be followed by formal introduction of a bill in 2012-13.

2. Lords reform has been discussed at length in Britain in the last 15 years, with no fewer than five previous government white papers since 1997, plus a Royal Commission and numerous other reports. Most attention to date has focused on options for changing the second chamber's composition. Here the latest proposals seek to build on what has gone before, as parliamentary opinion appears to have gradually moved towards a largely or wholly elected chamber, with the Commons expressing its in principle support for this in 2007.[13] Relatively less attention has so far been given to the appropriate powers for a second chamber, and indeed how powers and composition interrelate. But focus has shifted in this direction with the publication of the latest proposals, for two reasons. First, because with the argument over composition seemingly over, it is now important to consider what the repercussions of a largely elected chamber would be. But second, because clause 2 of the draft bill controversially suggests that '[n]othing in the provisions of this Act... affects the primacy of the House of Commons... or the conventions governing the relationship between the two Houses'. This clause attracted much critical attention during the parliamentary debates.

3. Opponents of election to the House of Lords, and indeed some who support it, believe instead that a reformed chamber with a more democratic composition would inevitably make greater use of its powers. That is, that whatever is written into the bill, the conventions governing the relationship between the two chambers would change. This had previously been the conclusion of a joint parliamentary committee established in 2006 specifically to consider the conventions, which suggested that '[i]f the Lords acquired an electoral mandate... their relationship with the Commons, would inevitably be called into question, codified or not'.[14]

4. In the face of such concerns, those on the government side have been keen to cite examples of bicameral parliaments overseas as evidence that greater 'democratic legitimacy' need not go alongside greater powers, or lead inexorably to more challenges to the elected lower chamber. For example when the proposals were published Deputy Prime Minister Nick Clegg emphasised that:

> *... There are a number of bicameral systems in democracies around the world that perfectly manage an asymmetry between one chamber and the next, even though both might, in many cases, be wholly elected.*[15]

5. During the debates in June 2011, various claims were made about international practice. Most notably, former Liberal Democrat leader Lord Ashdown told the House of Lords that '[o]f the 77 bicameral Chambers in the world, 61 are elected. In no single one of those has the primacy of the lower Chamber been affected'.[16] This intervention seemed to set off a parliamentary game of 'Chinese whispers', including Shadow Lord Chancellor Sadiq Khan

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11 House of Lords Reform Draft Bill, Cm 8077, London: The Stationery Office, May 2011.

12 For a discussion of some of the main controversies around Lords reform see Russell, M. (2009), 'House of Lords Reform: Are We Nearly There Yet?' *The Political Quarterly,* 80(1), 119-25.

13 In a series of free votes the Commons voted for a wholly elected chamber by 337 to 224, and for an 80% elected chamber by 305 to 267. However there are reasons to doubt the sincerity of these votes: see House of Commons Hansard, 27 June 2011, column 677 (Stuart Bell) and column 679 (Paul Murphy).

14 Joint Committee on Conventions (2006), *Conventions of the UK Parliament* (London: Houses of Parliament). Paragraph 61.

15 Evidence to the House of Lords Constitution Committee, question 217, 18 May 2011.

16 House of Lords Hansard, 21 June 2011, column 1198.

suggesting to the Commons that '[o]f the 61 other bicameral Parliaments, none has an appointed upper chamber. All of them are elected and seen to be doing a pretty decent job'.[17]

6. The contradiction between these two statements already makes clear that there is a good deal of muddle surrounding the practice of bicameralism internationally, both in terms of second chambers' composition and their powers. The purpose of this article is therefore to try and set the record straight, by presenting a brief and purely factual account on both matters. In doing so, the claims made by politicians in the current British debate will be critically examined. It is hoped that this will be of use to those engaged in the Lords reform debate, and perhaps to those in other countries considering similar parliamentary reforms. Given that no similar survey currently exists with respect to second chamber powers, the article should also be of wider interest to scholars and students of bicameralism.

7. The first section of the article presents information about the composition of all the world's national second chambers that were operational in October 2011. The next section considers the powers with respect to the first chamber of all largely or wholly elected second chambers. The third section of the article looks briefly at a common feature of bicameralism: the use of joint committees to resolve intercameral disputes. The paper concludes that bicameral arrangements are extremely diverse, both in terms of composition and powers. The statements in recent debates have been somewhat misleading, in several respects. Directly elected second chambers are less common in parliamentary systems than might be assumed, although more common under presidentialism. In many such cases, chambers are 'co-equal', with no sense of the 'primacy' of the lower house. Nonetheless amongst parliamentary systems, the formal powers of the House of Lords are relatively strong. If the chamber is reformed to become largely or wholly elected, and this causes it to make greater use of its powers, it would become one of the stronger second chambers in parliamentary systems internationally. But this would be welcomed by some, who wish to see stronger checks on the UK executive and its majority in the House of Commons.

The existence and composition of second chambers

8. Lord Ashdown's comments were broadly correct about the number of second chambers internationally (though arguably about little else). Reliable information on this matter is available from the Inter-Parliamentary Union's extremely useful online database, and is regularly updated. The number of such chambers tends to fluctuate, in part due to changes in the number of national parliaments judged to exist by the IPU, and in part due to parliaments shifting from unicameral (single-chamber) to bicameral (two-chamber) and vice versa. On 5 October 2011 the IPU database included 190 national parliaments, of which 78 were bicameral and 112 were unicameral. In May 1999 the equivalent figures were 66 and 112 respectively.[18] Bicameralism therefore remains popular, and perhaps increasingly so.

17 House of Commons Hansard, 27 June 2011, column 653.

18 Russell, M. (2000), *Reforming the House of Lords: Lessons from Overseas,* (Oxford: Oxford University Press).

Table 1: All 76 national second chambers, by composition and regime type, 5 October 2011

	Parliamentary (36)	**Presidential (40)**
Wholly directly elected (21)	Australia, Czech Republic, Japan, Romania, Switzerland (5)	Argentina, Bolivia, Brazil, Chile, Colombia, Dominican Republic, Haiti, Liberia, Mexico, Nigeria, Palau, Paraguay, Philippines, Poland, USA, Uruguay (16)
Wholly indirectly elected (16)	Austria, Ethiopia, France, Germany, Netherlands, Pakistan, Slovenia, South Africa (9)	Congo, Democratic Republic of Congo, Gabon, Mauritania, Morocco, Namibia, Russia, Sudan (7)
Majority directly elected, minority indirectly elected (2)	Spain, Thailand (2)	
Majority directly elected, minority appointed (3)	Italy (1)	Bhutan, Burma (2)
Majority directly elected, plus indirectly elected, appointed and hereditary (2)	Belgium, Zimbabwe (2)	
Majority indirectly elected, minority appointed (11)	Cambodia, India, Ireland (3)	Afganistan, Algeria, Belarus, Burundi, Kazakhstan, Rwanda, Tajikistan, Uzbekistan (8)
Wholly appointed (16)	Antigua and Barbuda, Bahamas, Barbados, Belize, Bosnia and Herzegovina, Canada, Grenada, Jamaica, Saint Lucia, Trinidad and Tobago, Yemen (11)	Bahrain, Jordan, Madagascar, Oman, South Sudan (5)
Majority appointed, minority indirectly elected (3)	Malaysia (1)	Senegal, Swaziland (2)
Majority appointed, minority hereditary (1)	United Kingdom (1)	
Majority hereditary, minority appointed (1)	Lesotho (1)	

Sources:

Composition of second chamber: IPU Parline Database, www.ipu.org, accessed October 5, 2011. Exceptions: Egypt and Tunisia, whose parliaments and constitutions are currently suspended, excluded. Russia coded as indirectly elected, despite IPU description as 'appointed'.[19]

Presidential or parliamentary: World Bank dataset.[20] *Exceptions: Palau and Antigua and Barbuda are missing from this dataset; Pakistan and South Africa are placed in a third category on the basis that they have an assembly-elected*

19 Representatives in the Russian upper house are indirectly elected by regional councils (see for example J. Henderson, *The Constitution of the Russian Federation: A Contextual Analysis*, Oxford: Hart, 2011, pp. 166-174). IPU classification therefore seems incongruous with their treatment of other countries such as Germany and South Africa.

president. All four were classified instead on the basis of their constitutions, and specifically presence or absence of a confidence vote.

9. Table 1 lists all of those countries judged bicameral by the IPU in October 2011, excluding Egypt and Tunisia (whose constitutions were suspended at the time). It also indicates the composition method of each second chamber, based on information from the same database, and whether the country in question was 'parliamentary' or 'presidential' (as further discussed below). We see that bicameralism is common in Europe (particularly in the more populous countries), in the Commonwealth, and the Americas. There are also examples elsewhere, including in Africa, the Middle East and Asia Pacific.

10. With respect to second chambers' composition, perhaps the most notable feature here is the diversity of methods used. First chambers are normally directly elected by the people, but of the 76 second chambers, only 21 are composed wholly in this way. Instead other composition methods are common. The first is 'indirect election': that is, election by a group of people who were themselves chosen by the public. Election by members of regional or provincial parliaments is common for example (as in Spain and South Africa), or by local councillors (as in Ireland and France). Second chamber members can also be chosen by subnational *governments* (as in Germany). This presents something of a borderline case between election and appointment, but is classified here as indirect election. Once these forms of election are included, 39 national second chambers are wholly elected.

11. More straightforward forms of appointment to second chambers are, however, common. Altogether, 18 of these chambers (including the House of Lords) have no elected members at all; a further 19 include some unelected members. This last statement makes clear another common feature of second chambers' composition: that it often mixes members chosen in different ways. This is true of 23 chambers in total. In two cases this simply comprises a mixture of directly and indirectly elected members. But in 19 it combines some elected members and others who are unelected. Of these, 16 are majority elected, while three are majority appointed. Thus, 55 second chambers in total are largely or wholly elected (and three others include some elected members). This falls a little short of the 61 elected second chambers claimed by Lord Ashdown.

12. The inclusion of regime type in the table demonstrates that directly elected second chambers are significantly more common in presidential systems than parliamentary systems (such as that in the UK). We see that directly elected chambers are common in countries influenced by the US model, particularly elsewhere in the Americas. In contrast, many Commonwealth countries have unelected second chambers. In other parliamentary democracies—for example in Europe and Asia—the picture is more mixed. But notably, only five of the 36 parliamentary bicameral states have second chambers that are wholly directly elected. Even some presidential democracies include indirectly elected and appointed members in their second chambers.

13. The presidential model centres on a single individual with significant executive power.[21] In the US, and many countries modelled upon it, the president has a real veto over legislation. The same does not apply to either the Prime Minister or the head of state in most parliamentary systems. In parliamentary systems the government depends on the confidence of the legislature (though normally only the lower house) for its survival, while this does not apply in presidential states. Under presidentialism, therefore, the executive is far less dependent on the legislature, meaning that a strong legislature is less of a threat to government stability.

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20 Described in T. Beck, G. Clarke, A. Groff, P. Keefer, and P. Walsh, 'New tools in comparative political economy: The Database of Political Institutions' *World Bank Economic Review* 15 (1): 165-176, 2001. Data was from version updated December 2010, available at: http://go.worldbank.org/2EAGGLRZ40

21 There are various definitions of 'presidentialism' and 'parliamentarism', and also examples of systems which do not fit either model easily, in particular the 'semi-presidentialism' seen in France and elsewhere, where a directly elected president shares power with a prime minister and cabinet dependent on the confidence of parliament. Rather than coding for this somewhat contentious variable the classification in the table is based on an existing dataset, with additions/amendments as indicated in the notes.

The powers of second chambers

14. As indicated above, UK politicians have sought to make generalisations about the powers of second chambers, as well as their composition. This information is far less readily available, and is not collected by the IPU. It therefore needs to be gathered by carefully reading each individual country constitution, and secondary literature where this exists.[22] I am only aware of one previous global survey of this kind, conducted by John Coakley and Michael Laver in 1997.[23] This classified second chamber powers as 'greater than', 'more or less equal to', or 'less than' the powers of the respective lower house. Such classification is very difficult in practice, given the great variety of possible second chamber powers. For example, such chambers may have power over public appointments, the signing of treaties, linguistic rights or other constitutional matters. For simplicity, and because none of these special powers apply in the case of the House of Lords, we focus here simply on second chamber powers over government legislation.

15. Even here the picture is not straightforward, as second chambers often have different powers over different kinds of bills. The UK offers a good example. Here the Parliament Acts 1911 and 1949 reduced the power of the Lords from an absolute veto over all legislation to a delay of around a year on most government bills (as further discussed below). But there are a number of exceptions. First, the Acts stipulate that 'money bills' (i.e. those dealing exclusively with 'charges') may be delayed by the Lords for only a month. Second, they specify that any bill seeking to extend the life of a parliament remains subject to an absolute veto. Third, and more importantly in everyday terms, the limitation on the Lords' powers was only applied to bills starting their parliamentary passage in the House of Commons. Bills introduced in the Lords itself (which make up around a third of the total) therefore remain subject to the veto. As a result, governments tend only to introduce relatively less controversial bills into the Lords.

16. In other countries, it is likewise quite common for second chambers to have greater power over some legislative matters than others. As in the UK, reduced power over financial legislation, and increased power over key constitutional legislation, is particularly common. Further, in several federal countries where the second chamber represents subnational units (i.e. provinces or states), it enjoys more power over legislation on regional matters, variously defined. This applies for example in Germany, and in South Africa, where bicameralism was based to some extent on the German model.

17. It is thus not straightforward to classify second chambers' legislative powers, even when constitutions are readily available and easy to interpret, which is not always the case.[24] On top of this, an added dimension of complexity is created by the various mechanisms through which second chambers may block or delay bills, and the various mechanisms by which conflicts of this kind between the chambers may be resolved.

18. As far as possible, given these caveats and limitations, Table 2 shows information for the legislative powers of all the largely or wholly elected second chambers above (excepting four cases for which no reliable data could be traced). This amounts to 51 cases, with the UK shown for comparison. In each case the intention is to show the chamber's *maximum* power over 'normal' government legislation, excluding special cases such as financial, constitutional or emergency bills. Where more than one category of legislation might be considered 'normal' (e.g. in Germany, where half of bills deal with regional matters), the chamber's maximum power is shown, and any special cases are indicated in footnotes.

19. The table shows that just under half of elected second chambers—21—have an absolute veto power over normal legislation. That is, if the chamber rejects (or in most cases amends) a bill, the executive and first chamber have no

22 I am grateful to Simon Kaye for doing much of the difficult information gathering on this task.

23 'Options for the future of Seanad Éireann', in *Second Progress Report*, The All-Party Oireachtas Committee on the Constitution, Dublin: The Stationery Office, 1997.

24 An example of lack of clarity is the Rwandan constitution, which states that in the event of disagreement between the two chambers a joint committee is established to negotiate a compromise, but simply adds that '[i]n the event that the compromise decision is not adopted by both Chambers the bill is returned to the initiator' (Article 95). In the absence of any other readily available information about Rwandan bicameralism, this has been assumed to mean a veto power. It is accepted that such interpretation may be flawed in some cases, and these cases are indicated in the tables with asterisks.

way of imposing their will. In cases where the second chamber veto is absolute, it makes little sense to speak of the 'primacy' of the lower house. Such a statement would certainly not be recognised in the US, for example. Instead, the two chambers may be considered essentially 'co-equal'. Hence it is clearly not accurate to claim, as Lord Ashdown does above, that 'in no single case' does an elected second chamber challenge the primacy of the first chamber. Neither can it be said, in Nick Clegg's words, that the two chambers 'perfectly manage an asymmetry'. Instead they might be considered, at least on the important matter of government legislation, to be symmetrical.

Table 2: Elected second chambers and their powers (with UK for comparison)

	Parliamentary	**Presidential**
No override power	*Germany* (JC)[1] Italy Switzerland (JC) *Netherlands*[2] UK (unelected, Lords bills only) Zimbabwe*	*Algeria* (JC) Argentina[3] Brazil Chile (JC)[4] Colombia (JC) Dominican Repub. Haiti (JC) *Kazakhstan* Liberia Mexico Nigeria Palau* Paraguay[5] Philippines (JC) *Rwanda** (JC) USA (JC)
Joint sitting (A= by absolute majority, % = by supermajority)	Australia (A)[6] *India* *Pakistan* Romania (JC)	Bhutan Bolivia (A) Burma Uruguay (66 %) *Uzbekistan** (A)
Supermajority	Japan (66 %) *South Africa* (JC) (varies)[7]	*Belarus* (66 %) (JC) *Burundi* (66 %) (JC)[8] *Namibia* (varies)[9] *Russia* (JC) (66 %) *Tajikistan* (66 %)
Absolute majority	*Austria* Czech Republic Spain Thailand (JC)	*Afghanistan* (JC)[10] *Morocco* (JC) Poland
Normal majority	Belgium[8] *France* (JC) *Ireland* *Slovenia**[8] UK (unelected, Commons bills)	*Gabon* (JC) *Mauritania (JC)*
No clear upper house role	*Ethiopia**	

Key:

Italics denote wholly or mostly indirectly elected, others wholly or mostly directly elected.

JC = joint committee included within the conciliation process (see below for discussion).

** Based on limited information.*

Excluded: Cambodia, Congo, Democratic Republic of Congo (no English-language constitution available), Sudan (operating under a 2005 'interim' constitution, which does not contain specific information on legislative process). Plus Egypt and Tunisia, as in Table 1.

Notes:

[1] *Germany: Second chamber can veto completely on regional issues. On others, a 2/3 upper house majority may only be overridden by 2/3 lower house majority (or normal majority by normal majority).*

[2] *Netherlands: Cannot amend bills, can only vote to reject or approve. Rejection used rarely.*

[3] *Argentina: Rejection of a bill cannot be overridden. On amendments, 2/3 upper house majority may only be overridden by 2/3 lower house majority*

[4] *Chile: A 2/3 upper house majority cannot be overridden.*

[5] *Paraguay: If the originating chamber re-passes its bill with an absolute majority, it may only be overridden by the revising chamber with a 2/3 supermajority.*

[6] *Australia: joint sitting can only be held after an emergency general election caused by the dispute.*

[7] *South Africa: On regional issues, 2/3, following a joint committee. On federal issues, normal majority, no joint committee.*

[8] *Belgium, Burundi, Slovenia: Can amend only, not reject bills.*

[9] *Namibia: ordinary lower house majority overrides, except where second chamber vetoes a bill completely and by 2/3 majority, when 2/3 lower house majority required to override.*

[10] *Afghanistan: If joint committee fails, but bill is approved by lower house, it may vote it through in the next parliamentary session with an absolute majority.*

20. This kind of arrangement is particularly common in presidential systems, making up 16 of the 21 cases. Co-equality between the chambers is much less common in parliamentary systems. In the five cases where this does apply (in addition to the Lords' veto on Lords-initiated legislation) some caveats should be noted. First, as already indicated, the German Bundesrat has a veto over only around half of government bills. Second, the Netherlands is likewise not a straightforward case, as here the second chamber has no power to amend legislation, but can only reject it. In practice this appears to be essentially a 'nuclear option', used very rarely, and instead the threat of its use may encourage the government and lower house to amend bills to meet second chamber concerns.[25] Third, for Zimbabwe only limited information was available. This leaves just two bicameral parliamentary systems—in Italy and Switzerland—where an absolute second chamber veto power definitely applies to all ordinary legislation, and may actually be used. We see therefore that the House of Lords' power over government bills initiating in the Lords is strong in international terms.

21. In all other overseas cases, including in the majority of parliamentary systems, there is some means for second chamber objections to government legislation to be overridden. Often, as in the UK on Commons-initiated bills, the second chamber may simply be overridden by a vote in the first chamber sooner or later. It is relatively common, however, for this to require some kind of special majority. In seven cases an absolute majority of first chamber members is needed to vote down second chamber objections, and in another seven a 'supermajority' of first chamber members (usually 66 per cent) is required. This can present serious difficulties, since if the government controls less than two thirds of lower house seats it may effectively face a permanent and universal veto. For example in Japan there has been much instability in recent years caused by second chamber vetoes, and it has become necessary to form 'oversized majorities' (i.e. exceeding 50 per cent of lower house votes) in order to ensure that the government

25 As described in G.T. Kurian (ed.), *World Encyclopaedia of Parliaments and Legislatures*, Washington, DC: Congressional Quarterly, 1998.

has a second chamber majority.[26] Hence for these countries as well, Nick Clegg's statement that other countries 'perfectly manage asymmetry', and Lord Ashdown's suggestion that lower house primacy is unchallenged, appear inaccurate.

22. Beyond these cases, there are nine countries where resolution between the two chambers can only ultimately be achieved through a joint sitting of the members of both. Generally such an arrangement will favour the lower house, as it is the norm (though not Britain) for second chambers to be significantly smaller than first chambers. However in some cases an absolute majority, or even a supermajority, at a joint sitting is required. When compared with all of these examples, the House of Lords' power over Commons-initiated legislation on the face of it looks fairly modest.

23. But although Table 2 gives a good initial indication of elected second chamber powers, there are other factors which it does not make visible. One, noted by the bracketed term 'JC', is that the resolution process between the chambers in many countries includes deliberation by some kind of joint parliamentary committee. These arrangements vary significantly, and are discussed in a separate section below. The second factor, which is completely invisible in Table 2, is the extent to which second chambers which lack an absolute veto power can use the power of delay to exercise influence. Table 3 therefore concentrates on those elected second chambers where absolute veto power is lacking, showing the mechanism by which disputes can be resolved, and the length of time for which the second chamber may delay passage of a bill. Whereas in Table 2 the UK's powers over Commons bills looked relatively weak in comparative terms, this table makes the picture appear rather different, with the House of Lords at the 'stronger' end of the spectrum.

24. The first row in the table is not directly comparable with the rest, as it does not represent a specific time period, but a mechanism. Here a bill may pass without second chamber support, but only in a new parliamentary session. This is the mechanism that applies in the UK. The Parliament Acts require that a bill objected to by the Lords (and where the Commons is not prepared to compromise) must be reintroduced in the next session, with at least 12 months having elapsed since its initial Commons second reading. The Lords' delay power is often summarised as being 'around a year', but in practice it may vary substantially: from much less than a year following the Lords' intervention (if the bill was introduced in the Commons early in a session, and reached the Lords late[27]) to much more than a year (particularly in a long parliamentary session, such as the current session 2010-12).

25. A similar mechanism is set out in the constitution of Afghanistan, which states simply that a rejected bill may be approved by the lower house alone 'in the next session'. Better known, and far tougher, is the arrangement in Australia, where ultimate resolution of disputes requires an extraordinary 'double dissolution' of both chambers of parliament, followed by fresh elections to both. If this is insufficient to resolve the dispute, a joint sitting may subsequently be held. This sets a very high political price for governments wishing to resolve an intractable intercameral dispute. There have been six such double dissolutions since 1900, followed in only one case by a joint sitting.

26. In most cases in the table the mechanism for resolving disputes is more straightforward. In several, the constitution specifies some kind of minimum delay period which the second chamber may impose to disrupt legislation. But this delay period is often short. For example in Poland (although the chamber is directly elected, and the system presidential) the constitution states that the second chamber has only 30 days to consider legislation. If a bill is not passed within this period, it is taken as approved. If the second chamber raises objections within the 30 day period, these may be immediately overridden by an absolute majority in the lower house. In cases such as this the delay power of the second chamber is clearly far less than that enjoyed by the House of Lords. There are various similar examples, and others where no delay period at all is specified in the constitution (though some of these chambers in practice may get longer to consider legislation than Poland's 30 days). Only in India does the

26 See for example *Wall Street Journal*, 14 December 2009, 'Japanese Coalition Frays', or for a longer discussion T. Ohta, 'One House Better Than Two?', 2 February 2010, at www.japaninc.com/node/4369

27 As in the case of the European Parliamentary Elections Bill, introduced in the Commons in October 1997, amended by the Lords a year later, but passed under the Parliament Acts in December 1998.

constitution specify a delay power of more than six months (after which a dispute can be resolved in a joint sitting), and in Thailand the delay period is slightly shorter, at 180 days.

27. Thus, although a House of Lords' veto may be overridden by a simple majority in the House of Commons, the chamber's potential to disrupt government legislation (even when introduced in the Commons) is relatively high compared to many parliamentary systems. A substantial delay power, of a kind enjoyed by the House of Lords and the second chambers of India and Thailand, is nonetheless a far more flexible weapon than the first chamber supermajorities required in countries such as Japan. A delay mechanism requires the first chamber to reflect, and allows time for public and media debate on the disputed issues in the bill. But if on reflection the first chamber and the government wish to proceed, they ultimately can.

Table 3: Delay powers of elected second chambers without absolute veto (plus UK for comparison)

	Joint Sitting**	**Supermajority****	**Absolute Majority**	**Normal Majority**
Delay until next session (actual time varies)	Australia		*Afghanistan (JC)*	UK (Commons bills)(unelected)
Delay of 6+ months	*India (6 months)*			
Delay of 2-6 months	*Pakistan (90 days)*		Thailand (180 days) (JC)	*Ireland (90 days)* Spain (2 mths)[1]
Delay of up to 2 months	Romania (45 days) (JC)	*Belarus (20 days)(JC)* *Burundi (30 days)(JC)*[2] *Germany (6 weeks)(JC)*[3] Japan (60 days)(JC) *Russia (14 days)(JC)*	*Austria* (8 weeks) Poland (30 days)	Belgium (60 days)[2]
Override available immediately (or no period specified)	Bhutan Bolivia Burma Uruguay* *Uzbekistan**	*Namibia*[4] *South Africa*[5] *Tajikistan*	Czech Republic *Morocco (JC)*	*France (JC)* *Gabon (JC)* *Mauritania (JC)* *Slovenia**[2]

Key:

As above, italics denote wholly or mostly indirectly elected, others wholly or mostly directly elected.

Bold denotes presidential countries, others are parliamentary.

JC = joint committee included within the conciliation process (see below for discussion).

** Based on limited information.*

*** For full details see previous table.*

Excluded countries: as above, plus Ethiopia. NB Germany included even though it has a veto on some bills.

Notes:

1 Spain: Amendments overridden immediately by normal majority; vetoes overridden absolute majority, or normal majority after 2 months.

2 Belgium, Burundi, Slovenia: Can amend only, not reject bills.

3 Germany: Second chamber can veto completely on regional issues. On others, a 2/3 upper house majority may only be overridden by 2/3 lower house majority (or normal majority by normal majority).

4 Namibia: ordinary lower house majority overrides, except where second chamber vetoes a bill completely and by 2/3 majority, when 2/3 lower house majority required to override.

5 South Africa: On regional issues, 2/3, following a joint committee. On federal issues, normal majority, no joint committee.

28. Of course, a key question is not only what formal powers are enjoyed by a second chamber, but the extent to which these are in practice actually used. The House of Lords has over the past century not used its powers to anything like their full potential, largely because of the evident 'illegitimacy' of its membership (particularly when this was largely hereditary, pre-1999).[28] As argued by the joint committee on conventions, this may well change should the chamber's membership be reformed. In other bicameral states, it is generally the party balance of the second chamber with respect to the first which determines the level of conflict, rather than concerns about legitimacy (though in cases like the appointed Canadian Senate legitimacy is important). Where both chambers are democratically elected, but differ in their partisan composition, the second chamber is less likely to exercise restraint over use of its powers, as some examples here testify. Hence many parliamentary systems that 'perfectly manage asymmetry' in fact do so through the second chamber having far more limited powers than exist in the UK. In other cases, as already discussed, relations are not always as harmonious as some contributors to recent debates have suggested.

The use of joint committees to resolve intercameral disputes

29. Before concluding, it is worth reflecting briefly on one mechanism for resolving intercameral disputes which is fairly alien in the UK context. That is, the use of joint parliamentary committees to negotiate compromise between the chambers. As indicated in Tables 2 and 3, this is fairly common in other bicameral parliaments. Although not the main focus of this article (and a fairly complex topic in its own right), it is hard to get a full picture of other second chambers' powers without some indication of how these joint committees work.

30. In total, 19 of the 51 elected second chambers discussed above include a joint committee in the resolution process. Commonly such committees are made up of an equal number of members from both chambers, and try to reach agreement on the more contentious aspects of bills when the second chamber has raised objections. These arrangements differ widely. Table 4 classifies joint committees by just two aspects of their role in the process: how the committee is created, and what happens after its deliberations.

31. It is first notable from the table that joint committees are more common in presidential (14 cases) than parliamentary (six cases) systems. Second, we see that joint committees are most commonly established automatically after a dispute between the chambers has reached a given stage. For example in Chile a bill rejected by the second chamber is referred directly to a joint committee, as is a bill amended by the second chamber if these amendments have been rejected by the first chamber. Thus there may either be a degree of 'ping-pong' between the chambers before the joint committee is established, or it may come into being very early on. In other countries creation of the committee is not automatic, but instead at the discretion of the executive, the second chamber, or both.

32. In systems where the second chamber enjoys an absolute legislative veto, any proposals emerging from the joint committee must of course be approved by both chambers. This is the case in several presidential systems, but also in Switzerland and Germany (on regional bills). In other cases, the first chamber has the final say if the second chamber rejects the joint committee's compromise (or if no such compromise was found). Here the second chamber's role may be anything from relatively weak to relatively strong. The table demonstrates presence of a 'French model', exported to three other countries with strong French influence: here the executive retains discretion not only to establish the joint committee, but also to invite the first chamber to approve the legislation alone if negotiations fail. This creates little incentive for first chamber members to compromise. At the other end of the spectrum, the second

28 For a discussion of the extent to which the post-1999 House of Lords is making greater use of its powers, see Russell, M. (2010), 'A Stronger Second Chamber? Assessing the Impact of House of Lords Reform in 1999, and the Lessons for Bicameralism', *Political Studies,* 58(5), 866—85.

chamber's refusal to agree to a joint committee compromise can only be overridden by a two thirds first chamber majority: as in Russia, for example. This creates a far greater incentive to listen to second chamber concerns, as does the 180 day delay in Thailand. Other more unusual cases are indicated in the notes to the table.

33. In looking to overseas experience to inform debates on House of Lords reform, political actors in the UK might therefore consider whether some kind of joint committee arrangement for resolving intercameral disputes would be desirable. In designing such a system, however, the devil is in the detail. As well as the factors already indicated, in some cases, for example, the committee may be restricted to dealing only with specific disputed clauses, while in others it can find trade-offs in other parts of the bill. In some, the joint committee's proposals may be presented on a take-it-or-leave-it basis to the two chambers, and in others may be amended. These kinds of details can be critical to how such arrangements work.[29]

Table 4: Use of joint committees to resolve intercameral disputes where second chamber elected (all cases)

Procedure after committee → How committee created ↓	**Equal approval by both chambers**	**Lower chamber has final override**	**Other**
Triggered automatically	***Algeria*** **Chile** **Colombia** **Haiti** **Philippines** **Rwanda*** Switzerland	***Belarus (66 %)*** ***Burundi (66 %)*** ***Russia (66 %)*** Thailand (after 180 days)	***Afghanistan***[1] Romania[2]
Created at executive discretion		France **Gabon** ***Mauritania*** ***Morocco (abs. maj.)***	
Created at request of second chamber		South Africa (regional bills)[3] Germany (other bills)	
Created at request of first or second chamber	**US**		
Created at request of executive, first or second chamber	Germany (regional bills)		

Key:

*Italics denote wholly or mostly indirectly elected, others wholly or mostly directly elected. Bold denotes **presidential** countries, others are parliamentary.*

**Based on limited information*

Notes:

[1] *Afghanistan: if the joint committee agrees, the legislation passes straight to the executive for enactment. If it cannot agree, the bill is considered defeated but may be passed by the lower house alone in the next parliamentary session.*

29 For a slightly longer discussion of these issues, see Russell, M. (1999), *Second Chambers: Resolving Deadlock* (London: Constitution Unit).

[2] *Romania: if the joint committee is unable to produce an agreement approved by both chambers, the matter is ` referred to a joint sitting*

[3] *South Africa: on other bills no joint committee applies, and first chamber can overrule by normal majority.*

Conclusion

34. This article has reviewed the basic patterns of second chamber composition and powers internationally. It has shown that bicameralism is common, in both parliamentary and presidential systems. Elected second chambers are relatively more common in presidential systems, in part due to US influence. But the composition of second chambers varies widely, with indirectly elected, directly elected and unelected members often serving (in both presidential and parliamentary states) and with many chambers having a mixed membership between these groups. Second chamber powers also vary widely. In presidential systems relative 'coequality' or 'symmetry' between the chambers is common, with the second chamber having an absolute veto over all or most bills. This applies to many directly elected second chambers, but also some which are indirectly elected. In parliamentary systems it is more usual for there to be a means of overriding second chamber objections to government bills. Amongst this group, the existing powers of the House of Lords are relatively strong, as it retains an absolute veto on those government bills which start their passage in the House of Lords, and a lengthy delay over bills which start in the House of Commons.

35. Some of the statements which have been made about the international practice of bicameralism during recent UK debates on reform have been somewhat misleading. First, elected second chambers are now common, but not as ubiquitous as some contributors to these debates have suggested (particularly in parliamentary systems). Second, the 'primacy' of the first chamber is not recognised in those systems where the chambers share coequal powers (particularly in presidential systems). Third, it is mistaken to assume that relations are harmonious in other bicameral systems. Powerful second chambers in other parliamentary systems, such as those in Japan and Australia, have at times caused significant aggravation—though this may not always be seen as a bad thing. Finally, some bicameral arrangements are in fact far more asymmetrical than those in the UK, with the second chamber having only very limited powers. If the first chamber can override second chamber concerns within a matter of a small number of days or weeks, second chamber resistance may be only a minor irritation.

36. Having considered the information in this article, two key questions for the UK reform debate remain. First, to what extent would the House of Lords, if transformed into an elected (or largely elected) chamber, make use of the substantial powers that it has? This of course is unknown. In practice it would be dependent on the extent of partisan conflict between the chambers, as well as on how political culture develops over time. The experience from other bicameral states suggests that elected chambers generally feel free to use their powers to the full, in a way that the House of Lords currently does not. So the second critical question, which is perhaps even more difficult than the first, is how powerful it is desirable for the reformed British second chamber to be? Some would argue, and some argued in the recent parliamentary debates, that it would be good for British politics if the second chamber acted as a greater constraint on government and the House of Commons. What this article has demonstrated is that a reformed House of Lords left with its existing powers, if it chose to use these more freely, would be one of the more powerful such chambers amongst parliamentary democracies. For examples of how this could change British politics reformers might look to countries such as Australia, Germany, Italy, India, Japan, Switzerland and Thailand.

24 October 2011

Dr Alan Renwick—written evidence

1. This submission is accompanied by a copy of the Political Studies Association's publication, *House of Lords Reform: A Briefing Paper*, which I wrote. The briefing paper draws on extensive evidence from the UK and other countries and sums up what we can say about the likely impact of various aspects of the government's reform proposals. It is not my intention to duplicate the briefing paper here (I understand that it has already been sent to all members of the Committee). Rather, I shall briefly highlight five points that I regard as particularly important. The first three of these defend the government's proposals:

- claims that the proposed reforms would destroy Commons primacy are greatly exaggerated; in fact, they would probably lead to a limited increase in the power of the House of Lords, and this change might well be desirable;
- elections of the type proposed would not obviously deprive the chamber of experience, expertise, and independence, as some have presumed;
- the STV electoral system is the one most likely to deliver the sort of chamber that most participants in reform debates want.

The remaining two points highlight difficulties in the government's proposals and suggest possible remedies:

- the proposed move to a full-time, salaried chamber does appear likely to discourage many of the best candidates from running; consideration should be given to whether a satisfactory system of per diem payment can be devised;
- the proposed system would do nothing to enhance accountability; while there are advantages to this, there are also disadvantages; these could be mitigated through minimum service requirements and recall, both of which would be applicable at the five- and ten-year points in a member's fifteen-year term.

The power of the second chamber

31. The evidence suggests that the government's proposed reforms would create a more powerful second chamber, but would not threaten the primacy of the House of Commons: the reformed second chamber would have greater democratic legitimacy; but it would still be constrained by the Parliament Acts and probably by some conventional constraints, and the government would still be based in the House of Commons;

32. There is much to be said for a more powerful second chamber: power is presently highly concentrated in the British political system, creating the danger that legislation may be passed without adequate consideration of all its implications.

33. But our judgement upon the desirability of the proposed reforms depends on whether the revised second chamber would use its powers effectively. This depends, in turn, upon the next point: the effects of the proposed reforms on the composition of the chamber.

The composition of the second chamber

34. The current method of composing the House of Lords is indefensible. While non-elected office-holders can play important roles in a democracy, there can be no case for a chamber whose overall party balance is shaped in significant part by the whims of successive prime ministers and most of whose members are party placemen.

35. Election, by contrast, is clearly a legitimate mechanism for determining the composition of a parliamentary chamber. The introduction of a statutory appointments commission would also safeguard the appointments process against prime ministerial interference.

36. Concerns have been expressed by some that the proposed reforms would deprive the chamber of its experience, expertise, and independence. There is, however, little reason to think that the creation of a largely elected chamber, on the basis proposed, would in itself necessarily have these undesirable effects.

- Much of the experience in the current House of Lords comes from members who were formerly MPs, who move to the Lords in order to stay active in politics without the burden of having to serve and nurture a constituency. It is not clear why many of these people would refuse to stand in one further election.

- Non-partisan experts would continue to be appointed as now. Some of the current partisan appointees are non-professional politicians who also bring expertise to the House from other fields. The willingness of such people to run for election is difficult to predict. But the differences between the sorts of election we are used to and the elections that are proposed—one-off elections in very large constituencies for a secondary chamber—are very great. We should not extrapolate from one to the other and presume that non-professional politicians will refuse to stand.

- Non-renewable terms will promote independence. Indeed, it is not at all obvious why popular election should be thought likely to lead to less independence than appointment by the party leader. The degree of independence of partisan members and the number of non-partisan members depends also on the specific electoral system, which is my next point.

The STV electoral system

37. There is general agreement that no party should hold an absolute majority among the partisan members of the second chamber. Given this, a proportional electoral system is necessary: a majoritarian system such as First Past the Post or the Alternative Vote would often generate a majority for one party.

38. Among systems of proportional representation (PR), there are three basic options: closed-list PR (such as is used for British elections to the European Parliament), open-list PR (not currently used in the UK, but widely used elsewhere in Europe), and the Single Transferable Vote (STV, used for most elections in Northern Ireland and for local elections in Scotland). Of these, closed-list PR, quite rightly, has no defenders: it can create politicians who are no more than elective placemen.

39. Open-list PR and STV are both equally good at allowing voters to choose which of their favoured party's candidates will represent them.

In the context of the proposed second chamber, however, the case for STV over open-list PR is strong:

- STV, unlike open-list PR, allows voters to show support for candidates across party lines. For Commons elections, there is a good case for saying that voters should be encouraged to think first about party: Commons elections are in large part about choosing the party or parties that will form the government. But this does not apply to elections to the proposed second chamber.

- STV is far more permissive of independent candidates than open-list PR. Given the general (and justified) belief in the value of independents in the second chamber, this is a significant advantage.

STV is sometimes said to lead to excessive parochialism. But this is unlikely to be a problem in the context of very large constituencies and non-renewable terms.

40. The ability of STV (or open-list PR) to give voters a choice of candidates from their preferred party clearly depends upon the number of candidates that that party nominates. The experience of STV elections in Northern Ireland and Scotland is that parties have, in fact, often stood only as many candidates as they hope to win seats, thereby denying voters this choice. A rather obscure aspect of the government's proposed reforms—namely, the method for filling vacancies—would, however, prevent such behaviour. Vacancies would be filled by unsuccessful candidates, so parties would have a strong incentive to run more candidates than they expect initially to secure election. The proposal not to hold by-elections would thus—perhaps counterintuitively—expand democratic choice.

A full-time, salaried chamber

41. I have suggested that the proposed mixture of election and appointment, as well as the specific proposed electoral system, would probably have benign effects and, specifically, that fears about scaring away the sorts of people whose participation in the current House of Lords is widely valued are probably exaggerated. But another aspect of the government's proposals that has received much less attention does appear likely to have these unintended effects. This is the proposal that members should work full-time and receive a salary for doing so.

Specifically:

- The current chamber benefits from the contributions of individuals with outside expertise. It is problematic if the outside experts never or only very rarely attend. Equally, however, outside experts, by definition, have other things to do. It is unclear why we should want them to attend the Palace of Westminster most of the time. It is also unclear why they would want to do so and why, therefore, they would accept membership on this basis.

- Many of the most active members, as already noted, are semi-retired politicians who devote considerable time to the chamber but who may not wish to commit themselves full-time. This consideration is particularly acute when we consider the proposed fifteen-year term, though members would at least be allowed to retire early.

I therefore suggest that the Committee consider whether a satisfactory system of *per diem* payment can be devised, such that varying levels of attendance can be acknowledged. It is clearly unsatisfactory if members can arrive, sign in, and promptly leave again, thereby securing their daily allowance. But it is surely not impossible to design a system that works better than this.

Accountability

42. The government's proposals would improve the representative quality of the second chamber, but—because terms would be fixed and non-renewable—would do nothing to enhance its accountability. Such a scheme has both advantages and disadvantages.

43. On the positive side, lack of accountability would promote independent-mindedness. Members would be freed from the game of calculating the effects of their every move upon their prospects for re-election. Non-politicians who have no desire to play this game would be more likely to put themselves forward.

44. On the negative side, members, once elected, would be free to do as they wished. They might disregard the interests of those who elected them. They might simply never show up, but still (if the government's proposals go through) pocket a handsome salary.

45. Given the desire for independence and expertise in the second chamber, the benefits of non-renewable terms appear great. Nevertheless, the negative effects of lack of accountability might be mitigated through two measures:

- *Minimum service requirements.* While I have suggested that the reformed second chamber should be built to accommodate widely varying levels of attendance, it is reasonable to expect—as the current Appointments Commission does—that members should regularly participate in the work of the House. Minimum service requirements might therefore be set as a condition for continuing membership beyond five years and beyond ten years. The Appointments Commission's most recent appointees have participated in a little over one quarter of the votes that they could have taken part in, suggesting that a minimum participation rate of, say, 20 per cent might not be so onerous as to dissuade highly accomplished candidates while still ensuring a significant contribution. Clearly, much care would need to be taken in devising the details of such a scheme.

- *Recall.* The government is non-committal on the subject of allowing recall of members of the House of Lords. If introduced, recall could not be used to precipitate a by-election: by-elections in such large constituencies would be very costly; they would also violate the principle of proportional representation. Rather, it could be used only to require a member to stand for re-election after five or ten years. A signature requirement of 10 per cent (as the government initially proposed for recall in the House of Commons) would be difficult to achieve in the proposed

large constituencies, so successful recall initiatives would be rare. But such a provision should be considered as a way of providing an ultimate constraint against unrepresentative behaviour without violating the general practice of non-renewable terms.

11 October 2011

Professor Sir John Baker—written evidence

1. I am most grateful for the opportunity to submit these observations on the Government's proposals for reform of the House of Lords. I am presuming to write at some length because I believe the future of the House of Lords is the most important constitutional question of the present age. If it is resolved badly there may be little left of a British constitution at all. I begin from an assumption which I hope is uncontroversial even in the case of an unwritten constitution. The purpose of any constitution is to serve three fundamental purposes. It defines the way in which power is to be lawfully exercised by the Government of the day. It imposes limits on that power, so as to prevent absolutism and preserve basic values. And it provides some means of holding governments to account for the exercise of their power. Those in office, especially when supported by a clear majority, very easily fall into the habit of assuming that they have been given an absolute power by the electorate, and recently this has come to include the power to change the constitution as a matter of routine, sometimes without any joined-up thinking about the whole machinery and sometimes even with open contempt for the rule of law. It is easy to see how this has come about, because the unwritten British constitution provides no special procedure for constitutional reform. But it threatens to undermine the constitution itself. If it were to result in a form of Parliament which meekly enacted whatever the Government laid before it, without demur, we would be very close to absolutism. Our only safeguard then would be the right to a general election. And we cannot any longer be sure how safe that is. It would only need the pretext of a convenient emergency to remove it.

2. In recent decades one of the strongest safeguards against absolutism and careless government has been the House of Lords. This may seem a strange twist of history, but history does not always run in straight lines. As we all know, since the introduction of life peerages in 1958, and the removal of most of the hereditary peers in 1999, the House has gained a new confidence and an enhanced role in checking, controlling and improving legislation. Moreover, as Lord Simon of Glaisdale said as long ago as 1993, the House of Lords has become 'effectively the only place in which the legislature can curb the power of the executive'. These have been welcome indeed essential—developments, given the inability of the Commons to carry out those constitutional functions. It is plain to see why the Lords have managed to achieve what the 'democratic' Commons cannot. The main reason, obviously, is that peers are less beholden to party control and therefore more independent of Government. This can be readily demonstrated by the House's record over the last ten years. And if we seek an explanation for this independence, the answer is equally obvious, namely that peers have tenure and that many of them are not career politicians. These are advantages generally recognised even by those who propose an 2 elected House, save perhaps by those in Government who secretly do not want the second chamber to show independence.

3. The principal objections to the present House of Lords are not to its independence of spirit but to its size, and to the system of selection by the Prime Minister. Although the majority of peers are well-chosen from persons of distinction in various walks of life, peerages are also honours, and they have been used by Prime Ministers to reward second-rate or even (in a few cases) distinctly unsavoury politicians who, far from bringing special distinction to the upper House, have rather tended to bring it into disrepute. There seems to be little disagreement that these are the principal issues in need of resolution. Assuming that they are, I submit that election is far from being the best solution and would, in practice, carry us further towards unchecked absolutism.

4. The issue of size is dependent on the nature of the House and should not be addressed in isolation. The optimum size of the Lords cannot be determined in the abstract merely by making a direct comparison with the Commons, or with other legislatures, or by measuring the available bench-space. It depends upon whether it is thought appropriate, as at present, for the House to include essentially part-time members, or persons whose membership is seen as purely honorific and who are not expected to participate in its work. Those are two separate categories, because the latter element could be removed without altering the character of the House, whereas the former could not. Whatever view is taken of this, it is a secondary question, to be addressed only when the method of selection has been settled.

5. The more serious problem, arising from unsuitable appointments, could be resolved without abandoning the breadth of experience and expertise which is a strong and unique characteristic of the present House. The simplest solution would be to remove ministers from the selection process and transfer the power of selection exclusively to an appointments commission. The Prime Minister could if necessary continue to recommend names to the Queen, in accordance with the advice of the commission, but would not have the power to do so without the sanction of the latter. He would have to continue in this intermediary role if peerages were conferred on all persons appointed to the Upper House. The Government seems to be against this, though there is a strong case for the appointed members to be made peers, and for the House to retain its present name. If so desired, sitting peers could be distinguished by some such title as Lords of Parliament. This would be perfectly compatible with continuing to confer other peerages purely as honours, since a distinction between sitting and non-sitting peers has already come about through the removal from Parliament of the hereditary element. But, whatever the formal role of the Prime Minister might be in advising the Queen, the selection problem would be solved merely by transferring the selection of names to an independent commission. This was, broadly speaking, the conclusion reached after very careful thought by the distinguished members of the Royal Commission of 2000 on the Reform of the House of Lords (Cm 4534). An appointments commission would, of course, become a very important body, but there is already a precedent for that in the new system for selecting judges. It would be expected to develop a detailed and systematic knowledge of the field of suitable persons for appointment, liaising with professional and other relevant bodies.

6. Although almost everyone is agreed on the merits of the broadly constituted House of Lords that we have at present—leaving aside the inappropriate political 3 appointments and (for some) the remaining hereditary element—the leaders of the three principal political parties have decided that those advantages must be abandoned because an unelected House lacks 'democratic legitimacy'. They therefore favour election, not as a solution to any perceived problems but as an end in itself. A cynical observer might explain this remarkable cross-party accord by saying that the concept of 'democratic legitimacy' is in reality a self-serving doctrine calculated to ensure that only full-time politicians could gain entry to either House. Whether or not that is an unfair jibe, it can hardly be doubted that the result would be just that. Few candidates other than career politicians would be likely to stand for election for a position which would require electoral campaigning and would also require them, if successful, to give up their ordinary careers. Campaigning for such elections would be a process in which the political parties would inevitably wield exactly the same kind of influence as they do in elections for the Commons, since only the extremely wealthy could finance their own campaigns. Most of the selecting of candidates would therefore be carried out by the political parties who fund the campaigns, not by the people who vote, and the selecting would be carried out on party lines without the professional expertise that an appointments commission would develop. The politicians elected after such a process, if not already committed party activists, would most likely feel some obligation to the party which had propelled them into their paid positions. Even if they were released from strict subservience to the whip by the grant of limited tenure, they would be likely to submit to party discipline either out of gratitude or habit, or in the hope of preferment. In other words, it is reasonably predictable that an elected (or mostly elected) House of Lords would acquire in a substantial degree all the defects of the House of Commons while losing most of its present advantages.

7. A very strong argument would be needed to justify moving to such a system. But no such argument has been made by those who propose it. It seems that the magic word 'democracy', like the magic phrase 'separation of powers', has but to be uttered and argument becomes superfluous. I venture to suggest that, however important those concepts may be, the mere incantation of their names ought not to stifle serious thought. It is not sensible to insist on an avowedly undesirable result, which would in all probability destroy the usefulness of the second chamber, on the sole ground that it is the inexorable requirement of a vague theory of' democratic legitimacy' .

8. It has not been explained by anyone, so far as I can discover, why the House of Lords ought to be a 'democratic' body, in the sense of being elected. It cannot force legislation on the Commons but can only delay and improve. It does this most importantly in protecting the people against infringements of human rights and the rule of law, a role which the elected Commons has shown itself unable to perform; but it has also achieved a significant role in scrutinising and improving legislation, which is increasingly introduced with little care or thought by ministers hungry for headlines. Time and again, when the previous Administration refused to modify proposals which seriously threatened the rule of law or constitutional proprieties, it was the House of Lords which came to the rescue. It is rightly accepted, and is enshrined in the 'Salisbury Convention', that a Government is entitled to have Parliament pass into statute the principal measures which were outlined in its party manifesto before a general election. But that does not mean, and democracy does not require, that they are entitled to enact those measures in a manner contrary

to our traditions of justice, fairness and clarity. It cannot be supposed, without evidence, that the electorate voted for that. Even if there were such evidence, there are some 4 values which ought to be protected against sudden change even by majority vote, most obviously the protection of minorities, but also the rule of law itself. Most other civilised nations in the world have written constitutions which prevent elected governments from enacting whatever measures they wish in whatever manner they wish. They would be very shocked to be told that they were not 'democratic' countries. So long as we do not have a written constitution, that work has to be done either by Parliament, which means in reality the House of Lords, or by the superior courts.

9. The increasing boldness of the courts in the wake of the Human Rights Act 1998 is a mixed blessing and not universally admired. But even the strongest advocates of judicial activism would have to admit that it is only needed where Parliament fails. It is far more desirable for imperfect legislation to be put right before it is enacted than challenged in the courts afterwards. Most ordinary citizens do not have the means or the time to launch proceedings for judicial review, and in any case the available armoury is imprecise and can cause all the collateral damage of a blunderbuss. But we must have one or the other. I suggest that it is wrong to consider introducing an elected House of Lords without simultaneously addressing the question of a written constitution. The two should be inseparably connected, for a very simple reason: if we have a British constitution at all, it must be enforced either by checks within the parliamentary system or by checks from without. Since electing members of the Lords would remove or seriously weaken the last internal check, the only practical alternative would be a judicial check. I do not recall this being mentioned, let alone discussed, by this Government or its predecessor. I should explain that I am not advocating a written constitution as things are at present, since I think it would have disadvantages; but it could be forced upon us by the Government's proposals.

10. It is true that some politicians profess not to see the need for 'checks and balances' . It is sometimes suggested that the very existence of a body which may delay or even frustrate legislation proposed by a Government is somehow undemocratic. But, even if this were a valid objection, the difficulty would not obviously be avoided by introducing an elected House of Lords. An elected House which was of the same political complexion as the Commons would be unlikely to upset the latter. It would probably not act at all. It would be more or less superfluous in any area of contention. On the other hand, an elected House which happened to be of a different political complexion from the Commons might feel a greater confidence than the present House in opposing and frustrating the intentions of a Government, and might even be emboldened to do so on party-political grounds. It would be supported by a 'democratic legitimacy' equivalent to that possessed by the Commons, and it may be supposed that electors who have an equal say in the choice of both Houses of Parliament will not readily grasp why one house should not have the same authority to act on their behalf as the other. The Government propose to solve this problem through legal magic by declaring that the Commons would continue to have the superiority accorded to it by the Parliament Acts. But that would flatly contradict the theory behind the proposed change, and a legal declaration of something contrary to general perception would be fragile. Indeed, if the 'democratic legitimacy' theory means anything other than enhancing the career prospects of party politicians, it is difficult to see any justification for retaining the Parliament Acts or the Salisbury Convention were the Lords to become an elected body. Regular conflict would be the full and logical price to pay for the new philosophy.

11. It has been widely assumed by those in power, including those now in opposition, that any difference between the Commons and Lords over this question, if it still exists, must be resolved by the Commons. This shows a disappointing unawareness of the first principles of a constitution. Although the Commons has the undoubted primacy in most ordinary affairs, it cannot be the business of the Commons to tamper with the only effective check on their power—that is, on the otherwise absolute power of the Government which they support—especially when there is no evidence of any general popular mandate for such interference. It could never happen in a country with a written constitution. And it would be plainly wrong to suppose that the principle behind the Salisbury Convention should apply in a constitutional matter such as this. If there were a clear body of opinion in the country supporting a particular constitutional change, that might be another matter, although even then it would be necessary to ponder very carefully the consequential effects of introducing such a major change. There are few parts of the constitution, if any, which do not impinge on others—the future of the Lords, as I have suggested, should not be separated from the issue of a judicially-enforced written constitution. In the case of Lords reform, however, there is at present no indication whatever of public opinion. The voters at the last general election were given no choice, because the major political parties decided not to contest the issue and there was no campaigning on it.

12. It is a matter of deep concern to me and others that, in the absence of debate between the political parties, no reasoned case for election was advanced in the recent White Paper, certainly nothing to challenge the detailed reasoning in the report of the Wakeham Commission. The White Paper more or less assumes that the House should be elected. But this is too fundamental an issue to be treated so dismissively, and I urge all politicians to accept that, on this matter if no other, they have a supreme duty to lay aside the career interests of their profession in the public interest. The objective of parliamentary reform should not be an abstract concept of 'democratic legitimacy' which would in practice promote elective dictatorship. It should be the prevention, by the best available means, of the accrual of arbitrary, arrogant, and absolute power. A step in the opposite direction might suit any Government very well in the short term; but it would, I fear, be an irreversible disaster in the longer term.

30 September 2011

MONDAY 7 NOVEMBER 2011

Members Present

Lord Richard (Chairman)
Baroness Andrews
Lord Hennessy of Nympsfield
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Baroness Shephard of Northwold
Baroness Symons of Vernham Dean
Lord Trefgarne
Lord Trimble
Lord Tyler
Gavin Barwell MP
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Tristram Hunt MP
Mrs Eleanor Laing MP
Dr Daniel Poulter MP
Laura Sandys MP
John Stevenson MP
John Thurso MP

Mr Mark Harper MP (QQ 250–277)

Examination of Witness

Mr Mark Harper MP, Minister for Political and Constitutional Reform.

Q250 The Chairman: Minister, thank you very much for coming.
Mr Harper: It is a pleasure.
The Chairman: I am beginning to think that we really should stop meeting like this, but we are grateful to you for coming along to round off, so to speak, where we had got to last time. I think that we had just finished dealing with the question of Ministers in the Lords. What I would like to talk about to start off with this afternoon is disqualification. I ask you a simple question: why would the disqualifying offices and bodies be the same for the reformed House of Lords as they are for the House of Commons?
Mr Harper: That was our starting premise, which we set out. We also set out that it would be open for change, but that was the position that we started off with for simplicity, if nothing else. It is not more complicated than that.
The Chairman: I see. So that is a starting point and if we wanted to veer from that we could.
Mr Harper: We said that it would be expected that appointed and elected Members of the reformed House of Lords would have a different disqualification list, simply because if you are appointing people to the House of Lords for their experience and for what they do outside it may well be, as is the case already, that for people who play a part in certain organisations where you would not allow them to be Members of the House of Commons you might consider having them as appointed Members of the House of Lords, as that could be appropriate for the very purpose of bringing in their experience and expertise. But that would be something that could develop over time.

Q251 The Chairman: What about the full-time requirement?

Mr Harper: It is a full-time requirement, of course, when the House is sitting, but not when it is not sitting. "Full-time" rather depends on how many hours people work. Many people would say that being a Back-Bench Member of the House of Commons is a full-time job, but if you become a Minister of the Crown you are expected to fit in that work, which many people would say was also a full-time job, as well as being a full-time Member of Parliament. We seem to manage to do that somehow, so I suspect that it depends on how much of your life you are prepared to devote to being a Member of the reformed House.
The Chairman: When you say "when the House is sitting", are you excluding mornings or are you merely excluding recesses?
Mr Harper: You could argue both, but I was thinking more in terms of recess. Clearly there would be parts of the year when the House was not sitting when, if you had much less onerous constituency duties than a Member of the House of Commons, there might well be time available for you to do other activities.
The Chairman: Do you not think that you would lose quite a lot of experience if you made it wholly full-time?
Mr Harper: As I said, it partly depends on how people organise themselves. There are Back-Bench Members of the House of Commons who have interests outside the Commons but do an excellent job as constituency Members of Parliament. There are Members of the House of Lords who contribute on a very active basis to the House of Lords when it is sitting but who also play an active part in organisations outside. It rather depends on the time that people are able to commit, but the expectation, if you are getting a salary, is that you are available full-time. Obviously at the moment Members of the House of Lords collect their allowances when they are here and that is a check on the amount of time that they put in.

Q252 Baroness Scott of Needham Market: I wonder whether you have given any thought in your discussions to whether a reformed second Chamber would sit at different times of the day or whether it would mirror the pattern of sitting that it and the Commons have now. The reason I ask is simply the evidence about the effect on family life and so on and the impact on the sort of people who come forward. Have you given any thought to whether there is an opportunity to do things differently and see whether we can get different sorts of people involved?
Mr Harper: We have not given it thought in the sense of micromanaging it down to that level. Our view is that those are not things that you would set out in legislation; those would be things for the House. That would be exactly the sort of thing that the House could sit down and make decisions about, in the same way as the Houses do at the moment—the Commons thinks about what sitting hours are sensible. To pick up the question from Lord Richard, it may make sense to think about the sitting hours, for appointed Members in particular, fitting around other commitments, including family commitments. But that would very much be a matter for the House rather than for the Government in their proposals.

Q253 Tristram Hunt: Minister, could you just talk me through—forgive my ignorance—the requirement that a Member of the reformed House of Lords is not able to stand for election to the Commons until four years after leaving the Lords? How does this work in law?
Mr Harper: Do you mean why four years and one month or do you mean how it would operate?
Tristram Hunt: How it would operate.
Mr Harper: The point of it is to make sure that, if someone stood down from the House of Lords or their term ended just before a general election, they would not be eligible to stand at that election but they would be eligible to stand at the subsequent general election, so there would be a gap. The exact reason why it is four years and one month is rather long and complicated. I would be very pleased to read out my long, complicated list; it would sound like something out of "Yes Minister", but it makes sense. It is basically to do with the shortest possible gap between an election, given that if there were an early general election the regular election would take place on the fourth first Thursday in May subsequently, which is why it is four years and not five. It is basically to make sure that you have a gap, so that someone cannot use their position in the reformed House of Lords as a platform to stand for the House of Commons. It is not a longer prohibition because we were mindful that under the Human Rights Act and the European convention you are not able to have a prohibition for a disproportionate length of time. It is basically to set an expectation that people would not use the reformed House of Lords as a platform for entry to the Commons, to make sure that we attracted people to the reformed House of Lords for that purpose and not for another.

Tristram Hunt: When you say "set an expectation", how does it work? Do you sign a contract saying that you are not going to do this? What would possibly prevent Lord Whoever from seeking to test this in the European court, saying, "You are prohibiting my rights to labour," and all the rest of it?
Mr Harper: There would be nothing to prevent them from testing it, but our advice is that having a proportionate bar would be allowable. That is why, for example—
Tristram Hunt: But do you accept that requirement when you become a Member of the reformed House of Lords? Is that part of your contract?
Mr Harper: It would be in statute, so that once you ceased to be a Member this time bar would be in place by law before you were eligible to be a candidate for election to the House of Commons. You would have accepted that restriction when you became a Member of the reformed House of Lords.
Tristram Hunt: Okay. Is IPSA happy with that, as it will be in charge of a lot of these terms of employment?
Mr Harper: Whether or not you were able to be a candidate for election to the House of Commons is not a matter for IPSA. It would be prohibited in statute.

Q254 Lord Tyler: You mentioned again that it is the Government's view that at least the majority of Members of the reformed House would be full-time parliamentarians. Would you accept that, given that you also recommend that they should not have any constituency responsibilities, constituency offices and so on, this is not in any way comparable to a full-time Member of Parliament? I am sure that you and I would agree, as would the MPs here, that that ends up at 300-plus days a year, rather than just the sitting days. Why then are the Government recommending that a Member of the reformed House should have a salary that is lower than for a Member of the House of Commons but higher than for Members of the devolved Assemblies, all of whom have constituency responsibilities and tend to work 300-plus days a year? Is not that really rather odd? Are we not anticipating that Members of the reformed House, without any constituency responsibilities, will primarily be full-time only when they are here?
Mr Harper: First, they are not primarily going to have constituency responsibilities in the sense that a Member of the House of Commons does, but I do not think that they are going to have no constituency responsibilities. The elected ones are going to have constituents who write to them, so they will not have no responsibility for constituents. Indeed, I would say that Members of your Lordships' House already, while not being elected by anyone, get lobbied and written to, particularly when there are contentious matters. At the moment, of course, that varies, but you get lobbied on that basis, so I think that that will happen when you are elected. You will not have the same level of constituency responsibilities, but I do not think that it is true to say that you will not have any. We set an expectation of the salary as our best starting point of where we thought it should be pitched. This Committee is, of course, free when it is taking evidence from others to make a different recommendation, but that was our starting point; we thought that it sounded sensible, but the Committee is free to give us different advice.
Lord Tyler: The logic of that position would be, under the Government's preferred option of 80 per cent elected and 20 per cent appointed, a differential salary for the two different types of Member. I am sure that that would be very divisive.
Mr Harper: No, I do not think that that is right. As I said in answer to the Lord Chairman's question, the amount of work that Members put in is not particularly scientific, in the sense that, even if you are here for all the hours that the House is sitting, Members vary in their amounts of work and contribution. You cannot possibly reflect that in the salary. In the same way as in the House of Commons we have a set salary for every Member, I think that you have to have a set salary for every Member of the House of Lords. Some will work incredibly hard and some will work less hard. That is just what we get used to in politics. I do not think that you can start differentiating salaries by how hard people work or how many hours they put in.
Lord Tyler: I certainly accept that, but would you not accept that equally logical would be the Lord Chairman's point that, if you had a rather larger total number of Members—over 300 Members—many of whom had other interests to fill up the many days when they were not here, both the House might benefit and you might not have to pay them such large salaries?
Mr Harper: That is entirely true and it is something on which the Committee may want to give us advice, which we will reflect on. Another thing that weighed with us, simply to do with the point at which we are starting, was that we were conscious that—I think that I am right in saying this—Members of the current House of Lords, if

they attend every day the House sits with the current allowance, can take away roughly what a Member of Parliament can or thereabouts. We did not want to move too much lower than that and change the expectation of the high calibre of people whom we were expecting to be Members of the reformed House of Lords. For both those reasons, I think that we have pitched it about right, but we are open to advice from the Committee.

Q255 Lord Hennessy of Nympsfield: This question, Minister, may be a bit unfair, because in your role as a Minister you have to give an impression of enthusiasm for the Bill, whatever your private views might be, but I am assuming that you are an enthusiast for the Bill. One criticism that the reformers level against the ancien régime such as my friend Lord Norton and me is that the average age for this House is 68 and this should be a mechanism for getting younger people in. If you want to get younger people in, I think that it is in many ways undesirable to say to them, "You can frisk in this paddock of the Senate"—although "Senate" means ancient house—"but you can't, as you learn, naturally progress to the House of Commons." In many ways, it is in restraint of political trade. It just does not fit with the enthusiasm of the reformers' case, which you occasionally bring before us, to our pleasure.

Mr Harper: I am very enthusiastic for these proposals—indeed, I am Tigger-ish in my enthusiasm, which I think is a phrase that you have used from time to time. I do not agree. If we were saying that there was a prohibition for life and that you could never be a Member of the House of Commons once you had been a Member of the reformed House of Lords, your point might be valid. All that we are saying is that you have to have a breathing space or cooling-off period.

Lord Hennessy of Nympsfield: But why? Tell me why.

Mr Harper: There are two reasons. It is mainly so that you do not attract people to be Members of the reformed House who only want to be Members of it as a stepping stone to being somewhere else. There is a serious job of work for the reformed House of Lords to do as a scrutiny and revising Chamber. We want people to be attracted to it for that work; we want to attract people who want to do that work and want to be parliamentarians. We do not want to attract people who primarily want to be Members of another place—hence the cooling-off period. It is also how we address the challenge from those in the other place who think that Members of this House will spend all their time interfering in the role of Members of Parliament. We want to make sure that we have a distinct House with Members who are undertaking different roles in a complementary way and, by doing so, are increasing the ability of Parliament to do its job, rather than crowding each other out.

Lord Hennessy of Nympsfield: But 15-year terms mean that they are going to be pretty ancient before they get the chance. Fifteen plus four is 19. They may come in as youths to this House, but they will be verging on the venerable by the time they are free to try to run for your House. That is what I mean by restraint of political trade. It seems monstrously unfair.

Mr Harper: But if you take that period of time, it is the length of the term that is significant; the cooling-off period is a relatively short period after that. As I said, we want to attract people to the reformed House of Lords who want to be in the reformed House of Lords for itself. Perhaps, if I may say so, people will be attracted into the House of Lords because that is the destination, not because it is just a route on the journey to somewhere else, much as there are many Members who want to be Members of the House of Lords who have not already been Members of the House of Commons and, indeed, can think of nothing worse than being Members of the House of Commons. They like the different role and nature of the House of Lords and that is why they want to be there.

The Chairman: But if it is the destination, should they not be allowed to stand again?

Mr Harper: I am very happy to go through our logic about why we thought we should have single, non-renewable terms, but I am conscious that we do not necessarily want to go over ground that we have gone over before.

Q256 Baroness Symons of Vernham Dean: On this point, why does it not work in both directions? Why do you say that there is a restraint on Members of the House of Lords standing for the House of Commons but not a restraint on Members of the Commons standing for the Lords? If there is such a major point about the distinction of roles, why does it not work in both directions?

Mr Harper: Mainly because we are setting up a new body here and concerns have been expressed that you would attract a lot of people who were using it only as a stepping stone to get to the House of Commons. I have not heard it often expressed that Members of the House of Commons stand for the House of Commons only in order

to become Members of the House of Lords. If we are looking at the problem that we are trying to solve or the risk that we are trying to avoid, that is not one that was at the forefront of our minds.

Baroness Symons of Vernham Dean: Forgive me, Minister, but there is a lot of evidence that at the moment the traffic is precisely in that direction and people like to become Members of the House of Lords. I fail to see the logic in what you are suggesting.

Mr Harper: It may be that significant numbers of Members of the House of Commons do become Members of the House of Lords. That, indeed, is the case. The question is whether they become Members of the House of Commons in order to become Members of the House of Lords. I submit that they do not. They become Members of the House of Commons in order to become Members of the House of Commons. It is the causality.

Baroness Symons of Vernham Dean: Again, Minister, this is a completely illogical point. You keep saying what your reason is but I have still not understood the logic of the answers that you have given to Lord Hennessy. If it is right to have that inhibition, what you are essentially suggesting, although you have not said it full on, is that somehow there is something dishonourable in becoming a Member of the House of Lords and, I think you said, using it as a stepping stone to the House of Commons. I am sorry, but in life people have career progressions. They are allowed to use their current jobs to go for another job, if that is what they want to do. Indeed, I would suggest that there is a great deal of evidence that once people are in the Commons they actually quite like coming to the Lords and a 15-year term might be very attractive to them, having done 10 years in the Commons. I really cannot see that you have stood up the logic of this part of the Bill.

Mr Harper: I have set out the reason why we have chosen that. You clearly think that we should have an equal and opposite restriction on Members of the House of Commons—

Baroness Symons of Vernham Dean: I do not think that you should have a disqualification period, but if you are going to have a disqualification period, in logic it should work both ways. I actually think that it is nonsense to do it at all, but if you are going to do it, I do not think that one is defensible without the other.

Mr Harper: Okay.

The Chairman: I think that we ought to hear from the one person in the room who has actually gone from the Lords to the Commons.

Q257 John Thurso: Thank you, Lord Chairman. Is it still not the case that what all these things to do with the bar and so forth are about is seeking to retain the Lords' character of reflective debate and maturity rather than the more hurly-burly aggression of the Commons? Therefore, why do we not look at the core of that, which is simply having a minimum age rather than bars afterwards?

Mr Harper: The way that you have put the objective is very sensible but I am not attracted to age as an automatic requirement. It seems to me that it is not necessarily the fact that the membership of the House of Lords is predominantly older in terms of its average age that brings with it those other qualities. I do not think that if you just set an automatic age, that is what you would get necessarily, as lots of other qualities are involved. I am very unattracted to using some kind of automatic mechanism like that for selecting Members. I presume that what you have in mind is a minimum age requirement, much as they have, for example, in the United States Senate, but I do not think that setting that at any realistic level would have the outcome that you want. I do not think that anyone would suggest that we set it extraordinarily high. It is hardly as if most Members of the House of Commons are that young when they get elected. There is the odd one but politics is a strange profession in that you can get elected when you are in your 40s and people think that you are incredibly youthful.

John Thurso: The average age of election of young thrusting politicians in the Commons is in the 30s. That is when most of the ones who end up in the Cabinet get elected. If one had, say, 35 as the minimum age for the Senate, it would mean that they would not be available until the age of 50 in the Commons, by which time a ministerial career and that hurly-burly would probably be past them. Does that not achieve the objective without a lot of notions of prevention?

Mr Harper: I am not sure that it does and, looking round at the looks of surprise on the faces of my fellow Members of the House of Commons, I am not sure that that is a widely shared view.

Q258 John Thurso: I was very interested in what you said about constituencies. I have always had the assumption that a core objective of the Bill is to ensure that Lords at no time and in no way end up competing with a constituency Member of Parliament, and that the conventions that have always existed in the past—they

may or may not continue to exist, I do not know—that Lords did not get involved in constituency matters and individual cases held good. Are you referring to your previous comments on being lobbied about the generality or specific points in legislation, which, of course, they would be, or are you talking about taking on casework? Can you take this opportunity to assure us that any notion of taking on casework is not something that you would expect a reformed Lords to undertake?

Mr Harper: That is a helpful distinction. I was referring primarily to the correspondence and lobbying that you would get from constituents based on the legislative process or, indeed, the scrutiny process. As regards the primary role for taking up cases, whether with arms of government or local government—the sorts of things that constituency MPs do on a daily basis—your constituency MP would be your primary person for doing that. I suspect that it is, of course, possible, if you have done that and reached an unsatisfactory outcome, that you may well approach a Member of the upper House. Clearly, if you are debating and passing legislation and holding the Government to account, you are going to get constituents writing to you with their views on that legislation and asking for your views on it, so you will have some workload, but I would not expect it to be of the same magnitude as that of a Member of Parliament.

John Thurso: This is a very slippery slope, because the fastest way to end up having two Houses competing to do the same job is through the constituency element. Believe me, it is what really distinguishes being in the Commons from being in the Lords—more than virtually anything else, I suggest. It must be absolutely clear at the outset that Members of the House of Lords just should not do constituency work. That will help to preserve the character of what the Lords does very well. Anything that we can do by convention or legislation to ensure that is vital.

Mr Harper: I think that in the last part of your question you highlighted why it is not in the draft Bill, because that is exactly the sort of thing that you would establish by convention. That level of detail about the roles and what Members do is not what you would want to put in legislation so that it was justiciable in the courts. It is the sort of thing that you would establish by convention. We have a starting point, and that is exactly the sort of thing that the Houses could do.

Q259 Oliver Heald: If a person is elected to represent a region, he will expect to do that and he will be expected to do that. You have said in the past that you would expect this to lead to constituency work. At the moment, we all know that we receive many messages from people who live in our constituencies who have been encouraged to send in a fairly standard letter on behalf of a particular campaign. You and I can think of forests, the EU referendum and numerous other subjects where this has happened. Why would it not happen in the Senate?

Mr Harper: To go back to the way I have just answered that question, you would, of course, be written to by constituents about legislation that was before you, and by constituents who wanted you to vote on that legislation in a particular way. That would of course happen, which is why I said in answer to Lord Tyler's question that you could not assume that you would have no constituency work or contact with constituents—you would have—but what you would not do is the detailed individual casework that John Thurso just raised.

Oliver Heald: Our colleagues in the European Parliament, of course, get individual cases brought to their attention but they tend to be on matters within their jurisdiction, but here it would be different because the jurisdiction would be the same—domestic matters in the UK. Why would a constituent not approach the Senate Member if he was not satisfied with the Commons Member?

Mr Harper: There are two different parts to that question. The constituent can approach whomever they like, but the question is: what does the Member of the reformed House of Lords then do? If there is a very clear convention that it is the job of the Member of the House of Commons to take up individual cases, it would be perfectly open to the Member of the reformed House of Lords to make that clear and not take up those cases. It would depend on what that convention was. That sounds to me a very sensible delineation between individual casework and lobbying Members of the reformed House of Lords on legislation that was before them.

Oliver Heald: But do you not appreciate that, in the world that we live in now in politics, if you were a Member of the Senate and you were approached by somebody in circumstances that could be portrayed in the media as being very compassionate ones and you turned them away, you would be seen as useless, unhelpful and unpopular, and this institution would suffer?

Mr Harper: There are two things. First, if it was very clear from the outset that it was the job of the Member of the House of Commons to deal with the casework and it simply was not your role, I do not think the problem

would be as great as you suggest. Secondly, as you and I both know, Members of the House of Commons frequently take up cases that, frankly, have very little to do with our actual responsibilities, and where we are actually doing the job that a local councillor could do perfectly effectively but for some reason has not, or perhaps people have come to us first. The reason why we do that and why we always say yes is that we have to get re-elected. A Member of the reformed House of Lords can probably be a little braver and a little more vigorous than we are, be clearer about their responsibilities, say no to the constituent, point him or her in the right direction and be a little firmer about it because they do not have to get re-elected.

Q260 Oliver Heald: I am not of the view that the reason why we do a good job is that we want to get re-elected. A lot of people do it for that reason but a lot of people do it because they just want to do a good job. We have talked about MEPs, who, of course, have a regional mandate. In terms of the hierarchy of pay, they obviously do not do all that much constituency work and are probably likely to do less than a Member of the Senate, so how do you justify the hierarchy of pay?

Mr Harper: Are you asking me to justify the hierarchy of pay for MEPs or for what we have proposed for Members of the upper House?

Oliver Heald: How does it fit together, because an MEP is on about €93,000, which comes down to about £80,000 a year, and a Member of Parliament is on £65,000? How does this work?

Mr Harper: I am not a great expert on what MEPs get paid, never having wanted to be one, but my understanding is that our MEPs get paid the same as Members of the House of Commons get paid in terms of what you end up with after all the various taxes and things.

Oliver Heald: It may be of interest to know, Minister, that they get 38.5 per cent of a European court judge's salary. That currently gives them €93,600 a year.

Mr Harper: I am not going to argue with you because I have no idea whether that is, indeed, correct. In our White Paper we have set the salary for a Member of the reformed House of Lords at less than that for a Member of the House of Commons, but not that much less as it is still a very important role—the sort of role that you want to attract high-quality, high-calibre candidates to. However, we see it as a slightly subsidiary role to that of the House of Commons. That is why we set it like that, thereby establishing the Commons' primacy. We set out a starting point in relation to where this fits in with the devolved Assemblies, but, as I say, this is not an exact science. You set a salary level but some Members will work incredibly hard whereas others will work less hard. I do not know whether the Committee has taken detailed evidence on what Members of the reformed House of Lords ought to be paid, but if you have a strong view based on evidence that you would like to recommend to the Government, we would be very happy to hear from you.

Q261 Baroness Scott of Needham Market: I am interested in whether or not you would consider retaining a per diem arrangement for the appointed Members on the basis that the rationale for keeping appointed Members is their expertise, because if it is 15 years out of date it would not be terribly helpful.

Mr Harper: So what you are saying is that, if you want to have appointed Members who have a range of responsibilities outside to allow them to participate effectively, the quid pro quo for the allowance would be that they were not full-time.

Baroness Scott of Needham Market: Exactly, because if they are full-time and salaried, they are not doing whatever it is that they came in to be experts on, and by the time they come to the end of their term of office their expertise will be 15 years out of date.

Mr Harper: I take that point. I think I said that our expectation was that they would be full-time when the House was sitting. However, for parts of the year it is not. One of the things to look at is whether that is compatible with undertaking a range of other activities. As I said, lots of people say that being a Back-Bench Member of Parliament is a full-time job. Indeed, it is, but some Members can also undertake other responsibilities and can manage to fit those in with being Ministers. I know that already Members of the House of Lords who are working Peers contribute a great deal but also have other responsibilities. We started off with the assumptions in the White Paper but if, as a result of the deliberations of this Committee, you have other recommendations, we will listen to them. That was our starting point. We did not want to make a distinction between the remuneration or expectations of different Members of the House. We wanted to treat them all on an equal basis.

Baroness Scott of Needham Market: Would that include Bishops? After all, their attendance is very sparse indeed. We have already established the principle that there would be a different mechanism for the Bishops, so it would not be a huge leap to have a different one for appointed Members as well.
Mr Harper: Yes, and in the details we have said that we would expect Bishops to be different because of the nature of their other office and therefore we have made different arrangements for their remuneration.

Q262 Baroness Scott of Needham Market: That could apply to appointed Members because it is not always easy to find work that is sufficiently obliging to fit in with the sitting hours of the House. We hope that the Government would bear that in mind. I have one final question on the four-year period, if you feel you have to have it—like Lady Symons, I am not convinced about it. Would you consider a prohibition on, if you like, jumping ship while your 15 years are in train, but perhaps remove the four years afterwards, as I find it difficult to imagine what sort of profession would allow you to be a full-time Member for 15 years, go back to whatever it was you were doing before, and then run again?
Mr Harper: That is a very good point. We have said in the proposals so far that you would have the cooling-off period at the end and it would also apply if you stepped down some time in the middle. However, you have made a very good point, which we will reflect on. You may want to make a firm proposal when you report, but that is something I will go away and reflect on.

Q263 Lord Rooker: I wanted to ask some questions regarding the disqualification and the effect on public life. However, because of the exchanges that we have just had, I have just a couple of follow-up questions on casework. Under the current conventions, which everyone says will carry on, it is possible for Peers to raise individual grievances on the Floor of the House at Question Time or in debates. If an impression is given that new Peers or Senators should not do this because, for example, the relevant government departments would not answer their letters, the first thing they will do is to table Questions. That is the last thing that civil servants want. You will not be able to prevent Peers from raising individual cases. They may make a particular area of casework their specialism—disability is a good example. We have competition in this House among Peers because of their expertise. They have world-class expertise. I do not speak in a pejorative sense. No government department will say, "The convention is that you must approach the MP. We are not answering these letters or questions." That is just preposterous. We must knock on the head straightaway any impression among Members of the Commons that elected Senators will not be doing casework. I ask the Minister to take this away because we must not give electors the impression that they can elect Peers but that those Peers cannot take up any issues or casework for them. That is simply not the case. We have to meet that one head on. The conventions will not be able to limit any individual's behaviour, because they are conventions. The Minister has admitted that they evolve and change over time if they are not fixed in statute. That is the only way to do it. The impression has been given that Members of the Commons can rest assured that nobody in the elected upper House will interfere in casework. The Minister might wish to think about that impression in terms of responding to colleagues in the Commons. It is a false impression and it does not fit with the reality of what happens. We had a classic case last week of a grievance that was properly raised on the Floor of the House. That will happen more and more. In fact, people will get wound up and do that in order to assert the authority of this House in scrutinising the same Government and the same Ministers dealing with the same issues in the other House. Does not the Minister see that he has raised the spectre—we have not gone into this in detail—of a clash arising between the two Houses in this regard, irrespective of whether this House is 100 per cent or 80 per cent elected? I suspect that most of his constituency casework is local authority oriented rather than central government oriented. That was the case for me. I never sent anybody away, first, because I was up for re-election—that is a fair point—but also because I wanted to help people. Members have a platform. They have the one thing that the general public do not have—the ability to table a Written or Oral Question. Does not the Minister see that this issue could cause considerable difficulties between the two Houses if the conventions are left as they are?
Mr Harper: I think that you have already said that at the moment, even without the House of Lords being elected, there are examples of individual cases being raised or cases being raised to illustrate an issue. However, that is not the generality; that is not what most people do when they raise an issue. Most people will approach their Member of Parliament. In the future, if there is a convention, some people might approach their elected Member of the House of Lords or there may be elected Members of the House of Lords who choose to take up

these issues. That may well be the case, but the question is: what is the generality? What do most people do? What is the general expectation? You are quite right that if you have a convention you cannot necessarily stop an individual who wants to raise something and use it as an example, but the question is: what would the generality be? Would it be that the 300 Members of the reformed House of Lords all spent 60 per cent of their time doing casework, or would each of them occasionally raise some cases? Those are quite different scenarios in terms of people's workload, their time, how they spend it and where they place their focus. If there is a clear expectation about what happens, it does not mean that you do not have variations on that, but you do have a general expectation. I think that you have already said that, even with an expectation that Peers do not pick up casework and that that job is done by Members of Parliament, that convention is breached from time to time, and perfectly rightly so.

Lord Rooker: Could I just ask one more question on this? I have two questions on public life. This is a very substantial issue.

The Chairman: You had three and a half minutes before, to be fair.

Q264 Lord Rooker: All right. I will move on to public life, but we will come back to the casework issue because it will not go away. As regards the disqualifications in public life in respect of holding an office of profit under the Crown, do I take it therefore that the intention is, particularly if there is a 20:80 split in the second Chamber, that the 20 per cent who have come in because of their expertise will not be entitled to sit on a government board or chair a public inquiry or any other such matter while they are Members of the upper House? Have I got that right in terms of the disqualification because that is what applies at the moment in the Commons? I understand that it is to be the same for both Chambers. I declare an interest in that I chair the board of a government department, which, of course, I would not be able to do under the proposed disqualification. Have I got that right?

Mr Harper: That was our starting point. I said in answer to an earlier question that we think that it would be acceptable for there to be a different regime for appointed Members as opposed to elected Members, given that you are getting appointed Members in for their experience. As regards your specific case, you will be pleased to know that the position you hold would not disqualify you from being a transitional Member of the reformed House of Lords. I hope that that is good news.

Lord Rooker: I am not proposing to stand for election. This is an important point. What you are saying is that transitional Members can carry on, so there will be two classes of Member in the Lords over and above the 20:80 split. Some of those who are able to serve on government bodies and chair inquiries—

Mr Harper: The transitional Members are, by definition, there only for the transitional period, but when we get to the steady state we think it would be acceptable for there to be different disqualification provisions in terms of offices held for elected as opposed to appointed Members for exactly the reason that you have suggested—that if you are getting appointed Members for their expertise, clearly you might want to draw from people who have some current expertise, which might involve them chairing bodies that would not enable them to be Members of the House of Commons, for example.

Q265 Laura Sandys: I come back to the casework issue, as Lord Rooker raises a very important point. I put this in the context of Kent, which I represent. The relevant Peer, along with 17 Members of Parliament, would represent two million people and would therefore probably engage with a constituent of mine only once every 17th time. That would not be a case of putting their tank on my turf, if you see what I mean, because their job would not necessarily comprise specifically casework or comprise casework at all. They might get it by default. This is an important issue. Can the Minister confirm that through this process the Government, or an agency of the Government, would communicate adequately with the electorate to explain the different roles and levels of responsibility, as quite a lot of communication would be needed? To be frank, that might help people to clarify the role of MPs as well, which I think is very muddled. Would you look to put restrictions on resources to support people in the second Chamber in order to create a bit of a barrier to taking on two million people, and Two million people's casework, because if they start to get known for casework they will very soon find that they will be inundated with it? I would have thought that might be a useful deterrent.

Mr Harper: You can certainly set out very clearly what the role is expected to be. Communicating that clearly to electors would be very helpful. The mechanism that you set out comes down to clearly setting out what the role

is. IPSA—to pick up the body mentioned by Mr Hunt—would have responsibility for setting out the expenses regime.

Laura Sandys: Can I add to that? Should not IPSA deal with the salaries, as it deals with our salaries? I do not like the four-letter word particularly, but if we have to use it, it is coming to an agreement about our salaries. Would it not be sensible for that body to deal with it rather than for you or for us to do so?

Mr Harper: That may well be the case. Coming back to the expenses, IPSA would then be able to set out a sensible expenses regime in order to allow a Member of the reformed House to do their job. If it was clearly set out that it was not intended primarily to do casework, it could set out those requirements accordingly. As you said, if a Member of a reformed House has some staff assistance to enable them to carry out their function in Parliament but does not have as much resource as Members of the House of Commons, you set a limiting factor to their ability to take on that casework. That may well be a sensible mechanism by which to do it.

Q266 Lord Trefgarne: Lord Chairman, I just want to say two quick things. Would it not look very odd for elected Members of the House of Lords to be restricted from raising matters to do with their constituents if the relevant Minister was himself in the House of Lords? That seems to me to be an indefensible position, which I am sure would not survive too much scrutiny. My second thought is this. We have been talking about trying to restrict people from using the Lords as a jumping-off point. Is it really supposed that someone who is prepared to fight for a seat in the Lords and spend 15 years here is doing so all in preparation for doing something else? Not many jobs have that dedication and I do not suppose that there are that many people who want to be MPs on that basis either.

Mr Harper: On that latter point, I said that I would take away the point that was made earlier and reflect on it. Of course, unlike for life Peers, it is open to people who are Members of the reformed House of Lords to stop being Members of the House of Lords at any point, and the cooling-off period applies then. You may well be right that it may be worth looking again at someone who serves a full term—three Parliaments for 15 years—and saying, "Actually, if you've done that, we don't think that's a serious risk of only attracting certain people." Alternatively, we could say, "You've frankly put enough work and effort in that you kind of deserve it." But we may well look at a different regime for people who have served a full term—three full Parliaments. As I said, I will reflect on that.

On the question about Lords Ministers, as I think I accepted, I do not think that you could prohibit Members from raising cases, but you could set a clear expectation that they were not the primary port of call. As Lord Rooker said, it already happens now that Peers raise individual cases, but it does not happen on the scale that it does in the House of Commons. It may well be that that arrangement would work perfectly well.

Lord Trefgarne: In my time in the Lords, I have often raised individual things with Ministers but I have always kept the MP informed, or even asked him first, particularly my local MP.

Q267 Dr Poulter: I wanted to tease a few points out about this issue of why nobody should be allowed to stand for the Commons and whether there should be a prohibition or moratorium on people transferring across from the reformed House of Lords to the Commons. Clearly, under the electoral system proposed, there would be large constituencies and the general view is that it is undesirable for Members of the reformed House of Lords to have a strong constituency role. Is there not a risk, if someone was coming to the end of their 15-year term, that without that moratorium in place, perhaps where a particular parliamentary party had a target seat, one of the elected Members of the House of Lords could take up a constituency role specifically with a view to being elected at the end of their term? Is that not the risk in all this?

Mr Harper: That is the reason for having a cooling-off period in the first place. It partly reflects what I said about recruitment and wanting people to be Members of the House of Lords to do that role, because it is a very valuable role. It also reflects the general feedback about what happens in some of the devolved Assemblies, where you have both directly elected and list Members. You sometimes get people elected on a list basis focusing specifically on individual constituencies and that type of behaviour. That was something that we wanted to avoid as well. You set it out very well. That is the reason for having the cooling-off period—not for ever, but for a period when you cannot jump from one to the other without that gap.

Dr Poulter: Would it be fair to say that, in making sure that there is that differentiation of roles—Lord Thurso made this point very well earlier—the key difference between the role of a Member of the House of Commons and the role of a Member of the House of Lords is that link with the constituency? Is it not the case that, if you

want to have two Chambers with different and distinct roles, this is a key part of making sure that that distinction is maintained and that party politics do not get in the way of that being maintained? That is why the moratorium is potentially very important.

Mr Harper: It is. One thing that we have set out throughout the White Paper is that we are very clear that the Chambers are distinct. They are both Chambers of one Parliament but they have different roles. When we were discussing why we had chosen to have single, non-renewable terms and why we had chosen the electoral system, we made it clear that they were all ways of ensuring that the two Chambers were distinct with distinct roles, so that they did not compete, to the extent that that was possible. I think that these provisions are part of that distinction, to ensure that being a Member of the reformed House is the thing that people want to do, rather than having Members compete with each other.

Dr Poulter: I have one other question on the timetable for the Committee. Should I ask it now or later?

The Chairman: Later, please.

Q268 Baroness Shephard of Northwold: Minister, I should like to follow up the points made by Laura Sandys and Lord Rooker. I am still extremely sceptical about the whole idea of having elected Members for the House of Lords. You have made it clear that they are not to be accountable, as they are not to be re-elected and they are to be there for a 15-year term. You have made it clear that they will have no constituency or, as it were, local responsibilities and you have said that their ability to raise matters that are raised with them as elected people will be very much limited—indeed, Laura Sandys suggested that you should explain those limitations in the advance publicity for this great change. Do you not think that, at a time when politicians are not necessarily so popular as all that, the public will say, "What are these people for, apart from claiming expenses?" How would that help attitudes towards democracy, accountability and the reputation of this House, which at the moment is, I believe, not bad?

Mr Harper: I think that we made it quite clear that the point of having election was to have Members who were seen as more legitimate, because they had been put in place by electors rather than largely chosen by leaders of the political parties.

Baroness Shephard of Northwold: But accountability is part of legitimacy.

Mr Harper: Yes. You could ask what people think about Members who are in place already and—the party Members, at least—are selected by the leaders of their parties. As I said, if they attend every day that the House is sitting, they can take home either the same money as or more money than a Member of the House of Commons. I am not sure that that is very well known by members of the public. Perhaps if it was they would be a little less happy with the present arrangements.

Baroness Shephard of Northwold: But you seem to be implying that to receive expenses for attending is the same as being accountable. I do not understand your reasoning, I am afraid.

Mr Harper: No, I was simply answering in terms of the way in which you posed the question. You said that if Members were elected and were not seen as accountable because they had single, non-renewable terms and received a salary, people would say, "What are they for?" People might say that about Members of the House of Lords already. They are there and they receive an allowance when they turn up—

Baroness Shephard of Northwold: But they are not full-time and they are not elected. It is known that they are there because of their expertise. You seem to be substituting—I know that you did not mean to do this—the idea of people saying, "What are they for?" because they are getting expenses, with the idea of them saying, "What are they for?" because they are being elected for 15 years. I cannot think that you intended to give that impression.

Mr Harper: I am simply saying that the difference is that Members of the present House of Lords are not accountable whereas, if you elected them, you would at least make their method of getting to the reformed House of Lords more legitimate, because you would put it in the hands of the electors rather than, as at the moment—certainly for the party-political Members—in the hands of the leaders of their parties, because that is how they get here.

Baroness Shephard of Northwold: You seem to be making a distinction—I do not think that I have noticed you making this point before—between people who are political appointees and those who appear via the Appointments Commission.

Mr Harper: No. In terms of what we have set out, the Government's proposal is that you have a House that is made up of both elected and appointed Members. Clearly the appointed Members will be appointed by the

Appointments Commission, so they are similar to those who are appointed already. Under our proposals, the party-political Members will all be elected, but at the moment they are effectively elected but only by one person—the leader of their political party, who chooses them and puts them here. It seems to me that having people elected by members of the public is a better way of getting them into the upper House than having them chosen by the leader of their party.

Baroness Shephard of Northwold: From a party list?

Mr Harper: No. Our preference in the White Paper and Bill is for the single transferable vote. If it were a list, it would be an open list and not a closed list. The electors would be able to make a decision about the order in which candidates were elected; people would not just be elected in the order in which the party leader had ranked them.

Q269 Gavin Barwell: I want to try to make some progress on the issue of people's ability to take up casework. I have been a Member of the House of Commons for only a year and half or so, but it seems to me that there is very strong adherence to our convention that Members do not take up casework in another MP's constituency. It seems to me from what has been said that in your Lordships' House Members will occasionally, without having a constituency, take up a case that has been drawn to their attention and falls within their sphere of interest. If we go down the road of reform, probably everyone would want to avoid a situation where there was conflict between the roles of Members of the two Houses. Is not the right way to deal with that not necessarily by law to proscribe Members of the upper Chamber from raising cases that were of concern to them but through the information that we give to members of the public about the roles of the relevant jobs and through the allowances system? As a Member of Parliament, my ability to deal with casework is significantly impacted by the fact that I have a constituency office on a high street where people can walk in to contact me. It seems to me that it would be entirely inappropriate for Members of the upper House to have that. I get given a staffing allowance that allows me both to have staff here at Westminster to support me in my role of scrutinising the Government and to have staff in my constituency who deal with casework issues. To me as a Member of the House of Commons, I think that Members of the upper House should have the former but not the latter. So are there not ways of dealing with this concern about the ability to raise casework without having to legislate to stop anyone doing something?

Mr Harper: I think that both those points are very sensible. I know that when I was talking about conventions earlier there was some scepticism, but you are quite right. In the House of Commons there are already some strong conventions about taking up cases of other MPs and there are conventions when you make official visits on business to other Members' constituencies. These are quite strong conventions, which are largely adhered to, although occasionally they will not be. I think that that can work very well. Indeed, in some ways it is much better to have that and to have it enforced by the House authorities rather than to try to get a legal process under way. On your point about resources, I think that that is the way to do it. Although people were saying that Members of the reformed House would be desperate to take up casework, the fact is that if their resources are limited, they may well take up cases on the same basis that Members of the House of Lords do at the moment, perhaps if they have a specialism, but they will not be doing it on a frequent basis. They will have a large constituency on a regional or sub-regional basis and if their resources are limited they are simply not going to be in a position to arm-wrestle those cases away from Members of the House of Commons.

Q270 Baroness Andrews: I have to say, Minister, that I think that this is a terrible muddle. The more we probe into the detail of how you use conventions to regulate behaviour, the more problematic it is becoming. Will you have a convention to stop the Member of the upper House holding regular surgeries, no matter where?

Laura Sandys: For two million people?

Baroness Andrews: Well, it would be very difficult to stop them. He or she could do it on a transitional basis around the constituency. There will be wealthy people who want to stand for the second Chamber. Why should they not buy a shop front in the middle of your constituency? It is difficult to go with this wonderful manifesto of a new representative democracy but then to say to people that they will not be able to have outside interests, they will not be able to stand for the House of Commons and they will not be able to do anything for you, because the conventions, which will have to be agreed by this House, will have made that impossible. Then there is the process of agreeing the conventions. At what stage do you think that the conventions might be agreed? In a transitional period? Why is it in the interest of the transitional House to agree a set of conventions to bind the

future House that will inhibit everything that is worth doing? A witness last week said that what would change this House would be the fact that it became a salaried House—that is far more likely to change and limit the sort of people who might seek membership. I cannot visualise these people. I see them only as extremely anaemic, without ambition and without moral force.

The Chairman: Please could we ask a question, which is the object of the exercise, not to make a speech?

Mr Harper: I did not spot a question in there.

Baroness Andrews: The question is very simple. Would you have a convention that made it impossible for the Member of the upper House to hold surgeries?

Mr Harper: There are two things. First, I do not think that it is for me now to set out what I think all the conventions should be. Part of the discussion that we had about transition was to reflect the things that are good about the House of Lords at the moment. You get the new Members in over time. I have been quite frank about the conventions. As I said in our first meeting, the conventions will change over time. I do not think that you can set out now everything that the House will do for evermore; I do not think that that would be sensible. In terms of your proposal, if you did the things that Mr Barwell mentioned about resources and the expectation of the role, it may well be that a Member of the reformed House wants to have a surgery, but if the resources are limited and they have a constituency or region to represent, it simply is not going to happen very often. I think that you can have some conventions that make it very clear what the expectations of the role are. To pick up your point about voters saying "What do these people do?" it will be clear what their role is—they will be Members of a scrutinising and revising Chamber, they will hold the Government to account and they will scrutinise and improve legislation. That will be the role that people expect them to do. It will be a different role from that of Members of the House of Commons, but I do not think that members of the public will have any difficulty grasping what the role is and electing people on that basis, looking at their qualities for the role to which they are electing them.

Q271 Lord Norton of Louth: On conventions and resources, the conventions are complied with by parliamentarians, not by constituents. If you told constituents that MPs do not have any responsibility for local authority matters, I very much doubt whether that would stop constituents writing to MPs about those matters. If you limit the resources, all you are doing is preventing Senators from replying; you are not stopping constituents writing. If lots of people start writing, saying, "I voted for you, so will you do X?" and then they get the response, "I can't do X," you will get a reputation locally. How will that restore trust in politics?

Mr Harper: To pick up the point about conventions and affecting the behaviour of electors, of course if someone really wants to write to you, they can write to you, but you can set the expectation about your role. As I said, Members of the House of Commons always say yes, but we probably ought not to say yes all the time and we probably ought to get people to approach the correct elected person, but the reason why Members of the House of Commons say yes to everybody is that they want people to vote for them in the future. As I have said, Members of the reformed House of Lords can probably be a little firmer than Members of the House of Commons are about who does what. For example, I know that in the United States members of the Senate and the House of Representatives are often very clear about their role versus the role of members of state legislatures and people at the state level of government and about who deals with what. It is much clearer there than it is in our system. To pick up your point about trust, it is about how people perform the role that they are expected to perform. You should set clear expectations about what the role is. Of course there will always be constituents who expect you to do something different. We as Members of the House of Commons have constituents who have an unrealistic expectation about what we should do and we have some people whom we try very hard to help but who remain dissatisfied. But the generality of constituents, I would suggest, are broadly satisfied, certainly on an individual level, with what their MP does. They do not remain dissatisfied—

Lord Norton of Louth: No, but that is because the MP responds. We know from survey data that people have a stronger positive attitude towards parliamentarians following contact with them, but that is because they get a response, which they appreciate. Members are responding even though it is something for which they have no responsibility.

Mr Harper: Yes, but I am just talking about being clear with people about what your role is. If your role is not to be the primary person to deal with casework—the Member of Parliament is—part of your role may be to make sure that you signpost someone towards their Member of the House of Commons to pick up that casework. We

may, for example, see better working between elected Members. It seems to me perfectly clear that part of the convention could be that, if someone approaches a Member of the reformed House of Lords to pick up some casework, the first thing that you do is to see whether the Member of Parliament has picked it up. It may be that it is only in cases where they have not picked it up that you do so. You can have a convention that deals with these sorts of situations in a way that leaves the constituent satisfied that the right process has taken place. There are always going to be constituents who are dissatisfied with not getting the right outcome, but that is the case today.

Lord Norton of Louth: Exactly. They normally want a particular outcome; they are not too concerned with processes. I wonder how soon you think that MPs are going to start writing to constituents saying, "Sorry, I'm not going to deal with that. Write to your local councillor and don't take it up with me."

Mr Harper: As I have said, I think that the biggest reason why Members of Parliament do not do that is that they want to get re-elected. We tend to say yes to things, even when strictly speaking it is a matter for the local authority and it is something that the local councillor should do. If people come to us, we say yes because we have that very clear reason that we want to get re-elected.

Lord Norton of Louth: But that will build up expectations on the part of electors that Senators or these super-MPs cannot then fulfil, because they start knocking them back.

Mr Harper: I am not sure that that will be the case. This is going to be quite a significant change and we should be clear at the beginning about what the role is going to be. To pick up the point that Ms Sandys made, these are going to be people who are standing for a region or a sub-region—a much larger area than an individual constituency. If you are clear about the role, I do not think that you get the disappointment or breach of trust that you would get if you were not clear about the role.

Lord Norton of Louth: I suspect that Members may be clear about the role; the problem is how to educate the public about the role. There is no evidence that they have been educated as to the roles of parliamentarians.

Mr Harper: That is clearly something that we would need to think about in explaining the change to people. Part of the pitch that Members who were standing for the Senate would make would be about their role and about the balance between Members of the House of Commons and Members of the upper House, the elections to which would, of course, take place at the same time. I think that you could make a very clear distinction to people about the vote for one, the vote for the other and the respective complementary roles.

Lord Norton of Louth: That raises a wider question, which I suspect we will not go into, about the basis on which they will stand for election.

The Chairman: Let us not go into it in that case. I have five Members on my list. Lady Symons has spoken already and now wants a second go. That is fair enough, but the Minister was brought here for half an hour and has now been here for over an hour. With great respect, one reason for that is that people have been going on for rather too long, if I may say so.

Q272 Baroness Symons of Vernham Dean: I will try to be crisp. Minister, I agree that it is not up to you to set out the conventions today, but you have said over and over again that people have to have clear expectations, so that, I think you said, there is no disappointment. Therefore, do you think that, before an election, those clear expectations—the conventions—should be clearly set out so that people know whether they are voting for an advocate or an expert? That goes to the heart of the issue. If you are to have a democracy that works, people have to know what they are voting for. We can have a huge argument about this but that seems to me an absolutely incontrovertible point. At the moment, I think—perhaps you will not agree with me—this discussion has been not so much about strengthening democracy as about protecting the Commons. You say, "Let's limit it through how much money we give them," but the fact is that if you were a Conservative Member of this House and somebody came to you complaining about what the Labour Member of the House of Commons had done, I bet you would pick up the case and I bet that most people would, because this is politics. It is not a gentleman's arrangement; it is politics. If you want to limit it, do you not think that the right thing to do is to make the conventions clear so that people know what they are voting for?

Mr Harper: I think that it is sensible that people are clear about the role of the reformed House of Lords as opposed to the House of Commons before a set of elections. I think that that is very sensible. However, I do not think that it therefore follows that you have to set out every single detail of how the two Houses are going to operate for ever at the point in time that the whole process starts. We have made it very clear that you have a

starting point, which is that the powers of the two Houses are where they are today, but I have been very clear that, over time, the roles will evolve, and that seems to me perfectly sensible. But at the beginning you are going to have a very clear expectation set out about what you expect people to do and what the respective roles are. I think people will be very clear about what they are electing and what they are electing people to do.
Baroness Symons of Vernham Dean: That is the convention, then.
Mr Harper: I do not think that it is as complicated as some people are trying to set out—
Baroness Symons of Vernham Dean: No, it is not complicated. It is very straightforward. I agree.

Q273 Mrs Laing: Minister, I am concerned about accountability and I have become more concerned about it as our deliberations have progressed today. The Government's position as set out in the paper says: "The House of Lords performs its work well but lacks sufficient democratic authority." Presumably, what the Government are trying to do is to give the second Chamber sufficient democratic authority, but surely that does not come only from being elected—what follows after that is also important. Surely the person who has been elected has to be accountable for what they do in order to have the democratic authority that the Government are seeking. We have been discussing this afternoon what these Members of the upper House would do. I am concerned about how that would be measured in order to make them accountable. If they are not there to represent anybody, so they do not have a representative function, and they are not to be re-elected, and therefore they cannot be held accountable in that way by saying, "We will not re-elect you unless you do A, B, C," then where does the accountability come in? To whom are they accountable in order to increase the democratic authority of the House?
Mr Harper: We were very clear about this, both in evidence that I have given already and, indeed, in the debate that we had on this issue in the other place. We were very frank about saying that having elected Members of the upper House meant that they were more legitimate because they had been put there by voters—in terms of the party Members—rather than by their parties. We were very upfront in saying that we recognised that having single, non-renewable terms—that is the broad consensus that people have arrived at when they have talked about reform—meant that they were less accountable than Members of the House of Commons. We were very frank about that. If you think that that is a big stumbling block, I would argue that we are still talking about a very significant improvement on the present House of Lords, where Members are neither legitimately elected by voters nor accountable to anybody. Indeed, not only are they there not just for 15 years, but under the present arrangements Members are there for life and cannot be removed by anybody for any reason.
Mrs Laing: Fair enough. I understand what you are saying about it being an improvement on the current situation, but with respect that does not answer the question. They would still not be accountable. It is not just that they would not be as accountable as Members of the House of Commons; they would not be accountable at all to anyone.
Mr Harper: They would be no less accountable than, say, a Member of the House of Commons who has announced that he is not seeking re-election.
Mrs Laing: Surely they would actually be no more accountable than current Members of the House of Lords.
Mr Harper: We have been quite clear in arguing for our proposals. We have not been trying to argue that they would be both legitimate and accountable. We have been quite frank about accepting—to pick up the point that Baroness Shephard made—that they would be more legitimate because they would be elected by voters as opposed to being put here by their party leaders. We have accepted that they would be less accountable than Members of the House of Commons. The point is that they would be here only for a fixed term. We are not talking about producing a House of perfection. We are talking about reforming the existing arrangements and improving it. I would argue that Members who are put into that reformed House by voters, and who are therefore there for, yes, a lengthy but a fixed term, constitute an improvement on a House in which the political Members are put there by their party leaders and who are accountable to no one and are there for the whole of their natural life.

Q274 Ann Coffey: I have a couple of questions and observations. Do you think that there might be more possibility of independent Members being elected to the House of Lords than there is to the House of Commons if a different process is introduced? In the House of Commons the matter of who stands as a candidate is very much decided by the party itself and there is a long tradition of not being able to elect independent people. Do

you think that this process might help independent candidates be elected? The second observation is that, having been a Member of Parliament since 1992, I have seen an enormous growth in casework over the years. The growth has increased at the pace of the resources that have been provided to my local office. There has been a long debate in the Commons about whether MPs are turning into super-social workers, which is overtaking their ability to do their job in the Commons. I suggest, very much in line with some of my colleagues, that limiting resources will prevent that. I personally would have no problem with anybody from the upper House doing my casework. You are all welcome to do so. If you give me your addresses, I will send it to you tomorrow.

The Chairman: In prehistoric times when I first got into the House of Commons, you did not have any allowances for this sort of thing. You really did not have very much casework. I used to hold a surgery once a week and if six things emerged from it that was a busy afternoon's work, but things have changed.

Mr Harper: On the last point, I was thinking that it would probably be better if someone other than me said it, but it is very welcome. It would be nice if someone came along and did all one's casework. That would be wonderful. To pick up the point about independents, that was one of the reasons why we picked the electoral system that we did—the single transferable vote—not because we have any illusions that it is going to be easy for a non-party candidate to get elected, but because the single transferable vote is the system that is most likely to enable an independent person to get elected rather than a list system. We picked it on the basis that it would be most likely to get independent people elected. As I said, the reason why we wanted an 80:20 House was to get a raft of non-party-political people into the House, because we think that brings some benefit as well. Both those things mean that you maximise the chances of independent non-party candidates getting both elected and selected.

Q275 Mr Clarke: Lady Symons made the point that I was hoping to make and with much more eloquence than I could offer, but the Minister beautifully anticipated a number of points that were in Members' minds. The Minister referred to the list system. In the Scottish Parliament, I could see the opportunities that could arise to abuse conventions. If you were elected on the list system and you had your eye on a particular seat, you just settled down there, had your office there, wrote to people there and so on. That danger could arise. Now that I have the microphone, I end with a brief question. Does the Minister believe that the question of salaries ought to be on the face of the Bill or dealt with in another way?

Mr Harper: On the salaries point, we set out in the White Paper our expectation of where we would position the role, but a very good point was made by someone else, which is that we have now moved not just salaries but expenses and our pensions to IPSA. It might be more sensible to set out the role and what is involved with it and then allow Members of the upper House to have the joys of IPSA to the same extent that we do in the other place rather than trying to micromanage and set out in statute exactly how the framework is going to work. I know that one thing IPSA is planning to do with the salaries of Members of Parliament is to look at the role, including taking some evidence from the public, and looking at public opinion about the sorts of roles that it compares with when it is trying to set a suitable level of remuneration. That may be the right way to go forward here as well. It is certainly something that we will reflect on.

The Chairman: The last question, Lord Trimble.

Q276 Lord Trimble: I want to focus on the question of constituency work and draw your attention to what I think will be the consequences of the electoral system that we are using. You are going to have multi-Member constituencies and the single transferable vote. The major parties will then be running something between four and eight persons per region as candidates. When you are running several candidates under STV, one of the great problems is trying to making sure that the candidates do not spend their time fighting each other. One of your objectives when running STV campaigns is to make sure that all the candidates get a decent first preference vote. You have to manage the vote and that can be done and is done. One way of managing the vote and avoiding conflict between candidates is that you divide up the multi-Member constituency into specific geographic pockets and you allocate each candidate to that pocket and tell them, "There is the area where you have to seek your first preferences." You police it quite strongly from a party point of view. It is absolutely essential. It is what happens everywhere that STV operates. What will happen in these elections is that candidates will be selected several years in advance, told what their area is and told in advance of the election, "Go into that area, make yourself known and start to build up a personal vote." They can do that by running campaigns on general

political issues or by interacting with potential future constituents about their own personal issues—what you might call casework issues. That will be done. You cannot then turn the tap off when the election comes or after the election. The person will have created expectations, which they will then have to fulfil. Indeed, in any event the party will insist on him continuing to do that because even though he will not be standing again after 15 years, another candidate from the party will and the party will not want to see its potential support base spoilt by an inactive person. If you want to have a situation—this is where my point culminates—where the Members of this body do not engage in casework, do not have STV or open lists, as only a closed list can possibly produce that result, because a closed list means that the individual candidate is looking purely to his party for support, not to the electorate. But if you have a situation where the candidate is looking to the electorate for his support, the person who is elected will engage in casework and campaigning. If you want to achieve your objective, you have to use a different electoral system.

Mr Harper: I think that I parted company with you part way through your logic. You were setting out the things that the party would demand of the candidate. I can see that the party would have a fair amount of sway prior to the candidate getting elected, because the party would have some kind of process by which someone would become a party candidate. But part of the logic of having single, non-renewable terms is to have Members who are a little more independent of their parties. Once you have been elected, because you do not have to be re-elected, your party may well insist on all sorts of things but it strikes me, looking at both the House of Lords as it is today and the House of Commons, that parties insist on all sorts of things and Members do not always do as they are told, even when they have to get re-elected.

Lord Trimble: Party loyalties are not to be ignored. Furthermore, there will be considerable personal pressures coming from the electorate, the party machine and all the rest of it. You hope that people will be completely independent, but I do not think that it is going to happen. In any event, I would like you to go away and think about the impact of the electoral system, bearing in mind that the closed list is most likely to produce the result that you want.

Q277 The Chairman: Minister, thank you very much indeed. I apologise for having kept you very much longer than I originally intended, but you have been very generous with your time. I have one tiny question. I have written to you about the application of a war powers Act in relation to the Commons and the Lords. At some time, I would be grateful for a considered reply to that, which would probably be better done in writing, so that we can both have a look at it.

Mr Harper: I am very happy to give you a brief answer, because it is not a very long answer.

The Chairman: In that case, give me a brief answer.

Mr Harper: I know that your letter was prompted by Lord Grocott, who I think misunderstood Lord McNally's answer, which I have reread. He said that he should write to you once we had announced what our proposals were for war powers, rather than beforehand. I think that Lord Grocott rather jumped the gun. We are obviously considering what the proposals are going to be. We will look very clearly at the issues that he raised, but the rather obvious solution was raised by Lord McNally in his answer. He looked at the way in which the current treaty provisions work, where both the House of Lords and the House of Commons can vote on the ratification of treaties. Lord Grocott seemed to be saying that it was an extraordinary proposition that both Houses could vote on something and that you would be in some dreadful confusion if they made a different decision, but under the Constitutional Reform and Governance Act that is exactly what happens. Both Houses can vote on treaties and, if they vote in different ways, it is the view of the House of Commons that prevails. It seems to me that that would be a perfectly good solution. We are going to set out our proposals on war powers in due course. Once we have done that, we can engage in this debate, but it is a little premature to do so before we have.

The Chairman: Thank you very much indeed, Minister. I am obliged to you.

MONDAY 14 NOVEMBER 2011

Members Present

Lord Richard (Chairman)
Baroness Andrews
Lord Hennessy of Nympsfield
Bishop of Leicester
Lord Norton of Louth
Baroness Scott of Needham Market
Baroness Shephard of Northwold
Baroness Young of Hornsey
Lord Trefgarne
Lord Trimble
Lord Tyler
Gavin Barwell MP
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Tristram Hunt MP
Mrs Eleanor Laing MP
Dr William McCrea MP
Dr Daniel Poulter MP
Laura Sandys MP
John Stevenson MP

Electoral Reform Society [Katie Ghose] (QQ 278–307)

Examination of Witness
Katie Ghose, Chief Executive, Electoral Reform Society

Q278 The Chairman: Ms Ghose, thank you very much for coming this afternoon. You obviously know what the Committee is set up to try and look at. Before we launch into the questions, is there a short statement that you would like to make?
Katie Ghose: Certainly. Thank you very much for the opportunity to give evidence. Unusually, for a significant constitutional matter, there were manifesto commitments to a wholly or partly elected Lords by the three main parties. We are really grateful that the Government is not attempting to reinvent the wheel on Lords reform. We think that the basic design is there—a proportional system with a choice of individual candidates, a significantly smaller Chamber, long non-renewable terms of office, and groups of representatives being elected at different times. We think that it is really about detail—crossing the "t"s and dotting the "i"s, and we do not think that this is something that can justify any further parliamentary time or resource. We have looked at other people's evidence, which I would like to complement today if I can, mainly by explaining how we think a distinctive role, both collectively and for each individual Member, is entirely achievable with an elected second Chamber—and perhaps by giving a little bit of extra detail as to how that would look and feel for voters.
The Chairman: You said that you wanted to do that now?
Katie Ghose: No. That was my opening statement, which gives a framework for what we would like to cover.

Q279 The Chairman: Perhaps we can launch into it. You take the view strongly that STV would be the right electoral system. Why do you think that?
Katie Ghose: That is right. On balance we think that it is really important, especially in terms of having a distinctive second Chamber that is very different in terms of look and feel from the other Chamber, that you get

a good mix of independent-minded people, both from within political parties and from outside them. We simply think that STV has a track record as a voting system in enabling that to happen. It gives voters plenty of choice.
The Chairman: Why do you favour that over an open list?
Katie Ghose: Because on balance, we are informed by what a number of politicians over the many years during which Lords reform has been looked at have said about this, parties have less control under STV than with list systems, and we think that that simply means that voters therefore have more of a chance of electing exactly whomever they want to.
The Chairman: Why is that such a good thing?
Katie Ghose: This is something that this Committee has looked at in some detail. I think that this is where it comes down to the importance of an elected second Chamber being distinctive—having distinctive roles and functions, and a distinctive make-up. Therefore, we think it important that the voting system can best promote independent-minded people. STV is more likely than other systems to do that, and it has a track record of doing it.

Q280 Lord Trimble: Speaking with some experience over 30 years of STV, I am struggling to remember any time that an independent was elected by STV in Northern Ireland. We are currently operating with six-Member constituencies. The bulk of people elected all belong to political parties. I should have checked, but just offhand I cannot remember any example of an independent being elected. Furthermore, if you look at STV results and take the first-preference votes for six-Member seats, count down the first six candidates and draw a line, invariably, those six people are those elected at the end of the day. In most constituencies, but not all, STV probably makes a difference to one out of those six people. STV very rarely alters the order for more than one. You are going to have a rather complicated system, and the difference that it will make is really quite slight. If there is a variation in one out of six, compared with a relative-majority approach, it is doubtful if you are making much difference. The biggest difference that you get as a result of STV is the advantage given to people whose names begin with the first three letters of the alphabet.
Katie Ghose: First, I would have to go back to look at our written evidence to find specific examples in Northern Ireland. However, certainly when one looks elsewhere when STV has been used, there is a good correlation for independents coming forward—however you define that. They may be independents who do not take a party whip or people who are prepared to be independent-minded, although they are attached to a political party. I am thinking particularly of STV in the local elections in Scotland, where we have had one set of elections under STV there. There are other examples from Ireland. Overall, there have certainly been examples where STV has, on the evidence—some of which we provided in the written submission—proven to be a better system for independents than other systems.

Q281 Lord Trimble: I saw in your written evidence the assertion that it had had some success in bringing forward independents in the Republic of Ireland, but I do not think that you have printed the evidence on which that assertion might have been based. Leaving aside the turmoil that has happened as a result of the economic crisis in Ireland, which means that the last election could not be regarded as typical, independent candidates in the Irish Republic are few and far between. I am not saying anything about Scotland; I have not looked at the experience in Scotland.
Mr Clarke: There was Margo MacDonald, but not many others.
Lord Trimble: In so far as independents come forward, they are persons who have built up a large personal profile through doing other things. You are not really favouring independent persons, but persons with a large media profile.
Katie Ghose: Independent-minded people, if you like, come in many different guises and categories. I would be very happy to provide the Committee with a written note that provided more evidence for our assertion. The Committee is understandably looking at a couple of options that the Government has put forward—one is STV and the other is the open list. We would assert that, on balance, we think that STV would have more chance of widening the talent pool, if you like, to independent-minded candidates who can be defined in a number of different ways.
Lord Trimble: But as I say, with over 30 years' experience in Northern Ireland, it has not happened.
Lord Trefgarne: I do not think that it happens anywhere.

Q282 Oliver Heald: The system that you are arguing for is a 100 per cent elected House, whereas the Government is looking at 80 per cent as its main option. In the world of 80 per cent, the other 20 per cent are of course independents, anyway. We were told that the best example of an STV system was in Australia. Do you agree?
Katie Ghose: Different types of STV are used in Australia, in terms of Senate and the—
Oliver Heald: We are talking about the second Chamber, the Senate, in Australia.
Katie Ghose: I am not sure that that would be the best model for looking at here, because it is not true STV in terms of giving people the full choice that we would prefer, which is that you could get to choose party candidates or people who are not in parties.

Q283 Oliver Heald: But you want that because you want 100 per cent elected, do you not? You are looking for a system that in a 100 per cent-elected world gives you your independents, whereas I am asking you: what about the 80 per cent-elected world?
Katie Ghose: We think, on balance, whether it is 80 per cent or 100 per cent elected—and we have given more details of each model in our written evidence; and we have been informed by others who have spent many years looking at these issue—that STV would be the best system for getting overall what you want, which is a distinctive second Chamber that has a very different look and feel from the other Chamber. We would feel comfortable with STV for both options.

Q284 Oliver Heald: What country would you point to, then, as a good example?
Katie Ghose: I do not think that there is one country out there that provides us with our model, because we have our own distinctive political culture, we do not have a written constitution, we have a certain sort of settlement—if you like—in terms of powers and duties, and what we really want to see is the very best of how the House of Lords operates at the moment, but with democratic legitimacy because we the people have voted them in. I do not think that it would be right of me to point to anywhere, because any other country has so many different aspects to their political institutions that I do not think that there is one model out there. What matters now is that all the groundwork that has been done and the consensus-building is brought to a conclusion in a very sensible way, and that the reforms go through.

Q285 Oliver Heald: You will be aware that last time that this came in front of the Commons, in 2007, there was a lot of concern among MPs about another person elected for a region being able to act as a constituency Member in the same area as them. What about national rather than regional elections?
Katie Ghose: I am not sure that I understand what you mean.
Oliver Heald: When the Electoral Reform Society was first invented, it used to argue for STV for the whole country. You just have a very long list.
Katie Ghose: I shall say what we are looking at at the moment and what I think we can most helpfully do for this Committee. This Committee is looking at a renewed or refreshed House of Lords, and we think that if we were to choose between open list and STV, on balance we think that STV would be the best system. That is what is on the cards at the moment. In terms of the distinctive role and the importance of having Members of each Chamber distinctive from each other, we actually feel positive about the measures that have been put forward. Things such as having one long non-renewable term we think will be very helpful in ensuring that you will not have that dual mandate or overlap in terms of constituency work. We think that the broad package is about right, and that is very important in terms of distinctiveness.
Oliver Heald: So you think that someone can be elected to represent people in a region, and then just not do any constituency work.
Katie Ghose: I would not put it in such extreme terms because I think that these things will evolve over time. However, I think that the roles will be very different and safeguards have been put in place in the draft proposals. If you look at the large geographical area that a Member of the second Chamber would be elected to represent, compared with the constituency of an MP, and if you look at the fact that they will be there for a maximum of 15 years and will not be seeking re-election, some safeguards have been put in terms of not using it as a springboard for election to the other Chamber. I do not think that it would be right to say—and I am sure that it happens at

the moment—that Members of the second Chamber are approached by individual members of the public. I do not think that we should be extreme about such things. I really do not envisage a problem in terms of the roles overlapping or becoming confused.

Q286 Baroness Shephard of Northwold: Ms Ghose, may I just take you up on that last exchange? What would therefore be the benefit for electors of electing someone who was not representing them, who was not seeking re-election, and who did not seek to do constituency work? What would be the point of people voting?
Katie Ghose: The point is that the second Chamber would have, for the first time ever, the democratic legitimacy that the people of the land had elected people to do an extremely important job. It is a different job, but it is extremely important. I look at the issue as the question of how you can make the legislature as a whole as effective as you possibly can. That is, I think, what people in this country want. It is having the democratic legitimacy of having been put there by electors rather than having been plucked because of political patronage. That is what it would be. It is giving democratic legitimacy to a vital part of the legislative jigsaw, which is essentially to be a kind of revising, debating and deliberative Chamber. The other benefit is to have a place where perhaps there is a more proportional spread of views and representation—perhaps minority points of view that you might not get so readily represented in the other place. There are quite a lot of benefits for voters in that.

Q287 Baroness Shephard of Northwold: That leads me on to my next point. In your introductory remarks you said, quite rightly, that in the manifestos of all three main parties at the last election there was a pledge to introduce some kind of election to the House of Lords. In your written comments, you make the point that a general consensus has existed on House of Lords reform for some time. Last week, we had certainly more than one academic witness who said: "How do we know what the public want?" We certainly cannot take election results as any kind of mandate, since the public had no choice in the matter. All three parties made the same promise. On what do you base your assertion that there is a general consensus?
Katie Ghose: This is something that has been chewed over by politicians of all parties for—
Baroness Shephard of Northwold: I am talking about the public, not the political class. On what do you base your assertion?
Katie Ghose: Probably public opinion on this is mixed and I am not aware of any up-to-the-minute—
Baroness Shephard of Northwold: How have you measured this in order to support your assertion?
Katie Ghose: The assertion that we have made is, first, that this matter has been looked at over many, many years and we do not think that any more parliamentary time or taxpayers' money can be spent on something where essentially there is a broad consensus across the political parties for it. Secondly, all three parties have put forward that there should be a wholly or partially elected House.

Q288 Baroness Shephard of Northwold: That means, to take your second point, that there can therefore be no measurement of public opinion from an election when the same promise is made by all three parties. In your answer, you said, "We take the view" that too much time has been spent on that. By "we", I assume you mean the Electoral Reform Society and not the public at large.
Katie Ghose: Yes, exactly—the Electoral Reform Society.
Baroness Shephard of Northwold: Okay. So is that the point you are making—when you say "general consensus", you mean the Electoral Reform Society?
Katie Ghose: I think that it is important to point out the amount of politicians' time over years and years that has been spent looking at this issue. What we would really like is a conclusion to it, and we would challenge politicians to say, "Can you justify any more time and taxpayers' money being spent looking at an issue where there is broad party-political consensus for it to be concluded?"
Baroness Shephard of Northwold: I wonder whether I might just gently point out that where in paragraph 1 of your evidence you say "general consensus", you perhaps should qualify that by saying that it is a consensus within the Electoral Reform Society, as you have just stated.[30]

30 http://www.parliament.uk/documents/joint-committees/draft-house-lords-reform-bill/JCHLR%20Written%20Evidence%20Web%20Version.pdf, EV 55

Katie Ghose: I am not sure that we are looking at the same paragraph, but we have said that the Government has "an historic opportunity to build on cross-party consensus and finally finish the job".
Baroness Shephard of Northwold: No. You said, "The Government's proposals and the draft Bill are in keeping with the general consensus that has existed on the issue of House of Lords reform". That is what you have said. I am asking you on what you are basing that assertion, given that as far as I know there has been no measurement of public opinion—certainly not through general elections. You eventually said that actually it was the view of the Electoral Reform Society.
Katie Ghose: I will happily say, as we said on page 1, that there is cross-party consensus.
Baroness Shephard of Northwold: That is not the same as a general consensus; but thank you very much, indeed.
The Chairman: Perhaps I could remind the Committee that some time ago we asked the Library to produce a document on the state of public opinion, and I am told that it is ready and is shortly to be distributed. With any luck we will have a bit of a base for the discussion.

Q289 Laura Sandys: One of this committee's objectives is to look at the draft Bill itself and examine where there are problems and things that need to be addressed. We have very much looked at Clause 2, which creates or is aiming for, but not necessarily achieving, clarity between the primacy of the House of Commons and the House of Lords. Do you have views on whether that clause covered those issues? This Committee is not convinced, but we are looking for ideas and thoughts around that, to ensure that the legislation reflects the objective.
Katie Ghose: We certainly do not have massive concerns about the primacy issue. We think that there should be an elected House of Lords. We think that it is entirely achievable and indeed essential that the House of Commons retains primacy. We are realistic about this and we understand that when you change the composition of a Chamber it can then lead that Chamber over time to behave in a different way. This is a tricky one. We do not think that there would need to be codification, if you like, of conventions—lock, stock and barrel—before moving towards a fully elected Chamber. We have set out some thoughts on this in our written submission, and we do think that powers need to be looked at in a little more detail. We understand that the issue of secondary legislation, including veto and so on, has been looked at before by a royal commission. There are some practical solutions that have been looked at regarding this whole issue of how you practically can ensure that the House of Commons is the prime body and that the second Chamber is the revising, debating and scrutinising Chamber. We think that the Government is more or less on the right lines and we certainly do not think that you need lock, stock and barrel codification. However, the issue of powers needs to be looked at. We think that that needs to happen over a period of time, because we do not think, contrary to what some witnesses have said, that when you bring in an elected Chamber overnight the culture or behaviour of that place will change. We think that that happens more over a passage of time.
Q290 Laura Sandys: Has your organisation looked at how some of the eastern European countries have introduced their democratisation, and at how the structures are there but somehow the behaviours are different? Is there anything that we can learn from creating a total change in a legislative body?
Katie Ghose: That is not something that we have looked at.
Baroness Young of Hornsey: You refer to the notion of independence, although you are not in favour an 80:20 split. On balance, you would prefer a 100 per cent elected second Chamber. You make this distinction between party political independence and the independently minded. In paragraph 24 of your submission, you spell out some ideas about how that might be defined. I wonder whether you could expand on some of those points you raise in points (a) to (f), and how you might ensure that some of those constituencies of interest might be represented. I am particularly interested in how you would feel that that might happen as regards point (f), relating to, "Eminent persons in fields other than politics". How would such people get voted in, or what sort of system would ensure that such people might get voted in, if they are not appointed?
Katie Ghose: I do not want to rehearse the ground that we have already gone over in terms of, on balance, preferring STV to the open list. When you look at the voting system, I do not think that you can do so in isolation. It will very much be about how political parties and others interact with the system. There has been speculation that category (f), eminent people, automatically would never want to put themselves forward to give 15 years of public service. I do not think that that is necessarily the case. If the communications were gone about in the right way and if there was a real ethos that this was a donation—if you like—of 15 years of very important

public service to the legislature as a whole, I would hope that we would see a whole range of candidates putting themselves forward.

Baroness Young of Hornsey: But it is not about people putting themselves forward. It is about getting elected. You give a number of instances of specific cases whereby independently minded people have been voted in, switched parties, or whatever. However, it seems to be the case that it is a very rare occasion in which that kind of independently minded person actually gets elected. I am not talking about them putting themselves forward.

I am asking whether you could spell out in a bit more detail what kind of mechanism you think there could be within a voting system that would enable some of those people actually to be elected.

Katie Ghose: I suppose that what I am saying is that the point of STV is that you have a chance of being out with a political party and being elected. We do not think that there is anything inherent in having to be elected in itself that will necessarily put off people in that category from putting themselves forward.

Q291 The Chairman: Do you think that it would be just as easy for the Martin Bells of this world to get in if you had STV?

Katie Ghose: The point is that we do not know, but the evidence suggests that STV is the best system that you have. Within which—and we have tried to define it broadly and look at all the different categories—yes, there is no inherent reason why independently minded people and those with expertise would not put themselves forward for election. I do not have any particular mechanisms to suggest—that is not something that we have looked at, but it is something we will certainly take away and provide a written note on, if that is helpful.

Q292 Baroness Scott of Needham Market: On that same point, I struggle to see how such individuals would be able to make an impact in such large electoral districts without party-political machinery behind them. It sounds to me as though you are trying to square an unsquareable circle, and if you really want to ensure independence, would it not be better to get behind an 80 per cent-elected Chamber and ensure the independence through the 20 per cent, rather than try and pretend that they can play on a level playing field in regions that contain millions of voters? As a party-political person, I struggle to see how they would do that.

Katie Ghose: I certainly think that we need to be realistic about what would be achieved, and we all need to acknowledge that we are starting from a bit of a blank sheet here. We do not know quite how individuals would react or how the political party machine will react. I totally acknowledge that. We would not want to see this argument about the proportion of who would be elected get in the way of what we think of as unfinished business that should be seen through. I should like to make that clear. At the same time, we do not think that it is impossible in any way for people to find ways to put themselves forward, particularly if they have already achieved eminence—they might well be then campaigning against people who had the party-political machine, but they would have a name for themselves. You might see some interesting comparisons there and, of course, the voters would then be free to vote for that person who is on an equal footing with someone who has been supported by the party political machinery.

Q293 Baroness Scott of Needham Market: In similar vein, in terms of the diversity of representation as well as political independence, clearly we would be seeking a better outcome in terms of gender and ethnic diversity for a new second Chamber. What is your view of the relative merits of the different electoral systems in terms of delivering that? Is there not a trade-off? In a lot of the examples from across the world where gender diversity has kicked in, quite prescriptive systems have got them there, involving a reduction of choice for the voter. Again, there is a sort of trade-off between voter choice and outcome.

Katie Ghose: Yes. This is, again, very much about how the political parties interact with the voting system. Obviously, they can choose to take positive action, or whatever. First past the post is definitely the worst system for getting any kind of gender balance, so I think you are looking at two proportional systems that tend to be better at getting more of a mix. Voters have more choice; there are multi-Member constituencies and so on. On balance, such systems are better. The choice is really going to be seen, and with my "counting women in" coalition hat on—a coalition of democracy and gender organisations that are pushing to achieve equal representation of men and women across the legislature—that coalition would want the parties to take a range of positive action measures, whatever voting system was adopted, to try to get much more of a balance than there has been already. Obviously, we accept that with appointments some legislative provision could say that if there

are to be 60 appointed Members you have to have 30 of each gender. That is a very straightforward way of doing it, although we accept that that might be controversial. With the voting system, it is going to be more about how you get the political parties to interact with the voting system, and they have the option of adding positive measures to make it more balanced.

Q294 Dr Poulter: I want to follow up on the point about the voting system and STV. What I think we are driving at here is that we are saying that STV may be of benefit if we want people to be more independently minded—even if they are party political. That may work in single-Member constituencies, but there is a real challenge in there being any effect at all, particularly across vast regions. Is that a fair critique? Looking at examples from Australia, where there are single-Member constituencies, you can get independents selected by the alternative vote or more independently minded Members by STV. But will that actually have any impact when you have vast regions?
Katie Ghose: Can I just clarify that you are talking not about the gender point, but the point on independent-minded Members?
Dr Poulter: Yes.
Katie Ghose: If we look at the evidence, STV, I guess, encourages parties to put out a group of candidates who are a little bit different from each other. In that sense, you are not going to have them all coming from the same wing of the party. What is really important is how this interacts with the other elements that the Government has put forward. One of the things that it has done is say, "We're going to have a 15-year term that cannot be renewed". We think that that sort of measure will perhaps encourage a different kind of person—someone who is not necessarily going to be allied as much to the party whip. We think that it is important that you look at the whole package of measures, not just at the voting system.
Dr Poulter: Sure, although I am struggling to see how that connects with the proposed single transferable vote and having a wider group of candidates. It is something that all political parties have actively strived to do, some with varying degrees of success at the moment anyway. I just fail to see how it would work across a larger geographical region. You can see how it could work on a constituency basis, but can you provide any evidence of how that has actually worked in a big geographical area?
Katie Ghose: That is something that we might have to provide a note on when we provide the evidence in terms of STV and independent-minded candidates. If I am understanding you, you are saying that given such a large area you would question whether you would get any kind of mix.
Dr Poulter: Yes. I think that some concrete examples of where that has worked would be useful to make the case, or perhaps not. With your indulgence, Lord Richard, we could receive the written evidence.
The Chairman: Yes.

Q295 Dr Poulter: The other point that I was going to raise was this issue of primacy that we on the committee have come back to time and again. Do you have concerns that either a wholly elected House of Lords or a House where 80 per cent are elected and 20 per cent appointed would challenge the primacy of the House of Commons?
Katie Ghose: No, we do not. We think that steps will need to be taken over the course of time to keep a close eye on that, because we accept that those people—especially by the time there is a wholly elected Chamber—may behave in a different way. But we do not think that this is anything that cannot be dealt with.
Dr Poulter: And do you think that there is any difference in having a wholly elected Chamber, or having a Chamber that is 80 per cent elected and 20 per cent appointed, in respect of the argument you have just put forward?
Katie Ghose: No, not especially. We do not think that all this can be dealt with by a lock, stock and barrel approach—assuming that from day one that a wholly or partly elected Chamber would behave in a completely different way—but we think that primacy can be maintained.
Dr Poulter: Through conventions and the like?
Katie Ghose: Yes, and possibly through other measures. We have said it is an area where we think the Government should have a more detailed look at the powers, and we think a very close eye needs to be kept on it.
The Chairman: Perhaps I might gently suggest to the Committee that we have been gnawing at the bone of primacy for about four or five weeks. It seems a bit unfair that with every witness we hand the bone over to have another gnaw at it. We are supposed to be looking at elections and the timing of elections, and whether they

should coincide with other elections and, if so, which ones and how. That seems to be the sort of practical issue that this witness would be able to help us with.

Q296 Dr McCrea: Thank you, Lord Chairman, but I want to continue on the question because I want to follow this up. As Lord Trimble rightly said, we have some experience of STV in Northern Ireland. Can I ask a basic question? What is the basis on which you are making this assertion that the electorate want more independent, non-party, persons in the House of Lords?
Katie Ghose: That is not the assertion. Where we are coming from on this—and I believe that it is a subject that the committee have looked at—is the fundamental importance of the two Chambers being distinctive from each other, with distinctive roles and powers, and being distinctive in how they go about their respective powers and duties. For example, in the second Chamber, that might be about having a less partisan and more deliberative approach than in the other Chamber. We think that having independent-minded Members, who can be defined in a number of different ways, would be one of the things that would help that culture of the second Chamber to be more distinctive from the other place.
Dr McCrea: And should the electorate have any right to decide the system on which to elect the second Chamber?
Katie Ghose: We do not see any need for a referendum, if that is what you are asking.
Dr McCrea: So therefore everyone decides for the electorate, instead of the electorate, what the outcome is going to be.
Katie Ghose: On this issue, for the reasons I have already put forward, we do not see a case for a referendum.

Q297 Gavin Barwell: There are two issues that I would like to pick up on, both of which, you will be pleased to know, relate to elections and timing. The first is in relation to recall. I was quite surprised, given the overall aims of your organisation, at the view you took on recall. To me, it seems that a 15-year term, with no prospect of standing for re-election, is extraordinarily long—and I understand the reasons given by the Government—and that recall would be some protection against that. In paragraph 43 of your written evidence, you state: "Recall was originally part of the progressive government reform". I am never sure what people mean when they use this word "progressive". Then you say that "in practice recall has proved reactionary rather than progressive", on the grounds, it appears, that electors in certain parts of the world have used it to get rid of people who they are not pleased with. Why is that reactionary?
Katie Ghose: That was just one example. The point that we are really making there is that we do not think that it is necessary. We think that if there is tough application of the criminal law, where appropriate, and really rigorous and properly enforced standards of conduct within each House, we think that that is going to be a better way forward for that person to be held to account on any day, week or year of that 15-year term. That is where we are coming from.

Q298 Gavin Barwell: Let me give an example of something that falls outside bad conduct. One thing that electors often get annoyed about, whichever party they support, is if the person they have voted for defects to another party. At least in the context of the House of Commons, that person is likely to have to come back and stand for re-election within three or four years and there is a chance to do something about it. But if someone who was elected to an elected second Chamber defected a few months after their election, you would be facing 14 and a half years of the person you thought you had elected to represent a particular set of views sitting in a different political party. Is that acceptable?
Katie Ghose: That is certainly something that we will take away and think about in the context of recall, but in general we still hold to our position on recall. However, we would like to see an incredibly robust and decent set of sanctions that can be applied at absolutely any time to any Member of each House.
Gavin Barwell: I would also like to ask some questions on timing, but would you like me to come back after other members of the committee have had a chance, Lord Chairman?
The Chairman: Do it now.

Q299 Gavin Barwell: On the issue of on what day elections to a second Chamber should be held, on page 16 of your written evidence, I was quite surprised again that you seemed to give greater weight to the technical

difficulties—which I entirely accept there would be, of holding elections for two different bodies, where the boundaries might be different, on different days—than what seems to me to be the compelling argument that the turnout would be much higher on general election day. Therefore, if what we are after is legitimacy—and it is clear from what we have heard today that there is no consensus on this issue, but your key argument is that the second Chamber at the moment lacks legitimacy—surely what we want is a high turnout for the election.
Katie Ghose: I think that that is a really interesting point and I should say that we are not being massively forceful on or wedded to one view. As we have said, on balance, we would argue that the timing of the elections to the second Chamber should be alongside the elections to the European Parliament—I repeat, on balance. So I entirely acknowledge what you are saying. This is a difficult one to weigh up all the factors. I come back to the importance, which all of you have acknowledged in different ways, of having distinctive roles and the issue of primacy, and so on, that feeds through into timing in an important way. Having the election on a different day from that of the general election is sending a message out about the second Chamber being a different kind of place and that it is a different kind of election that voters are taking part in. That is where we were coming from. I entirely acknowledge what you say about turnout. There are pros and cons in all this. I suppose what we in the Electoral Reform Society are driven by is the importance of there being distinctive roles, powers, and duties and how that kind of thing feeds into timing. I think that that is where we are coming from on that, but we acknowledge that there are arguments either way.

Q300 The Chairman: Perhaps I could just follow that up with one other question. Do you see a problem in some of your suggestions of having the electoral term for the second Chamber as being different, or at least not coterminous with the electoral term for the House of Commons?
Katie Ghose: I think that that has some advantages as well, in terms of democratic legitimacy, mandate and so on. There is the suggestion about doing it in thirds, and you always have MPs who, arguably, have been elected more recently and have more of a mandate in that sense from the electorate. There are advantages to that as well as disadvantages. I do not think that this is an area where there is a perfect answer. I think that it is about getting a good resolution.

Q301 Bishop of Leicester: The conversation has moved on a bit since I first wanted to raise this issue, but I want to come back to the concept of democratic legitimacy, because so much hangs on it. You said in your earlier response to Oliver Heald that you could not offer us another country with which to compare a second Chamber because we have our own unique political culture that has been developed over a very long period. Within that unique political culture, could you help me to understand what you see as the three most significant symptoms of the present democratic illegitimacy of this House? In practice, what is the problem that we are trying to fix and how does it affect the way we do business?
Katie Ghose: This gets to the nub of it. Many people feel that the basic role and functions of the House of Lords are correct. It is basically doing the right kind of work in the legislature as a whole, but there is a massive anomaly that the representatives are not elected by the people. This has been gone over again and again. So it is not so much about the role but the means by which people are put there to do the role. That is the gaping hole.
Bishop of Leicester: What I am trying to drive at is what do you think are the consequences of the way we do politics in that "massive anomaly"? What effect does it have?
Katie Ghose: On people's lives or decisions?
Bishop of Leicester: On the functioning of the upper House.
Katie Ghose: We would not see a massive difference in what the functions would be and how they would be done, but we think that for the first time the people there would have the legitimacy of being able to say, "We were elected by the people".
Bishop of Leicester: So what in practice would be the consequences of the people here being able to say that?
Katie Ghose: I am sorry, but I do not understand.
Bishop of Leicester: You said that the effect of democratic legitimacy would be that it would confer upon those who were elected a capacity to, as it were, act out of that authority conferred by the electorate. Is that what I hear you to be saying?
Katie Ghose: No, it is not exactly that. This is something that has been looked at over years and years, and it seems to me as though all three main parties have got to a place where they are saying that they accept and

acknowledge that in this year, 2011. It is interesting that this coalition Government is taking this matter forward and has said a lot about the importance of power being given to people; and a lot of the government agenda is within that area. It sits within that agenda. We do not know exactly how what the behavioural changes of elected people may or may not be. That is speculation, but it has been said by all those parties that there should now be in the era that we live in a chance for the people to put the representatives into the second Chamber.

Bishop of Leicester: Let me have one last go. One piece of evidence given to us by Sir John Baker QC included this statement: "A cynical observer might explain this remarkable cross-party accord by saying that the concept of democratic legitimacy is in reality a self-serving doctrine calculated to ensure that only full-time politicians could gain entry to either House". How would you react? I am not making that assertion.

Katie Ghose: I cannot speak for elected politicians and you would not expect me to. For a start, people do not need to be doing this full time. If you want to widen the talent pool, it is important to have the opportunity for different kinds of people to do it, and to be able to look at the opportunities for this role to be done part time, combined with other roles, expertise and so on.

Lord Tyler: To follow that last point, I am interested to see that you say in paragraph 17 that "the Society is not persuaded that 300 is the optimum size for a … second chamber". Naturally, if you have a bigger House, it is possible to have Members who have other interests. Let me pursue one point that you make in this paragraph about your fear that such a small House, particularly if only 80 per cent are elected, may result in a rather unrepresentative reformed Chamber. Yet later on you seem to accept that the multi-Member seats could be as small as three or four, which actually makes it very difficult to get gender balance, diversity or even proper party representation. Is one of the reasons that you want a larger House that you think that you could then have more Members in a multi-Member seat, and that that would give better opportunities for diversity—including, incidentally, for independents?

Katie Ghose: Yes, it is. We do not have a kind of optimal number that we are suggesting. We entirely accept that the second Chamber should be much reduced in size. Our second Chamber is incredibly large compared with international examples, so we definitely think that the number should come down. We think that the Government should look at this through a kind of diversity lens, if you like, and ask what would be a realistic floor, in terms of both the geographical areas themselves and the overall size of the House, through which it will be practically possible to achieve a good mix in terms of gender and other backgrounds, and a mix of part time and full time as well.

Q302 Lord Tyler: To get that mix, would you therefore agree that the minimum in a multi-Member seat should be more than three or four, which is what you have later in your paper? Should it be at least five?

Katie Ghose: No, the kind of modelling that we have done suggests that it would be possible to achieve that, but that is certainly something that we will take away, look at and come back to the Committee on.

Q303 Lord Trefgarne: Why are you so opposed to any kind of reserved seats for religious representatives? Do you really think that such people are going to stand for election, as you suggest in paragraph 24f?

Katie Ghose: I think that that is something that the Electoral Reform Society has had a position on for some time, which is simply that we live in a country where there is a great number of faiths, and different denominations within the Christian faith. We simply feel, therefore, that, in that context, it is no longer appropriate or necessary to have reserved seats for members of one faith. If you widen your talent pool and have a lot of people coming forward, you will have a Chamber with people of many faiths and none within it. I would also say that we are balanced on this, in the sense that we want to see these reforms put through and have a wholly or partly elected Chamber. We would not want to see something of this nature become a sticking point, but we have had a consistent position on this. We do not think that there should be reserved seats.

Lord Trefgarne: I appreciate that your position is consistent. Is it why you have the position that I am inquiring into?

Katie Ghose: Because we look at the society that we are in, and we see that there are people from many different faiths and people of no faith, and we think that it would be good if the Chamber reflected that.

Lord Trefgarne: You do not really think that such people will stand as independents, do you? That is what you suggest. I shall quote from your paragraph: "Eminent persons in fields other than politics, such as scientific and

religious leaders appointed to the current House of Lords". Those are the people you are defining as standing for election as independents.
Katie Ghose: It may not be that the people of the most eminent and senior standing in the Christian faith would put themselves forward. It may well be that people who think of themselves as religious community leaders of different faiths would put themselves forward. I should also have thought that there would be a mix of representation of different faiths and none from among the mix of representatives you had as a whole.
The Chairman: Lady Andrews?
Baroness Andrews: My question has been asked, thank you.

Q304 Ann Coffey: I want to explore the method of election. Actually, behind it all, there is very little evidence that demonstrates that STV will elect more independently minded people. You still have the parties selecting candidates, and they will select the candidates that go on an STV list, an open list or a closed list. In fact, first past the post, which you say is the worst system, gives much more independence to constituency parties than it does to the national party. Constituency parties are much more likely to choose and keep as their candidate people who are independently minded; you can see that in the House of Commons quite a lot. Bearing that in mind, do you not think that the idea of having 20 per cent appointed is the only guarantee there is of having independent people? Otherwise, clearly, the only other thing that you can do with 100 per cent elected is bring in some law which demands that when the political parties forward their lists there is a certain amount of diversity.
Katie Ghose: As I have said, we will provide a note to the Committee with the concrete evidence that, as we assert, STV is the best system for producing independents. I take what you say about the parties still putting forward the candidates and having the machinery there, but STV gives voters the opportunity to vote for whichever candidate they like. That will include independents as well as party figures.
Ann Coffey: Excuse me; you would have that under first past the post. That is no different. The electorate can elect independents at the moment, but it does not. It is very difficult to get past that party system. You cannot just assert that it will give the electorate an opportunity to vote for independently minded people when, clearly, if parties are preparing the lists, their first priority is party loyalty. They are not necessarily going to propose people who are independently minded. There is a tension there, is there not?
Katie Ghose: I think the point is that it is a preferential system. You can put down different preferences which means that you can give a preference to one candidate—
Ann Coffey: I understand what you are saying. What I am saying, which you are not dealing with, is yes, of course it does in an ideal world, but if those candidates are not there in the first place people do not have any more option under an STV system to elect independent people than they have under first past the post if people are not being proposed as independents under first past the post. The mechanism is who the parties put forward as their candidates. That is the key thing. The electorate only get the opportunity to vote among the candidates that the parties have proposed.
Katie Ghose: The point is that under STV you would have an opportunity to vote for other non-party candidates as well as party candidates.
Ann Coffey: But you have that under first past the post, and independents do not get elected. We seem to be putting the party system on one side, as though it is the elephant in the room that we are not talking about, but this is a party system. All voting systems will be based on that party system, which must be taken into account.
Katie Ghose: Absolutely, but I thought that, as a Committee, you were comparing single transferable vote with open lists and a couple of proposals that the Government have made. There seems to be a consensus that a proportional voting system would be the right kind of system to get a Chamber that was, again, distinctive because it had more minority voices represented and a better match of the seats with the votes cast and so on. I suppose that I am simply commenting on what you, as a Committee, have been given to look at.

Q305 Lord Hennessy of Nympsfield: Can I ask you about the Electoral Reform Society's views on the "Transitional arrangements" on page 17? You will have seen from Mark Harper's evidence and the White Paper that the Government wants there to be quite a lengthy transition. Mark Harper explained, whether for reasons of humanity or utility I do not know, that it would be nice for some of the ancients to hang around for a while, so that there would be a kind of osmosis effect: that the better end of our behaviour patterns could be transmitted to the new ones. That is very nice of him, but you do not want that. You want a "brisk" move to a smaller Chamber.

I find the word "brisk" fascinating, because you seem to find the combination of blood, piety, merit and political conviction that has made the ancient House what it is profoundly irritating. This is a sort of *Good Housekeeping* approach to the British constitution. You want to whisk it away. I am slightly surprised, because the Electoral Reform Society has been around for a long time. It has got quite a feel for the peculiar ways of the British constitution, its mystery and magic. But not here: "Sweep them all away". That is a bit tough, is it not?

Katie Ghose: That is not what we are saying at all, actually, if you look at our evidence as a whole. Again, this is an area where we have taken quite a balanced approach. We have not been prescriptive about it. We have not said that on day X we should, in your words, sweep away a number. We have said that you should get the balance right between having a critical mass of elected Peers to establish the Chamber's new working practices. One of the reasons that we think a brisk move would be good is cost. We think that it is important to look at the costs of the transition, of elections and so on.

Lord Hennessy of Nympsfield: But we do not cost very much, do we? We do not know whether we are going to be paid a senatorial rate or anything. It seems a little bit harsh. Do you not believe that the Minister is on to something when he talks about a natural osmosis and a bit of continuity?

Katie Ghose: Absolutely. This is not something where we take an incredibly prescriptive approach. As we understand it, using elections by thirds, which will be the norm anyway, the Government have said how change could be achieved at different speeds. I would have thought that that would be a good mechanism by which you keep some of the existing Peers. Contrary to what you are suggesting, we are supporting the continuity in terms of powers, functions and role, which is what all of this should be about, in terms of the Chamber being revising and deliberative. That will be enhanced by having the democratic legitimacy of elections.

Lord Hennessy of Nympsfield: To sum up, it is "Right functions, wrong people". Is this the essence of your evidence?

Katie Ghose: In the context of what the Government talk about on giving power to people, we are hardly alone or odd in thinking that the people of this country should be able to elect their representatives.

Q306 Mr Clarke: In paragraph 4 of your submission you list a number of countries and explain how things are happening, for example, in Australia. Do you think that the Australian way of doing things is influenced by compulsory voting? Do any of the other countries mentioned on that page involve themselves in compulsory voting? Does your organisation have a view on compulsory voting?

Katie Ghose: Sure. To take your last question first, we do not have a view or policy on compulsory voting. I do not have a note here and could provide one if helpful, but we have not looked at the correlation, if any, between compulsory voting and how things are working in those other places. It is important to take into account how compulsory voting works in Australia, and look at it. I suppose that that is just another aspect of a different political culture and way of doing things. I suppose that is why we do not think that you can look at them lock, stock and barrel and say, "We should adopt that". We should be informed by some of these other places; that is a good example.

Q307 Lord Trimble: I just want to go back to your exchange with Lord Hennessey, who raised the question of a "brisk" move to a smaller Chamber. What struck me was your next sentence: "While we appreciate the need for continuity, a critical mass of elected peers will be necessary to establish the chamber's new working practices". What new working practices?

Katie Ghose: Well, it is a new group of people coming into the Chamber. The Chamber is going to be substantially reduced in number. I would imagine that there would be differences in how Members of that second Chamber would work together. There might be differences between 750 people working together and maybe 300 or 400 working together. That is what we are getting at.

Lord Trimble: This is a sentence that is rejecting continuity. It says, "While we appreciate the need for continuity"—and what follows is very much a silent "but". You are clearly envisaging a Chamber which does not continue the style and ethos of the present upper House, but something that is quite different.

Katie Ghose: No. That is not what we intended there, so I am happy to clarify that now. I would imagine that there would be a difference when you have considerably less than half the Members, practically speaking, in terms of working together on Committees. Doing the Chamber business would be different.

Lord Trimble: Can I suggest to you that what is written here is more sensible? If you have a predominantly or wholly elected House, the probability is that that House will have a different ethos and way of operating.
Katie Ghose: It may do. We think that that is something that will happen over time. I do not agree with some of the witnesses—
Lord Trimble: No, you are not in favour of it happening over time because you want it done briskly.
Katie Ghose: That is a completely different point. We are saying that, particularly on cost grounds, there is nothing unreasonable about saying that you should move fairly quickly given that there is a consensus that there should be a wholly or partly elected group. I do think that an organisation can just change its ethos overnight. Looking at how organisations work, that would happen over time.
The Chairman: Thank you very much indeed for coming and exposing yourself to this barrage this afternoon. I hope that is has not been too exhausting or difficult.
Katie Ghose: No, it was a pleasure, thank you.
The Chairman: You have helped us greatly. We are very obliged to you.

Professor John Curtice and Professor David Denver (QQ 308–332)

Examination of Witnesses
Professor John Curtice, University of Strathclyde, and **Professor David Denver**, Lancaster University

Q308 The Chairman: Thank you very much for coming. You know the scope of this inquiry and what we are at. Would you like to say something to start off with, or would you like to launch straight into questions?
Professor John Curtice: I think we have agreed that Professor Denver will go first. I have not submitted written evidence. I was asked by the Committee to appear, so I wanted to make a small statement to give you some idea of what I am willing to talk to, but we have agreed that Professor Denver is going to make a rather more wide-ranging statement, so with your permission, Lord Chairman, I think he would like to talk first.
Professor David Denver: I was asked to look at some questions, most of which have been done to death already, as far as I can hear, but I will quickly skip through them anyway and give you my perspective on them. The first question is what is the best form of electoral system. The answer, of course, is that there is no such thing as a best system; it all depends on hat you want to achieve. If you want a broad representation of opinion, you might go for one thing; if you want the ability to produce majority Governments, you would go for another; if you want close links between representatives and the represented, you would go for another. Except, of course, that the electoral systems do not always produce what even people such as John and I expect, hence we have in Scotland a majority Government elected on the Additional Member system, which surprised lots of people, especially me. And, of course, we have a coalition in Westminster on the basis of first past the post. So life is always interesting for the electoral analysts and you never know what is going to happen.
None the less, in the draft Bill there is a commitment to PR, and that seems to imply that what the Government—or the people concerned with this—are seeking is some kind of broad representation of opinion. It does mention list systems as a possible option. Personally, I would be deeply opposed to such a system. It is simply a party stitch-up, because the parties control who gets elected and non-party candidates are virtually excluded—well, they are excluded. Party list systems are awful, in my view.
STV is proposed, as we have heard at great length. People know the good points. It provides a broad range of opinions being represented and it confers power on voters rather than parties, at least in the electoral process itself. It does not take it away from parties entirely, as we heard, when it comes to nominating candidates, but it gives a bit more power to voters, I think, at that point. On the other hand, people have to accept that there are problems with STV. The biggest one does not apply in this case, which is that it does not confer decisive governmental power, and at that point it transfers power from the people to the politicians. That seems to me to be a dreadful thing, but as I said that does not apply here. It is also associated with weaker links between representatives and the represented. I do not think that matters much here either, because of the very large districts proposed. Some people talk about elected Lords doing constituency work. That just seems to me to be bonkers. One disadvantage also seems to be that STV might seem complicated, but in fact it worked very well in Scotland when it was introduced in 2007 for the Scottish local elections.

1.8 per cent of ballots were rejected, which is a bit more than you would get on first past the post, but it compares with the Irish experience. They have been doing it since the 1920s. So you get a wee bit more rejected ballots, but nothing very dramatic—certainly not as dramatic as the Scottish election produced for the Scottish Parliament in 2007.

Q309 Lord Trefgarne: Unless you are part of the 1.8 per cent.

Professor David Denver: Unless you are part of the 1.8 per cent. But when it gets to 4 or 5, as it did in the Scottish Parliament election, then you really have got problems. One of the reasons for rejected ballots, and another problem, is that it requires lengthy ballot papers—very lengthy if you are going to have seven people, as I will come back to. There is clear evidence that when people are voting using STV, there is alphabetical voting. People placed at the top of the list clearly do better. Many fine Labour councillors in Scotland were defeated because they happened to be called Young or Wright, or things like that. That is very clear, and nobody has really come up with an answer.

Lord Trimble: There is an answer. We had a rash of this in Northern Ireland. You change your name by Deed Poll.

Professor David Denver: You can change your name, that is right. It is interesting to note also that, no matter where the level being employed, most voters using STV give three choices and no more. They go one, two, three and then they stop. Only real nerds like me go a lot further. The evidence is absolutely clear. Some people go on—there are nutters like me who will go on and on—but Ireland is the case in point, as is Scotland at the last election. After three, there is a very big drop-off. That is just for interest, really. I do not know what relevance it has for your deliberations. Of course, STV requires large electoral districts—very large in this case, as you know, with only 80 to be elected across the country.

On the point about timing, the draft Bill proposes elections at the same time as general elections. I can see the reasons for this. The point about turnout was made earlier, but that seems to imply that people would not bother voting for the House of Lords if it was not on the same day as the general election, which is a sad assumption. A more realistic reason for it is cost. It costs a lot of money to run an election, and running a separate one would be expensive. I accept that, but none the less the Committee might like to consider the argument that coterminous elections lead to confusion in the electorate. There are confusing messages coming across and campaign material, for example. It leads inevitably to the downgrading of the less important election. We have lots of experience of general elections and local elections held at the same time. When that happens, you hear nothing about the local elections. They are lost, and that seriously downgrades the whole function of elections, which is to hold people to account, including on local councils. And, of course, please note that in Scotland local elections have recently been decoupled from the Scottish Parliament elections, precisely for these reasons of confusion and so on.

My penultimate point is about electoral districts. We have already heard that multi-Member districts are required and a minimum of three are required for STV to work, really. In general, if you want more representative people elected, the more the better. The Bill proposes five to seven. The problem with the upper limit is quite a simple practical one, which is the size of the ballot paper. If you have seven, with three parties, that is 21 for a start, before you go any further. It is always possible—it is difficult to know how to put this—that the more representative it is, the greater the chances that people with, shall we say, eccentric opinions would get elected. You might say that that is fine, or that it is not fine.

I had a think about making the electoral districts based on groups of counties. On the whole, I think that is probably the sensible thing, because parliamentary constituencies are usually within counties anyway, so it will not complicate the boundaries too much.

Finally, on by-elections, obviously people will die, given the 15-year term, but by-elections would be really silly, because it would be really expensive for not very much, it seems to me. The Bill proposes to replace whoever dies, or whatever, with the next person of the same party. This bespeaks a fixation with party that is contrary to the spirit of STV, and I fail to see why the replacement should not simply be the next person in line, as it were, irrespective of party. There, I will stop.

Professor John Curtice: I was asked to talk specifically about the actual system, and particularly about the Scottish experience of the single transferable vote in 2007. A lot of this is probably very familiar to you, but just so you understand, let me start with a little bit about the presumptions on which I am operating. The first presumption on which I am operating—I have heard some debate about this—is that it is now probably the case

that if a body is going to be regarded as legitimate, by which I mean that it is a body that most of the public accept has the right to be involved in the law-making process for the rest of society, that body probably has to be elected these days. If you want to get some idea of this, for example when British Social Attitudes last asked people about their attitudes towards the House of Lords, I have to tell you that between about a fifth and a quarter wanted to get rid of it entirely, but among the remainder only 10 per cent felt that the House of Lords should be entirely appointed. Many were willing to accept the idea of a mixed House, but there is very clear evidence from polling data that in today's society, people are doubtful about a Chamber that does not have an element of election to it. This is the presumption from which the Government is starting.

However, I also accept that the House of Lords has at least developed, perhaps partly by accident, a role that is now valued as, in some senses, the principal revising Chamber of the two Houses, and certainly a revising Chamber that occasionally is willing to tackle the detail of a Bill without necessarily debating it entirely on party lines, and to consider whether the technical merits of the Bill are adequate. That rests, in part at least, on the fact that it is a body that is widely acknowledged to contain much in the way of renowned professional expertise, much of which is represented in this Room. There is clearly no guarantee that once we move towards a system of election, we will necessarily get the same body of professional expertise among elected politicians. Therefore, one potential risk of moving towards election is that maybe we lose, to some degree, the body of professional expertise. Certainly an obvious danger is that, whatever electoral system we have, the expectation in most elections is that most elected representatives are going to be representatives of parties, so the elections tend to be about party. There is therefore a clear risk a system of election will increase the partisanship of the upper Chamber.

In a sense, therefore, I am starting from the basis of accepting that we probably have to have a House that is pretty much elected, but if we are to preserve its ability to do the job for which it has become renowned, we need to try to minimise the extent to which partisanship becomes a feature and, in so far as possible, at least not to make it any more difficult than necessary for those with acknowledged professional expertise to become Members.

If you come from that standpoint, you can certainly see why people would want to choose the single transferable vote. Point No. 1 is that all votes are for candidates, formally they are not for parties, and if I give a first preference to, for example, a Labour candidate, that does absolutely nothing to enhance the prospects of any other Labour candidate being elected. In this respect that extent it is pretty much unique among systems that are regarded as proportional. It is very much a personal system. At the same time, however, as long as you have reasonably sized districts, it produces a reasonable degree of proportionality. Almost unlike any other proportional system, the other ingredient is that it is a system of transferable votes. To some degree, therefore, it provides an incentive to parties and to candidates to appeal for lower preferences from those who are not supporters of their party. To that extent, therefore, both because it is a more proportional system—therefore it is unlikely to create a majority in the House—and given the nature of the electoral system, you can see how, to some degree at least, STV would help to reduce the partisanship of elections, because you will be looking at people who to some degree have had an incentive to appeal across party lines, and because you have a House where it is probably not true that any party is going to have a majority, so to that extent the search for consensus is being highlighted.

You can see why you might choose STV. The question is whether it works in practice. Although STV is not used in many places, it so happens that the one thing we know about the system is that it produces very different consequences in different contexts. In Malta, it is associated with one of the strongest two-party systems in Western Europe, with very little in the way of willingness from voters to transfer ballots across party lines. In contrast, in Ireland it is associated with one of the weaker party systems in Western Europe and a system in which voters are very keen and willing to vote on the basis of the personal attributes of candidates, not least whether or not they have done a favour for them recently. Therefore, we have to be very careful about making any inference about the way in which the system might operate if it were introduced in Great Britain. I have to say here, with due respect to colleagues in Northern Ireland, that given the very different party system there, we cannot even infer very much from Northern Ireland about what would happen on this side of the water in an STV election.

One place where you can gain some guidance is from Scotland, which introduced the single transferable vote for local elections in 2007. The other think about it that is interesting, given the Government's proposals, as David

has already referred to, is that these elections were held at the same time as another election that most people regarded as more important, and certainly grabbed the media attention. Therefore, the Government's proposed context was replicated in 2007 and interestingly is not going to be replicated in 2012, which I suspect might be important. We will come on to that further.

There are some differences. I have heard some people say that you cannot have STV in three-Member constituencies. Oh yes you can; Scotland has them in spades. The deal between Labour and the Liberal Democrats meant that we had very small wards. They are all three or four-Member wards. They are smaller than those proposed in the Bill. This makes a difference, because, for example, with such small wards lots of parties put up just one candidate. That affects the nature of the system and the choice that is given to voters.

The other thing to say is that Scotland has four significant parties rather than three. The more fractured the party system, the more likely it is that voters will cast preferences for candidates from more than one party. So you need to bear that in mind.

Given those caveats, this is about as good as it gets. Given that there was this novel experience, I was lucky in being able to persuade a funding council to get respondents to the Scottish Social Attitudes survey in 2007 to complete a mock ballot paper. We asked them to replicate on a mock ballot paper, which had the names of all their local candidates, how they voted in the election. Although you can tell some things from elections—David has already referred to the fact that, because we had an electronic count we know that the median voter only cast three preferences—there are lots of things we cannot tell from it. But by asking people exactly how they voted and linking it to other evidence about those people, we can learn a lot more about how people used that ballot paper and which kinds of people did so. In doing that exercise, we replicated very closely a study done of the Irish election to the Dáil in 2002, so we can begin to get some handle on how similar Scotland is to Ireland, and by extension how similar England and Wales might be, too 1-1, or is it to some degree different?

Okay. Let me just give you one or two headlines and then I am sure you will want to talk more later on. The first thing that clearly needs to be true if this system is going to work is that people need to be willing to vote for more than one party. If that transfer incentive is going to be there, we need to know that voters are going to use it. 59 per cent of people who responded to our mock ballot paper indicated that they voted for more than one party. Even among those who had more than one candidate standing for the party of their first preference, around 43 per cent of them were not necessarily ranking all the candidates of that party above the candidates of any other party. So of those voters who were faced with the possibility of just voting SNP one, two, three and going home, many did so, but a significant minority voted SNP one, Labour two, Tory three, or whatever.

The incidence of that kind of behaviour is lower than it is in Ireland, as you might expect. We are more partisan, but arguably there is enough there to suggest that there was an incentive for somebody standing to say, "I am not just a Labour candidate, but by the way I am a really good Labour candidate and I have these other personal qualities, and therefore you should vote for me."

That said, there is undoubtedly a very clear problem, which again David has already referred to. If we just take all the people who responded to our survey, we can ask how many of them said that they gave their first preference vote to a candidate who was placed higher up on the ballot paper than the candidate they gave their second preference to. If voters were doing this intelligently, you would expect that figure to be roughly 50 per cent. The answer is that among all voters it is 60 per cent. If you look at those voters who voted Labour one, two and three, or whatever, they were in a ward where Labour—it was mostly Labour—was putting up more than one candidate. They were partisan voters who just wanted to go Labour one, two and three. It is among that group of voters that alphabetic voting is very clearly happening. About 70 per cent of those voters voted alphabetically.

This is where I come back to the issue of coupling. One of the things that is very clear about comparing the Scottish data with the Irish data is that voters in Scotland were much less likely to say that they really liked the candidate that they put their No. 1 against. It was only about a fifth of voters. We asked them to give the candidate whom they gave their first preference vote to a mark out of 10 for how much they liked them. In Scotland, only 19 per cent of voters gave their first preference candidate a score of 9 or 10. In Ireland, 39 per cent did so in 2002. Undoubtedly, if you have an election in which you have partisan voters and the candidates evidently have not made that much impression on the electorate as individuals, you are certainly creating an environment in which alphabetic voting is likely to occur. I cannot prove it until we have factual evidence, but this is where I think Scotland in 2012 is going to be important. One of the potential risks of having the Lords election on the same day as a Commons election, in which all the media attention is going to be on what happens

in the House of Commons, is that it will make the environment in which voters vote more partisan. I have suggested earlier that you want to minimise the partisanship of the election, whatever system you use. Secondly, you will arguably make it more difficult for individual candidates to get the profile that they need to be able to get votes on an individual basis and you are probably creating an environment in which you will maximise the incidence of alphabetical voting. I realise that there are downsides with not coupling, but I suggest that if you are really concerned to create an electoral system and an electoral environment in which voters are voting for candidates, the issue of running it alongside Commons elections at least needs thinking about. I am hoping to persuade somebody to replicate this exercise in 2012, which would give us some idea of whether, when we have a local election that is not coupled, the incidence of alphabetical voting declines. If so, I suggest that that would be very strong evidence indeed against the idea of a coupled election.
There are other ways around this, such as Robson rotation. But if you are going to have a voting system that gives voters the chance to say what they like about candidates rather than about parties, pretty much any preferential system is at least potentially at risk of suffering from alphabetical voting. The alternative is of course that parties also have to try to do something about it. The answer, perhaps particularly in Northern Ireland and in the South is to say to voters, "This is how we want you to vote: one, two, three". But arguably, that is not really voting on the basis of personality either.

Q310 The Chairman: Thank you very much. Can I start off by assuring you two gentlemen that, for many of us in this room, "party politician" is not necessarily a term of abuse?
Professor John Curtice: I entirely accept that. I am not using it as a term of abuse. I am pointing out that it is widely accepted that one of the strengths of the upper House at the moment is that it is somewhat less partisan. The truth is that partisanship has declined as a force in House of Commons voting and we now have a very rebellious lower Chamber, but historically, the upper Chamber has tended to be rather less partisan, with Peers being rather more willing historically to vote against the party line. It has been felt that that is one of the reasons why the upper House is often rather more effective than the Commons at saying, "Hang on. You may want to achieve this objective in Government, but this is not a terribly good way of going about it".

Q311 The Chairman: I do not want to follow this for too long, because I want to talk about the details of the electoral system, but I assume that you would agree that you have got to have parties, even in the upper House. You have to have a party structure and parties have to be operative, otherwise you will not get a thing through.
Professor John Curtice: Yes, exactly. In a sense, the argument that I am suggesting is that basically you need an ideal mix. Yes, of course you are going to have to have parties to organise elections and you want parties to provide a degree of organisation to the House, but you do not want parties to be so powerful that a single party can say, "This is what we want. Our chaps are going to vote for it come what may. End of argument". You want a chamber in which argument and deliberation potentially have some impact on the outcome.

Q312 The Chairman: Can I come on to the details? I have two or three questions, one of which is a slight idiot boy question, which I am sure I should know the answer to. Why do you have to have five to seven in an STV constituency?
Professor John Curtice: A basic rule of electoral systems is that the smaller the district size—the smaller the number of people elected per district—the less proportional it is. That is a basic rule, irrespective of whether it is STV, d'Hondt, Sainte-Laguë, open list, closed list or whatever. The major text on this, which did a very substantial comparison of electoral systems across the world, came to the conclusion that the most important determinant of the proportionality of the system is district size. If you have a four-Member district, you basically have to get 20 per cent of the vote to be sure of getting elected. If you go down to a seven-Member district, you only need 12.5 per cent to be sure of getting elected. It is just straight arithmetic. It is a trade-off. It is a question of how much proportionality you want. Of course, one of the things to be aware of is that even with a seven-Member district, the de facto threshold of STV—what kind of share of the vote you require before you are going to get elected—is pretty high. It is certainly higher than the de jure threshold that most list systems enforce, such as the system in Germany.

Q313 The Chairman: My impression, having heard evidence from both of you, is that on the whole you think STV would be a good electoral system for the upper House, provided that you can overcome all the difficulties about the dates on which you do it, the size of the districts and the number of seats. Is that fair?
Professor David Denver: If you want to achieve a broader range of opinions, STV is the one that does that. But then there are other problems.
Professor John Curtice: My argument to you is that, given the premises I laid out—you want a House that is not dominated by one party at any one time, but which also maximises the incentive for candidates to get election on the basis of personal popularity, because that may also be advantageous to the House—STV is certainly not an inappropriate system. You may regard some other open list preferential systems as an alternative. If you can get STV to work and you can overcome the issue of alphabetic voting, it would be difficult to find a better system. I think that the argument would be whether you found the problem with alphabetic voting so serious that you therefore wanted to reduce the degree to which voters had to choose between candidates in order to reduce that problem. That is probably where the argument is.

Q314 The Chairman: Perhaps I can abuse my position and ask one more question. Suppose that we were to go to the European size constituency and you were to have elections to the upper House on the same day as the European elections, which would not synchronise with the Commons elections. Do you think that would create more or less difficulty? Would it be desirable to have the Houses elected on different dates by different systems?
Professor David Denver: Electors are often brighter than we think. They can cope reasonably well. In the Scottish case, there was STV and then there was what is technically called MMP—mixed Member proportional. Most voters coped with it perfectly well. You get worried if there are 2, 3 or 4 per cent of spoiled ballots, but that means that 96 per cent are coping quite well. I want more elections all the time—as many as possible—so my preference is still to keep them separate, because it gives dignity to the body being elected. It gives some kind of focus on the body being elected, rather than people just having to turn up and vote for two things. Just think what would happen if we had a general election, an election for the Lords and local elections as well. We have had local elections in England on the same day as general elections the last three times, I think. I disapprove of it.
Professor John Curtice: Given the current election cycle for England and given the Fixed-Term Parliaments Bill, if this draft Bill were to be enacted in time for 2015, you would have three elections on the same day in many parts of England.
Coming back to the question, I would make two observations. We can have an interesting speculation about whether elections to the House of Lords would attract more voters than elections to the European Parliament. Holding them on the same day as elections to the European Parliament would certainly not do anything to increase the turnout to this body. It might have some benefit on the turnout for the European elections. Holding the local elections on the same day as the European Parliament elections has certainly done something for European Parliament turnout. The second thing that I would say, however, is that I suspect it would be true that if you were to hold House of Lords elections with an open list system or with STV on the same day as the European Parliament elections with a closed list system, the debate about the closed list system for the European Parliament elections would be reopened and I guarantee that you would have plenty of phone-in programmes in the run-up to the election saying, "Why can't I choose my local MEP?". As many Members here will be aware, it was a somewhat controversial decision, when it was originally made back before 1999. I suspect it would cause that issue to be reopened.

Q315 Baroness Scott of Needham Market: I have two questions. First, for Professor Denver, could you say a word or two about experience in the Scottish Parliament of having some Members elected on a constituency basis and some on a list? This question of hybridity exercises us. The second question is for both of you. You have both talked about having elections on the same day. Initially, my concerns were very much along the lines of Professor Denver's about how you get oxygen for the subordinate election. But as time has gone on, I think that this is a more important issue than we are giving it credit for. I would appreciate your thoughts on this, because it seems to me that in all our talks about primacy of the Commons we have discussed it in constitutional convention terms, whereas it seems to me that its primacy comes because the voters vote for it. They vote, on the whole, twice as much in general elections because they are voting for the Government. In a sense, its primacy comes from the people because they jolly well turn out and vote. Is there, in fact, a question not of weakening the

vote for the second Chamber by having it on the same day, but almost giving it an importance that the voters would not otherwise give it?

Professor David Denver: You heard me talking about MMP, which is the mixed Member proportional system, which is what politically correct political scientists want to use instead of the additional Member system, because using additional Members implies that somehow the additional Members are kind of extra or not of the same value. That is precisely what happened in the Scottish Parliament, when it began anyway. The regional Members, as we might call them—the additional Members—were kind of looked down on by the properly elected constituency Members. The constituency Members thought they should get paid more. I think that actually passed.

Professor John Curtice: They got more expenses.

Professor David Denver: The constituency Members got more expenses, because they had more constituency work. I do not know, but I suspect that as time has passed, that kind of controversy has gone now and people just accept the fact that people are Members of the Parliament and they do not have that kind of rivalry any more.

Professor John Curtice: The truth is, David, that since the disaster suffered by the Labour Party in 2011, it will have rediscovered the advantage of allowing candidates to stand both in the constituencies and on the list—let alone anything else—because the Labour Party made its situation even worse when it suffered a disaster in May, because it meant that large numbers of people were elected on the list who had not been in the Chamber before, whereas large numbers of its Shadow Cabinet were out of the door. The days of arguments—most of which came from the Labour Party—about list MSPs being second-class MSPs north of the border are over. The Government of Wales Act was changed to make it impossible for people to stand in both ballots. I always find that slightly odd, because of course the reaction of the Conservative Party, which is also rather sniffy about list Members, was that therefore you had to stand in both. You pay your money and take your choice, but the truth is that this argument will now disappear in the light of what happened in May in Scotland.

Professor David Denver: The second point was about having elections on the same day. Were you expressing doubt about whether—

Q316 Baroness Scott of Needham Market: What I was saying was that my initial concerns were about the failure of the second and subordinate election to get oxygen. However, my bigger concern is almost the reverse—that of having a sort of second-hand turnout, whereby people are turning out to vote for the Government, and while they are at it they are casting a vote for something else. There is an issue of legitimacy that may roll on to the primacy question.

Professor David Denver: There is a very subtle point about legitimacy that is very much opposed to the point made earlier—the fact of getting a higher turnout would give more legitimacy to the Lords. Your point would be that, actually, people are not turning out to vote for the Lords at all and, as happens in local elections, they turn out to vote in the general election, because that is the most important one, and while they are there they fill in the local ballot without perhaps knowing or caring very much. It is different perspective on legitimacy—albeit a subtle one—from the point made earlier by our friend here. It is just a different way of looking at it. In the end, you have to decide. Do you want elections on the same day or not?

Professor John Curtice: The truth is that you pay your money and take your choice. Do you want to ensure that as many people as possible can vote? It is always worth remembering that Commons elections do not attract quite as much interest from the voters as they did. The House of Commons manages only 60 per cent these days, so perhaps we should not necessarily rely on that too much as a crutch. You either say, let us get as many people as possible through the polling station or you say, let us create an environment in which people actually get the chance to consider the candidates and the issues. You pay your money and take your choice. Let us be straightforward; the other obvious downside of a decoupled election is what happens if the House of Lords comes to be regarded as not being that important—and there is no guarantee that it will. We know what happens in local elections, which people do not regard as important. They say, "That rotten David Cameron, Gordon Brown or whoever is in Downing Street. I want to send a message that I am not going to vote for a Tory or Labour candidate". The whole thing therefore becomes caught up in a protest vote against the Government. There is no perfect answer to these things. It is a question of a trade-off. What I would say, however, is that it comes back to what you want to achieve. If you want to minimise the partisanship of an election and maximise the degree to which individual candidates standing in that election have a chance to impress themselves on the

electorate, you probably would not go for a coupled election; but you may feel that the other considerations that we are talking about are more important.

Q317 Oliver Heald: The debate about electoral systems over the years has tended to be in the context of electing a Government or a body that has a majority, and it is therefore clear who should be in the executive positions. That is true of the Scottish elections, the general election in the UK, councils and so on. However, a slightly different exercise is required in terms of electing a second Chamber. If you have an electoral system that is designed to elect a Government and you apply it to a second Chamber, is not the effect of that to confer additional legitimacy on the second Chamber?
Professor John Curtice: I am not sure that that follows. My view is very simple. I understand the arguments in favour of majoritarian electoral systems where a Government is at stake. However, parenthetically, I would say that I regard first past the post as a rather poor way of achieving that—but that is another argument. I do not see any argument for having a majoritarian system where you are not choosing a Government and where you are indeed choosing a body to represent the views of the electorate. That would seem to be, in the case of Lords election, what it is about and that therefore there is no argument for a non-proportional system. I fully accept the argument for majoritarian systems where you want to emphasise the ability of voters to make and unmake Governments, but where that is not at stake, it is very difficult to think of an argument against a proportional system. That is the argument.

Q318 Oliver Heald: That is on a slightly different point from the question I was asking you. I may have misled you. The point is that the two main contenders in the normal argument about electoral systems are proportional representation—often STV—on the one hand, and on the other you would look at first past the post. There are competing arguments about that. But is not the question in the context of a second Chamber rather a different one. It is how to give democratic legitimacy without affecting primacy.
Professor David Denver: That is nothing to do with the electoral system. I speak as a supporter of first past the post. I do not think that people are going round saying to themselves, "Gosh, I wonder if the House of Lords is more legitimate than the House of Commons". I just do not think that that will occur to people.
Oliver Heald: Let me give an example of what I mean. If you look at the system in Australia, they have chosen a voting system, STV, but they allow a group voting ticket, which 90 per cent of electors use, and the size of constituencies varies tremendously, because it relates to states. That is a system that does not confer as much legitimacy as first past the post does here in a general election.
Professor David Denver: Indeed.
Professor John Curtice: But the point is that the Australian Senate is partly there to do a different job. It is much more analogous to the United States Senate; it is designed to give equal representation to the various component parts of the Australian federal state. If truth be told, you could regard that as an objective here, in which case you would be talking about having equal representation for Northern Ireland, Scotland, Wales and perhaps the component regions of England. That would be a different vision for an upper Chamber—perhaps a vision that we might have to revisit if devolution goes further in the United Kingdom, and particularly if it were to go further in England—but at the moment that does not seem to be on the table. You are talking about an upper Chamber that is in part designed to deliver a different function. Australia has not only compulsory voting, but also requires people to go all the way down the ballot paper. If truth be told, most people think that that is daft, and that is part of the reason why you have ended up with a block vote—in order to save voters the trouble of going 1, 2, 3, 4, 5, and wasting an awful lot of ink and increasing the risk of casting an invalid vote.

Q319 Oliver Heald: Let me put my overall proposition to you and then hear what you both think about it. If your aim was to have a House that was basically doing the same sorts of things as the House of Lords does now and you wanted to have in it eminent people with national standing as well as people with a regional flavour, you could have a closed list and you could say that it would have to have certain requirements in terms of balance, and regional requirements. However, by doing that, you would elect people but they would not have an individual mandate for an area. They would be national figures and they would have that standing. That is a very different proposition to what you would want to do for the Commons.
Professor David Denver: The mind boggles, frankly. A national list—it is kind of like "Big Brother" or "Strictly".

Professor John Curtice: Of course you could do that. That argument against it is, first, you would probably find that the public would not be too keen on it. There were grumblings in Scotland because there was a closed list system. Leaving that to one side, the argument against is that it is felt that if you have that kind of system, how will people get up the list? If truth be told, even if you have some requirements with gender zipping or whatever, it is because you are popular among your party membership, and most parties these days have some form of election for deciding the order of their lists and, therefore, the people at the top of the list will tend to be the people whom the party members like and they will tend to be partisan. I would suggest that that is not the element of the upper Chamber that you wish to exaggerate any more than you have to.
Oliver Heald: But they are the people who would get selected under any system.
Professor John Curtice: They might do, but if the view of the party's electorate differs from that of the public in terms of the order of which candidates would be elected, the same people would not necessarily get elected. I grant you that there are arguments both ways, but I have come at it very clearly. I suspect that you probably do not wish to emphasise the role of the party in order for the House to do its job effectively.

Q320 Gavin Barwell: I have two quick questions, the first of which is to Professor Denver. I want to pick him up on the issue he touched on, and on which some members of the committee had some concerns, regarding Members of and elected second House potentially taking up casework. I think that you rather colourfully described it as nonsense, or something like that. In the Scottish context, what evidence is there of list Members competing with individual constituency Members on that basis?
Professor David Denver: This caused no end of trouble because when you have a regional Member and a constituency Member from different parties, the constituency Member tends to think that the regional Member is trying to pinch his seat and is spending his or her expenses doing constituency work in order to prepare for the next election. This causes a lot of problems, because people are frightened about votes in the next election. But do not forget that in Scotland there are eight regions, which are quite small areas. If you are talking about regions of the UK for this issue, you are talking about vast regions. I can see that Members elected could try to do some pro-regional work, if you like—perhaps on behalf of the tourist board or something. But I cannot see them dealing with constituents' problems with the Department of Health or social security.
Professor John Curtice: That is probably also my view, but I am afraid that I am going to say something that will probably also be very unpopular in this Room. Given the extent to which the rest of society is being told by politicians that competition is good for us, I have no sympathy for MPs or MSPs who are worried about competition for their seats. I think that it is good for you too.

Q321 Gavin Barwell: I personally agree with that. The other question that I wanted to pick up was about the dates of the elections. You have been very honest in discussing the pros and cons. I want to put two points to you. First, I would be very interested in your view of the likely turnout if you went for the more expensive option of a stand-alone election. Obviously it will be just an educated guess. Secondly, Professor Curtice made the point about the Scottish context and how a separate election made it much easier for individuals to raise their profile. I think that you were saying that in relation to the Scottish council elections and the Scottish Parliament elections. I think that you were referring to both categories. Would you not agree that in the context of what is proposed by the Government here, the potential electoral areas are so big that it would be very difficult for anyone other than a celebrity, such as the candidates for the Mayor of London are, to develop any kind of individual profile in that way? Therefore, to me, those arguments are less persuasive the larger the geographical area is that you are talking about.
Professor David Denver: On the stand-alone election, I would guess that the turnout would be in the 40s, percentage-wise. It would be difficult, but there are regional personalities. I do not know what happens in London, but in the north-west or north-east, and so on, there are people who have a regional profile. I do not see any reason why they could not get that across in an election. It would be difficult because, naturally, the parties would be competing. However, I think that there is a chance of well known regional figures, such as the people who were involved in the north-east referendum on devolution, for example. It attracted big personalities in that area.
Professor John Curtice: I have a couple of points. I agree that a turnout of about 40 per cent would be my guess. There are two somewhat separate issues here. There was a lot of discussion with your previous witness about

Independents. There is no doubt that it will not be easy for Independents to stand. The truth is that we know from other elections that there are two kinds of people who can make it as Independents. One is general practitioners and the other is ex-party politicians. They can often do it. Margo MacDonald as an ex-party politician managed to do it on the list in Scotland. I suspect that there might be a regional TV presenter standing on some big campaign. But that may be rare. However, a separate issue, among the candidates for parties, is about how much personality will matter. It is the argument about whether voters are going to vote alphabetically or whether they will exercise discretion. Certainly, in so far as candidates discover that voters do not vote just alphabetically or follow the advice of their parties—it really depends on what the voters do—those candidates will have a strong incentive to say, "By the way, I am so and so. This is what I do for this region". They will have an incentive to develop their personal profile. However, it depends on the electorate. If the electorate do not vote alphabetically and voters start to exercise their own discretion, then the system will work. That is why I come back to this: if that is what you want to achieve, think about not making it too difficult and creating an environment in which that is more likely to happen.

Q322 Mr Clarke: There are those who think that the Commons has not dealt with the West Lothian question. Having looked at the draft Bill, do you think that we have got that right?

Professor John Curtice: You are talking about the distribution of seats across the various parts of the United Kingdom?

Mr Clarke: That is part of it. My supplementary would be that, assuming that we have 80 per cent elected in the Lords and they start saying, "We have been elected from English regions" or whatever, "but we are not allowed to vote on these issues in Scotland". In other words, the West Lothian question, which might not yet have been addressed, could become an issue in a House of Lords which has an element of election.

Professor John Curtice: Okay. There are various complicated issues here. One of them is that it is intriguing that nobody raises the question of Members of the upper House who might originally have come from the Scottish Peerage—I do not think that there are any of those still left in the House—or those who are simply resident in Scotland still being allowed to vote on English Bills. Actually, the issue is arguably already before us in this House. Why should someone who is a Peer from north of the border be allowed to vote on so-called English legislation? At the moment, the Bill assumes, as is now the case in the Commons, that all parts of the UK should be represented on the basis of population. That certainly does not deal with the West Lothian question. The only thing I will say, and I will now make myself very unpopular with one person in this room, is that it could be argued as somewhat curious, if you are going for a House where the distribution of seats of the elected element is in proportion with the population of the UK, that one of the elements of the nominated element will be representative of the church of only one portion of the UK. That is another issue that you might want to think about, given the wider spirit of the Bill. But otherwise, Tom, the answer is that this Bill does not deal with the West Lothian question. The West Lothian question will be there, but it is arguably already there at the moment.

Q323 Lord Trimble: Sorry, but I am going to start with a bit of a grouse, particularly addressed to Professor Curtice and the way in which, in his introduction, he regarded Scotland and the Republic of Ireland as things that we could learn from, but skated over Northern Ireland by saying that we could not learn from it because, allegedly, the party system was different. The party system in Northern Ireland is closer to the system here than that in the Republic of Ireland. We have got over 30 years' experience of PR there, and it is worth studying instead of making excuses for not learning about, if you will forgive me for saying that.

The other thing that I want to focus on is when you were looking at people transferring votes beyond a particular party. The dynamic that tends to work here, and I am quite sure that most of the electorate can work this out for themselves as soon as they think about voting, is that, with STV, you do a simple triage. You decide the people who you want to vote for, who you give your first preferences to. Then there are the people who you do not want to see elected, who you do not give any preferences to. Then there are the ones in between, who you give lower preferences to in order to vote against the other party. It is a simple triage. The electorate understand this very quickly, and very quickly follow it. When you say that you got 59 per cent who voted for more than one party—hooray—a lot of that 59 per cent might just be voting for the other party to keep out a third group of people. That is what normally happens in this situation.

Professor John Curtice: Sure. Absolutely.

Lord Trimble: The other thing that normally happens is that parties give advice to the electorate. The electorate generally pay attention to that advice. That becomes quite a significant factor in this, too. You can probably only get rid of the alphabetical factor if you randomise the ballot paper. People talk about that, but I do not think that it ever has been.

Professor David Denver: It certainly has not been done in Scotland.

Lord Trimble: I have a third observation to make. This cannot happen when you have got boundary commissions, but in the glorious days when you did not have them, the way in which you gerrymandered STV was in the choice between three and four seats. You would go for one or the other depending on the level of electoral support that you had in the area. It is quite sophisticated but can be done. I will run classes in that later, if you like.

Professor John Curtice: There are a few points to respond to. The point that I was making about the Republic of Ireland is that, actually, we cannot necessarily rely on it. I was trying to tell you that the evidence from Scotland is not the same as that of the Republic of Ireland. It is simply that I would also suggest to you, for reasons that I will come on to, that there are equally particularities about Northern Ireland. As you will well know, one of the reasons for introducing STV in Northern Ireland was in the hope of promoting cross-nationalist/unionist transfers.

The Chairman: I fear that there is a Division in the House of Commons.

The Committee was suspended for a Division in the House of Commons.

On resuming—

The Chairman: We have a quorum.

Professor John Curtice: Do you want me to repeat for the record the conversation that Lord Trimble and I were having as we broke up?

Lord Trefgarne: No.

Professor John Curtice: I gave you a chance.

Q324 John Stevenson: I have two points to clarify on what you were saying, and one general question. Under the draft Bill, there is a cooling-off period for Members of the House of Lords to stand for the House of Commons. I get the impression that you would like to see that taken out, and I would like clarification on that point.

Secondly, you seem to be supporters of STV, but am I correct in saying that, if that were to be introduced for the purposes of the House of Lords, we should also introduce a rotation system for the ballot paper? Would you want to see that actually happen?

Thirdly, on the elections being on the same day, if they are on the same day as a general election, you would get higher turnout. Clearly, it would be favourable to the main parties. There would less of a protest vote, and there would be not be a better mandate to the House of Lords over the House of Commons. If it were to be held on a separate date, such as that of the European Parliament, you could start to see quite a dramatic change in British politics. For example, in the previous European elections, UKIP got about 16 per cent of the vote. If you saw that happen, effectively as a protest vote against the Government, you could have a very different second House from the first House. I would be interested in your observations on the possibilities of that and its consequences.

Professor David Denver: These are very interesting questions. On the first one, I have no views whatever on the cooling-off period. It is not something that I have even thought about; it is just not within my competence. I am not a supporter of STV in general for electing the House of Commons; I certainly would not favour that. It seems as if what we are looking for with the House of Lords is a kind of proportional system. STV seems to be the best. We were just saying beforehand that it would get rid of a lot of problems if you introduced a kind of randomisation of the ballot, if you just randomised the candidates and did not put them in alphabetical order. That would cure it. There seems no reason to avoid it at all. I cannot see why you would not do it.

Often I have been able to say to students and others that it is really nice that the European Parliament elections come along when they do, because they are nice and conveniently in the middle of the term and we get something exciting and different. You get UKIP, and a few years ago you got the Greens getting a huge vote. It is all good fun, since who cares about the European Parliament? You may as well have some fun with it. If you had the Lords tied to that and it was in the mid-term, you would assuredly get a different kind of vote. You would get more protest voting, with the mid-term blues. It would become what we call a second-order election. In second-

order elections, people are much more willing to desert the major parties. They are less likely to turn out, but they are much more willing to experiment with other parties. On the whole I do not think that that would be too bad. It would add to the gaiety of life.

Q325 John Stevenson: Do you not think it would potentially have long-term consequences for our system of legislation?
Professor David Denver: But in the long term we are all dead.
Professor John Curtice: This, frankly, is outside my remit, but you have asked me the question. My own view is that I do not agree with term limits. I would allow people to stand again. It seems to me that it is up to voters to decide whether or not people are worthy of being re-elected to the House. One reason for saying that, in the context of my previous remarks, is that one of the things that would help to ensure that voters did not simply vote alphabetically is the presence on the ballot paper of either popular or unpopular incumbents. To that extent at least, I would not be in favour of term limits. Why should voters not decide whether or not it is a good or bad idea for people to stay in the Chamber?
On the rotation system, I think that, yes, it is probably a good idea in principle, although you will doubtless get complaints from political parties because it will make their lives more difficult in persuading their voters to vote in a particular way.
The third thing I would say is that, we now know that European elections are an occasion on which UKIP does extremely well, and there is some evidence that that also spills over into local elections that are held on the same day. Therefore, to that extent at least, if I were not holding it on the same day as a UK general election, I would also probably not hold it on the same day as the European Parliament elections. The thresholds are, as we discussed, very much higher and it would not be that easy for UKIP, the BNP or the Greens to gain representatives—boy, oh, boy, if I was giving evidence on behalf of those parties, I would say that it was a wonderful idea to have them on the same day as the European elections because I would think that that would be more likely to happen. That said, as I said earlier, there is no doubt that, even if you had it on a day other than the general election and European Parliament elections, you will probably get a certain amount of anti-Government voting. I am not sure that there would necessarily be any long-term consequence. Under the current proposals, if we get a Labour Party landslide in one election, a Conservative landslide in the next and maybe a close contest in the third, the upper Chamber will not look anything like the Commons on any of these occasions anyway. It is almost built into these proposals that the House of Lords will always be a pale reflection of the current political mood.

Q326 Ann Coffey: If you wanted the House of Lords to be a bit different and were trying to achieve that by making it much more diverse, representative and reflective of the British population, and given that neither proposal for these voting systems will achieve that except at the margins—because the parties will still be choosing the candidates—how do you think that you could achieve it while at the same time having some legitimacy as a House with some connection with the people out there?
Professor David Denver: I think that you are absolutely right. You were earlier, when people were going on about diversity and gender, absolutely right that the parties can do that. I do not think that it should be done any other way, myself. Indeed, I feel myself to be swimming against the tide a good deal. I am a real radical in that I think that the electors should decide who gets elected, not anybody else. There should be no rules about women or anything else. The electors decide. That is my view. I do not approve of special mechanisms to get different groups. Once you start, where are you going to end? What about Scottish working-class kids? Apply that and get more of them in the House of Commons?
Ann Coffey: We can have a very robust discussion on that, but the question that I am asking is, if you want it—if the aim was to achieve a House of Lords that was more diverse—
Professor David Denver: Appoint them all.
Professor John Curtice: The technical answer, if you wished to enforce that, is to go for a closed party list system in which, by law, the parties were required first to zip by gender, alternating the top from one region to another. You would also require their proportion of ethnic minority candidates to somehow reflect the local population. The first is relatively easy to enforce. The second will be much more difficult because you then get into the question of whether it is just any ethnic minority or whether it should be a certain proportion of those of Indian

or Pakistani origin etc. Of course, as our population gets more diverse, not least as an increased number of people are of mixed origins, this becomes more difficult to achieve. In practice, what we have discovered is that the greatest pressure for ethnic diversity is the geographic concentration of those populations. As a result, parties can find it political because they have a membership which has said, "Hey guys, we want somebody from an ethnic minority representing us around here".

Q327 Dr Poulter: Professor Curtice, you made a couple of points earlier about a study you had done of voting patterns in Ireland. Is that correct?

Professor John Curtice: We mounted a study in Scotland that replicated research that had been done in Ireland, so that we could compare Scotland with Ireland and see how different or similar they were. My basic argument was that voters in Scotland in the 2007 Scottish local elections were not as candidate-centred as voters were in the Republic of Ireland. On the other hand, they were reasonably candidate-centred.

Dr Poulter: My only concern with these studies is that we know that there is a false recall as well, is there not? If you speak to and survey voters, there can be false recall. Is it Professor Antony King of the University of Essex who does this? He did some good work into this after the previous general election and found that 28 or 29 per cent of people were still saying that they voted Liberal Democrat, when we know that only 23 per cent of people actually did. There is that confounder, is there not?

Professor John Curtice: There is a rather different confounder in this case. We were asking people to remember how they had filled in a ballot paper that they filled in some time ago. While most people in this room would regard it has holy writ that they would easily remember, lots of people probably did not necessarily remember. Because the votes were counted electronically, however, we can to some degree verify the data. For example, the median voter in our study cast two votes. Casting three votes was not quite at the 50 per cent point; I think that we had about 45 per cent, 46 per cent or 47 per cent casting three or more votes. We were slightly short, but only slightly short. Certainly, on the number of voters in our study who cast only one preference, which we had as 22 per cent, in the electronic data it is 20 per cent. There is a bit of an issue about whether people remembered all the votes on that ballot paper. There is probably a bit of a problem there, but it does not look to be too serious.

As for whether the survey matched the outcome, yes, we were pretty close on all three ballots in 2007. But bear in mind that I was saying nothing about the partisanship of the voters. It was about how they were using the ballot paper.

Dr Poulter: There was another confounder. Correct me if I am wrong, but you were also saying that, in Scotland, not every party put up a full list. That also rather confounds and undermines, in my view, the transferability of that into real practice.

Professor John Curtice: Absolutely, and I was upfront about that. There is no doubt that a smaller number of wards means caveat emptor. If I was a Conservative supporter and my party put up only one candidate, I was more likely to cast a second preference for a candidate of another party than if my party put up two candidates. To that extent, at least, the degree to which the voters are willing to transfer votes across may be less than was the case in Scotland. However, I remind you that Alan Renwick, in his evidence to the Committee, has pointed out that the recall proposal that the Government are suggesting will create an incentive for parties to put forward candidates. Therefore voters will have more choice within parties. It will then come to how far they want to go down that path.

Q328 Dr Poulter: I have one more question on this point. Lord Trimble made the point very well that it is actually very difficult to analyse what may or may not happen. There can be the propensity for agreements to be made, and so you have more national elections, as in Australia. For example, we saw in the Australian elections that the Green second-preference vote was significant. Informal agreements can be made between parties. It is very difficult to extrapolate that until voters are informed by their first-preference parties about where other loyalties may or may not lie.

Professor John Curtice: Absolutely. If you are an advocate of STV, you regard that as an advantage of the system. If you are a critic, you regard it as a disadvantage. The interesting thing in Scotland is that I do not think that I came across a single piece of evidence of any of the political parties encouraging or giving any sign that they wanted their voters to transfer to somebody else. The parties managed to avoid saying any of those things in 2007. Whether they will continue to do that, who knows? There is an incentive to do so. If you can maximise the transfers between parties, as Fine Gael and Labour have demonstrated in the past, that is to your advantage. You

pays your money, you takes your choice. I do not necessarily regard it as being a problem. You can argue that it is a way of enabling voters to indicate whether or not they back an understanding between the parties or not.

Q329 Lord Norton of Louth: I have two quick questions. Since we have you here, it would be interesting to know your views on which method you would prefer for the allocation of surplus votes. Should the method actually be on the face of the Bill, given its significance? Secondly, I want to pursue the point that has been raised about the "no re-election" rule. Obviously, that sets this system apart from those that you are mentioning; it puts us on a par with Mexico in terms of having a "no re-election" rule. Professor Curtice, you have argued against that, and that the electors should have the capacity to re-elect. Would it also flow from that that you would recommend a shorter term than the 15 years that is stipulated in the draft Bill?
Professor John Curtice: The answer to your first question is that, as you will be aware, the Scottish Parliament insisted on the weighted inclusive Gregory method. It did so after the Local Government Committee of the Scottish Parliament looked at the practice in both the north and south of Ireland and said, "We do not like this. It looks a bit too haphazard". It was advised that if you used electronic counting it was possible to use the weighted inclusive Gregory method. The reason why we had electronic counting in 2007, and weighted inclusive Gregory, is because of a cross-party consensus that was generated in Parliament. It was not something that originally came from the Government. Given that electronic counting is possible, there is no reason why you should not use weighted inclusive Gregory.
On the second question, you are right; I think that 15 years is an inordinately long time to give somebody for a term. There are some knock-on consequences to that. If you elect the whole House every five years, and if we accept that seven Members is probably the maximum for an STV constituency, you would have to have smaller constituencies. Some things I have heard in this room suggest you might regard as being an advantage. The Government were obviously concerned about turnover. If you go for something like STV, the turnover will be dampened down quite a lot. If you allow incumbents to be re-elected, you will keep the turnover down. The funny thing is that, although the Government's proposals try to dampen down party turnover, on membership turnover you have got a third of new boys and girls every five years.
Lord Norton of Louth: Did Professor Denver want to comment on the allocation?
Professor David Denver: No, I do not. That is way too technical for me. I go for big, broad brush strokes.

Q330 Lord Norton of Louth: To pursue the previous point, Professor Curtice, was your argument against the "no re-election" rule that it limits the choice of electors? So, if they want to re-elect someone it should be up to them. Would not the same principle apply in respect of this limit of four years before you can stand for the Commons? Is that not also a limitation on the choice of electors?
Professor John Curtice: Yes, absolutely. Maybe again this is an issue in Northern Ireland. People complain about people being able to "double job". I say that it is up to voters. If voters are happy for people to "double job", that is up to them.
Lord Norton of Louth: Professor Denver is nodding; I wanted to add that for the record.
Professor David Denver: Yes.

Q331 Lord Trefgarne: I share Professor Denver's preference for the first past the post system. Therefore, I am wondering whether it would not be possible to devise some sort of system, perhaps akin to the French one, where you have two elections separated by two weeks, provided that they have got less than 50 per cent first time. One has to recognise that Members of our House of Commons are elected by first past the post and very rarely attract more than 50 per cent of the vote.
Professor David Denver: Indeed. The strength of first past the post is to elect Governments, even though John will say that this is going to happen less and less. None the less, that it what it is for. In the case of the House of Lords, we are not electing Governments. It is all right to have STV for a second Chamber. I think that you would open up a Pandora's Box if you start bringing in two rounds of elections.
Professor John Curtice: You now have a straight political problem. The double-Member system will to many people look horribly similar to the alternative vote system, which has been decisively rejected by the electorate. I think that it is probably a dead duck.

Q332 Lord Hennessy of Nympsfield: David and John, you are both great experts in watching political markets in operation all across the world and here. As you have gone on, I have put down a little sketch, based on what you have been saying, of what the political market that the Bill wants us to create might look like if it comes to pass. It will have a second-order election, particularly if it stands alone, with about a 40 per cent turnout, to produce what you called a "pale reflection" House containing a mix of celebrities, eccentrics, UKIPs and very big tranche of party politicians who are not even household names in their own household. I may have got you wrong, but that is what has come out of the picture that you have been painting. If I was in favour of a wholly or largely elected Chamber, I would be deeply depressed by that prospect. Have I reflected your views accurately with these little scraps I have together?

Professor David Denver: I think that they might be unrepresentative in that they are torn out of context; in fact, I have no doubt. I did not ask to start from here, either. If it were up to me, I would not even have started reforming the House of Lords. But there you are: we are stuck with it. What do you do?

Lord Hennessy of Nympsfield: I do not think that we are stuck with it. That is the whole purpose of being here every Monday.

Professor David Denver: Really?

Professor John Curtice: I think the riposte to you is, yes, the public can indeed be rather awkward at times.

Lord Hennessy of Nympsfield: That is very profound. Thank you very much.

The Chairman: Thank you very much indeed. That has been a fascinating, instructive, almost breezy session, and thoroughly enjoyable for that.

Electoral Reform Society—written evidence

About the Electoral Reform Society

The Electoral Reform Society was founded in 1884 and has over 100 years of experience and knowledge of democratic processes and institutions.

As an independent campaigning organisation working for a better democracy in the UK we believe voters should be at the heart of British politics. The Society works to improve the health of our democracy and to empower and inform voters. As well as our campaigns and lobbying, the Society also conducts expert research on electoral systems and outcomes.

The Electoral Reform Society welcomes the government's moves on Lords reform.

Lords reform has been characterised as 'unfinished business' for just over a century. This government has an historic opportunity to build on cross-party consensus and finally finish the job of reform.

Key points

The Electoral Reform Society supports the following:

- A 100 per cent elected House of Lords using the Single Transferable Vote form of proportional representation, with elections by thirds tied into the European Parliamentary election cycle.
- Codifying existing conventions to ensure it would be technically and legally impossible for a new second chamber to bring government to a halt.
- Members of the second chamber should be banned from standing for the House of Commons for a period of 4 years.
- There should be no reserved seats for Bishops of the Church of England, or indeed for any faith community leaders.
- Thresholds or other positive measures to ensure diversity of party candidates.

The Case for Reform

The Electoral Reform Society welcomes the government's moves on Lords reform.

Lords reform has been characterised as 'unfinished business' for just over a century. This government has an historic opportunity to build on cross-party consensus and finally finish the job.

The House of Lords of course cannot be viewed in isolation. An effective second chamber is part and parcel of an effective parliament and effective government, and that remains our chief concern. Reform is a chance to preserve the chamber's vital scrutiny role and to actively enhance it with the legitimacy conferred by public election.

There will always be plenty of excuses to put reform on the back burner. But Lords reform must not burden another parliament. Much of the work this committee is tasked with has already been done; there is sufficient time in the parliamentary timetable and it is impossible to justify wasting any more time on an issue on which broad agreement already exists.

The Coalition Agreement was unequivocal: it is "*time for a fundamental shift of power from* Westminster *to people*." And that is precisely what Lords reform means.

Winston Churchill put it well when he detailed his doubts on the "trumpery foundation" of "mere nomination". He insisted: "If we are to leave the venerable, if somewhat crumbled, rock on which the House of Lords now stands, there is no safe foothold until we come to an elected chamber."[31]

The elective principle offers us a solid foundation. What other basis for legitimacy and law-making can there be?

How the draft Bill fulfils its objects:

1. The government proposals and draft Bill are in keeping with the general consensus that has existed on the issue of House of Lords reform for some time. The basic design of an elected replacement—a proportional system with choice of individual candidate, a chamber significantly smaller than the House of Commons (or indeed the current Lords), long terms of office with election by parts—is certainly firmly within the mainstream of thought on the issue.

2. There are certainly areas in which the Society takes a different view to the government, although these are in the main points of detail rather than general principles. To that end we congratulate the government in not attempting to 'reinvent the wheel' and to respect and build on the consensus established under past governments.

3. The Society does however feel the government has failed to give sufficient attention to the question of powers. Our observations follow in point 4.

The effect of the Bill on the powers of the House of Lords and the existing conventions governing the relationship between the Lords and the Commons:

4. **On balance the Society feels insufficient attention has been given to the question of powers.** The reliance on continuation of Parliament Act(s) fails to take into account impact of the second chamber having strengthened democratic legitimacy. The proposals seek to leave the Lords' powers unchanged, and there are mixed messages about whether the conventions will endure. The Deputy Prime Minister Nick Clegg has said:

> "There are a number of bicameral systems in democracies around the world that perfectly manage an asymmetry between one chamber and the next, even though both might, in many cases, be wholly elected".[32]

But most do that through second chamber powers being far more limited than those of the House of Lords, or are in presidential systems quite different to the UK:

a) Poland and the Czech Republic may be overridden by absolute lower house majority

b) Spain can do the same, or with a simple majority after two months' delay

c) Japan may be overridden by a two-thirds lower house majority, and has suffered much recent instability

d) Italy has co-equal powers, but composition is largely identical

e) Australia is nearly co-equal and its Senate is very strong, but held back by 'illegitimacy' argument over equal state seats

f) The United States, Argentina and Brazil have co-equal powers, but operate under presidential systems.

The Government needs to take into account lessons from elsewhere on second chamber powers.

5. Before the 1911 Parliament Act, Britain was in an ambiguous position in that there was nothing to stop the Lords from breaking convention and denying the government supply of funds, in effect terminating its existence. A similar ambiguity persists in Australia, where the Senate attempted to choke off government funds in 1974, prompting an election, and 1975 culminating in the fall of the government. The need for the support of both chambers has been one

31 Public Record Office CAB 27/502, Cabinet committee HL(25); Churchill memorandum HL(25)13

32 Evidence to House of Lords Constitution committee, 18 May 2011, q217

of the elements encouraging instability in Italian government, at least until the more majoritarian post-1994 dispensation—although the prospect of hostile majorities in Chamber of Deputies and Senate still exists.

6. **The Society believes it is useless to imagine when designing a constitutional system that drastic circumstances will not happen—from time to time they do**. A clear choice should be made giving the responsibility for forming a government unambiguously to one chamber, to avoid 'unconstitutional' episodes like those in 1909 in Britain and 1974-75 in Australia.

7. The implication of this position is the carrying-over of the provisions of the Parliament Act relating to money bills and conceivably—given the relatively small number of bills certified as money bills—a broadening of the class of legislative business that is the sole preserve of the House of Commons. **The Society believes it should be technically and legally impossible for a revised second chamber to bring government to a halt.**

The role and functions of a reformed House:

8. The Society has long argued for a reformed House of Lords. We do not support elections for elections sake, but as a means to preserve and enhance the chamber's vital constitutional role.

9. After the work of the Wakeham Commission and the two parliamentary committees (Joint, and Commons Public Administration), a fair degree of consensus about the role for a second chamber exists. The government's proposals broadly reflect this.

10. Like the government, we envisage the second chamber is intended to be primarily a revising and debating chamber with real but limited powers making it an effective part of a constitutional system rather than a source of authority in its own right. It is intended to be a more reflective, less tribal political environment than the Commons, with a measure of independent judgement and seniority. Independence means that, while many members will generally follow their party whip, the ethos and rules of the House should tolerate judgement and dissent and members should not be influenced by patronage (either in gratitude or expectation) or fear reprisals. Many argue that independence should also mean that the parties are not the only pathways into the second chamber.

11. In addition, the Society is part of the long term consensus that a reformed second chamber should represent the regions and nations of the UK, and that it should fairly represent the UK's diversity. No party should have an overall majority and its composition should be roughly representative of the strengths of the parties in the country. It should be a forum where all interests are heard but none dominate, unlike even the present appointed House of Lords. Again the government's measures on direct elections broadly reflect this.

The means of ensuring continued primacy of the House of Commons under any new arrangements:

12. The Society does not accept the argument that a largely or wholly elected Lords would challenge the primacy of the Commons. Local authorities and devolved assemblies are wholly elected, as are MEPs. These bodies do not undermine the role of MPs in the areas they represent because the jobs they are elected to do are sufficiently different from those of MPs. Whilst it is inevitable that tensions will arise between different levels of government from time to time, it is clearly understood that, in the last resort, the Commons is the paramount authority.

13. The role differentiation between members of the Commons and the second chamber are broadly clear in the government's proposals. Members of the upper house are elected to scrutinise legislation. There is no obligation—and more importantly no incentive—for constituency casework. Election by thirds also ensures that a clear majority of the chamber have been elected longer ago than the previous General Election and therefore have a weaker mandate than the Commons.

14. As we have stated before, codifying the powers and conventions governing the second chamber would help remove potential ambiguity from this relationship.

The size of the proposed House and the ratio of elected to non-elected members:

15. The Society agrees with the government that the House of Lords is too large and believes that a smaller chamber is necessary to provide an effective and efficient second chamber. The current House is grossly oversized and growing unstably as each incoming Prime Minister moves to restore party balance.

16. The Society agrees that a smaller second chamber is compatible with its intended role and would support a more collegiate style of working.

17. This noted, the Society is not persuaded that 300 is the optimal size for a new second chamber. Given the government's intention to have elections by thirds, there must be concern not only that the elections produce results that are proportional between parties and members drawn from different geographical subdivisions of the United Kingdom, but that they are more broadly representative as well. Our concern is that elections for 80 or 100 members at a time may result in parties not providing sufficient choice and diversity in their slates of candidates; international evidence tends to show, for instance, that representation of women is improved when a party must choose more than one candidate at a time and where more than one candidate of a party is elected. We fear that 80-100 members at a time may be too few to produce a fully representative institution. For this reason, we submit that a chamber of 450 members (either 120 or 150 elected at a time) would be more likely to be socially representative and therefore more likely to be the basis for a permanent solution.

18. On balance the Society supports a fully, directly elected second chamber. There are many scenarios in which appointed members could prove decisive in divisions and we would regard this to be problematic. Should the final proposals recommend a proportion of non-elected members, we would see 20 per cent as a tolerable maximum.

19. The Society does not accept the logic or necessity of a corrective appointed element to support expertise and independence.

Independence and 'independents':

20. The Society welcomes the government's determination to preserve and enhance the 'independence' of the second chamber. However, we note that independence can be characterised in several ways, which are related but not the same. Institutional factors in the organisation of the House, such as control over timetabling, the functioning of the party whips, the extent of consensus working through committees, and so on will affect the collective independence of the House as a whole.

21. Independence can exist within the party system. Not everyone elected to a body on a party ticket sees their role identically. Every elected representative has to weigh the respective strength of:

a) their party loyalty,

b) their moral conscience and ideological principles,

c) their conception of the national interest, and

d) the interests and views of the constituency for which they are elected.

Any legislature will cover a number of views about how this balance should work. In the House of Commons, party discipline is arguably important because, after all, people do elect governments, not just MPs. In the Lords, it should be different. The forces of party loyalty and constituency interest should be weakened and the members' independent judgements about morality, ideas and the national interest should be relatively strong.

22. **The Society believes that some features of the draft Bill aim to encourage this form of independence**—long, non-renewable terms of office mean that members will be insulated from the pressures of party and constituency which would apply if they were seeking to be re-selected and then re-elected. This will encourage independent behaviour once a representative is elected. This will encourage senate membership to be either at the end of a political career, or to appeal to those who wish to engage in public service without having the aspiration for a lifetime career in politics. We support these features of the draft Bill.

23. **The provisions on the electoral system also reflect this by helping to select the type of person elected to the second chamber.** Some electoral systems encourage the balance to be struck against these independent qualities which one seeks in the second chamber. For instance, closed list PR makes party loyalty an absolute priority in seeking election. First Past the Post and the Alternative Vote can encourage an excessive constituency focus, and also the desire to be mainstream within a political party (to maximise chances of selection) rather than independence of mind. **It is therefore welcome that the government has narrowed the effective choice down to two sorts of system—the Single Transferable Vote (STV) or a form of list PR that gives voters an effective choice between candidates as well as parties.**

24. Looking beyond the idea of independence within the larger political parties, an independent-minded second chamber should contain viewpoints with support in the country which are independent of the structure of major-party politics. There are a number of ways in which a perspective somewhat distanced from party politics may be brought in to a second chamber and independents come in several varieties:

a) Disaffected former members of political parties who already have a political profile. This may arise as a result of deselection or selection disputes, or ideological or disciplinary disagreements with the party. The classic cases of this would be people like Eddie Milne (1974) or Dennis Canavan as an MSP (1999-2007) who fell out with their parties but defeated them in an election. Being an independent in this sense can be a transition stage to membership of another party.

b) Representative of a local cause whose importance is concentrated in the immediate area being contested—the classic example here being Richard Taylor (2001-10).

c) Representative of a national cause, often supported by one or more political parties which has withdrawn from the contest in order to support the independent; classically, Martin Bell (1997-2001) and often with independent candidates between the wars in by-elections such as Oxford and Bridgwater.

d) Parties of either small but genuine parties (like the Greens in the Commons at the moment) or parties that are vehicles for a single politician (like the labels under which Kilfedder and McCartney won election in North Down).

e) Non-party but political—such as several independent MPs between the wars, most notably but atypically Eleanor Rathbone and A.P. Herbert (elected under STV in the University seats).

f) Eminent persons in fields other than politics, such as scientific and religious leaders appointed to the current House of Lords.

25. Two more detailed features of electoral system design, beyond the requirement for minority representation and therefore proportionality, would probably lead to more independent and small party candidates. Large district size (perhaps whole region for list PR) would bring down the barriers to entry. **Because of this phenomenon, and the fear of 'wasted votes' under small-area list PR, we argue that there should be a presumption, if list PR were to be used, to have larger districts than would be required under STV.**

26. Electing small parties under list PR is not problematic, provided that the districts are large enough and there is sufficient support. The Greens have had a constant presence in the Scottish Parliament thanks to the list component of the Scottish electoral system, and the 'rainbow parliament' of 2003 saw a short-lived breakthrough of smaller parties on the lists. Interestingly, an independent, Margo MacDonald, has been elected from the list vote to the Scottish Parliament three times since 2003. **Under list PR, an independent candidate stands as a 'list of one'** (unless there is some sort of voluntary slate of independents). However, winning is relatively unusual. MacDonald had been elected as an SNP candidate originally and was already a well-known Scottish political and media figure before winning as an independent. But it clearly can be achieved, particularly if the electoral dynamics for senate elections turn out like mayoral elections, when voters seriously consider unusual options.

27. **STV, on the other hand, makes life significantly easier for independents**. Preferential voting would mean that independent-minded candidates with a base of sympathy that crosses political divisions would attract transferred votes as the count progressed and unsuccessful party candidates were excluded. Preferential voting also means that

people will not be deterred from looking seriously at, and supporting, small party and independent candidates through fear of wasting their vote. Independent candidates are placed on the same basis as major party candidates.

28. **There is** considerable **evidence that STV is favourable to independents and small party candidates from the recent history of the Republic of Ireland** and the contrast between its election results and those in the United Kingdom. ***See appendix 1.***

Expertise:

29. The Society agrees with the government that a second chamber's deliberative function is greatly enhanced by the involvement of substantial expertise. However, we do not agree that experts need to be sitting members of the legislature.

30. The Society notes and accepts the broad conclusions of Professor Hugh Bochel and Dr Andrew Defty:

> "Whilst there is certainly a great deal of expertise in the House of Lords, it is not clear that this makes the House as a whole more expert".[33]

In key policy areas such as welfare there are clear gaps in the chamber's expertise, limited to a relatively small number of peers. More broadly, while many expert members have a valuable contribution to make in their specific fields, all are expected to participate on and vote on all issues, regardless of specialism.

31. The Society would strongly encourage other methods for deepening the expertise of the chamber *in toto* via the committee system and that external advice is open to all members as a matter of course.

Representation of Women and Black and Ethnic Minorities:

32. The Society has stated repeatedly that consensus dictates a reformed second chamber should fairly represent the diversity within the UK. That diversity should rightly include gender and ethnicity alongside other aspects of a person's identity and background.

33. **While the Society welcomes agreement on a proportional voting system, we recognise that PR is not a silver bullet.** It is best characterised as a *facilitator*—not a *guarantor*—of better representation for women[34] and other under-represented groups.

34. **We believe that serious consideration should be given to require parties to achieve a rough gender balance in their candidates for each region.** It seems reasonable to ensure that at least 30 per cent of the candidates presented in each region should be either male or female.

35. If an appointment commission is to remain in place, the Society believes there is a strong case for a statutory requirement to appoint equal numbers of women and men.

A statutory appointments commission:

36. As stated previously, the Society sees a case for a fully elected second chamber. An appointed element may form part of the final proposals, but is not required as a corrective influence to provide either independence or expertise.

The electoral term:

37. The Society believes that electing a second chamber by thirds is a reasonable proposition. It means that two thirds of the chamber is elected longer ago than the previous General Election, which means that the second chamber will be less likely than otherwise to think it has a mandate to challenge the supremacy of the Commons.

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33 A Question of Expertise? The House of Lords and welfare policy. Professor Hugh Bochel and Dr Andrew Defty

34 Childs, 2008 as quoted in Evans, E & Harrison, L. Candidate Selection in British Second Order Elections: A Comparison of Electoral System and Party Strategy Effects, 2011.

38. We do note that 15 years is exceptionally long by international standards. However we recognise that this is a side effect of the 5 year fixed term measures brought forward for the Commons, not the Lords design per se.

39. A more sensible Lords term (12 years) would be the consequence of a more sensible Commons term (4 years) but we appreciate that we are not starting from an ideal situation.

40. A single non-renewable term of office is clearly compatible with the desired character of a reformed second chamber—i.e.: members insulated from the pressures of party and constituency work, neither seeking re-selection nor re-election.

Quarantine:

41. The Society believes that the ban on standing for the Commons for 4 years is a welcome—nigh essential—part of the proposals. Quarantine measures avoid significant problems observed in overseas chambers:

a) Ireland's Seanad has often proved a 'stepping stone' to the Dáil, e.g. in 1997, 16 senators (of 60) were elected as MPs.

b) In Canada, a similar phenomenon is developing in 2011 with members departing the Senate to run as MPs and returning if defeated.

This provision also rightly limits temptation to undertake constituency work.

Recall:

42. The Society notes the government's consideration of recall measures for a reformed second chamber. While we are sympathetic to the challenges presented by one long single term of office, the Society is strongly opposed to recall on principle.

43. Recall was originally part of the progressive government reform package in the United States in the early decades of the 20th century, along with primary elections and the direct election of senators. But in practice recall has proved reactionary rather than progressive. It has given well-organised interest groups the ability to target public figures who oppose their agenda. While the overthrow of Governor Gray Davis of California in 2003 is probably the most famous example, recall has become a conventional partisan campaign tool at state level.

44. The Society believes strongly that the chamber requires correct and proportionate sanctions that bypass the need for recall. Members should simply be subject to rigorous and properly enforced standards of conduct, including attendance, and be subject to criminal laws of fraud and corruption.

The electoral system preferred:

45. The Society welcomes the government's acknowledgement that members of the upper house must be elected on a different basis to the House of Commons. It is a matter of general consensus that the upper house should represent the regions and nations of the UK, and that it should fairly represent the diversity within the UK. No party should have an overall majority and its composition should be roughly representative of the strengths of the parties in the country. It should be a forum where all interests are heard but none dominate, unlike even the present appointed House of Lords. The government's choice of systems reflects this.

46. The Society applauds the government's rejection of closed lists (as used in European Parliamentary elections). The degree of party control possible under a closed list system would simply replace one form of political appointments with another.

47. **The Society welcomes the government's proposal to use of STV system for elections to a reformed second chamber.** The key differences between STV and Open Lists are noted throughout this submission, and are perhaps best expressed by Paul Tyler, Kenneth Clarke, Tony Wright, Sir George Young and the late Robin Cook in *Breaking the Deadlock* (2007):

> "We believe that the electoral system for the second chamber should maximise voter choice, and we therefore reject the idea of closed party lists. We thus propose that elections should be carried out using either open lists or STV. **On balance we believe that STV is more in keeping with the needs of the second chamber."** [35]

48. STV, as a candidate-based multi-member system, is the most friendly there is to independent candidates.

a) **Voting is for candidates** rather than party lists.

   i) This puts independents on an equal footing to political party candidates—in list PR elections, independents are often placed below the parties on the ballot paper with a blank box next to them where parties have an emblem, and the task of independents in communicating what they each stand for is harder.

   ii) STV encourages parties to offer candidates who differ a bit from each other in order to maximise their vote and encourages candidates to highlight what is distinctive about themselves, which means allowing them some latitude. It also means that community leaders who agree with a party most of the time but do not want to take a whip are able to stand as independents without harming the party's chances.

b) **Voting is preferential**, i.e. 1, 2, 3… rather than a single X as is usual in FPTP or list PR.

   i) Voters do not have to worry about wasting their vote or splitting the vote of the section of the electorate they belong to because it can transfer to their next choice of candidate if their first choice does not have sufficient support to get elected. One of the barriers to voting for independents under FPTP (and even many forms of list PR) is the fear that one's vote will be wasted. STV removes this barrier.

   ii) Preferential voting affects the behaviour of parties and candidates in that it makes it harder for parties to deselect or discipline candidates. Attempts to insist on conformity will founder because rebels will be more willing and able to stand as independents without splitting the vote.

How many STV seats are needed for reasonable proportionality?

49. **The government has reasonable concerns about providing for electoral areas with sufficient 'district magnitude'** (i.e. the number of representatives elected from each district) to provide a fair degree of overall proportionality. The general principle is that the larger the district magnitude, the closer the system overall gets to proportional representation of the votes cast.

50. **However, it is not necessary to insist, as the government suggests, that there should be a 'floor' of 5 members elected at a time per seat.** Research shows that a fair degree of major-party proportionality, and lower barriers to entry for smaller parties and independents, do not require a high district magnitude under STV.

51. In the Scottish local authority elections of 2007, a mixture of three- and four- member wards was able to achieve a level of proportionality which was comparable to that achieved by list PR or Mixed Member Proportional (MMP), namely a DV score of around 8. The least proportional results were in authorities which had a uniform pattern of three members per ward. In the Scottish local elections, 74 per cent of first preferences elected a candidate, and if second and third preferences are taken into account perhaps up to 90 per cent of voters had a say in electing *someone*.

52. In dealing with small seats, list PR can sometimes involve considerable numbers of 'wasted' votes cast for unsuccessful candidates, which can distort representation. For instance, 6-member list PR in South West England in the 2009 European Parliament election resulted in 30.5 per cent of votes cast failing to elect anyone.

53. Allowing a few seats electing three or four members would enable electoral boundaries to be more consistent over time and more coterminous with regional boundaries.

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35 http://www.ucl.ac.uk/spp/publications/unit-publications/119.pdf

54. **The Society recommends that the normal minimum size for STV electoral districts be three, not five, seats, provided that the average size is around five or more.**

What number of STV seats is the practical maximum?

55. The government proposes to create subdivisions where using whole regions would result in an STV election of more than 7 members at a time. This is reasonable given that a larger figure may result in very long ballot papers and that, except in Scotland and Northern Ireland, preference voting will be initially unfamiliar to voters. The size of the quota for election, and thus the 'barrier to entry', also falls more slowly when there are more seats. For instance, increasing the number of seats from three to four means that the quota drops from 25 per cent to 20 per cent, while increasing it from 6 to 9 only achieves a reduction from 14.3 per cent to 10.0 per cent. Using international comparisons, normal STV district magnitudes are as follows:

a) Republic of Ireland: 3-5 seats

b) Republic of Ireland local government: normally 4-7 seats

c) Malta: 5 seats

d) Australian Senate: 6 seats

e) Northern Ireland Assembly: 6 seats

f) Northern Ireland local government: 5-7 seats

g) Tasmania: 5 seats

h) Australian capital territory: 5-7 seats

There are some elections with larger STV districts than this, including some smaller local authorities in the Republic of Ireland and the occasional 'double-dissolution' Australian Senate election, and of course frequently for elections of executive committees in voluntary organisations and trade unions. But international experience, and common sense, suggests that a district magnitude of 7 is a reasonable ceiling for the UK's second chamber.

The Society agrees with the draft Bill's proposed maximum of 7 seats per electoral district.

How does one allocate seats to parts of the United Kingdom?

56. An allocation method for seats which is consistent with the government's broad approach and established policy as regards the distribution of seats for MEPs and, under the 2011 Act, 596 of the 600 MPs, would involve the following procedure:

a) A minimum of three seats per nation, and the remainder (68 or 88 seats) allocated using the Sainte-Laguë divisor method

b) The English seats allocated between the nine regions, again according to the Sainte-Laguë divisor method

However, we note that international experience suggests that seats in elected second chambers are rarely allocated with sole reference to population (leaving aside the problems in matching population to registered electorate). Elected second chambers usually reflect the make-up of federal or multi-national states and are seen as a balance to prevent the interests of 'big states' overriding those of 'small states'. This is the pattern in the Senates of the United States and Australia, and also with the indirectly elected Bundesrat of Germany.

Applied to each tranche of seats, based on the proposed three hundred members, election by thirds and the alternatives of 80 per cent and 100 per cent elected, the above formula gives the following distribution of seats in proportion to the 2011 electorate figures (as compiled December 2010).

	80 seats per election	100 seats per election
Northern Ireland	3	3
Wales	4	5
Scotland	7	9
England	66	83
Of which…		
East Midlands	6	7
Eastern	7	9
London	9	12
North East	3	4
North West	9	11
South East	11	14
South West	7	9
West Midlands	7	9
Yorkshire/ Humber	7	8

If more precise equalisation is required, and if future adjustments are needed, there is no reason why the number of people elected from the same area should not be allowed to vary slightly in successive elections. The following two tables indicate how the allocation of seats to regions might vary to give each region a more precise degree of equality, under 80 per cent or 100 per cent election. **However, the instability of the electoral register, and the long terms of office for members of the second chamber, suggest that there are dangers to excessive precision.**

80 seats per election	Seats per election—uniform electoral cycle	Total seats - uniform electoral cycle	Total seats -variable electoral cycle	Term A	Term B	Term C
TOTAL	**80**	**240**	**240**	**80**	**80**	**80**
Northern Ireland	3	9	9	3	3	3
Wales	4	12	12	4	4	4
Scotland	7	21	20	7	6	7
England	66	198	199	66	67	66
Of which…						
East Midlands	6	18	18	6	6	6
Eastern	7	21	22	7	8	7

London	9	27	27	9	9	9
North East	3	9	10	3	4	3
North West	9	27	27	9	9	9
South East	11	33	33	11	11	11
South West	7	21	21	7	7	7
West Midlands	7	21	21	7	7	7
Yorkshire/ H	7	21	20	7	6	7

100 seats per election	Seats per election—uniform electoral cycle	Total seats - uniform electoral cycle	Total seats -variable electoral cycle	Term A	Term B	Term C
TOTAL	**100**	**300**	**300**	**100**	**100**	**100**
Northern Ireland	3	9	9	3	3	3
Wales	5	15	15	5	5	5
Scotland	9	27	25	8	9	8
England	83	249	251	84	83	84
Of which…						
East Midlands	7	21	22	7	7	8
Eastern	9	27	28	9	9	10
London	12	36	35	12	11	12
North East	4	12	13	4	4	5
North West	11	33	34	12	11	11
South East	14	42	41	14	13	14
South West	9	27	26	9	9	8
West Midlands	9	27	27	9	9	9
Yorkshire/ H	8	24	25	8	8	9

However, the technique of varying the numbers elected each election can allow more freedom to draw sub-divisions, where needed, which comprise sensible groupings of whole counties.

57. One should not become unduly concerned with the issues of the subdivision of regions for an STV election; it is very much a subsidiary matter. **The draft Bill suggestions on this point are unsatisfactory for two reasons:**

a) **There is no need to create a new institution to draw boundaries of sub-divisions.** The Boundary Commissions for England and, if necessary, Scotland, could easily perform this rather simple task. There is no need for frequent boundary adjustments.

b) The draft Bill leaves open the possibility that the electoral regions for the second chamber may cross the boundaries between English regions. This is undesirable, in that the regions are now accepted units for the European Parliament and drawing House of Commons constituencies, and electoral administrators are familiar with co-operative working within them. It is also unnecessary.

Good proportionality is perfectly consistent with having a few districts smaller than 5 seats in magnitude. A close relationship between size of registered electorate and number of representatives is also easier to achieve in multi-member than single-member seats.

Model electoral districts for STV election for both 80 (80 per cent elected) and 100 (100 per cent elected) seats per election are provided in appendix 2.

Vacancies:

58. The Society agrees that given long terms of office interim appointments should not persist for more than the period until the next partial election.

59. The Society notes that proposals for filling casual vacancies are crude—i.e.: the candidate with the 'highest vote without being elected'. Under STV, a first preference count does give one measure of support, but can produce unusual results. The final preference count—i.e. the total reached by the candidate in the last stage of the count before exclusion—is another.

60. **The system of increasing the number of members to be elected for that particular constituency—as used in Liberal Democrat internal elections—is the best way to represent the views of the overall electorate**.

Timing:

61. The Society notes the government's preferred option is concurrently with General Elections. We accept that this has the advantage of maximising turnout and that is important. The point that mid-term second chamber elections will disrupt the legislative process is also not a trivial one. **However, the Society believes there are significant drawbacks to running alongside General Elections:**

a) **Prominence.** Holding the second chamber election on the same day as the General Election would mean that the more decisive and important election (for the Commons) would dominate media and public attention. Given that the government seeks, and we agree, an independent-minded chamber of expertise and legislative revision, the electoral timetable should allow a considered assessment by the electorate of the qualities of those seeking election.

b) **Political.** It would seem likely that the voting patterns in second chamber elections would be fairly close to those for the election to the House of Commons given that they would reflect the same state of political opinion and be strongly influenced by views on national issues. But the newly elected tranche of senators would arguably have a superior mandate given that its composition would more closely resemble the votes actually cast in the election because of the proportional system. It may or may not be considered desirable, but the prospect of eroding the supremacy of the Commons throughout each government's term exists with this proposal.

c) **Public understanding.** It will be easier to promote knowledge and understanding of the new electoral system used for the Lords away from the General Election campaign period.

d) **Administrative.** General Elections involve a complex and heavy administrative load already, and a second chamber election using a new electoral system and new boundaries will add massively to this problem. There may well be cases where the boundaries of Commons constituencies and sub-regional senate electoral districts do not match up as well as the complexities of English local elections on the same day.

62. The Society sees two possible alternatives:

a) **To hold second-chamber elections on the same day as the European Parliament election.** This has the merit of combining two UK-wide second-order elections. The European Parliament election is also already conducted on a regional, proportional basis and it may therefore be simpler from the point of view of voter education and administration. It will also mean substantial coverage and awareness of the distinctive nature of the election for the second chamber. However, this would mean (assuming that the five-year term is a permanent fixture) second-chamber elections taking place late in each term of the House of Commons and perhaps therefore to them being regarded as surrogate General Elections by the public.

b) **Establishing a new mid-term date, for instance 2017-2022-2027.** This would certainly be more costly than the alternatives, as there would be no other UK-wide national election on that date.

There is no strong international evidence for one solution or another. Italy, Australia and the United States directly elect their Senates in whole or in part alongside their lower chambers. In Japan, House of Councillors elections take place in mid-term, although with both Japan and Australia the elections are legally capable of being separate or combined, and the difference just depends on the timetable of early dissolutions of the lower houses.

63. On balance, we would argue that timing second chamber elections alongside the European Parliament election would be the best option, although we recognise that all the possibilities have pluses and minuses.

Transitional arrangements:

64. A period of transition is necessary to ensure the upper house's operational continuity. Using elections by thirds, the government has indicated how the change can be achieved at different speeds.

65. On balance, the Society believes a brisk move to a smaller chamber is desirable. While we appreciate the need for continuity, a critical mass of elected peers will be necessary to establish the chamber's new working practices. As such the Society sees no merit in allowing all current peers to remain for a full electoral cycle.

The provisions on Bishops:

66. The Society does not accept that there is a case for reserved seats for Bishops of the Church of England. Britain is a multi-faith and multi-denominational society and we do not believe it is acceptable for one denomination to receive such representation.

67. **The Society therefore recommends that reserved seats for the Bishops are removed.**

Other administrative matters like pay and pensions:

68. The Society believes that remuneration for members of the second chamber should be such that people from all social backgrounds and all regions of the UK can serve in the chamber without facing financial hardship.

69. We agree with the Wakeham Commission's conclusion that "payment should be made for the time members of the second chamber devote to their parliamentary duties". But given the valuable and distinctive nature of members "duties" from those in lower house—the stronger focus on deliberation and the absence of casework—we would, on balance, recommend giving members the same basic salary and allowances as MPs.

70. We continue to support the Wakeham Commission's recommendations that additional office and secretarial resources should be provided to enable members to fulfil those duties more effectively.

71. The Society agrees with the government that all members of the second chamber should be resident in the UK for tax purposes.

Appendix 1: Independents in Ireland and UK

	Independents	Minor parties	Combined	Combined per cent	UK number	UK per cent
1981	6	2	8	4.8	1 (1979)	0.2 (1979)
1982 Feb	4	3	7	4.2	-	-
1982 Nov	3	2	5	3.0	1 (1983)	0.2 (1983)
1987	3	5	8	4.8	1	0.2
1989	8	5	13	7.8	-	-
1992	4	6	10	6.0	1	0.2

	Independents	Minor parties	Combined	Combined per cent	UK number	UK per cent
1997	6	8	14	8.4	2	0.3
2002	13	14	27	16.2	1 (2001)	0.2 (2001)
2007	5	10	15	9.0	2 (2005)	0.3 (2005)
2011	14	19	33	19.9	3 (2010)	0.5 (2010)

(Major parties defined as Fianna Fail, Fine Gael, Labour and Progressive Democrats in Ireland, and the leading four in each part of the United Kingdom—i.e. Conservative, Labour, Liberal Democrat, SNP, Plaid Cymru, DUP, UUP, SDLP and Sinn Fein). Arguably, Sinn Fein (14 seats) should be counted as a major Irish party in 2011.

As Irish political scientist Michael Gallagher observed 'independents represent a face of Irish politics that simply will not go away. Whereas independents are almost unknown in most European counties, they have proved tenacious in Ireland.'[36] Ireland does have a distinctive political culture but STV plays a significant part in explaining why Ireland elects so many independents and minor parties to its lower House. By contrast, the number of independents has varied from zero to two in the same period in the UK's considerably larger parliament, and those of minor parties also from zero to two (currently two, one Green and one Alliance Party). Significantly, Northern Ireland, whose political culture is affected by STV which is used in all other elections in the province, has provided one of the four candidates elected as an independent since 1983 (Hermon, the others being Bell, Taylor and Law), and three of the four small party MPs (Kilfedder, McCartney and Long, the other being Lucas). Ireland's parliament has the highest proportion of independent members in Europe.

The Irish Senate is mostly indirectly elected, but there are six seats elected using STV by graduates of the Irish universities, who are usually all independents although occasionally party candidates can win.

Appendix 2: Model STV electoral districts

Model electoral districts (80 seats per election)

Regions elected as a whole without subdivision:

- Northern Ireland (3)
- Wales (4)
- Scotland (7)
- East Midlands (6)
- Eastern (7)
- North East (3)
- South West (7)
- West Midlands (7)
- Yorkshire and the Humber (7)

Subdivided regions:

36 M. Gallagher 'The Results Analysed' in M. Marsh and P. Mitchell *How Ireland Voted 1997* p136.

London:

North London (5 seats, technical entitlement 5.20)

South London (4 seats, technical entitlement 3.80)

South London, for these purposes, would be all boroughs south of the Thames, plus Hounslow and Twickenham north of the river.

It would be possible, however, to use the fact that the elections will take place by thirds to draw more meaningful boundaries for these subdivisions. There is no need, for instance, to add Hounslow to South London if one varied by 1 the number of seats elected from each subdivision at different elections. London south of the Thames (plus Twickenham) could elect 4 for term A, 3 for term B and 4 for term C, and North London would elect 5 for term A, 6 B and 5 C.

North West:

Cumbria, Greater Manchester, Lancashire (6 seats, technical entitlement 5.93)

Cheshire, Merseyside (3 seats, technical entitlement 3.07)

South East:

Berkshire, Buckinghamshire, Oxfordshire, Surrey (4 seats, technical entitlement 4.28)

East Sussex, Hampshire, Isle of Wight, Kent, West Sussex (7 seats, technical entitlement 6.72)

Electoral districts (100 seats per election)

A wholly-elected chamber would involve more subdivision of the regions.

Whole regions:

- Northern Ireland (3)
- Wales (5)
- East Midlands (7)
- North East (4)

Subdivided regions:

	Seats—even distribution	Entitlement	Variable term A	Variable term B	Variable term C
EASTERN					
Bedfordshire, Cambridgeshire, Hertfordshire	4	3.80	4	3	4
Essex, Suffolk, Norfolk	5	5.20	5	6	5
LONDON					
North London	7	7.31	7	8	7

	Seats—even distribution	Entitlement	Variable term A	Variable term B	Variable term C
South London	5	4.69	5	4	5
NORTH WEST					
Cumbria, Lancashire	3	3.15	3	3	4
Greater Manchester	4	4.10	4	4	4
Cheshire, Merseyside	4	3.75	4	4	3
SOUTH EAST					
Berks, Bucks, Hants, IoW, Oxon	7	6.77	6	7	7
E Sussex, Kent, Surrey, W Sussex	7	7.23	8	7	7
SOUTH WEST					
Avon, Gloucestershire, Somerset, Wiltshire	5	4.84	5	5	5
Cornwall, Devon, Dorset, Isles of Scilly	4	4.16	4	4	4
WEST MIDLANDS					
West Midlands, Warwickshire	5	5.14	5	5	5
Herefordshire, Worcestershire, Shropshire, Staffordshire	4	3.86	4	4	4
YORKSHIRE/ HUMBER					
Humberside, South Yorkshire, York	4	3.77	4	4	3
North Yorkshire, West Yorkshire	4	4.23	4	4	5

Several divisions of Scottish local authorities and other administrative geographies are possible; there may be merit in dividing the country into two blocks, each containing four Scottish Parliament regions, for the purpose of electing second chamber representatives.

The workings demonstrated here should give a clear indication that the Single Transferable Vote in seats, each contained within a European Parliament region, electing for the most part from 4 to 7 members at a time, is a workable system for filling either an 80 per cent or 100 per cent elected second chamber

MONDAY 21 NOVEMBER 2011

Members Present

Lord Richard (Chairman)
Baroness Andrews
Lord Hennessy of Nympsfield
Bishop of Leicester
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Baroness Shephard of Northwold
Baroness Young of Hornsey
Lord Trefgarne
Lord Trimble
Lord Tyler
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Laura Sandys MP
John Stevenson MP
John Thurso MP

Unlock Democracy [Peter Facey and Alexandra Runswick] (QQ 333–378)

Examination of Witnesses

Peter Facey, Director, Unlock Democracy, and **Alexandra Runswick**, Deputy Director, Unlock Democracy

Q333 The Chairman: Thank you very much for coming. We are very grateful to you. I think you have a pretty fair idea of what this Committee is about. Would you like to make a short opening statement before we launch into the questions, or would you prefer just to start with the questions?

Peter Facey: I think that we would prefer to start with the questions.

The Chairman: I have one, which struck me when reading your evidence again. Why do you think that the House can do without the independence of a section of Cross-Benchers?

Peter Facey: Our view is that the independence of experts can best be replaced by having experts attached to Committees rather than as full Members. Ideally, we think that expertise can come through election rather than through appointment. We do not have any evidence to show that you cannot have the type of knowledge that you need through direct election. If you want to have expertise, it is better to have that as advisers to Committees than people who end up voting on every subject rather than simply on the subject which they are there to be an expert in.

Alexandra Runswick: I believe that the question was about independence rather than just expertise. It is possible, although difficult, for independents to be elected using either of the proportional electoral systems that have been proposed in the Bill. As we have already said, we believe that the best way to bring expertise into the second Chamber is through the Select Committee system rather than as full-time Members.

The Chairman: I did not catch the last bit of your answer, I am afraid.

Alexandra Runswick: Just to repeat what Peter was saying, we believe that the best way of bringing current, up-to-date expertise into the second Chamber is through the use of the Select Committee system rather than making people full-time Members of the legislature.

Q334 The Chairman: Let me just follow that for a minute. What do you mean by the Select Committee system?

Alexandra Runswick: There are different ways in which you could do it. If you wanted to continue with something that already exists within Parliament at the moment, you could, for example, appoint expert advisers

to Select Committees, as is the case, for example, with the Joint Committee on Human Rights. One thing that I would be interested in would be appointing experts to be full-time members of a Committee considering a particular policy proposal, but there is not an example that I am aware of that happening elsewhere.

Q335 The Chairman: You realise that the Committee system up here is very different from the Committee system in the House of Commons? We do not have as comprehensive a number of Select Committees in the Lords as they do in the House of Commons.
Alexandra Runswick: No, I am aware of that.
The Chairman: What we have up here is the European Select Committee, which is pretty comprehensive, the Economic Affairs Committee and the Science and Technology Committee—and the Communications Committee. We do not have a foreign affairs, home affairs or transport Committee; we do not have any of those. How on earth do you think that you could fit expertise into each of those Committees?
Peter Facey: But, with due respect, there is nothing stopping the Chamber setting up new Committees. If you have effectively moved to an elected House, there will have to be some changes to the way in which the House operates.

Q336 The Chairman: But this would be a huge change, would it not?
Peter Facey: If you are looking to bring in expertise on an issue, one of the problems that we see with expertise is that if you appoint someone because they are expert in A, they are there to deal with all the other letters of the alphabet. If you are looking for an effective way of saying, "What we want is the best brains on this particular issue", we have to find a different way of doing that, and a way which is current. If you appointed someone as an expert in 1983, they are not necessarily an expert in 2011. Therefore, we need to find a different way of doing it. Personally, I have greater faith than some Members of the second Chamber in the process of election in bringing people through who are expert in their field and can gain expertise, but the argument that what we need is to appoint people for life to get expertise is, I think, extremely weak.

Q337 The Chairman: Okay, but let me just turn the argument slightly back on you. What you are really saying is that if you want individual experts to come in on individual issues that they are expert in, you will have to reorganise the whole Committee system of the House of Lords.
Peter Facey: Yes, or attach them to Bill Committees or find different ways of doing it. I think that there are ways of doing it which would allow you to have more current expertise than the assumption that you appoint somebody and they are your expert on it, even though that subject never comes up for 15 years.

Q338 The Chairman: But why is that a better system than one in which you have appointed non-party members of the Lords?
Peter Facey: The fundamental problem is that you are talking about appointing people. If you appoint experts to a subject area, they are voting Members—they are full Members—on other subjects. It is like appointing my mechanic because he is an expert on automobiles and saying that he should decide on education policy and defence policy. It is quite a strange way of bringing in expertise. You would not do it in any other field. You would not say that an expert in one subject automatically therefore should get to vote on a whole range of other subjects, but we seem to think that that is perfectly sensible when it comes to the second Chamber.

Q339 The Chairman: It seems to me, if I may say so, that you are really saying that in the interests of psephological purity, which is that everybody has to be elected, you are against the idea of having independent experts as full Members of the Lords. That is the base of it.
Alexandra Runswick: We are against them being full-time Members. We are absolutely not saying that we do not want expertise to be brought into the legislative process. We just think that we have to be a bit more creative about how we do it.
The Chairman: I understand that.

Q340 Lord Hennessy of Nympsfield: Thank you very much for your paper. One thought that occurred to me when I was reading it was the one on which the Lord Chairman focused—the experts question. Can I ask you

how much time you have spent observing the House of Lords in action, either in the Chamber or in its existing Select Committees—yourselves sitting in, watching how it really works, as opposed to reading *Hansard*?
Peter Facey: I do not have a diary of how many times I have done it or have sat there. I watched most of the two days of the Lords debate on Lords reform, and I have sat in on a number of occasions, but I am not saying that I spend my entire life doing that. I would not be a very good director of the organisation which I represent if I spent my whole time sitting watching your Lordships.

Q341 Lord Hennessy of Nympsfield: I understand that, but the reason why I mention it is that I am still relatively new here—I have been here roughly a year—but I have been very struck by the degree to which I had not appreciated until I actually came the level of expertise you get in the normal exchanges in the House, particularly at the Committee stages of Bills.
For example, about three weeks ago, there was a clause in the health Bill dealing with psychiatric services, and we had three terrific psychiatrists. Having them participate in that way across the Floor—interleaved with everybody else, many others of whom had considerable expertise, but not comparable to theirs—was very special. I simply do not think that you can replicate that by having people to advise Select Committees. It is that chemistry which is indefinable; it is one of those intangibles; you have to see it to appreciate it. That is my point.

Reading your evidence, I get no sense that you have that feel for the House. It is almost like Kremlinology in the old days when you could not get into the Soviet Union: you saw who was standing where at Lenin's tomb on May Day and drew up extrapolations from it. I do not want to be too unkind, but you have more than a whiff of that in your paper. We are a foreign land to you, as well as irritating you very profoundly, quite obviously.

Peter Facey: I think that I probably irritate Members of the House of Lords equally as profoundly as they irritate me on occasions. What I challenge in your assumption is that you cannot get that expertise through election. I have watched debates. For instance, there are Members of the House of Lords who used to be parliamentarians, some of whom were leading psychiatrists, who were elected. On the idea that you can get this expertise only through appointment and that nobody who is an expert would ever deem to dirty themselves to stand in an election, I probably have a greater faith in the democratic process than you do. Maybe that is naive and idealistic on my part.

Q342 Lord Hennessy of Nympsfield: One tiny remark on that, Lord Chairman, if I may. The problem arises that it is a 15-year term. Are you going to get psychiatrists with the depth of experience that, for example, we had the other day, running in their early 30s for election? That is the problem. It is a phasing of the career problem as well as a democratic legitimacy problem.
Peter Facey: As you will see from our evidence, we think that the 15-year term is too long, so we have suggested 10-year terms, which deals with some of the problem you raise. There is evidence from the House of Commons that people interrupt their careers to participate through election. There are people who are advanced in their careers who will do that. I am not saying that it is not a barrier, but I am not sure that it is the barrier that everybody makes out that if we moved to an elected second Chamber—wholly or to the Government's preferred model of 80 per cent—you cannot have the expertise that people want through the democratic process rather than through the process of being appointed, predominantly by party leaders.
Lord Hennessy of Nympsfield: There is one active research scientist in the House of Commons out of 650 Members—just one.
Peter Facey: To be honest, in lots of cases, I do not think that the expert in the subject is necessarily the best person to frame the laws. It is important to have them advise the people making the laws, but I am not sure that they are always the best person to frame the laws. If you are an expert brain surgeon, it does not necessarily mean that you are the best person to look at the whole way in which the NHS works in all its complexity. You have a particular point of view, and it is an important one to be expressed, but there is the idea that just because of that you have some magical insight which cannot be brought in through Committees like this, with the opportunity to have witnesses, to have advisers and to debate. The fact is that in lots of cases the people who are most expert in the subject in terms of law are people who have experience and do it. I am not normally nice to Members of the House of Commons, but lots of them after years of service are experts in what they do and have a level of knowledge which should sometimes be celebrated rather than denigrated.

Lord Norton of Louth: You are confusing expertise with specialisation.

Q343 Lord Trefgarne: You come down very firmly against any government Ministers sitting in the second Chamber. Whom do you imagine will take government legislation through the House?
Peter Facey: We say that government Ministers should be able to speak in the House of Lords; they should be allowed to be present in the House of Lords but they should not be Members of it. We think that that convention should be removed. You can effectively have a Member of the House of Commons who can present Bills in the House of Lords.
Lord Trefgarne: But if he is not a Member he cannot even move amendments; he cannot do anything.
Peter Facey: No, but there are plenty of Members who could move amendments on behalf of the Government; you do not have to be a Minister to do that. If you are looking to have distinct roles for the two Houses, one of them is that you want this place to be freer, to a degree, from the power of the Executive. One way of doing that, which we have suggested, is to remove Ministers.
Lord Trefgarne: I am terribly sorry, but I think that your proposition that somebody else should move government amendments is absurd.
Peter Facey: Given that most amendments to government Bills are moved by the party in power—by representatives of the parties or party in power—even if it is not the Minister who puts the amendment down, there are ways to ensure that you hold Ministers to account. They do not actually have to be from the second Chamber. Regularly I hear your Lordships say, "What we don't want is a clone of the House of Commons." One way to distinguish it is to remove Ministers from it and to ensure that this case is about scrutiny and accountability, not about the Executive. You can agree with that—obviously you disagree with it.
Lord Trefgarne: It will not work.

Q344 The Chairman: I do not want to lose the first point that we were on, so forgive me for asking one question before we take the next on the list. On the assumption that a government Bill is going to be enacted, would you want the 20 per cent nominated to be part-time or full-time?
Alexandra Runswick: Full-time, I think.
Peter Facey: We have based our assumptions on a full-time Second Chamber. To be honest, I do not think that we would dictate to those people who were appointed whether they served full-time or not. The assumption would be, given that we are talking about a significantly smaller House, that they would be full-time. By its very nature, the Government are proposing a House of 300. Presently, the average attendance is somewhere in the mid-450s. Therefore, you have to assume that those 300 people are going to be full-time.

Q345 Baroness Young of Hornsey: Thank you for your submission. You make some interesting points, some of which I agree with, around this issue of expertise and independence, although I am not sure that I agree with where you end up on that. I did not find your methodology for assessing current expertise in the Lords to be terribly rigorous, to say the least. I suggest that you look again at how you assess current expertise and have a look in the Register of Lord's Interests to see where people are really current, because if anybody else's entry has the same sort of inaccuracy as mine, it is very weak indeed.
I wanted to ask about the issue of independence. When we look at some of the polls carried out among the general public, there seems to be a circle that cannot be squared, or a set of contradictions. On the one hand, the public say, "Yes, let's have elected Members of the second Chamber," but on the other hand they say, "Can we have them independent of political parties to at least some degree?" How do you think that you can square that circle, particularly if you do not want to have any appointed independent Peers?
Peter Facey: The best way that you can square that circle is by ensuring that the electoral system that you put in place is one which allows independents to be elected and weakens the power of the party Whip. The two options which the Government have outlined in the White Paper of an open list system and a single transferable vote both, in different ways, can be used to do that. There is evidence of independents being elected. If you take STV, in the Irish Republic elections to the present European Parliament—that election is probably about the nearest you can get to the equivalent size of seats—one independent has been elected, and in the last term two were elected, so it is possible to get through under that system.
Baroness Young of Hornsey: But we are talking very small numbers.

Peter Facey: You are talking very small numbers. The evidence is that voters did not vote hugely for independents. I am in favour of independently minded people. I am in favour of having an electoral system which allows independents to be elected if people want to vote for them, but they have to be popular to get through the electoral process.

Q346 Baroness Young of Hornsey: But there are a number of barriers that prevent people who are party-political independents from standing in the first place, so there is less choice for the public.

Peter Facey: We can look at how we remove some of those barriers. We can try to find ways to ensure that it is as flexible as possible. If it is a list system, we can look at having counting systems which benefit independents and smaller parties. We can look at the use of STV, if we want to, and how we can encourage that. There is already evidence from the House of Commons that where there is significant public desire to have an independent elected, they get elected. For example, there is Wyre Forest, where Health Concern Kidderminster had a candidate elected for two terms in the House of Commons. That was under an electoral system which most academics think was the most unfriendly to independents.

Baroness Young of Hornsey: But we are always only talking about one or two at a time. The other thing that I get from your paper is a very different kind of body emerging from the one that we currently have, which is of course part of the point. It seems to me to be a lot more technocratic. I do not have a feel for what the ethos of the body would be. It feels very instrumental—going through scrutiny and revision in a very technocratic way.

Alexandra Runswick: We hope that it would be a deliberative Chamber. That is certainly the division of the Chambers that we would like to see. Yes, its prime function would be scrutiny and review, but we would hope that, because it would be a smaller Chamber, chosen using a more proportional election system, you would be able to have a more deliberative and—I would say "consensual", but I do not necessarily mean agreement—collegiate atmosphere than there often is in the House of Commons.

Peter Facey: Maybe our ability to translate our desires into words has not been effective. I do not want a purely technocractic House. That is not our desire. We have tried to take what people say is the purpose of the House of Lords in terms of scrutiny and show how we address those concerns. We are not looking for people to come through this who are identikit politicians. We want independently minded people; we think that they can come through election. You can have independently minded people inside parties. The idea that you have a choice of an independently minded person or somebody from a political party is a false dichotomy.

One thing that we found interesting is that, if you look at rebellion rates, we always assumed that in rebellions in the House of Lords the number of people breaking the party Whip would be significantly stronger than in the House of Commons. Actually, depending on how you count it, they are either the same, broadly speaking, or people are slightly more rebellious in the House of Commons. The size of rebellions in the House of Commons in terms of the number of people rebelling at any one time tends to be larger. The evidence that election will not produce independently minded politicians is not there.

Q347 Oliver Heald: Do you agree that the sort of House that you want affects the electoral system that you choose?

Peter Facey: Broadly, yes.

Oliver Heald: At the moment, the House has about 25 per cent who are independent Cross-Benchers. Would you want those sorts of people in the second Chamber?

Peter Facey: It does not really matter what I want; it would be what the electorate want. Would I like them to stand? Absolutely.

Alexandra Runswick: It should certainly be possible for them to be in the second Chamber. We would not want to see anything which barred them from that.

Peter Facey: I would be a very strange democrat if I called for an election and then said, "This is exactly the outcome that I want from the electorate." What I want is a system which is flexible enough to give the electorate the outcome they desire.

Oliver Heald: Yes, but you are obviously looking at the interaction between the electoral system and the kind of Chamber that you are trying to create. If you were trying to create a Chamber that was designed to produce the Government of the country, you would argue between first past the post, which tends to produce an emphatic result, or STV, which tends to be more proportional, because that is what you are trying to achieve: a legitimate

and clear outcome. For a revising Chamber, which deliberates, you might be looking for something different. My second point is whether you see this as a House which represents regions and where people elect a regional representative to stand up for their region in Parliament.

Peter Facey: Certainly that should be one of the functions; I am not sure that that is the sole function. The present House of Lords is dominated by people from London and the south-east. There is a role for the second Chamber to have representatives from all parts of the United Kingdom and represent interests in a different way from how they are represented in the House of Lords. Most second Chambers around the world have some function of representing the different parts of the state or the country. We have always argued that the second Chamber should have that function and that, therefore, there should be voices from Northern Ireland, from Scotland and from the English regions, however they are constructed, ensuring that it is not a predominantly metropolitan voice that comes through the second Chamber.

Q348 Oliver Heald: We have been asking questions of the experts—you have probably read this in our evidence—about what the outcome would be of following the Government's model of STV to see what sort of House it would produce. We are told that the best example is Australia—this is what Meg Russell told us. The STV system in Australia produces about three independents.

Peter Facey: People get hung up on the differences between STV and list systems. I would like the Committee to concentrate on the features that you would like rather than the name of the system, and build up that way. What the Australians have done with STV is effectively to turn it into a closed party list. They have made it so difficult for the voter to use the system that, overwhelmingly, the majority of people simply tick a box and, effectively, the party decides where all the preferences go across all the lines. If you want a system that encourages independence of mind, the Australian version of STV is the last that you want, because the difference between it and, say, the system that we have for the European Parliament in Great Britain is very small. Effectively, it is a party list. If you compare it with the list system in Finland, for instance, which was a system that the Conservative Party proposed in opposition when we were looking at changing the system from first past the post to PR for the European elections, that is a very open list system. It is effectively first past the post within party lists.

You can get caught up here on the labels of things. You need to look at the components of electoral systems. For us, the important thing is that the voter had a genuine choice of individuals, not just parties; that it is broadly proportional; and that it does not produce too high a bar to prevent non-party people from being elected. You can do that under STV—depending on how you do it—and you can do it under various types of list systems. When we did a survey of our supporter base, they overwhelmingly supported STV, but they would be horrified if that was turned into something like the Australian Senate STV, which, trust me, is not what you want to be basing yourself on.

Q349 Oliver Heald: Is that not because you are still thinking about this in terms of the classic debate about electoral systems, which is all about the Commons? If you wanted to produce a working Chamber that did revising and deliberation, why would you not want very much the same make-up as now, and why would you not want to have the system that they have, where it is a closed list, in effect, plus selection, because that way you get a very different composition from what you get from straightforward STV?

Peter Facey: I have just been criticised on whether election would produce independent-minded people. If you go for what is effectively a closed system, whether it is STV or a closed party list, you are doing everything you can to prevent that from happening.

Oliver Heald: You are not really, are you Peter? If you are having selection for the non-political elements, you will have people of great expertise—people who know a good deal about particular subjects and have a lifetime of experience. When it comes to the elected element, you could get the same sort of people, but with their political affiliation, as you do now, whereas with your system you are just turning it all over to the politicians.

Peter Facey: Actually, I think that you are turning it all over to the politicians. Maybe I am wrong, but if you are suggesting that you have a selectorate who suggest and then closed-party lists which decide the balance in the House, the problem with that is that the voters cannot effectively change that balance.

To give you an example from Norway—one of my personal favourites—there was an occasion called the revenge of the women, because the traditional political parties put men at the top of their lists and all the women were in lower positions. The feminist movement of the 1970s in Norway had a very simple suggestion to Norwegian

voters: to cross out—you could do that because it was an open list system—all the men until you got the first woman. Effectively, they massacred a load of male politicians. The effect was that in Norway, not because of the law but because of the effect of the electoral system, Norwegian parties now have mixtures of men and women. You do not just have all the men at the top and all the women at the bottom.

If you go for a completely closed system, you are depending on parties to be more enlightened than the electorate. I personally always trust the electorate more than I trust the parties. If you look at some of the problems that we have in producing diversity of candidates, it is not the electorate who are resistant; in lots of cases it is the parties who are resistant. Therefore, I would like a more open system.

Oliver Heald: There is no reason why you cannot have rules about what the list contained.

Peter Facey: You can, but I would prefer to have an open system in which the electorate decides that. I am all in favour of parties having the option of zipping or their own particular ways of doing it, but the final arbiter should be the electorate, not the selectorate.

Q350 John Thurso: Can I ask you about your comments on the length of term? You have criticised 15 years as being too long, and your paper goes for two five-year terms. You also criticise the fact that there is no re-election. If one goes to a 10-year term with re-election, are we not in danger of replicating the Commons and handing it to the party system, which is what we are trying to avoid?

Peter Facey: We thought long and hard about this and we do not think so. We think that the differences in the electoral system, the size, the functions, the powers and the fact that you will have a quarantine period before you can stand for the House of Commons would mean that you would not replicate. If you followed our recommendations completely, you would have a quarantine period before you even go from the House of Commons to the House of Lords. There would be a gap because we are not proposing to hold the elections on the same day as the general election. Therefore, you would carve out a separate niche for the second Chamber. We have to balance accountability with independence. We think that the ability to stand only once with a smaller term is better. When we polled our supporter base, overwhelmingly we were on the longer end, and they were on the shorter end. The people whom we engaged in our process were more in favour of shorter terms than we were.

Q351 John Thurso: Forgive me, because I am largely on your side, but that is a no-brainer. If you ask people, "Do you want them to have a 15-year term in all their luxury up in the padded red end?" they will say, "No, we don't" If you then say, "Do you want them to be independent of the party system?" they will say, "Of course we want them to be independent." They then give us the conundrum to work out.

Let me bring you back to one thing that strikes me about the Lords in its current form. Given that the only way out is through an act of God, the Whips really do not have a great deal of power if someone chooses to say, "Up with this I will not put." By contrast, in the Commons, although we have more rebellions, none of them ever gets anywhere, because they are very carefully managed to ensure that they do not. Therefore, we are fairly powerless or we are out of a job, as it were. If you want independence and that independence to have a degree of power, do you not have to compromise between the purity of constant election and the objective?

Peter Facey: I suppose that we would say that we have compromised. If you give us a choice between 15-year terms and no election, we will take 15-year terms, thank you very much. We are talking here about what we think would improve the Bill, because this is about pre-legislative scrutiny to produce the best deal for an elected Chamber. That is the purpose of the Committee. We think that we have already compromised. We are trying to balance accountability, legitimacy and independence. We think that a 10-year term, which would effectively be two full terms of the House of Commons, does that with one election and would still produce the level of independence.

One reason why rebellions in the House of Commons do not tend to get anywhere is that, on the whole, Governments tend to have relatively large majorities. Therefore, the rebellion is meaningless. The reason why the second Chamber is, in our opinion, very good at this is not just the independence of mind and the quality of the individuals in the House of Lords, in which there are many great people; it is that on the whole there are not majorities. Therefore, combinations of groups can defeat legislation. There is some evidence to show that the House of Lords can be quite disciplined. Some party groups in the House of Lords—the Liberal Democrats, for example—can be quite effective, well-managed groups which deliver beyond their means.

Q352 John Thurso: One last point on that before the Lord Chairman pulls me up. There are, effectively, four parties or four big blocs in the House of Lords, because the Cross-Benchers, although they can in theory go any which way, on major issues often coalesce around a particular concept or amendment. When that happens, which might not be very often, you get a big movement in the Chamber and a political party, two opposition parties, or whatever and the Cross-Benchers coalescing. If we went to your model, the likelihood is that the Cross-Benchers would be reduced considerably as a proportion. Would we not have thrown out a very important baby with the bathwater?

Peter Facey: I think that you would also find that there were more parties, depending on the electoral system. Let us be clear: at the moment, in most polls, UKIP is running at the same level as the Liberal Democrats. I cannot remember how many members of UKIP there are in the second Chamber, but I think that it is one or two at the moment. I am not speaking as an advocate for UKIP; I am just saying that the assumption that if we move to election it will just be a cosy place where there will be Labour, the Conservatives and the Liberal Democrats as the third party and that other forces will not be brought forward is not one that I necessarily accept. If you go for a proportional system, it is unlikely that you will have a majority in the second Chamber—in fact, it is extremely unlikely, especially if you do it either in thirds or in halves, as we suggest. Therefore, you can produce the same thing through election rather than appointment. If you are going to have appointment, let us have it at 20 per cent, but let us have those people not as party people. If this Committee deems that you want to keep the Cross-Benchers, let us make sure that that 20 per cent is Cross-Benchers, not simply people who are appointed by parties through a second route. Party people should be elected through the electoral system.

Alexandra Runswick: Just to add to that, one of the issues about Cross-Benchers is not whether they can make a difference but that they tend to vote much less frequently than party-appointed Peers. Meg Russell at the UCL Constitution Unit has done work showing that they attend and vote much less frequently than party-appointed Peers. It is a question of getting a balance. As Peter has said, we were attempting to get a balance between accountability, legitimacy and independence, and to look at the international models, whereby 15 years is an exceptionally long term.

Q353 Baroness Andrews: I am on a different tack. Thank you for your interesting paper. In paragraph 5, you state: "It has been asserted that an elected second chamber would no longer be bound by the Parliament Acts or the conventions that currently govern the relationships between the two chambers." Then you make a counter-assertion: "Unlock Democracy does not accept this argument." First, I would like you to expand on that, because the example of the Australian Senate that you give is of course a Senate inside a federal structure—so I would take issue with that. Can you explain the basis for your counter-assertion there?

Peter Facey: Yes, the Australian Senate is in a federal system, but, on paper, it is a more powerful Chamber than the House of Lords. Its powers are broadly equal. In some ways, you could say that it is more like the House of Lords before the Parliament Acts. Even there, it is clearly the second Chamber of the Australian model. It is a second Chamber not because of election—you can have the semantic argument about whether an individual elected from a constituency is more democratic than somebody elected by a proportional system—but because of powers and structures. We do not think that, if you move to a second Chamber with the Parliament Acts in place, elected by halves and by thirds, you are challenging the primacy of the first place or producing a duplicate. I cannot see how a second Chamber could effectively change the primacy without the consent of the House of Commons to do so.

Q354 Baroness Andrews: If that is the case, why do you say: "Particularly in the UK, where the House of Commons is dominated by an unusually strong Executive, it is vital that a second chamber—democratically legitimate, and constituted differently from the lower House—exists to hold it in check." Why are you so concerned to invent all these methodologies to make sure that that does not happen? What makes you so sure that an elected Chamber, ostensibly elected on a more democratic basis, is not going to flex its muscles?

Peter Facey: It would probably flex its muscles. Let us be clear: a directly elected or predominantly elected second Chamber would be more assertive. It would use the powers that it has. That does not mean that it affects primacy. In some ways, this is a strange debate. If by primacy you mean that the Executive, dominating the House of Commons, always gets its way on everything possible, I am against that definition of primacy. If you are talking about the House of Commons as the prime Chamber from which the Government are formed, where

votes of confidence are held, from which most legislation comes through and which is the prime—the stronger—the two Chambers, under a directly elected second Chamber that will still be the case. Is it going to be more assertive than now? Is it going to be more confident than now? Yes. Do I think that that is a bad thing? No. The fact is that the House of Lords has become more assertive over the last 10 years because of the changes that have already happened in the removal of the hereditaries, the way in which appointments have changed, et cetera. I make no apology for believing that you could have a stronger Parliament overall with, yes, primacy of the House of Commons, which makes the Executive's job harder, so that the quality of legislation and the quality of governance, which is what this is all about, are improved.

Q355 Baroness Andrews: In Clause 2 of the draft Bill, the Government say that the relationship between the two Houses should not change. You do not agree with that.
Peter Facey: We have said that one mistake that the Government have made is in not addressing the powers issue. We think that the powers are fine. We do not think that, on paper, they need to be changed. But the fact is that an elected second Chamber is going to be more assertive. We think that we should be up front about that and look at ways in which we can mediate between the two Houses. But I do not think that the powers need to change. There has been no change of powers in the last 10 years, even though the House of Lords has become more assertive. The fact is that it is more willing to use its powers than it was.
Baroness Andrews: So you do not think that election is of such qualitative change that this needs to change. Do you think, for example, that if the House had been elected, we would have given in at the last moment on the AV Bill?
Peter Facey: I do not know. If you look at the way in which the House of Lords dealt with the AV Bill, you see that it was fairly assertive. It was probably more assertive than it has been. There are Members of the House of Lords who have complained that the culture of the House of Lords has changed because of the increasing number of former MPs in the second Chamber. I would not say, looking at the AV Bill, that it was non-political; there was an extremely politicised debate around it.
Baroness Andrews: But the key amendments were moved by the Cross-Benchers.
Peter Facey: Cross-Benchers can be political; they are just not party political. You cannot be in the House of Lords and not be political.

Q356 Bishop of Leicester: Let me take us back to the question of the nature of the expertise in this House and how it functions. We were talking about it half an hour ago, but I think that it is central to the argument. I think that you were saying that not only was it likely that you would have expertise in an elected House but that, further than that, the expertise in this House at the moment is problematic in the way that it works. You gave the analogy of a car mechanic, who might be good at that, taking a view on something else that he was not good at. Are you arguing precisely that? If so, can you give an example of where an outcome from this House has been distorted by experts taking a view on something on which they do not have expertise? In other words, rather than just discussing the abstraction, how has that played out in practice and what has been the consequence of the particular problem that you are pointing to?
Alexandra Runswick: No. I cannot think of a particular example of where I think that somebody who did not have expertise in a particular subject has necessarily distorted a particular outcome. We have talked quite a lot about the work that we did on expertise and people rightly questioned the methodology of what we did. We are in no way claiming that this is the definitive work on expertise in the House of Lords. What we were trying to do was, because lots of assertions are made about expertise in the House of Lords, to look at those and look at whether or not appointment was the most effective means of bringing expertise into the second Chamber. We obviously take the view that it is not. For example, the largest single group of those appointed to the second Chamber consists of former councillors, MPs, MEPs and party officials. That is not to say that they do not have relevant experience or expertise, but those are a group of people whom we could get through election. That was what we were trying to look at in our work on expertise. We were not able to find any other assessments of how expert or not or what sectors were sufficiently represented in the House of Lords.

Q357 Bishop of Leicester: You say that where expertise is needed it can be brought in through the Select Committee process. Is the logical conclusion of that that you can buy in expertise when you need it and,

therefore, the last thing that you want is any expertise in the legislating Members and that expertise is actually problematic—representativeness is everything and expertise is less than nothing?

Alexandra Runswick: I do not agree with that and it is not what we are trying to argue. One of the issues with the House of Lords has always been the conception of membership. Some Members attend roughly full-time—they attend on a daily basis and contribute to debates on every Bill. Others continue a professional career and come in for specific subjects and obviously some people see it purely as an honour and do not generally attend the Chamber. What we were trying to think of in terms of an elected Chamber was what kind of membership we wanted and how you could bring in expertise that was current and relevant. One of the challenges, to which Peter has alluded, is that if you have appointed someone in 1983 on the basis of their expertise, 20 years later that may not necessarily be the most relevant expertise that you want to bring to the process. That is not to say that they do not have a view or relevant experience, but if you are trying to bring in somebody specifically for their expertise rather than for their general experience, which may include expertise on some subjects, we think that there are more effective ways of doing that.

Q358 Bishop of Leicester: Perhaps I could just ask one further question, which relates to the proposal in paragraph 16 of your submission for a Joint Committee to be set up, as you put it, along the lines of the German or US models. I am a complete non-expert in this area but I certainly think, looking across the Atlantic to the US model, that it is not a very inviting prospect of that being a permanent mechanism for resolving disputes between two Houses in a bicameral system.

Alexandra Runswick: The reason why we specifically referenced the US model is that there are lots of different types of Joint Committee that you can set up and some are more effective than others. For example, the French committee system is widely seen as quite discredited, partly because it meets very frequently but often for a few minutes and then just refers the issue back to the lower Chamber. We were looking for a permanent committee, which would enable people to build up relationships, because, obviously, if you are negotiating, that is a useful thing to have between the two Houses. We were looking at something that would be able to have power distributed between the two Houses. Obviously, one issue is who can call the committee, what happens to the results of the committee and who has the final say. For example, in the German system, either Chamber can call for the Joint Committee and, because they have a federal structure, which Chamber has the final say depends on the type of law that is being disputed. The American example is of a permanent committee. We are not saying that it is the ideal mechanism and that we should import wholesale the US model of government, but it is one example. For example, if either House recommends that there should be a committee, each has to consider it, vote on it and decide whether to allow that to happen. We thought that that was a useful mechanism.

Q359 Lord Norton of Louth: I would like to come back to the point that Baroness Andrews pursued on paragraph 5, where you refer to the conventions that currently govern the relationships. We are not talking about conventions qua conventions; we are talking about specific conventions. Paragraph 6 does not really relate to that in terms of current conventions. Of the argument about current conventions, you say: "Unlock Democracy does not accept this argument." Yet from paragraph 12 onwards, it seems to be the very argument that you are developing. In paragraph 15, you say: "Currently this is managed through the use of conventions. Unlock Democracy believes that an elected second chamber would benefit from a more formal structure". So you are moving away from current conventions and, of course, the conventions themselves limit the House in its use of the powers that are vested in it. You are saying that if it was elected, it would use those powers, which are presently constrained by convention. Presumably, either you accept your argument from paragraph 12 onwards or you accept your argument in paragraph 5. I cannot see that you can accept both.

Alexandra Runswick: It is more that we believe that government should be open and transparent and that citizens and residents should able to understand how decisions are taken and where they are taken. We would prefer things to be set out and for there to be clarity, rather than it simply to be convention.

Lord Norton of Louth: So you would move away from the current conventions. I mean, they would cease to be conventions.

Peter Facey: Yes. The reality is that a lot of the conventions are being challenged by the House itself. For instance, on the Salisbury-Addison convention, the Liberal Democrats have already stated that they do not feel bound by that convention because they were not part of the deal—they were neither Salisbury nor Addison. If

you move to an elected second Chamber, will work have to be done? Yes, we are not denying that. Do we think that the basic powers will change? The reality is that it will evolve. The fundamentals of the Parliament Act cannot be changed and the basic powers of the House of Lords cannot be changed without the permission of the House of Commons, and I cannot foresee a circumstance when the House of Commons would give more powers to the House of Lords. Maybe you can, but at the moment, I cannot; I do not have that crystal ball.

Q360 Lord Norton of Louth: That might be the political reality, but it does not mean that it is necessarily justifiable. You advance the idea of a Joint Committee. Do not forget that in 1911, the idea of a Joint Committee was offered as an alternative to the Parliament Act, not as a complement to it. My basic point is that the point you are making in paragraph 5 does not hold. In other words, you accept the argument.
Peter Facey: I am not sure that I do.
Lord Norton of Louth: In that case, we ignore paragraphs 12 onwards.
Peter Facey: No. I am more than happy to come back to you with justification of it but no, I do not think that you can ignore paragraphs 12 onwards.

Q361 Laura Sandys: The paper goes through the Bill, and all the rest of it, but one thing that you have only just mentioned now—it is not really in the paper—is that this is a change to Parliament, not just to one Chamber. Sometimes we look at this in a rather binary way: one Chamber and another and the competition between them. My strong feeling is that this is an opportunity to strengthen Parliament as a whole. As a result, I would question your point about the timing of elections—point 96. You and many other people who are keen on reform look at separating the two Chambers in the public's eye. If one is looking as a voter, is there not some justification for saying, "Today is the day I vote for my Parliament. There are two Chambers, and I vote in a different way for each"? That gives voters the ability to make different choices, particularly through different systems. It would build greater understanding of what Parliament looks like and its two Chambers' functions than there might be if you separated the elections and put them with the European elections, where you get a very low turnout. I question your wanting to divide this up and not seeing this as a place with two Chambers which has some narrative across both Chambers for the electorate.
Peter Facey: We are certainly attempting to get rid of the narrative that this is the whole of Parliament. In fact, we think that, at the moment that narrative is lost on most people, including people in Parliament. They tend to ignore the Lords and think about the Commons.
Laura Sandys: I agree.
Peter Facey: What we were trying to do is again about the desire to have separate functions for the two Houses and to protect one from the other. By having them elected on separate days, we think that overall you have a better mix. In particular, you create a degree of quarantine between the lower and the upper House. Yes, MPs can then stand for the upper House, but they cannot immediately go from one to another, because the elections are staggered; they are two years away. It creates, we think, a better mix. Is that something that I would go to the barricades over? No, it is not. It is a matter of judgment. In our judgment, having the elections mid-term probably helps to produce a House which counterbalances the Commons better and complements it better than having it on the same day as a general election. The danger is that elections to the Lords will be lost on that day.

Q362 Laura Sandys: I fundamentally disagree. I think that it is about the collective and the relationship between the two—the interrelationship. I would also say that one of the problems of having it midway between House of Commons elections is that you get protest rather than a positive sense of what one wants out of the Chambers. I am not unhappy with there being counterbalances—that is why I prefer a third, a third, a third to a half and a half, but I think that by separating them you will end up with extreme results which will not necessarily make for as effective a functioning Parliament.
Peter Facey: I suppose that this is a judgment call and our judgment is different from yours. Ours is that having it mid-term and spaced out is likely to produce a more balanced House, because it gives a period of time when the public can pay attention to what they want from the second Chamber. If it is at the same time as a general election, with all the concentration in the modern world on leaders' debates and everything else, the role of the second Chamber will get lost. You think that it will be more complementary and people will think about Parliament as a whole. My fear is that they will think about the Government of the day in the House of

Commons, and the House of Lords will be an afterthought, which is why we would like the election to be at a separate time. As I said, this is not a red-line issue for us. We just think that it would be a stronger overall Parliament if the Lords was elected on a separate day from the Commons. Again, we are talking from our point of view about improving the Bill rather than about a fundamental.

Q363 Lord Tyler: I think that this follows on from the last point. I am genuinely not sure whether your paper is saying that, as far as you, your colleagues and your supporters are concerned, it is all or nothing. If, for example, on the advice of this Committee, the Government come forward with 80 per cent, am I right in assuming that you would accept that 80 per cent is preferable to 0 per cent?
Peter Facey: Yes.
Lord Tyler: Am I right in assuming that if, in the same circumstances, on the basis of the advice of this Committee, the Government decide that they want one third, one third, one third and over 15 years, again, that is preferable to life?
Peter Facey: Yes.
Lord Tyler: Right. Thirdly, then, and perhaps slightly more controversially, if, on the advice of this Committee, the Government come forward with a Bill which does not make for a very small House—300 maximum—of full-time parliamentarians, but is advised to go for a larger House, some of whom, particularly if they are one of the 20 per cent appointed, are not full-time parliamentarians, would you again regard that as preferable to the current situation?
Peter Facey: Yes.

Q364 Lord Tyler: So if I am taking from your paper that the view that you are adopting is perhaps rather idealistic and that you think that the pragmatism of the Government is preferable to the present situation, is that a fair summary?
Peter Facey: I would not use those words. We have tried to take this Committee at face value. This is about pre-legislative scrutiny to produce the best form of an elected second Chamber. We have therefore tried to engage with the subject matter seriously. We think that the things that we have suggested will improve the Bill, otherwise we would not have bothered to engage 4,100 people in that process or to spend a long time on our submission. If you are asking me to choose between the existing system, where, effectively, you are appointed for life and where, even if you are sent to prison, you come back to your seat in the place—all the things in the present House of Lords—and a reformed Chamber as outlined in the government Bill, absolutely I will support the government Bill. We live in the real, practical world and we have to make the best of it that we can. Are there red lines? Yes. Are there things on which, rather like Oliver, I will come back to ask for more later? Absolutely. To choose between your two options, yes, we are on the side of the Government.
Lord Tyler: What is your red line, then?
Peter Facey: Our red line would be if it went under 80 per cent, which was the vote in the House of Commons—the two options being 80 per cent and 100 per cent. For instance, if the Committee said that it should be 20 per cent elected and 80 per cent appointed, I do not think that we would be supporting the Bill. In fact, we would probably say that it was a waste of time.

Q365 Ann Coffey: I want to follow on a bit from what Laura was asking, because I am slightly confused about the basis of the timings for elections. You say in your paper that you agree with the Government that combining elections is a sensible strategy. The point that you seem to be making is that you want to separate out elections to the House of Lords and elections to the House of Commons, but you do not have a problem with suggesting that elections to the House of Lords should be on the same day as the European elections or at the same time as local elections. That seems to me to be quite difficult to understand. I would have thought that if you have elections to the House of Commons and the House of Lords on the same day, you reinforce the primacy of the House of Commons. People know that in one set of ballot papers they are voting for a national Government; they can then put that to one side and turn their attention to what they want for a House of Lords. The fact that both are on the same day gives them the ability to do that. However, if you have these elections on the same day as the European or local elections, they know that part of that is voting for a national Government—it is about voting for the UK

Parliament in some form. I do not think that that reinforces the primacy of the House of Commons; it might actually take something away from it.

Peter Facey: The difficulty would be that, if you held the elections on the same day, I cannot foresee circumstances in which the BBC or other media would pay any real attention to the elections to the second Chamber. It will be a by-product. There will not be debates about it. I think that you can hold it with other elections and you can have that attention. If you do not want that attention on those elections—you deliberately do not want a focus where there is public debate about those elections and the candidates standing in them—you should hold them on the same day.

Q366 Ann Coffey: I think that the European Parliament is quite an important election. I think that the local elections are quite important elections. These are all important elections. Therefore, your argument about the BBC not covering the House of Lords because that election is on the same day as the election to the House of Commons, but they might cover House of Lords elections if they are on the same day as the European elections, because the European elections are less engaging, does not seem to me to be very robust. The BBC are perfectly capable of covering the local elections when they take place on the same day as the general election, and the population is perfectly capable of understanding the different people for whom they are voting.

Peter Facey: Of course people are perfectly capable, but I think that the reality is that, if you are looking at the coverage at the same time as a general election, because the House of Commons and the formation of the Government become all-consuming, you are competing against something very strong. I am not at all saying that elections to local government, to the devolved Assemblies and to the European Parliament are not important—if you have taken that from what I have said, I humbly apologise, because that is not what we are saying. I just think that if you combine the House of Lords elections with, say, elections to the European Parliament, you are likely to have a situation where both can get some oxygen of publicity. The reality is that, if you hold those elections at the same time as the general election, because you are talking about the formation of the Government of the day, it is a lot more difficult to have the same degree of engagement.

Q367 Ann Coffey: But do you not therefore think that, if they are on the same day, you will get the explanation of the differences between them? In fact, it would work to advantage. We are not going to agree about it, but my final question is whether you think that there should be a referendum. If so, what question would you ask? I see you that have done something online. It is very difficult to frame questions, so what question would you ask the electorate if you think that there should be a referendum on reform?

Peter Facey: We have thought long and hard on this subject. We are not against referendums. We do not think that, given the fact that all three parties had Lords reform in their manifestos, there necessarily needs to be a referendum. As an organisation that does not believe that Governments always asking people is necessarily the correct thing—people should be able to ask Governments—we are minded that, if opponents of reform had enough support in a petition, say 5 per cent of the electorate, to trigger a referendum, there should be a referendum in those circumstances. That should be a straight question about whether you want the reform. It has to be shown that there is the requirement to have a referendum. Referendums are very expensive and it needs to be shown that one is necessary. In this case, all the parties are saying that they are committed to doing this reform. Therefore, we think that that is sufficient legitimacy to go ahead and do it. On the other hand, if the public disagree and there is evidence that they want a referendum on the subject—as I said, 5 per cent is a reasonable trigger for that; it would be 2 million signatures—we would not be opposed to a referendum in those circumstances.

Q368 Ann Coffey: Would you initiate such a process?

Peter Facey: Having just come out of a referendum campaign on the wrong end of history, shall we say, on that particular occasion, I probably would not initiate it. There are other things on which I would rather initiate referendums. It is for those people who think that this reform is a bad thing to initiate that referendum. I would wish them well. In the same way that we have supported people who want to trigger local referendums on elected mayors, even though as an organisation we do not have a view on elected mayors, we would offer them support. But would I go out on the streets banging on doors to have a referendum? No, I would not.

Q369 The Chairman: Could I follow up on that point about referendums? First, given the passage of the Bill through Parliament, it is at least a possibility that the Lords will not accept a Bill that contains provision for an elected House. If you are going to have a referendum, do you want it before the Parliament Act is invoked or after the Parliament Act is invoked? Or do you think that, on the whole, a referendum would be a rather better alternative to the invocation of the Parliament Act?

Peter Facey: As I said, our view is that if you are going to have a referendum it should be triggered by voters. Therefore, I do not see that it would stop the full use of the Parliament Acts to get this through. It is one of the ironies about the debate about primacy that the House that constantly talks about the primacy of the other is willing to defend the primacy of the House of Commons to the point of obstructing the House of Commons. I look forward to the Lords voting for a democratic second Chamber, but I have to admit that I am expecting to wait a long time. I hope that your Lordships will all vote for it, but I do not necessarily expect you to.

Q370 The Chairman: But do you not think that a referendum would be better than two or three years of political turmoil on this issue?

Peter Facey: Given the experience of then having to legislate for a referendum and all the things that go alongside it, I am not sure that the turmoil would be any less if we had a referendum. All it will do is that the issue over which there is a fight will be different—it will be over the terms of the referendum and there will be clauses on whether there should be a super-majority, for example. The idea that simply by having a referendum you will save time in Parliament and will all be able to move on, leaving it to the electorate, is a nice one, but from previous experience I do not think that it would happen.

Q371 Mr Clarke: I found the paper extremely interesting, but in listening to your evidence today I get the feeling that you do not have a very high opinion of elected representatives, from councillors to MPs. If I am wrong about that, would you tell me?

Alexandra Runswick: Absolutely. It is not that we have a low opinion of elected representatives; indeed, part of our mission is to get more people actively involved in politics within the United Kingdom. We see political participation as a much undervalued activity. In the evidence that we put in the paper, it was not that we do not value the work of MPs, councillors and MEPs—or even party officials—it was simply to point out that, seeing as they have stood for election, there is no reason to believe that that expertise could not be got through elections to the second Chamber. We were certainly not intending to underestimate their experience or the value of their contribution to public service.

Peter Facey: One thing that we constantly say as an organisation is that this country does not value those people who give up their time to be part of the democratic process. We should celebrate people at a local and national level who give up their time to ensure that our democracy is a real thing. If you have taken from anything that we have said today that we denigrate people who stand for election, I humbly apologise, because that is not our intention. In fact, if anything, we think that an elected second Chamber could do as good a job, if not better, than an appointed one, because we have confidence in the electoral and democratic process.

Q372 Mr Clarke: I welcome those replies, but I would like to go back to some of the evidence that you gave earlier, when you said—and I am not saying that I disagree with this—that, as at present constituted, the House of Lords has more people proportionately than it should from the south of England and what the BBC used to describe as the Home Counties. That is your position, is it not? Tell me, then, about your organisation. When you had this consultation and 4,000 people responded, how many were from Scotland, how many were from Northern Ireland?

Peter Facey: I cannot give you that breakdown now, but I will come back to you to give it to you. Our membership is spread across the UK. Is there a higher percentage from the south-east? Yes, there is, but as an organisation we put lots of things in place to ensure that we have a balance. For instance, our elected council has constituencies, so that we cannot simply have people from the south-east elected who dominate the organisation. We ensure as much as possible that we are reflective of the whole United Kingdom. There are limitations on what a small NGO can do, but where at all possible we do those things to ensure that we are representative of our membership and supporter base. But I am happy to come back to you with a breakdown of where in United Kingdom the 4,000 people came from.

Q373 Mr Clarke: I am very grateful for that. Elsewhere in your paper, you deal with appointments. If I have got this right, you were saying that there should be some kind of Commission and that it should not consider people from political backgrounds. Why do you disqualify so many people from making a contribution?
Alexandra Runswick: We took the view that if you are having elections through a party-political system to a Chamber and continuing to have appointments as well, they were performing different functions: the role of the elections was to get the party-political experience and the appointments were to get a different type of experience in. Obviously, we take the view that we would rather have a fully elected Chamber, but if there was to be appointment, we would see it as trying to get a different set of people in from the ones through the elections.

Q374 Mr Clarke: I put it to you—and if you correct me, I will welcome the correction—that the logic of your argument is that people like Betty Boothroyd, Paddy Ashdown and Norman Tebbit, all of them with enormous experience, should not be considered among the people who you think should be appointed.
Peter Facey: All those people have enormous experience. We think that they have also shown a willingness to stand for election.
Mr Clarke: That is a very good point
Peter Facey: And they should be elected. If you are going to have appointments, and the argument for appointment is that it brings in a type of person who would not otherwise stand for election, let us have those people who would not stand for election. Let us not have a process whereby, as well as the experts that everyone seems to want to have in the House of Lords, we also have people who are drawn from the parties. That is not because we devalue those people; we think that they have a huge contribution to make, but it should be through the democratic process. Given that as an organisation we support 100 per cent elected, I suppose that you would expect us to say that.

Q375 Mr Clarke: Yes, but assuming that that does not happen—I value what you have said on it—are you really arguing that people such as those I have mentioned should stand for election representing political parties? If they are of independent minds, who is going to finance them? In some of the other Chambers that you have mentioned where elections take place, public funding is involved. Have these wonderful people of independent minds to pay for their own campaigns? Who is there to support them? Who is going to leaflet? How does the world know and how do the constituencies know what they stand for?
Peter Facey: Some of the people whom you are talking about have extremely high profiles. I cannot see Lord Ashdown standing as an independent; he would be standing as a Liberal Democrat, in which case the party structure would be there. But if they did stand as independents, I guarantee that the amount of publicity they would have would be greater in a lot of cases than they would have standing as a party person, because the media would be interested in them as such. There is evidence from places like Tatton that people would come to support them. In some ways, it is not for us to decide how they finance their campaigns. Independents already finance their campaigns. We are purely saying that the arbiter of whether they have a seat in this place should be the electorate, rather than an appointments system. That is our basic, principled line.

Q376 Lord Trimble: I want to come back again to the business of independent Members. The Government assume that if you appoint people on a 15-year term and cannot then be re-elected, they are for that reason more likely to take a slightly independent view of the matter. If you accept that reasoning, is it not then rather strange that the existing arrangements, with people there for life, do not make them even more independent-minded?
Peter Facey: We do not actually accept the Government's logic.
Lord Trimble: So you are rejecting the Government's original proposition.
Peter Facey: We think that there is a balance. You have to balance these things out. If you are trying to create a degree of independence then you do not want to go for an American-style system where there is constant re-election—we accept that. But with regard to the idea that you get independence of mind through lifetime appointments, if you are appointing from a party someone who is going to be there for life, on the whole you do not choose the complete maverick because you will have to live with them for life. The appointment for life tends to mean—on the whole, with some exceptions—that you will appoint someone who is a safe pair of hands. As for a party leader who appointed someone who was likely to be a complete pain for the entire rest of their life, as a

former party leader, you may have been willing to do that, but my experience of politics is that parties do not operate in that way. They do not tend to choose that type of person.

Lord Trimble: If I may put my interpretation on this, then, you do not accept the Government's argument that a 15-year term with no re-election will produce an independent mandate.

Peter Facey: It is no guarantee. The fact that you do not have constant election helps. It is about balancing things such as accountability.

Q377 Lord Trimble: All the arguments that you make about the sort of people you would appoint apply equally to the sort of people you might select to run as party candidates. To take a slight tangent here, I am looking at page 7 and the figures that you produce. Your comments in paragraphs 24 and 25 seem to indicate that the level of rebellion against party groups in the current House of Lords is not terribly different from the incidence of rebellions in the Commons. There is a fairly strong degree of party discipline—obviously self-imposed within the present House—so there is going to be just as much, if not more, party discipline in the elected Chamber, whether the terms are 15 years without re-election or your preferred level where re-election will be possible. You are going to get the same degree of party discipline.

We have an argument that we use here with Ministers, particularly those who are new to the business of how you get a government programme through a House where you do not have a majority. We tell them, "If you win the argument, you will win the vote." This is thinking largely in terms of the Cross-Benchers; while some Cross-Benchers are political animals, they are not party-political animals, as you pointed out. While we do not have a majority, we feel that when we put the argument and listen to what the Cross-Benchers say and engage in discussion with them, then if we win the argument we win the vote. We might then have a wholly elected House where there are no Cross-Benchers and not many independently minded people. We established from what we said earlier that where there is a new system, whether it is 10-year or 15-year terms, those Members will not be more independently minded than those of us who are here for life, so we will have a fairly strong party position.

I noticed the comment that you made earlier that, "Oh well, you'll still have a situation where the Government won't have an overall majority because we're being elected by PR", and I would agree with you on that. Third parties—Lib Dems, UKIP or whoever—are likely to hold the balance. But in that situation, the proposition that if you win the argument, you win the vote does not count because you are dealing with party politics. While you will still have to bargain with small parties to get the vote through, that will not be done on the merits. It will be an argument purely on the politics of the situation and what the small party wants, which will not necessarily concern the merits of the issue. You will have quite a different dynamic from the dynamic that is here, and instead of seeing things debated on their merits they will be determined by the small parties that will hold the balance of power. That will be done in terms of what favours are done for them or what particular interests they want to pursue. Have you thought about how that is going to work out?

Peter Facey: I am trying to think of other Chambers in the world. I am not sure that it would operate exactly in the way that you are talking about. You seem to be implying that there would be one small party so that there would be only one combination that could work. In many cases, it will not be that neat; there will not just be a small party that gets to decide this way or that. There may be many combinations that could be formed. The voting turnout of Cross-Benchers is about 12 per cent. The evidence that we have is that the reason why this Chamber is effective, as my colleague said, is that in the previous Parliament it was the combination of Labour and the Liberal Democrats that, when they coalesced together, tended to have the effect. In some ways, the operation of party politics ensures scrutiny.

I am not saying that I want to completely politicise the House so that it is at daggers drawn, but the idea that it is purely the Cross-Benchers who produce the quality of the debate in this place and the quality of decisions does not stack up. If you believe that, let us go for having 20 per cent appointed and all of them, effectively, being non-party people. I have confidence that you can have 100 per cent directly elected but, if not, then go with the Government's 80 per cent.

Lord Trimble: You were talking about the percentage of Cross-Benchers but I do not think that that is relevant. Merely looking at the figures does not really tell you anything; they will come and vote when they want to and maybe not when they do not want to. That does not affect the argument that we were making earlier.

When I was making my argument that the atmosphere in the present House of Lords is that in order win the vote, you have to win the argument, I saw heads nodding across the Room; it reflects our experience. But that will

not be the case in the upper House that you want, because in a wholly elected upper House it will be the small parties that determine whether the Government of the day have a majority and those parties will have a price. You said that one should not assume that it is always one party that does it and the Government will have a choice about which small grouping to go to. That is the case and that has happened here in the past; the Government look at the small parties and decide which is the cheapest one to buy. I remember this happening for a vote in the Commons during my time there when the Government were getting close to losing their majority and were looking anxiously at the small parties. There was a vote on which they were not sure whether or not we would support them, so they decided to insure themselves by going and buying the DUP instead because it was cheaper than we were.

The Chairman: Lord Trimble, I wonder if you would like to ask a question.

Lord Trimble: I am trying to get them to think about it.

The Chairman: No, come on, enough is enough. Ask a question or we will move on to the next one.

Lord Trimble: The Chairman wishes to move on, so I will pursue the debate another time.

Q378 John Stevenson: First, in your paper, you make reference to the fact that Members of the second Chamber should effectively have a cooling-off period before standing for the House of Lords. What sort of period are you thinking about? Is it the same as the Government's suggestion or would you rather have a longer period? Secondly, you are a pro-democracy organisation. By having a cooling-off period, it could be argued that you were restricting the choice of the voter. Why would you put that in?

Alexandra Runswick: It is partly about ensuring that there were different cultures in the different Chambers. One criticism that has been made of the House of Lords recently is that the large number of former MPs who have joined it have influenced the culture of the debates and practices, and the AV debate is cited as an example of that. Members of the Committee may have a better sense than I will of whether that is true, but that has been discussed in various publications. So it was partly about making sure that practices were not imported wholesale from the House of Commons and that there were distinct functions and cultures in the different Chambers.

To answer the first part of your question, if you timed the elections in the way that we suggest in our paper, the cooling-off period would be slightly longer than the Government propose, but we would be content with the one that they propose. It is about ensuring and celebrating the difference between the two Chambers.

Peter Facey: Are you talking about the cooling-off period before going from the Commons to the Lords, or before going from the Lords to the Commons?

John Stevenson: Primarily from the Lords to the Commons, because that is what the Government are referring to.

Alexandra Runswick: Sorry, I misunderstood the question.

Peter Facey: If it is from the Lords to the Commons, we basically support the Government's line. If it is from the Commons to the Lords, the gap that we are talking about would be because we are talking about holding the elections mid-term. There would effectively be two years before you could stand. If you left the House of Commons at a general election, you would have to wait until, say, the next European election before you could stand for the Lords. If it is the other way around, then we are proposing effectively the same thing as the Government are. We accept that to a degree it is a limit to the voter's choice, but again it is an attempt to ensure a balance between independence, accountability and democracy. It is trying to prevent what happens in, say, the Canadian Senate, which is appointed, where people effectively use it as a launch pad for careers in the lower House. We have accepted the argument that what you want is a second Chamber with a distinct purpose, and therefore we want to protect that purpose.

John Stevenson: So you see it as primarily a cultural thing within the two Chambers, rather than a political campaigning tool for someone in the House of Lords effectively to campaign to get into the House of Commons.

Peter Facey: It is both. We would not want to see the second Chamber becoming the place in which you cut your teeth to go into the House of Commons. We think that that would import a culture, and the whole way in which the candidates campaigned and how they behaved during their period of office in the second Chamber, in a way that would not be helpful. Therefore, we are looking effectively to create a quarantine period so that, with regard to casework, if you were elected to the second Chamber and you had no quarantine period and could go straight from the Lords to the Commons, even though there may not be an electoral advantage for Lords in doing casework, there may be a point in nursing your seat to go into the Commons. We would not want to see that,

because we think that it would bring the Houses too close together. We therefore accept the argument that there should be a quarantine period.

The Chairman: Thank you both very much for coming and for the paper that you produced. The paper was extremely helpful as a guide and your answers to the questions have been very helpful as well.

House of Lords Appointments Commission [Lord Jay of Ewelme and Richard Jarvis] (QQ 379–406)

Examination of Witnesses

Lord Jay of Ewelme, Chairman, and **Richard Jarvis**, Secretary, House of Lords Appointments Commission

Q379 The Chairman: Thank you very much for coming this afternoon. Obviously, the Appointments Commission is a fair part of what we shall have to think about. We are very grateful to you for coming. Would you like to make an opening statement? That might be helpful.

Lord Jay of Ewelme: Thank you, Lord Chairman. I should introduce myself as Michael Jay, Chairman of the House of Lords Appointments Commission, and this is Richard Jarvis, Secretary of the House of Lords Appointments Commission. I begin by saying that I am here in my capacity as Chairman of the House of Lords Appointments Commission, but I would not pretend to speak on behalf of its other members, whose views on House of Lords reform are, I expect, widely diverse. These are my own views but they are drawn from my experience of three years as chair of the House of Lords Appointments Commission.

The Commission as presently constituted is an advisory, non-departmental public body, established by the then Prime Minister in 2000. I am the second chair and took over in 2008. There are seven members of the Commission. Four, including the chair, are politically independent and appointed by open competition under the rules of the Commissioner for Public Appointments, and three members are senior politicians nominated by the leaders of the three main political parties.

We have two quite distinct but related roles. The first is to recommend independent Members of the House of Lords for appointment to the Cross Benches. In line with our published criteria, we recommend people based on their merit and ability to contribute to the work of the House of Lords. Formally speaking, the Prime Minister decides the timing and number, although we have settled on a rhythm of around four to five appointments a year. In the past 12 to 18 months, it has been more a rhythm of four appointments a year. I should say that four to five appointments a year is not far off what would, I understand, be required under the Bill that you are considering.

A key point that I want to stress is that our remit also includes the requirement to broaden the expertise and experience of the House of Lords and to reflect the diversity of the United Kingdom in its broadest sense. Those are aspects of the job that we take extremely seriously.

The Commission's second role is in vetting for propriety people who are recommended for peerages, including those put forward by the political parties. The role of the Commission there is to advise the Prime Minister on—I stress again—the propriety, not the suitability, of party-political Members of the House of Lords. It is for the political parties to decide whether somebody is suitable to be a Member of the House of Lords; we look at their propriety. It is a subtle but important distinction.

I should also stress that the appointments process is not a normal appointments process, as it would be for a job in the private or public sector. It is more of a continuing, rolling process in which the number of very high-quality applications that we get exceeds—I am glad to say—the number of recommendations that we can make. That means that we have to make some very difficult choices between some well qualified people, many more of whom than we are able to recommend would be well qualified as Members of the House of Lords.

We have recently looked hard at our criteria for selection. The main criterion remains the need to show significant achievement in somebody's chosen career or careers. I should stress that the Commission increasingly looks beyond just one career to see what somebody's achievements are in a career or outside a career so that they bring to the House of Lords experience and expertise in more than one field. We also look at the value that a new Peer would bring, not just through ability and experience but by adding to the skills and experience base of the Cross Benches.

We also require nominees to show that they are able to commit the time to make an effective contribution to the Lords. We seek a stated intention that they will remain independent of any political party. This Commission, like the previous Commission, believes that there should be a strong presumption that once you are appointed to the Cross Benches you stay a member of the Cross Benches and are not, or should not, be seduced across the Floor to one of the political parties.

Those changes are comparatively recent; the Commission has introduced them into its working over the past two to three years. That shows the importance of allowing the Commission to have the flexibility to make changes in the light of experience. There will be changes that it will need to make.

Finally, I come back to the Commission's remit, which I mentioned earlier, to broaden the expertise, experience and diversity of the House. We are very conscious of the need to do that and to balance the criterion of significant achievement with Britain's diversity, which is really quite broadly interpreted. By that we mean gender and ethnic minorities but also making certain that the different parts of England, as well as the United Kingdom, are represented in the House of Lords. Of the 59 appointments made to the House of Lords by the Appointments Commission since it was instituted some 10 years ago, 21 have been women and 13 have come from black or ethnic minority backgrounds, so 36 per cent have been women and 22 per cent have been from ethnic minorities. Those are just some of the initial points that I thought it might be useful to make.

Q380 The Chairman: Thank you very much indeed. Can I start off where I think you started off, which is with the criteria? The Bill states that the Appointments Commission should set its own criteria and process of appointment. That is a fairly wide remit. Do you see your criteria varying under the Bill from those you have at the moment?

Lord Jay of Ewelme: I think that there are certain criteria which will be useful to have on the face of the Bill. I think that political independence and the ability to make an effective contribution to the work of the House are things which it would be good to have on the face of the Bill. There are other aspects of our criteria which I think will not change but which could, and might or might not be on the face of the Bill. I am talking here about diversity, integrity and high standards in public life. Those are part of our criteria. I do not think that they will change, although the definition of diversity might change. I think that the key things to put on the face of the Bill would be independence and ability to make an effective contribution to the work of the House.

There is another issue of importance here. That is that one of our main criteria at the moment is conspicuous merit through a career. It is an interesting question whether, if there were to be a change in composition as proposed in the Bill, you would get the same sort of people applying or whether you might need to move from clearly demonstrated conspicuous merit towards clearly demonstrated promise, which is a tricky thing to do, but I think there is an issue there.

Q381 The Chairman: Can I be clear about one thing? If the Prime Minister comes to the Commission and says, "I want to appoint X, but I want to appoint him to the Cross Benches," do you say, "Well that is a prime ministerial appointment; we do not really look at anything except propriety," or would you say, "Well, he has to live up to the criteria for the Cross-Benchers"? Has that happened, anyway?

Lord Jay of Ewelme: There has been one occasion on which someone who we thought was going to be a member of a political party, when appointed, then joined the Cross Benches. To my knowledge, the only exceptions are that there is an understanding, a convention, that the Prime Minister can appoint, I think, 10 distinguished public servants—I am one of them, so it is a rough description—in the course of a five-year Parliament. Those are people who are proposed by the Prime Minister, and we would vet them for propriety, but that would be the Prime Minister's choice. They are people like the Cabinet Secretary and the Chief of the Defence Staff, who have traditionally been appointed by Prime Ministers.

Q382 Lord Trefgarne: I would like to ask you about the vetting of political recommendations from the Prime Minister. Could you say, during your time as chairman of the Commission, how many political appointees you have approved, how many you have rejected and what were the principal reasons for rejection?

Lord Jay of Ewelme: I have not got the number that we have approved. I think we have approved 110, roughly—

Richard Jarvis: Between 110 and 120, I think.

Lord Jay of Ewelme: I think it is between 110 and 120 who have been approved in the last year or so, which is actually about twice as many appointments as the Appointments Commission has made to the Cross Benches in

the last 10 years or so. There are some—I would prefer not to go into the detail of numbers—who we have declined, or recommended to the Prime Minister should not be appointed, because they do not meet the criteria of propriety which we set down.
Lord Trefgarne: Why should the number be sacred?
Lord Jay of Ewelme: Because it is better that the number should remain private.
Ann Coffey: Who decides that it should remain private?
Lord Jay of Ewelme: We do. My view—I have been asked this by the Constitution Committee, among others, at the time—is that the number we turn down is private advice that we give to the Prime Minister. Those who are appointed are clearly made public because they appear in the list published by the Prime Minister, but we give him advice and it is not for us to reveal the advice that we give to him for those we recommend should not be appointed.
Lord Trefgarne: I of course agree that the names should not be made public, but I do not see why the number should not be.
Lord Jay of Ewelme: The Commission has considered this; we have always preferred to keep the number that we recommend—
Lord Trefgarne: Do the candidates know?
Lord Jay of Ewelme: This would be a matter between the candidate and the political party.
Lord Trefgarne: You do not tell them.
Lord Jay of Ewelme: We give advice to the Prime Minister.
Lord Trefgarne: You do not tell the candidates that they have failed.
Lord Jay of Ewelme: No, we are asked by the Prime Minister to consider for propriety a list of names. We then consult the various agencies, HM Revenue and Customs, the security services, the police, and so on, and make a judgment as to whether they meet the criteria or not and give advice accordingly to the Prime Minister.

Q383 The Chairman: This becomes irrelevant under the Bill, does it not?
Lord Jay of Ewelme: Yes. It is a function we have now; I do not think that it would be relevant under the Bill as it now stands. It is something of interest to PASC and the Constitution Committee, who asked about it when I gave evidence to them.
The Chairman: Just to clear up this point, can you tell us what your criteria for propriety are?
Lord Jay of Ewelme: Yes: "in good standing in the community in general and with the regulatory authorities in particular" and that "the past conduct of a nominee could not reasonably be regarded as bringing the House of Lords into disrepute".
The Chairman: Well, that is nice and general. I have no idea quite what it means, but never mind.

Q384 Baroness Shephard of Northwold: Lord Jay, you have talked about the extreme care that the Commission takes to ensure diversity and you have given impressive examples of your progress in that area. If the proposal that 20 per cent of the current House of Lords should be chosen by your Commission were successful, do you think that elections would deliver the same kind of diversity that you and your Commission are at such pains to present?
Lord Jay of Ewelme: I am not sure that that is really for me to say. Judging by the House of Commons, I would have thought that the answer to that is probably no.

Q385 Baroness Shephard of Northwold: That would certainly be my view as well. I have another question. Page 146 of the White Paper states that the aim of the legislation would be to "attract individuals with different qualities from members of the House of Commons". That is by election. Do you have anything to say about that, because your experience is all about appointing people to the House of Lords? Can you comment on that assertion on the part of the Bill?
Lord Jay of Ewelme: That is?
Baroness Shephard of Northwold: That the result of the Bill being successful would be that the House of Lords would "attract individuals with different qualities from members of the House of Commons"—I quote; that is not very good English. You are concerned with the qualities of the people that you see. What do you think about that assertion, which is of course a key element of the whole legislation?

Lord Jay of Ewelme: This is for elections or nominations?
Baroness Shephard of Northwold: It is the assertion that the result of the changes proposed by the draft Bill would attract such individuals, from which one must assume that the Government mean a large number of elected people.
Lord Jay of Ewelme: Let me talk, if I may, about the appointed element. As far as the Commission is concerned, under a shift from the present position to one in which you were appointing people to a full-time, salaried job for 15 years, you would be attracting, I suspect, a different sort of applicant than is now the case. I do not say that there would be no overlap between the two, but I should think that there are quite a few present Members of the House of Lords who have come through the Appointments Commission who would not apply if it was a full-time job, if it was salaried, and so on. I think that there are some who would—some who would find being a Member of the second Chamber of a legislature in the 21st century sufficiently interesting in itself to want to do that. As far as non-elected Peers are concerned, I think there would be a difference, but it would not be a wholesale difference from the people whom we appoint now.
Baroness Shephard of Northwold: Thank you.

Q386 Baroness Andrews: In our various sessions with very different witnesses, we have had many different discussions about the nature of expertise and the way it is deployed around the House. My first question is: do you think that we are making the best use of the expertise that we have in the House, bearing in mind your criterion to appoint people who are pre-eminent in their fields and beyond? The second question is this: if, in fact, the outcome is a House where 20 per cent of the Members are appointed, there is a tendency in our discussions for witnesses to suggest that the heavy-lifting of expertise will be contained in those appointed 20 per cent. That suggests to me that the criteria would have to change beyond what you have already set out. Do you think that there would be pressure on an Appointments Commission to be more representative of the range of expertise that a modern legislature would need? Would you feel, for example, more compelled to appoint more scientists or more communications experts, or do you have an instinct as to what that range of expertise would look like, or indeed whether it would be necessary?
Lord Jay of Ewelme: I will take the second question first. I certainly think that a range of expertise would be necessary. I think that it would be the job of an Appointments Commission to ensure that there was a sufficient range of expertise. Of course, getting that in a smaller House with 20 per cent being a smaller group would be harder than it is now. The way that we have gone about this is that we Commissioned a study a couple of years ago from UCL on what expertise was available to the House. That enabled us to identify what seemed to us to be gaps. Depending on the nominations that we have had, we have tried to make certain that we can fill those gaps, in so far as that is consistent with merit and so on. We are updating that study at the moment to make certain that in future we are conscious of where the gaps are—not just the gaps on the Cross Benches but the gaps in the House. I think that that kind of work would be necessary under the Bill with 20 per cent nominated by an elections committee. It would be necessary to continue to try to make certain that there was a good diversity of skills.
As to whether the best use of the expertise is made now, that is a rather difficult question for me to answer. I am very conscious in many of our debates that there are extremely high-quality interventions from different Members—not just from the Cross-Benchers but from people such as Lord Winston and others from the party-political Benches as well. There are times when a name goes up and you go in and listen because you know that the person speaking is going to say something really worth listening to. Whether the best use is made, I do not know. I think that good use is made of quite a lot of Peers' very relevant expertise—relevant in the sense of making a real contribution to the legislation going through the House.

Q387 Baroness Andrews: I have one further question. With regard to the research that you have done with UCL, you say that you have been looking at gaps across the Chamber.
Lord Jay of Ewelme: Yes.
Baroness Andrews: Of course, in an elected House there would be no such opportunity to identify gaps and fill them. Do you think that we would get people who are expert, in the conventional sense that we use the word in the House, standing for election?

Lord Jay of Ewelme: I think that you would get some, yes. This is a personal view, but I should have thought that there would be some people with real expertise who are interested in the workings of the constitution and who, at a certain stage in their career, would think it really interesting to stand for election to be a Member of the House. I do not think that you can presume that there will not be that degree of real expertise. Would it be the same expertise as now? I would think not if it were an elected House. Would it be the same expertise as with the 20 per cent appointed? No, I do not think that it would be the same because I think that the nominations committee would be looking specifically for a balance of expertise for the Cross Benches.

Q388 The Chairman: Before we leave this point, may I ask one follow-up question? On the numbers in the Bill at the moment, it would be a House of 300. If that were to be adopted and you had 20 per cent of that number coming through an appointments Commission, how many a year would that be?

Lord Jay of Ewelme: It would be about five a year, which is about the same number as we appoint now.

The Chairman: Suppose that the numbers went up from 300 to, say, 450, then obviously the number that went through your Commission would increase accordingly. Do you think that that would make it easier for you to get a spread of expertise across the House?

Lord Jay of Ewelme: Yes, I think that it would make it easier to get a spread of expertise across the House. I think that the higher the number, the easier it is to get a spread of expertise.

The Chairman: Do you think that they should be full-time or part-time?

Lord Jay of Ewelme: My own view is that the Cross-Bench Peers in an 80:20 elected House should be full-time and not part-time. If they are part-time, there will be a very great distinction between the elected Members and the appointed Members, which would also begin to play out in questions as to whether they should vote and, if they did, how that would be regarded by those who were full-time, party-political and elected. Therefore, my own view is that they should be on the same salary and time basis as elected Members.

Q389 Lord Hennessy of Nympsfield: Could I ask a quick supplementary, first, on the vetting point, bearing in mind, Michael, your experience as Permanent Secretary at the Foreign Office? Is the vetting threshold roughly that of developed vetting for Crown servants?

Lord Jay of Ewelme: Roughly, I would think. What we do is consult a number of different agencies to ensure that the standards of propriety have been met.

Lord Hennessy of Nympsfield: So that is MI5, MI6, Customs and Revenue and Special Branch?

Lord Jay of Ewelme: There is also the tax and revenue.

Richard Jarvis: Relevant government departments.

Lord Jay of Ewelme: And relevant government departments.

Q390 Lord Hennessy of Nympsfield: Thank you. I was interested in the UCL work—Robert Hazell's unit, I would imagine. Did you publish? If so, I missed it. Could we possibly have the update if it is done in time for our deliberations, Chairman?

Lord Jay of Ewelme: The update is being done now. The original version we can certainly send to you but we are in the process of updating it. It was extremely useful. It can only be a pointer, because there is inevitably going to be some question about exactly where expertise lies and how up to date it is, but it did point out some areas where there appeared to be a gap, and that has been useful.

Q391 Lord Hennessy of Nympsfield: When we had the Minister, Mark Harper, with us the first time, I asked him whether the Government, in the course of preparing this draft Bill, had made a study of your first 10 years of existence as a Commission. If I remember rightly, he said no. Did you do an internal audit of your first 10 years that we might have a look at?

Lord Jay of Ewelme: The annual report publishes the names of the people.

Lord Hennessy of Nympsfield: I mean rather more than that. I am talking about the way your working practices changed as you developed and went on.

Lord Jay of Ewelme: Each annual report describes what we have done and how the criteria have changed and evolved, so that is all public knowledge. Each time there is a change in our criteria, for example, or a change in the processes by which we operate, that is made clear on our website. The website is kept fairly constantly up to date. To my knowledge, we have not sat down and said, "Well, we've been around for 10 years now. How has it gone?"

Lord Hennessy of Nympsfield: Do you not think that that would be a good thing to do?
Lord Jay of Ewelme: It probably would be a good thing to do but we do not have a huge number of staff.

Q392 Lord Rooker: I have a couple of questions, supplementary to start with, going back to the earlier bit. For the avoidance of doubt, the issue of the numbers of those you put to the Prime Minister is surely the equivalent of the annual honours list. People can apply to that in the same way as they apply to you; the numbers may be very small and as such identifiable. I take the view that you should not publish the numbers; you should just publish your advice to the Prime Minister—that is, those recommended. That is my personal view. On the ability to contribute to the House, is it an ability to contribute in general or in particular, knowing as the Commission does that the work of the House encompasses all of public life? It encompasses the whole legislative programme plus material that is not—that is, scrutiny and the Select Committees. How do you target the people who you are looking at for their ability to contribute, if they are experts in a narrow field?
Lord Jay of Ewelme: That is a very important point, and we are increasingly looking at people who are not just experts in a narrow field. We say to people during interviews, "You have fantastic expertise in X, but X is only likely to come up once a year—what else is there that you think you will be able to contribute?" So we are asking people at interviews what is the range of expertise that they have so we can make a judgment as to whether they will be able to contribute, not just in what has been their main chosen profession but more widely to the work of the House. That is one answer to the question. That is a judgment that we make during the interview process—will people attend the House regularly, will they speak in debates, will they attend and speak in Select Committees? Those are questions that we ask them. There has been over the years a steady move away from seeing membership of the House of Lords as being an honour to seeing it as a job. That is something that the Commission has welcomed and, in a sense, encouraged. As things are now, we make a judgment at an interview as to whether we believe that a nominee will spend a reasonable proportion of time on the work of the House. Assuming that we are convinced that the answer to that is yes, when a decision by the Commission as a whole is taken to recommend somebody, I ring them up and say, "You said in the interview that you would be prepared to spend a reasonable proportion of time—enough to make an effective contribution. Does that remain the case? We are recording this conversation because we want to have it down that you said that." We want to get away from people just wanting the honour and then not coming to the House at all. That has worked better as time has gone on. There will be some people who do not come very often and some who do not come very often because they are doing extraordinarily important pieces of work—and when they do come they will bring to the House the value from the work that they are doing. But we want to avoid the people who do not come at all.

Q393 Lord Rooker: Let us say that you have that phone conversation and they say, "Yes, I will be able to do that, because the working pattern and rhythm will fit in with me doing other important pieces of work." Is it now the case, under the new proposals in the Bill, that when they say yes, the reply is, "However, none of your important pieces of work over the next 15 years can involve service on any public body or what we might call a quango or anything like that, because you will be disqualified. For 15 years, you as an expert in your field will be under the disqualification process because you are a full-time Member of the second Chamber and subject to the House of Commons Disqualification Act, effectively." Do you think that the reaction when you make that phone call will be different under that arrangement from what it is today?
Lord Jay of Ewelme: Yes, I do. This in a way goes to the heart of it. The nature of the expertise of people who would come to the House if it were as proposed in the Bill would be different from what it is now. Some people who would now choose to apply would not choose to apply, while some people having looked closely at the terms of reference will conclude that it is not possible to be a full-time Member of a reformed House of Lords and continue to do other things as well. I think that this raises an interesting question as to what the nature of the expertise is that you would be able to attract under the provisions in the Bill. I think that it would be different from now.

Q394 The Chairman: How do you think that it would be different? In what respect?
Lord Jay of Ewelme: Lord Rooker has already given some examples of professions that would not be, as I understand it, compatible with the House of Lords. If you are a university professor, will you have time to do that and be a full-time Member of the House of Lords? If you are a medical doctor, will you be able to do that? There

are some interesting questions here. There is some expertise that people have gained in their careers, which they will be able to keep up to date compatibly with being a Member of the House of Lords, and there are other areas where that will not be the case. The result will be a different mix of expertise coming in to a full-time House of Lords from that which comes into the House of Lords as now constituted.

Q395 Baroness Scott of Needham Market: Let me confirm what I have already said in writing: I declare an interest as a member of the current Appointments Commission. As a member of the current Commission, I am quite interested in the process. At the moment, we have a steady churn, if I might so describe it, of people applying and their applications being considered. Then, of course, there is a flurry of activity when there is a political list. I wonder, Lord Jay, how you see the flow of work under the new system, where we would sit round and not do anything for a period of time and then have to make all the appointments in one go at the general election. What thought have you given to how that might work? Indeed, what sort of gap would you need between the results of the election for the 80 per cent and then the puff of white smoke from the Appointments Commission, which gives you the 20 per cent? How would that work—and how would you link that to the question of expertise, because you would then have to do an assessment of what expertise you have among the elected powers?

Lord Jay of Ewelme: These are good questions. Clearly, if the Bill were to enter into law, that is a key thing for a new statutory Appointments Commission to consider—exactly how it would work. Having thought about it, it seems to me that what would not be possible would be that on a day that an election was called you would try to get together and interview a large number of people and come up with 20 people for 14 days after the election. That would not work. You would have to be working if not throughout a five-year electoral period then at least, I would have thought, for a couple of years before you assume that there would be an election in order to interview quite a large number of people and arrive with a list of maybe 25 who you thought would be good candidates for appointment. Then, when the time came, you would need to check, and I suspect that some of them would say that they had received an offer in the meantime and were not available, so you would go down to something like 20. But you would need to do it on something like a rolling process rather than suddenly be sitting down and doing it in a rushed way. On the last part of the question, about how you relate that to expertise, I think that you would want to try to ensure that there was a reasonable balance of diversity in the broadest sense in the 20 names that you were proposing for appointment—diversity in terms of ethnic background and gender throughout the United Kingdom.

Baroness Scott of Needham Market: Would you then see that you might have to really skew that list to make up for imbalances on the elected side, although that would be difficult with 20? Or do you think that you would just look for balance among the appointed only?

Lord Jay of Ewelme: I think that you would just have to look at the appointed only. I have not thought about this point, but if there was an election and therefore one-third was changing, you would know that two-thirds were remaining and roughly what the balance of expertise was there. To some extent you could try to correct or alter that by the appointments that you were making to the Cross Benches, but clearly there is a limit to which you could do that.

Q396 Bishop of Leicester: This question anticipates our discussion next week, when we will be thinking about the place of the Lords Spiritual and faith representation here more widely. The submission from the Archbishops includes a recommendation that there might be laid upon an Appointments Commission a statutory responsibility to ensure a diversity of faith leadership in a reformed House. I wonder how you react to that proposal.

Lord Jay of Ewelme: There clearly could be and, if there were, that would be for the Commission to observe. We have operated on the basis, as I explained, of conspicuous merit and diversity. Within those parameters, we have appointed people who are from other faiths. There is therefore a broader representation in the House of Lords now than before of faiths other than the Church of England, so it is achievable by merit.

I would prefer not to have it so that among the 20 or so whom one is appointing at any election, you start by saying "Well, there have to be two or three from this area, from another area, or a quota on diversity or a quota of some kind," as it then becomes very, very difficult to manage. That would be my instinct. My instinct would be to do it on merit and to be looking at the range of expertise that the House clearly needed, rather than by quotas.

Q397 Lord Trimble: I would like to raise a couple of points with you. First, Unlock Democracy, who were here earlier with us, reminded us of the geographic imbalance that there is in the present House of Lords. Was this something that you took into account in the appointments made?
Lord Jay of Ewelme: Yes, we are very conscious of geographic imbalance and we are conscious of the need for there to be representatives from all the kingdom—from Northern Ireland, Wales and Scotland. We are also conscious of the need for there to be a geographical balance from the regions of England, because there is a tendency for people to apply from London and the south-east. In our view, it is important that we ensure that the areas—particularly the areas which the UCL study identified as gaps, which included the north-east, for example—were represented properly. That is something which the present Commission is very conscious of.

Q398 Lord Trimble: Going back to some points raised by Lord Rooker and Lady Scott, are you happy with the 15-year term? Did you consider or would you like to consider other ways or other terms from the point of view of the appointed Members?
Lord Jay of Ewelme: I think that 15 years seems a reasonable term. You could put arguments for different terms, but having 15 years and a third changing every five years seems reasonable.
Lord Trimble: But when you are looking for people who have demonstrated conspicuous merit in their career, and all the rest of it, you are likely to be looking to people who are getting on a bit in years. If you add 15 years on to that, it is a problem.
Lord Jay of Ewelme: We are, and there is an issue here. If you are appointing people with a degree of expertise to a full-time House, how are they going to maintain that expertise when they do not have the time that they now have to pursue other interests and bring the expertise thus gained into the work of the House of Lords? That would need to be considered.
Lord Trimble: It occurs to me that the appointed Members need not be tied to the 15-year term of the elected Members, and that you could possibly have appointed Members for shorter terms where their expertise would still remain relevant. Because you would then be dealing with a larger number of people, it might be easier to strike the various balances that you have to strike—which, if you are doing it with 20 persons at one time, does not really give you much scope.
Lord Jay of Ewelme: You could. Again, this is a personal view, but I think that there would be something to be said for minimising the distinction between those who are appointed and those who are elected. If you have different terms of service or different periods of service, there will be a much more obvious distinction between those sitting on the Cross Benches and those who are elected as party-political representatives. I would see some disadvantage in that.

Q399 Lord Tyler: I want to revert to the brief answer that you gave to the Lord Chairman a few moments ago, when he asked whether you thought that the size of the House might be important in this respect and what if we were not tied to 300 but went to a larger House. Since then, you have constantly been referring to full-time parliamentarians. We know what a full-time parliamentarian is in the House of Commons: it is someone who works six or seven days a week. What do you suppose that a Member of the new House would do in half the days of the year when the House was not sitting? How can they be full-time then?
Lord Jay of Ewelme: I was using "full-time" in the sense that has been used in the paper and in the Bill. It states that you would be there for as long as the House was sitting. Yes, that would provide time for people to maintain their expertise when they were not required to sit in the House of Lords. For certain professions, I suspect that that would be a satisfactory way to maintain a degree of expertise. For some other professions, I suspect that it would not, because it would be very difficult for six or seven months of the year not to be able to do whatever it was you would be required to do. For that reason, I say that there would be a different kind of expertise coming to the House of Lords under the proposed system than there is at present.
Q400 Lord Tyler: I go back again to the Lord Chairman's question. Suppose that we had a larger House. Suppose that there are 450. Suppose that the elected Members are not necessarily going to be full-time. They will maintain a connection with real life outside this building. On the basis that you say that you do not wish the two types of Members to be distinct in the sense of their commitment to Parliament, would you accept that there would be an advantage in that, if there were a bigger House, the workload would not be so great and they, too,

could retain an interest, a specialisation, a career, which would enable them to bring a degree of outside expertise to the House on a continuing basis?
Lord Jay of Ewelme: Are you suggesting that if there is a larger House, the commitment to be there will be less than if it is a smaller House.
Lord Tyler: Yes, for both types of Members.
Lord Jay of Ewelme: Clearly, the less the full-time commitment, the greater the chance to maintain or develop expertise outside it. I still think that it would be difficult to have the kind of expertise that you have in the House of Lords at the moment. For example, you have some who are surgeons, who managed to organise their life so that they are surgeons in the morning and in the House in the afternoon. Whether you could do that, I am not sure. I suspect that there are some professions where it would be difficult to maintain the same sort of expertise as people have now. The larger the House, the easier it would be to do it.

Q401 Lord Tyler: Let me just ask one other question in a different direction. Both now and under the proposals, you lay great stress that any nominations that come through your Commission to go on the Cross Benches should be complete political eunuchs, if I may use that expression.
Lord Jay of Ewelme: No, I do not think that that is a fair expression at all. I think that Members on the Cross Benchers have very acute political antennae, but they do not belong to a particular political party.
Lord Tyler: But some who currently sit on the Cross Benches have had very distinguished political careers. There is even a former party leader who sits on the Cross Benches. Why should that one-way street be permitted, but not the other way? Why should somebody coming into the House have a continuing political interest but also an active party-political past, but you cannot go the other way: you insist that they sign in blood that they are not going to suddenly see the error of their ways and want to join the Labour Party.
Lord Jay of Ewelme: We would not say that because you have been a member of a political party in the past, you are ruled out from joining the Cross Benches. There are plenty of people who have had political pasts but who have since pursued non-party political interests who would not be excluded, as the Commission now works, from joining the Cross Benches.
Lord Tyler: But it is a one-way street, is it not? There are members who have been nominated from the parties and who have been members of a party group who are now permitted to join the Cross Benches, but you do not permit it the other way.
Lord Jay of Ewelme: There has been one case of moving the other way. I think that the Commission's view is that you are appointing to the Cross Benches and that that should be for the length of period for which you are in the House. You are appointing people to the Cross Benches of the House of Lords, not as a way in to a party-political position.
Lord Tyler: As you read the Government's proposals, do you think that will continue—that the one-way street will be firmly in place?
Lord Jay of Ewelme: As I understand it, the Appointments Commission would be seeking nominations from people for the Cross Benches, and it would set its own criteria as to whether it thought that people with political backgrounds would be appropriate for the Cross Benches. That would be for the Commission to determine.
Lord Tyler: It is the commitment to continue to be a Member non-aligned with any of the parties that I find interesting.
Lord Jay of Ewelme: That is the view of this Commission and the last Commission: that there should be such a commitment to remain independent. That is what the independent Cross-Benchers are.

Q402 Baroness Young of Hornsey: I was thinking about that last point, because my initial reaction was that it would be very difficult to change from being a Cross-Bencher and go into one of the political parties, because they would have been voted in. I was trying to work out how that would work.
Lord Jay of Ewelme: There has been one case in the last few years.
Baroness Young of Hornsey: Under the proposed system, I cannot see how that would work, because the people on the party-political Benches will have been elected.
Lord Jay of Ewelme: I think that it is a very good point. I do not claim to be an expert, and I do not quite see how you would be able to move from an appointed Cross-Bencher to be part of an elected bloc.

Baroness Young of Hornsey: Sorry, that was a slight red herring, because that was not my question. A number of people whom I speak to about the Appointments Commission, which is the route through which I came here, are completely unaware of it. I wondered if you had any views of how you would get publicity and advertise the fact that these new roles were coming on stream, were the Bill to be passed.

Lord Jay of Ewelme: We consider constantly how we should make ourselves more widely known outside the House—and, to some extent, inside the House. Within the House, I do that, because I am in the House most days. It takes me quite a lot longer nowadays to get across from one side of the House to the other than it did before I took on this job. That is a good thing, because it means that you are being constantly lobbied; that is part of the job. Outside the House, I have been on the "Today" programme. Some members of the Commission make speeches which include references to what the Commission does. We have recently sent the last Lord Speaker, Baroness Hayman, a list of points, so that when she is going around talking about the House of Lords, on the basis of her experience, she can also talk about the role of the Appointments Commission. We do a certain amount of that. Could we do more? We could do more. We think about that a lot. If there were a new system and a new House of Lords and a new statutory Appointments Commission, the Commission would need to make itself more widely known than we are.

Q403 Baroness Andrews: Lord Jay, how do you imagine the ecology of the new House?

Lord Jay of Ewelme: I am sorry, the what?

Baroness Andrews: The ecology of the new House—how it is actually going to work? You said a few moments ago that you wanted to minimise the distinction between the appointed group—we are assuming the 20 per cent—and the elected Members. In fact, there would be a much greater distinction than we have now between the Cross-Benchers and the other group. How do you think that this hybridity would affect the way that the House worked and the way that the two groups represented themselves to each other? We have had witnesses who see this as a recipe for dysfunction, because the appointed group might be seen to have less legitimacy than the elected group. Is there an argument there?

Lord Jay of Ewelme: I think that there is an argument there, yes. We have done some pretty weird things over the years to our constitution, and it is not always a model of logic, so it is perfectly possible that you could have something which is, on the face of it, illogical but it could work, so I would not rule out it working, but I think that there would be a difference. The difference between nominated Peers and elected Peers would be different from the position now between everybody being nominated, but some being party-political and some being Cross-Benchers. I think that that would make a difference. I think that it would feel slightly different. Difficulties could arise if there were a vote and it appeared to have been carried or not carried as a result of the votes of the nominated Peers. That seems to me to be an issue that would need to be considered. Would it make it unworkable? No, I do not think that it would make it unworkable; I think it would create an issue. I do not think that it is an unworkable thing to have, but I think it would create different sorts of tensions from the ones you have now.

Baroness Andrews: Are there any obvious ways of ameliorating those tensions?

Lord Jay of Ewelme: One way to make them worse, it seems to me, as I said earlier, would be to make the Cross-Bench Peers in other ways different from the other Peers, whether through length of service, salary or whatever. That is something to avoid. You talk about ecology, but it is very difficult to know what the chemistry of a House of this sort would be. There would be people on the Cross Benches who would, I suspect, work closely with people whose interests they shared, so it would not be completely 80 per cent and 20 per cent. The way that the House works, they would begin to meld, but there could in certain circumstances be differences.

Q404 Oliver Heald: The people who were elected would represent a region. They would have some constituency work and they would be "full-time". The people who were selected and appointed would not have the burden of the representation of a region—they would not have the constituency work—and, from what you are saying, quite a lot of them would want to pursue a career as a great lawyer, surgeon, or whatever. Is that not going to lead to a cry of the part-time Peers versus the full-time Peers? Do you think that there is a reputational concern that we should have that the appointed Peers could get rather a rather raw deal in the media?

Lord Jay of Ewelme: I do not think that I was saying that they would do. I was saying that some Cross-Benchers would be able to maintain a degree of expertise, because they would not have the other obligations which elected

Peers would have. I still think that quite a number of people would not find it easy to maintain the sort of jobs that they have outside the House of Lords and the expertise that they bring in under the new system.
Oliver Heald: So they would not offer themselves; the pond would be smaller.
Lord Jay of Ewelme: I think that it would be different rather than smaller. There are quite a few people I can think of who would not put themselves forward as a Cross-Bench Peer who are now Cross-Bench Peers, but I think that others would be attracted to being a Cross-Bench Peer as a full-time, salaried job. That is why I said at the beginning that you would be looking for promise as much as achievement, because these would be people who had achieved quite a lot but had not got to the very pinnacle of their career or near the pinnacle of their career, which they would find difficult to combine with being a Member of the House of Lords.
Oliver Heald: So people would give up their career in order to become appointed Peers.
Lord Jay of Ewelme: Yes, I think that they would have to. If it is going to be a full-time job, or a full-time job for seven months of the year, that would be incompatible with quite a number of other professions. People would be giving up one career and taking on another, but that would not preclude them, in some cases at least, from maintaining the expertise that they have in their career while they are a member of the House of Lords.
Oliver Heald: This is always the criticism of the House of Commons—that people have left their career at a certain point but never reached the full heights of running the Army, being a top silk or running a solicitors firm, for example. Are you saying that we would end up with more people who are like the people who are standing for election and fewer people who are real national names?
Lord Jay of Ewelme: I think that there would be fewer people who were real national names, because you would have fewer people right at the top of their profession doing a lot of other things as well. That is true, but there would be some people from some professions who, perhaps towards the end of their career, would see this as a sensible and attractive way to spend the next 15 years.

Q405 The Chairman: I am bit lost about the mechanics of all this now. Under the Bill, all the life Peers go at the end of a transition period, whether that is in three parts or a grand cull at the end of it. For the sake of my question, let us consider the grand cull. They are all there until the end of the first Parliament, when all the elected Members come in and all the transitional Members go. That presumably means that you would go as well. Who would appoint the new Commission?
Lord Jay of Ewelme: I think that the Bill has the Joint Committee appointing the new Commission.
Richard Jarvis: I think that it is the Prime Minister, under the Bill.
The Chairman: I thought that it would be the Prime Minister.
Richard Jarvis: That is what the Bill says, yes.
The Chairman: That is what I thought. Let me go on with the grand cull. You have been reappointed, or your successor has been appointed—
Lord Jay of Ewelme: I am appointed for one five-year term, so it will not be me.
The Chairman: I am talking about at the end of the grand cull. If you are still with us, no doubt you would remain in this post, but we are talking about 2025. You stand a better chance of being here than I do, at any rate. Would you be entitled to consider the existing Cross-Benchers, who would have just been thrown out?
Lord Jay of Ewelme: I had not thought about that. I would think that if they applied, they would be considered alongside other applicants and the then Commission would have to judge their suitability alongside others.
The Chairman: That would be a difficult process.
Lord Jay of Ewelme: Yes. It is not an easy process anyway, to be honest.

Q406 The Chairman: The other point that I wanted to ask about is the role of the Prime Minister when you make an appointment. The current arrangements, as I understand it, are that you recommend them to the Prime Minister and he recommends it to the Queen.
Lord Jay of Ewelme: For the Cross-Benchers? Yes. But all Prime Ministers since this started have said, in effect, that they will just pass the recommendation on to the Queen.
The Chairman: He is just a postbox.
Lord Jay of Ewelme: Each Prime Minister has said, I think, that they would wish to have the right to check—
Richard Jarvis: The formal constitutional position is that the Prime Minister retains the responsibility for both the numbers and the timing, so the Commission agrees with the Prime Minister the numbers and the timing.

Lord Jay of Ewelme: We agree the numbers and the timing. I think that I am right to say that Prime Ministers have also said, on national security grounds, that they needed to look at a list to ensure that there was nothing that they found really difficult. But in practice each Prime Minister has passed the list on to the Queen.

The Chairman: He has the right to look at it and, if need be, amend it.

Lord Jay of Ewelme: He certainly has the right to, because we are an advisory Commission; we make recommendations to the Prime Minister. It is for the Prime Minister to decide whether he or she wishes to pass that on to the Queen or not.

The Chairman: Thank you very much. I thank both of you gentlemen for coming this afternoon. It has been revealing and useful; it has been a very helpful session.

Unlock Democracy—written evidence

About Unlock Democracy

Unlock Democracy (incorporating Charter 88) is the UK's leading campaign for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility. Unlock Democracy runs the Elect the Lords campaign to campaign for an elected second chamber. For more information about Unlock Democracy please see www.unlockdemocracy.org.uk

About this submission

In addition to writing our own response to the draft Bill, Unlock Democracy sought the views of our members and supporters. We ran a brief online survey on the key elements of the draft Bill as well as handing out leaflets at street stalls. We agreed to forward any comments people made regardless of whether or not they supported our policy. Over 4,100 people took up our offer, either filing in detailed comments on specific aspects of the proposals or just answering the survey. Many chose to do both. After discussion with the committee clerks we have submitted over 4100 individual responses as a separate word document but we refer to the survey results throughout our submission and the data set is included as an appendix.

Executive Summary

Unlock Democracy supports the following:

i) A fully directly elected second chamber with broadly the same powers as the current House of Lords;

ii) Members elected in halves for renewable 8-10 year terms;

iii) An electoral system that gives the voter choice between individual candidates and political parties such as the Single Transferable Vote or a number of open list systems;

iv) A considerably smaller reformed second chamber, between 250 and 350 members;

v) Experts should be brought into the second chamber through the Committee system to consider specific Bills rather than as full time members of the legislature;

vi) Government Ministers should not sit in the second chamber so that there is a clear distinction in roles and powers between the two chambers;

vii) The second chamber should have a role as a 'chamber of the union' representing the nations and regions of the UK at Westminster;

viii) Members of the second chamber should be barred from standing for the House of Commons for a lengthy period;

ix) There should be no places reserved for religious representatives in the second chamber;

x) The second chamber should be called the Senate;

How the draft Bill fulfils its objects

1. Unlock Democracy very much welcomes the fact the government has published a draft bill. In the one hundred years that electing the second chamber has been seriously discussed, this is the first time that a government has presented a bill to Parliament. This is a significant step forward in its own right. We also welcome the fact that the Bill has been published as a draft and can benefit from pre-legislative scrutiny.

2. Unlock Democracy is broadly supportive of both the proposals and drafting of the Bill. We are pleased that the government is moving ahead with plans for an elected second chamber, selected on a different basis to the House of Commons and that they are proposing to end the link between the Peerage and membership of the legislature. The white paper clearly sets out that some elements of the policy are still open for debate and we have entered into this consultation in that spirit. There are some areas where we take a different view from the government. For example we believe that members of a reformed second chamber should be elected for terms of no more than 10 years, that they should be able to stand for re-election once and that the house should be elected in halves rather than thirds.

3. While we understand the stated logic behind drafting the legislation for the most complicated options, but leaving some questions open in the white paper, as an organisation that supports a fully elected second chamber we would have preferred to see this included in the draft bill.

4. One criticism that we would make of the white paper and draft Bill is that they very deliberately sidestep the issue of the powers of a reformed second chamber. The White Paper simply states that the powers would be the same as for the current House of Lords. Unlock Democracy does not accept that an elected second chamber will undermine the supremacy of the House of Commons but we think that this concern should have been addressed in these proposals. We have outlined below how we would do this.

The effect of the Bill on the powers of the House of Lords and the existing conventions governing the relationship between the House of Lords and the House of Commons

5. It has been asserted that an elected second chamber would no longer be bound by the Parliament Acts or the conventions that currently govern the relationship between the two chambers. Unlock Democracy does not accept this argument.

6. The example of the Australian Senate also demonstrates that it is possible for a directly elected second chamber, even one with more formal powers than the House of Lords, to be constrained by convention. Even though the Senate can, periodically, make life very difficult for Australian governments, there is no attempt to try and move beyond being a reviewing chamber. The Australian Senate passes 74 per cent of Bills sent to it without making any changes[37], leaving the House of Representatives clearly the prime chamber.

The role and functions of a reformed House

7. Unlock Democracy and its predecessor organisations have long been committed to the reform of the House of Lords. We believe that a second chamber has a crucial role to play in the British constitution. Wherever a Parliament has only one chamber, the dominant party within it is in a position to abuse its power. Particularly in the UK, where the House of Commons is dominated by an unusually strong Executive, it is vital that a second chamber—democratically legitimate, and constituted differently from the lower House—exists to hold it in check.

8. Like the Government, we envisage a reformed second chamber as a deliberative body, complementing rather than duplicating the work of the Commons. It should provide additional capacity to an overburdened lower House, bringing a different perspective to the review of legislation and serving a discrete constitutional role.

9. In addition Unlock Democracy believes that the second chamber should play a specific role in representing the concerns of the nations and regions of the United Kingdom at Westminster. As the second chamber is elected on a different basis to the House of Commons, with considerably larger constituencies and with no mandate for constituency work, they can take a broader view when scrutinising policy. This is a role carried out effectively by the Australian and US Senates, although they do this through malapportionment of seats whilst we would prefer to use the electoral system and a minimum level of candidates per electoral district to ensure fair representation.

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37 Stanley Bach, "Senate Amendments and Legislative Outcomes in Australia, 1996–2007", Australian Journal of Political Science 43, no. 3 (September 2008), p 409 cited in Renwick, *A House of Lords Reform Briefing,* Political studies Association 2011

10. Unlock Democracy supports a reformed second chamber exercising the same powers as the current House of Lords. Specifically we believe the second chamber should be able to delay legislation for one year as is currently the case. Unlock Democracy also believes that the reformed second chamber should retain the power to veto secondary legislation. Secondary legislation receives very little scrutiny and the power of veto provides an important if rarely used check on this power.

11. Unlock Democracy believes the second chamber should develop its current role in protecting certain constitutional principles. Currently the Parliament Acts give the House of Lords a specific role in preventing a Parliament being extended beyond five years without a general election. We believe it would be beneficial for the second chamber to take on a similar role in relation to core constitutional documents. There would need to be extensive consultation over exactly which Acts or constitutional principles should be included and what the level of protection there should be. It may be for example that it would be determined that certain constitutional documents such as the Scotland Act 1998 or the Human Rights Act would be exempt from the Parliament Acts or could not be repealed without a two-thirds majority in the second chamber.

The means of ensuring continued primacy of the House of Commons under any new arrangements

12. The debate on how the primacy of the House of Commons should be maintained is an important one. Unlock Democracy is committed to the House of Commons remaining as the prime chamber within the UK legislature. However we also campaign for a stronger Parliament and accountable government, and do not accept that the pre-eminence of the House of Commons should mean that it always gets its own way.

13. Unlock Democracy accepts that it is likely that an elected second chamber would be more willing to use the powers that it has. Dr Meg Russell of the Constitution Unit at UCL has published a detailed analysis of the Government's defeats in the House of Lords since the removal of the hereditary peers in 1999[38] which suggests that an elected second chamber would be more assertive in its dealings with the House of Commons. The significance of this research is not the number of defeats which the last Labour government suffered, which although high was comparable to other Labour governments[39]. Rather this research shows quite clearly where the House of Commons has rejected Lords amendments, the second chamber has, since the removal of the hereditary peers, become more assertive and has been more willing to insist upon the changes it wants.

14. However it is important not to overstate the significance of this change. It is still the case that much more frequently the House of Lords agrees to give in and accept the decision of the House of Commons. This is not the second chamber challenging the primacy of the House of Commons; it is merely exercising its existing powers. Unlock Democracy sees this as part of a stronger Parliament using checks and balances to hold a powerful Executive to account, rather than a challenge to the primacy of the House of Commons.

15. Unlock Democracy recognises that there will sometimes be disagreements between the two Houses in Parliament, as indeed there are now. We believe that there needs to be a formal process for resolving any disputes that may arise. Currently this is managed through the use of conventions. Unlock Democracy believes that an elected second chamber would benefit from a more formal structure, such as Joint Committee to deal with such issues as may arise and to foster an effective working relationship between the two Houses.

16. Joint Committees are a common tool in bicameral parliaments for resolving disputes between two chambers, although some are less effective than others. We would be keen to see a Joint Committee set up along the lines of the German and US models whereby the committee is permanent, created at the beginning of each Parliament, with senior members of both houses chosen to serve on the committee. Although the committee being permanent means the members may not be familiar with the detail of the Bill in question, it allows the members of the committee to build effective working relationships and may also help to take some of the heat out of the debate.

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38 http://www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords/lords-defeats

39 http://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-govtdefeats/ accessed 1 October 2011

17. Interestingly in the online survey that Unlock Democracy conducted, of the 3659 respondents 2690 supported the creation of a Joint Committee to resolve disputes once a Bill had been rejected twice by the second chamber. The other popular option was that the House of Commons should be able to override a veto with a super majority—if two thirds vote in favour of the disputed Bill. This system which in Japan and a version of this is used in Spain. However we believe that negotiation through the committee rather than a more adversarial super majority vote is a more constructive way to resolve differences between the two chambers.

18. Unlock Democracy believes that there should also be structural constraints built in to the design of a reformed second chamber to ensure the primacy of the House of Commons. These are addressed in more detail below but would include the use of staggered elections and government Ministers being selected from the members of the lower house.

The size of the proposed House and the ratio of elected to non-elected members

19. Unlock Democracy supports a fully, directly elected second chamber. This is consistent with the will of the House of Commons expressed in the vote of March 2007. Although both the 80 per cent and 100 per cent elected options received majorities, it was only the fully elected option that received an absolute majority from across the House. Also in the immediate aftermath of the vote in the House of Commons, ICM conducted a poll for Unlock Democracy that found the public supported a fully elected chamber by more than 2-1.[40] In the recent online survey that Unlock Democracy conducted, of the 3987 respondents that answered this question 57.69 per cent supported a fully elected second chamber while 29.90 per cent favoured an 80 per cent elected chamber. Only 12.42 per cent supported other options for reform.

20. It is often argued, including by those who support an elected second chamber, that a small number of appointed members should remain in the second chamber to guarantee an independent, expert chamber, to allow for the appointment of under-represented groups and to facilitate the appointment of Government Ministers to the second chamber. Unlock Democracy does not support these arguments and we set out alternative responses to these concerns below.

Independence

21. The House of Lords is often held up as an example of a less partisan chamber that benefits from the presence both of members who have no party affiliation and more independent minded representatives of the parties. Unlock Democracy does not support this assertion.

22. Dr Meg Russell and Maria Sciara's detailed analysis of votes in the House of Lords from 1999-2006[41] showed that while there were various groups from the independent Crossbenchers and Bishops, to party rebels and opposition parties that could contribute to a government defeat, the key factor in most cases was the opposition parties voting cohesively. In other words the government was more likely to suffer a defeat because of strong partisan voting than the presence of a significant group of independents in the chamber.

23. Rebellions in the House of Commons generally receive more media attention than those in the House of Lords. In part this is because they are more obvious; there are a number of reasons, other than a rebellion that governments can be defeated in the Lords. Party discipline is also generally accepted to be weaker in the Lords than the Commons so defeats are not seen as such a threat to the government's authority.

24. The website www.publicwhip.org.uk provides statistics on the voting records of both MPs and Peers and how often individuals take a different view from the main party group. Analysing the number of rebellions in both chambers since 2005, we found that not only are there slightly more rebellions in the House of Commons than the

40 Asked "MPs have recently decided that the House of Lords should be fully elected. Do you approve of this decision or disapprove?" the survey of 1,003 people polled by ICM found that 63% supported the reform, compared to just 26% who disapproved. See http://www.unlockdemocracy.org.uk/?p=710 for full details

41 Meg Russell and Maria Sciara, "The Policy Impact of Defeats in the House of Lords", British Journal of Politics and International Relations 10 (2008), 517–89

House of Lords but also that rebellions in the House of Commons are more likely to involve more than 10 people than in the House of Lords.

25. Using the public whip data and their definition of rebellion, we found that in the 2005-2011 period at least one person rebelled in 50.53 per cent of divisions compared to 47.74 per cent in the House of Lords, although there were fewer votes in the House of Lords. Dr Alan Renwick has analysed the public whip data differently, looking at rebellion levels within party groups and found that although rebellion rates are slightly higher in the House of Lords they are still very low[42].

26. It is also interesting to note that when rebellions happen in the House of Commons they tended to be larger—17.05 per cent of rebellions in the House of Commons involved 10 or more members rebelling compared to 10.24 per cent of rebellions for the House of Lords.

27. It is too early in this government's term to look for trends in voting patterns, but it is interesting to note that the chamber does seem to have been more explicitly partisan, as demonstrated by the response to the Parliamentary Voting System and Constituencies Act, since the recent appointment of a large number of former MPs.

28. Unlock Democracy welcomes and supports the presence of independents in UK politics. However we do not believe that appointment is either the best nor only means of giving independents a voice in our legislature. We explore the ways in which independents can be encouraged through different electoral systems below.

Expertise

29. Unlock Democracy agrees that the legislative process can benefit substantially from the involvement of experts. We do not, however, agree that such experts must be full-time members of the legislature in order to have an influence.

30. It has also been argued that a reformed chamber must include an appointed element in order to ensure that the chamber has sufficient expertise to perform its deliberative duties.

31. This idea is to be rejected. Firstly, the current House of Lords is the clearest sign that appointment is not by any means a foolproof way of introducing expertise. A large plurality of sitting life peers—41.57 per cent—are drawn from active party politics, having served as MPs, MEPS, councillors or party officials; only 26.51 per cent are current 'experts'. When we look at the Crossbenchers as a group who are appointed for their independence and expertise, only 45.71 per cent of Crossbenchers are expert (10.5 per cent of the House of Lords as a whole).

32. Our full analysis of expertise in the House of Lords is included in Appendix 2[43]. It is very difficult to objectively assess expertise and there is a risk that any such classification can become arbitrary. However we used publicly available biographical information to assess seniority in a career before entering the House of Lords and the length of time since that position was held. This meant that peers who continue to practice their main career whilst also attending the House of Lords received higher scores than those who had retired.

33. One of the arguments in favour of retaining an appointed element to the second chamber is that experts would not be willing to stand for election. We do not find this a compelling argument. Two-fifths of the current membership of the House of Lords have either worked in politics or already stood for elected office so it is reasonable to assume, this experience could be gained through election.

34. We also question the idea that a chamber needs an internal cohort of experts to perform a deliberative role, and doubt their general value to such a chamber once appointed. Many expert members have a valuable contribution to be made in their field—such as sociology, or human fertility—but would be expected to vote on all issues whether versed in them or not. It is far preferable to have a chamber where expert advice is sought externally as needed—for

42 Alan Renwick *House of Lords Reform Briefing Political* studies Association 2011p16

43 Unpublished

instance, through the use of select committees or special Bill Committees—and where the final vote falls to democratically elected representatives of the people, who have been suitably informed.

35. One ongoing issue regarding the presence of independent experts in the House of Lords is the levels of attendance that are expected. One reason for the relatively low impact of the Crossbenchers on votes in the House of Lords is that with some notable exceptions they attend and vote far less frequently than party appointees. Dr Meg Russell and Maria Sciara[44] found that crossbenchers voted on average in just 12 per cent of the divisions they could have voted in between 1999 and 2007, compared to 53 per cent of divisions among Labour members, 47 per cent for Liberal Democrat members, and 32 per cent for Conservative members.

36. Unlock Democracy believes that expertise can more effectively be brought into the legislature though the appointment of special advisers to select committees or to committees to consider specific bills rather than through full time membership of the second chamber. This would ensure that the expertise called in was always relevant and up to date and would not mean that experts had to choose between their existing careers and advising on legislation in their field.

Gender and Ethnicity

37. Some have suggested that an appointed element should be preserved because it will allow for the adequate representation of women and ethnic minorities in the reformed chamber.

38. It is absurd that a chamber composed entirely of elected representatives should be rejected on the grounds that it will not be representative enough. As Unlock Democracy outlined in its evidence to the Speakers Conference on the Representation of Women and Ethnic Minorities in the House of Commons, the most effective means of increasing the representation of under-represented groups is to move to a proportional electoral system with multi-member constituencies.

39. Internationally, the countries that have more representative politics also have multi-member constituencies. This is the case even where there are no quotas in operation. Where parties have the opportunity to nominate more than one candidate they are more likely to nominate a balanced slate than if they can only nominate one candidate. If only one candidate can be nominated, parties will often choose the white, male candidate as he is seen as the more broadly acceptable candidate. The myth that women candidates lose votes has wide currency in constituency parties. Often discrimination is justified by blaming the voters, arguing (incorrectly) that the voters would not vote for a woman and the relevant Party could not risk losing the seat. However the Fawcett Society has shown that voters do not penalise women candidates. The problem is that political parties do not select women in sufficient numbers in safe or winnable parliamentary seats[45].

40. Multi-member seats also offer parties the choice of a number of different pro-active measures for selecting candidates from under-represented groups. In the UK, All Women Shortlists are the most well known and controversial form of positive discrimination but there are other mechanisms for encouraging selection of women candidates. For example in list electoral systems some parties 'zip' the party list so that every other candidate is female. Other parties use quotas, often thirds, for candidate selection so that at least a third of the list must be male and a third must be female. Of course it is not just getting on the list that is important but the position on the list which is why this technique is often combined with a quota for the top of the list so that at least one of the top three candidates also has to be female.

41. It should also be noted that these measures can also be used for electoral systems, like STV and open lists, that allow voters to choose between candidates as well as parties and not just closed list systems. Voters of course have the prerogative to choose not to elect female candidates but evidence suggests that this is not the main barrier to women's' representation. Indeed in Norway in 1971 women's organisations took advantage of an open list system

44 Meg Russell and Maria Sciara, "Independent Parliamentarians En Masse: The Changing Nature and Role of the 'Crossbenchers' in the House of Lords", Parliamentary Affairs 62, no. 1 (2009), 32–52, at p41

45 J. Lovenduski, and L. Shepherd Robinson, *Women and Candidate Selection in British Political Parties,* Fawcett Society (London: 2002).

used in local government elections to dramatically increase the level of women elected. They were able to do this because the type of open list system that was in use, allowed voters to strike through the names of candidates they did not want to support. So although the parties chose the orders of the list campaigners urged voters to go down the list of the party they wanted to support and cross out the male candidates until they reached a female candidate. As a result of this campaign the number of women elected to Councils in some cities rose from around 15-20 per cent to a majority of the Council. Although there was some backlash to this campaign at the next election it changed the way in which political parties in Norway approached drawing up party lists.[46]

42. Unlock Democracy does not believe that reform of the second chamber should be entered into on the assumption that the process by which 80 per cent of members are elected is so drastically flawed and unrepresentative as to need external correction. The focus should be on establishing an electoral system that takes proper account of voters' needs and wishes, rather than adding undemocratic buttresses to account for an existing system's flaws.

43. Unlock Democracy hopes that the opportunities implicit in creating a new chamber, to ensure that the chamber is more representative and takes advantage of more modern family friendly working practices, are seized. It is very rare in the UK context to consciously design a legislative chamber rather than seek to reform something that has evolved over time. We already have evidence from the creation of the Scottish Parliament, as well as the Welsh and Northern Irish Assemblies, that new bodies can lead the way both in increasing the level of women represented in politics but also in modernising working practices such as the reporting of expenses and engaging the public through the use of petition committees.

44. Finally, while the present House of Lords is slightly better in terms of gender balance and ethnic diversity compared to the present House of Commons, it is worth noting that it is only recently that levels of female representation in the House of Lords have begun to improve. Despite having none of the barriers frequently ascribed to elected chambers, the appointment process has repeatedly failed to produce a genuinely representative second chamber; if appointment worked, there is no reason why it should not produce 50:50 gender balance. There is certainly no evidence that appointment is inherently better for women or ethnic minorities, significant progress can be made in elected chambers if political parties are willing to act.

Size

45. The UK is unusual in having a second chamber that is considerably larger than the first. Unlock Democracy supports the view in the White Paper that the current House of Lords is too large. Partly this is a result of the differing views of membership in the House of Lords and the conflation of the honours system with membership of the legislature. We therefore welcome the fact that the government proposes to break this link.

46. Unlock Democracy agrees that the second chamber should be smaller than the House of Commons in recognition of its different functions and the lack of any constituency role for members of the second chamber. A smaller chamber would also encourage deliberation and a more collegiate method of working than the adversarial House of Commons.

47. Average daily attendance in the House of Lords has increased by 26.3 per cent to 497 in 2010/11 from 394 in 2009/10[47]. Even if the reformed second chamber were reduced to the 2009 figure, this would still leave the UK with one of the largest second chambers in the world. Unlock Democracy believes that the scrutiny and revision functions required of the second chamber could be delivered by a full time chamber of between 250-350 members. Therefore we are content with the government's proposal for a chamber of 300 members. Although this would be a significant reduction in the size of the second chamber, we do not believe this would not undermine the current structures and methods of working. Rather it would take into account that all members would serve on a full time basis and would be given adequate staffing support to carry out their roles.

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46 For more information see Maitland, Richard E, *Enhancing Women's Political Participation: Legislative Recruitment and Electoral Systems* http://www.onlinewomeninpolitics.org/beijing12/Chapter3_Matland.pdf

47 House of Lords Briefing Note System of financial support for Members http://www.parliament.uk/documents/lords-finance-office/2011-12/briefing-note-april.pdf

48. Part of the reason why the House of Lords relies heavily on part-time professionals who work outside the House is that members are not paid a salary, receive only a small attendance allowance and have little research and administrative support. Lack of salary also reinforces the metropolitan, affluent profile of the membership of the House of Lords.

A statutory appointments commission

49. Unlock Democracy supports a fully elected second chamber. However if we were to retain an element of appointment we would expect this process to be managed by an Appointments Commission rather than by political patronage. Equally we believe that any members appointed to the second chamber should be from a non-party political background.

50. We share the concerns of many at the way in which large numbers of political appointments were made after the last election. David Cameron has created more peers more quickly than any of his post-war predecessors, having ennobled 117 people in less than a year. This is unsustainable in an already overly large chamber. We also note the concern of Peers at the "fractious atmosphere"[48] created by the appointment of so many ex-MPs to the second chamber.

The electoral term, retirement etc

51. The government proposes that members of the second chamber should be elected in thirds for, periods of the 15 years and that they should not be able to stand for re-election at the end of their term. Unlock Democracy is sympathetic to the thinking behind these proposals although we do not come to the same policy conclusions.

52. It is common in elected second chambers for elections to be staggered. This helps to ensure that although both chambers are have elected members and therefore have legitimacy the second chamber's mandate is never more recent than the first. It also ensures that there is an element of continuity and institutional memory as it is not possible for all members to be replaced in one election.

53. There are also examples of elected second chambers where the term of office in the second chamber is longer than in the first. This helps to differentiate the two chambers and longer terms can help to create a different culture in the second chamber, as members are not so focused on seeking re-election and can take a longer term view.

54. However a 15 year term is exceptionally long, even for a second chamber. It is two or three times the length of term for many elected second chambers around the world and over a third longer than the longest term currently in operation—8 years in Brazil and Chile[49]. While France used to have terms of 9 years in the second chamber this has been reduced to six years which is only one year longer than the lower house.

55. Whilst we understand how the government came to this proposal by wanting staggered elections and a link to the term of the House of Commons which has now been fixed at five years, we believe that 15 years is too long and does not provide for any accountability.

56. Unlock Democracy would prefer 8 year term of office, linked to two 4 year terms of the House of Commons, however that is no longer appropriate as the term for the House of Commons has been set for 5 years. Therefore we recommend that members of the second chamber should serve for a 10 year term with 150 members being elected every five years.

57. Interestingly of the 3866 people who answered the question on length of term in our online survey, 51.24 per cent supported a term of less than 10 years, while only 9.21 per cent supported 15 year terms. Although we have used 10 year terms for modelling purposes in this submission we would hope that if the term limit for the House of Commons were reduced, this would be re-visited.

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48 Russell, Meg House Full: Time to get a grip of Lords Appointments Constitution Unit 2011 http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/152.pdf

49 source Inter-Parliamentary Union Parline Database: www.ipu.org accessed 15 September 2011

58. The lack of accountability is further exacerbated by the proposal that members of the second chamber should not be able to stand for re-election. Whilst we are sympathetic to the desire to promote independence among members of the second chamber we believe this has to be balanced with accountability. The only element of accountability on the current proposals is that members will be able to be recalled on the same basis as members of the House of Commons if recall proposals are introduced. We do not believe that this is acceptable.

59. Unlock Democracy believes that members of an elected second chamber should be able to stand for re-election; but only once. This allows for some accountability but also ensures that members of the second chamber will move on. Of the 3921 people who answered this question in our online survey a significant majority, 76.46 per cent supported members being able to stand for re-election.

60. If the reason for non-renewable terms is to promote independence and try and prevent members from using the second chamber as a means of launching a wider political career, then there are other ways that this can be achieved. It is already proposed that there should be a period of time after leaving the second chamber during which former members cannot stand for elections to the House of Commons. We would also support a similar bar on members of the House of Commons moving straight to the second chamber as we would not want to import the culture and working practices of the House of Commons into a reformed second chamber. However we recognise the difficulty that this would pose for political parties who wish to encourage some members of the House of Commons to retire. Our proposals of holding the elections to the second chamber on the same day as the elections to the European Parliament, rather than the House of commons would also have the effect of creating a short quarantine.

61. Unlock Democracy would also recommend that members of the second chamber be resourced in such a way that discourages them from establishing constituency offices and competing with members of the House of Commons for casework. We recognise that it is impossible to entirely prevent this from happening; it is as much to do with the culture of political parties who will expect members of an elected second chamber to support their campaigning work for other elections and bodies, as the career aspirations of the individual concerned. However we do believe that this can be discouraged in more nuanced ways, that also allow for some element of accountability, rather than the blunt tool of non-renewable terms of office.

Recall

62. The White Paper proposes introducing a system of recall, along the same lines as the system to be introduced for the House of Commons. While Unlock Democracy supports recall in principle, particularly in the case of an elected second chamber in which members will be elected for extended time periods, we do not believe replicating the model proposed for the House of Commons would be sufficient.

63. We support a model of recall in which, if 5 per cent of an electoral district calls for it, a recall ballot must be held on the same day as the next second chamber election. Only members of the second chamber not up for election in this election could be recalled in this way. Petitioners must give a reason for recalling the member, but it could be for any reason—not restricted to parliament having already disciplined the member.

64. If 50 per cent of voters support recalling the individual, that member will be excluded from the chamber and the number of members to be elected for that constituency in the subsequent election will be increased by one.

65. We believe this model would ensure accountability throughout the member of the second chamber's term of office without adding an unnecessary administrative burden or disadvantaging minority candidates.

66. The system of increasing the number of members to be elected for that particular constituency could also be used to fill casual vacancies at the next opportunity.

Retirement

67. Unlock Democracy welcomes the government's proposal that members for the reformed second chamber should be able to retire. This is a particularly important provision when combined with long terms of office as it is possible a members circumstances may change during a 10 year period, in ways that they could not have predicted when they stood for office.

The electoral system preferred;

68. Unlock Democracy is pleased by the Government's recognition that members of the reformed upper chamber must be elected on a different basis from members of the House of Commons. There is widespread consensus that the second chamber should have a different culture and outlook from the House of Commons, and that members being able to exercise independence of judgement is essential. If the reformed chamber is to complement the work of the House of Commons it must be able to address legislation from a different perspective.

69. Unlock Democracy welcomes the rejection of closed list systems such as is used for elections to the European Parliament. Closed list systems encourage candidates for the second chamber to focus on the political party rather than the general public as a means of getting elected. Under such schemes, political parties have a huge degree of control over the chamber's final membership. This is unhealthy for a democracy; it would lead to what is essentially a system of political appointments by another name.

70. Unlock Democracy does not endorse any particular electoral system. Electoral systems can be modified to achieve different ends and as such we assess any proposed system on the effects that it will have rather than just its name. We support the use of a proportional electoral system that gives the voter the opportunity to choose between different political parties and individual candidates. The government has proposed that either the Single Transferable Vote or Open List system should be used to elect members of the second chamber. We have outlined our views on these systems below. However, we note that there was a very strong preference among the 3671 respondents who answered this question on our online survey, with 86.33 per cent favouring the use of STV.

Single Transferable Vote (STV)

71. STV uses preferential voting in multi-member constituencies. Each voter gets one vote, which can transfer from their first-preference to their second-preference and so on, as necessary. This means that fewer votes are 'wasted' (i.e. cast for losing candidates or unnecessarily cast for the winner) under STV. Therefore most voters can identity a representative that they personally helped to elect. Such a link in turn increases a representative's accountability. This strengthening of accountability would be particularly beneficial if, as we recommend, members of the second chamber served for long non-renewable terms of office.

72. With STV the design of the ballot paper has a significant impact on the way the electoral system is used by voters. STV ballot papers can range from a larger version of that already used in UK general elections to a ballot organised by party groups where the candidates are listed in the order chosen by the political parties. Ireland, Australia and Malta all use versions of STV to very different effect because of the different designs of the ballot paper.

73. STV in large multi member constituencies is a proportional system that allows voters to choose between political parties and individual candidates. It is also successfully used in the UK already (for Northern Irish local and assembly elections and Scottish local elections). Unlock Democracy would therefore support the use of STV for elections to the second chamber.

74. We would strongly oppose the introduction of Australian-style STV, in which voters have to choose between essentially voting for a closed list, or voting "below the line" and having to express a preference for every single preference. In practice, this is a closed list system by another name. Voters should only have the option of voting for candidates and should be free to express as many or as few preferences as they desire.

75. However, one of the issues with STV is that voters are presented with a large number of individual candidates from which to express a preference for. Larger multi-member constituencies are not significantly more proportional than medium sized ones yet have the potential to cause unnecessary confusion for voters. We therefore recommend that, if STV is used, constituencies are limited to between 5 and 7 members.

Open Lists

76. Party-list systems guarantee a high degree of party proportionality and ensure that every vote has equal value. Across the globe, list systems exhibit a lot of variation, chiefly determined by the size of districts, thresholds for securing seats and the manner in which the seats are allocated.

77. There are large numbers of open list systems that allow voters to choose between both candidates and parties. However, in some list systems the choice is more formal than real. If a list system were to be used it should be a completely open list system. The system used in Finland where voters can vote for an individual candidates and the vote also counts towards the party total, may be of interest. This was the system supported by the Conservative Party during the debates on the European Parliamentary Elections Act 1999.

78. There are a number of systems that can be used to translate votes into seats depending on whether you wanted to weight the system in favour of encouraging smaller parties and minority voices or to ensure that parties received a significant level of support before wining seats. Where list systems are used in the UK the D'Hondt method is used but the Sainte-Laguë method, the Huntington-Hill method and the largest-remainder method would also be possible. Overall we would recommend that Sainte-Laguë is used as it would produce a more proportional result than the D'Hondt method, which tends to benefit larger political parties.

Constituency Size

79. As already outlined Unlock Democracy believes that the second chamber should be constituted differently from the House of Commons to emphasise the different role that it plays in the governance of the UK.

80. Currently membership of the House of Lords is disproportionately skewed towards London and the South East. We do not believe this would be desirable in a reformed chamber. In particular Unlock Democracy believes that the second chamber should be a 'chamber of the union' and play a role in representing the nations and regions of the UK

at Westminster. This regional voice would emphasise the representativeness of an elected second chamber, without being seen to compete with the House of Commons.

81. When considering constituency size it is necessary to balance the needs of effective electoral administration with the need to create constituencies that have some meaning for the public. Regional boundaries are often seen as arbitrary, created for the ease of administrators with no regard for the sense of identity of local communities. It is not always easy to find a balance between these competing factors.

82. Unlike members of the House of Commons members of the second chamber will not be responsible for casework; therefore it would be feasible to have large regional constituencies. We do not believe that counties would be large enough units to work with a proportional multi-member system and so we do not consider this to be a viable option. The alternative would be to use the existing regional boundaries used for the European Parliamentary elections, or to create some entirely new constituencies.

83. On balance Unlock Democracy agrees with the government proposal that the 12 electoral regions already used to elect members of the European Parliament should also be used as constituencies for members of the second chamber, although these will need to be subdivided into 1-3 constituencies if STV is used. While they are too large to reflect more than the most basic regional identities they are easy to understand and are already in use.

How many members should each constituency elect?

84. As already outlined, Unlock Democracy supports the use of a broadly proportional electoral system using large regional constituencies and electing more than one representative per election.

85. For this to be effective and proportional in practice there would need to be a minimum number of representatives per constituency elected at each election. Currently for the European Parliament elections the minimum per region is three MEPs. It would be possible to use this as the minimum for elections to the second chamber, but this would not allow for the expression of political diversity in the smaller regions. As we want the second chamber to have a particular role in representing the regions we do not think this would be appropriate.

86. While we would support allocating members of the second chamber to each region in broadly the same way that the Electoral Commission currently allocates members of the European Parliament, Unlock Democracy would support five being the minimum number of candidates being elected to the second chamber at each election. This would mean that the smallest region in the UK, Northern Ireland, would have a minimum of 10 representatives in the second chamber, with five being elected every five years. This would be sufficient to be proportional but would also allow the political diversity of smaller regions to be reflected in the second chamber. We would also recommend using the Sainte-Laguë method as this would marginally benefit smaller regions.

87. The maximum number of representatives per constituency can either be determined by the population of the area, as is currently the case for elections in the UK, or on the basis of strict equality for each area regardless of population, as is the case with the US Senate.

88. The system used in the US Senate guarantees equal representation for each state regardless of the size of population. It was known to be distorting when the system was created and has become more so over time. In 1787, the factor was roughly ten times (Virginia to Rhode Island), whereas today it is roughly 70 times (California to Wyoming, based on the 1790 and 2000 census). Unlock Democracy does not believe this would be a suitable system for the UK—especially since the current governmental regions in England were created primarily for administrative convenience.

89. As already mentioned, the current House of Lords is dominated disproportionately by members from London and the South East which emphasises a general perception that governance in the UK is very London-centric. If the number of the representatives per constituency were determined purely on the basis of population then this would give London and South East far more members than other less populated areas of the UK. This would not facilitate the second chamber playing a role as a 'chamber of the union'.

90. Any system based on population will inevitably give a large number of representatives to London and South East as they are the most populous areas the UK. However it would be possible to use a degressive system so that the difference between the representation of the most populous and least populous regions was less extreme.

91. Below, we have included two models: the first assumes that half of the chamber is elected every five years (150 members to be elected per election) while the second assumes that one third of the chamber is elected every five years (100 members to be elected per election). In each, we have assumed that regions should have a minimum of five members and have allocated seats using the Sainte-Laguë method.

92. This model highlights some of the problems with the government's proposed model of electing the chamber in thirds. The 100 seat model would make it harder for parties to ensure their candidate lists ensure gender balance and include sufficient representation of other under-represented groups. To ensure sufficient political plurality, the smallest regions would have to be significantly over-represented compared to the rest of the country. It would also be significantly harder to introduce STV using this model as constituencies would either be less proportional or harder to manage. In addition to the undesirability of long, non-renewable terms, we believe this demonstrates the desirability of adopting the half-elected model.

Table 1—Half elected every 5 years

Region	Population (millions)	Seats per region per election	STV Constituencies
North East	2.638	6	1
North West	7.193	17	3
Scotland	5.206	12	2
Northern Ireland	1.812	5	1
Yorkshire and The Humber	5.621	13	2
Wales	3.038	7	1
West Midlands	5.662	13	2
East Midlands	4.825	11	2
East of England	6.179	14	2
South West	5.62	13	2
London	8.114	19	3
South East	8.871	20	3
Totals	64.779	150	24

Notes:

The effect of allocating a minimum of five seats per nation/region is that Wales and the North East get an additional seat each, and Northern Ireland would get two additional seats.

Assumes that between 5 and 7 members are elected to each STV Constituency.

The D'Hondt method yields exactly the same result in this case.

Table 2—One third elected every five years

Region	Population (millions)	Seats per region per election	STV Constituencies
North East	2.638	5	1
North West	7.193	11	2
Scotland	5.206	8	1-2
Northern Ireland	1.812	5	1
Yorkshire and The Humber	5.621	8	1-2
Wales	3.038	5	1
West Midlands	5.662	9	1-2
East Midlands	4.825	7	1
East of England	6.179	9	1-2
South West	5.62	8	1-2
London	8.114	12	2
South East	8.871	13	2
Totals	64.779	100	14-19

Notes:

The effect of allocating a minimum of five seats per nation/region is that Northern Ireland gets an additional seat while the South East gets one fewer.

Allocating between 5 and 7 members to each STV Constituency would be impossible using this model; the range would have to be extended to either 4-7 (which would be less proportional) or 5-9 (which would be less manageable).

If D'Hondt is used, the South East would gain a seat while the West Midlands would lose a seat.

Independents

93. Unlock Democracy does not accept that it is necessary to retain an appointed element in the second chamber to ensure that independents have a voice. It would be possible for independents to be successful in either of the proposed electoral systems.

94. The evidence of elections to the devolved chambers and the European Parliament, has already shown that voting habits are different depending on the chamber. For example the SNP received 45.4 per cent of the votes cast in the 2011 Scottish Parliament elections and was able to form a majority administration in Scotland, despite only receiving 19.9 per cent of the vote in the 2010 House of Commons election. Equally UKIP gained 16.5 per cent of the votes cast in the 2009 European Parliamentary election but only gained 3.10 per cent votes in the 2010 general election. In part this reflects differences in electoral systems however it is also clear that there is a public desire to support parties other than the three largest UK parties.

95. Neither open lists nor STV would disadvantage independent candidates in the way single member plurality (the system used to elect the House of Commons) does. STV would enable voters to express preferences between both independent and partisan candidates without having to worry about their vote not counting. Open list systems do not allow for voters to transfer their vote in this way, but larger seats would ensure that independent candidates with broad support could still get elected. In addition, independents would also have the option of standing on a slate, as

the Jury Team[50] demonstrated in the 2010 election. We are confident that if the public wants to elect independent members to the second chamber they will do so.

Timing of elections

96. The government has proposed that elections to the second chamber should be held at the same time as those to the House of Commons. This would have the advantage of reducing the costs of the elections to the second chamber and potentially increasing turnout, as the country would already be going to the polls. We agree with the government that combining elections is a sensible strategy. However we would prefer that the elections for the two chambers of Parliament are not held on the same day. In part this is a means of reinforcing the primacy of the House of Commons and emphasising the different roles that the different chambers play in the legislature.

97. Therefore, for as long as the House of Commons term is fixed at 5 years we believe that elections to the second chamber should be held on the same day as those for the European Parliament. This would mean the first elections being held in 2014. If the term of the House of Commons is reduced to 4 years, then we would suggest holding the elections on a day when most people in the UK are already going to the polls. We would suggest holding them on the same day as the Greater London Assembly, Scottish and Welsh local elections—most English local authorities outside of London also have elections on this day.

Transitional arrangements;

98. The government has set out a number of options for moving forward to an elected second chamber. We support the government's view that having a period of transition would be welcome and beneficial for the elected members. As it is intended that members should be elected in tranches, a transition in stages should be feasible and the government has shown how this can be achieved at different speeds.

99. Unlock Democracy's strong preference is to move more quickly to a smaller chamber, and to reduce the current members of the House of Lords down to 150 when the first elected members first take office (assuming a model in which half are elected every five years). This would help to establish a new culture within the reformed chamber and establish new working practices. It would also dramatically reduce the costs of the new chamber. It is for others to explain how the cost of more leisurely transitional arrangements can be justified.

100. It would be a matter for the existing members of the House of Lords to determine who should remain as transitional members of the second chamber. We note that a similar process was successfully undertaken when the majority of the hereditary peers left the chamber in 1999.

101. The only option we believe to be impracticable is for all current Peers who wish to remain in the chamber to do so for a full electoral cycle. We are already in a situation where the numbers in the House of Lords can make effective working difficult. This model would lead to the second chamber growing even larger in size, guarantee that the unelected members continue outnumber the elected members for more than a decade and ensure that the costs of the second chamber would rise exponentially before coming down again, to no identifiable purpose.

The provisions on Ministers and Bishops and Hereditary Peers

102. Unlock Democracy does not support specific places for religious representation in the second chamber. Rather we believe that these views can be represented by—and to—elected members.

103. Unlock democracy agrees with the government proposal that hereditary peers should not have reserved places in a reformed second chamber, although we agree that they should be able to remain as transitional members and be free to stand for election. The agreement in 1999 was that 92 hereditary peers would remain in the chamber until the second stage of reform. When we move to an elected second chamber that condition will have been met and it would

50 http://www.juryteam.org/

be inappropriate for the hereditary peers to remain. Unlock Democracy does not believe that a seat in the legislature should be a birthright.

104. Unlock Democracy believes that government ministers should not sit in the second chamber. Confining government ministers to the Commons would help to distinguish the two chambers, secure a degree of independence for the second chamber and emphasise the primacy of the Commons. It would also end the current absurd practice whereby ministers who happen to be members of the Lords cannot be held to account by the House of Commons.

105. The scrutiny of government activity should be a task undertaken primarily by the specialist committees in the second chamber. Specialist committees should have the power to question ministers, and call for papers and evidence from government departments. Individual members would continue to have the right to ask written questions of government ministers. We would also support ending the convention whereby ministers who are also members of the House of Commons cannot take questions in the second chamber.

106. The White Paper proposes that the Prime Minister should retain the right to appoint people directly to the second chamber as ministers. Unlock Democracy believes that this is an unacceptable retention of prime ministerial patronage and that all government ministers should be elected.

Other administrative options such as pay and pensions

Name

107. Unlock Democracy is concerned that the second chamber should be fully elected on a proportional system and have broadly the same powers as at present. We have a preference for it being a called a Senate but we recognise that it may be controversial in some quarters and that there are a number of other names that would be adequate. Our prime concern is the democratic mandate of the second chamber rather than its name.

Salary

108. Members of the second chamber should be paid the same salary and allowances as MPs, reflecting the greater amount of specialist committee work they would be expected to undertake as opposed to the large constituency caseload of MPs.

109. Committees should also have greater financial resources to employ specialist staff or consultants to advise members. The example of the Joint Committee on Human Rights, which has paid specialist advisers, should be replicated. Committees' administrative resources should also be increased.

Is a referendum needed?

110. Unlock Democracy is sympathetic to the argument that significant constitutional changes, such as House of Lords reform should be subject to a referendum. The case for a referendum is certainly strengthened by the holding of the referendum on the Alternative Vote, which was in many ways a much less significant change to our system of government. However, unlike in the case of electoral reform for the House of Commons, there has been political consensus on this issue for some time. Indeed a predominantly elected second chamber was a manifesto commitment of the three main parties at the last two general elections.

111. Unlock Democracy believes that referendums should be triggered by a popular process rather than by the government of the day. If a minimum of 5 per cent of UK voters petitioned for a referendum on whether to proceed with House of Lords reform, we believe that Parliament should respect that and trigger a referendum. However as we believe this issue is settled and has broad popular and cross-party support, we do not believe the government needs to hold a referendum to legitimise the change.

Tax status

112. Unlock Democracy agrees with the government that all members of a reformed second chamber should be resident in the UK for tax purposes. We think it is regrettable that members appointed to the current chamber have not been held to this standard.

Franchise

113. Unlock Democracy supports the proposal that when the honour of a peerage is separated from membership of the legislature it would be entirely appropriate for the franchise to be changed to allow peers to vote.

Disqualification

114. Unlock Democracy supports the government's proposals on the disqualification regime for the reformed chamber. Although it is unusual in elected second chambers for the age restrictions on candidates to be the same for both chambers, we very much welcome this proposal. Unlock Democracy believes it should be up to voters to decide whether or not an individual candidate has the right skills and experience to serve in the legislature.

Expulsion or suspension for misconduct

115. Unlock Democracy believes that the expulsion regime for misconduct for members of the reformed second chamber should, as a minimum, be the same as for the House of Lords. However we welcome the fact that the reformed chamber will have the opportunity to go further than this if it wishes.

Disqualification of former members of the House of Lords standing for election as MPs

116. Unlock Democracy agrees with the government that the reformed second chamber should be a scrutinising and revising chamber and should as far as possible be prevented from becoming a training ground for aspiring MPs. We would not want to see situations like in Canada where MPs can lose their seat, be appointed to the Senate, resign their seat to fight an election for the lower chamber and then be re-appointed to the Senate when they are unsuccessful[51].

117. We believe that it is essential that there is a quarantine period during which it is not possible for former members of the second chamber to stand for election to the first. This will help to limit the temptation to do constituency work and with other measures outlines above will help to differentiate the second chamber from the House of Commons.

118. Unlock Democracy also supports there being a period of time during which former members of the House of Commons cannot stand for election to the second chamber.

Lobbying

119. Currently, as long as they do not votes on the issue concerned, it is possible for members of the House of Lords to act as paid advisers on government and legislation. Unlock Democracy does not believe that this is an appropriate role for a members of the legislature and hopes that this practice will not be permitted in a reformed chamber.

Appendix 1

Results of the Online Survey conducted by Unlock Democracy 14 September—5 October 2011

1. The government has proposed that the reformed second chamber should be either fully or 80 per cent elected. Do you think it should be

Fully elected	2300	57.69 %
80 % elected, 20 % appointed	1192	29.90 %
Other	495	12.42 %
Total number of responses	3987	

51 Senators Fabian Manning and Larry Smith both did this in 2011.

2. If some members of the second chamber are to be appointed, what types of people would be acceptable?

Anglican Bishops	385	10.64 %
Representatives of all faiths	1263	34.89 %
Specially appointed government ministers	401	11.08 %
People appointed by political parties	425	11.74 %
People appointed by an independent body for their professional/academic expertise	2970	82.04 %
Representatives of professional bodies (eg. British Medical Association, Royal College of Nursing)	3190	88.12 %
Representatives of trade unions	1745	48.20 %
Members of the public randomly selected from the electoral roll	1269	35.06 %
Other	361	9.97 %
Total number of responses	3620	

3. MPs are currently elected for up to 5 years at a time. This is usually longer for elected second chambers and the government has proposed they should be elected for 15 year terms. How long do you think members of the second chamber should be elected for?

15 years	356	9.21 %
10 years	1529	39.55 %
less than 10 years	1981	51.24 %
Total number of responses	3866	

4. Should elected members of the second chamber be able to stand for re-election?

Yes	2998	76.46 %
No	923	23.54 %
Total number of responses	3921	

5. The government is considering using two voting systems to elect the second chamber: the single transferable vote (STV), in which voters can rank any or all candidates in order of preference; or open lists, in which voters put an "X" beside the candidate they most prefer. Both systems are broadly proportional. STV offers more choice and ensures

that more votes will count. It is also better for independent candidates. However, the open list system is significantly simpler to vote in. Which system would you prefer:

Single Transferable Vote	3169	86.33 %
Open Lists	502	13.67 %
Total number of responses	3671	

6. The current House of Lords can delay government legislation by up to a year. However, the House of Lords rarely exercises this right, and has only used it four times in the past 60 years. Most experts agree that a wholly or mainly elected second chamber is likely to want to use this power more frequently. Should the powers of the second chamber be changed to reflect this?

No, the current rules should stay.	1734	44.61 %
Yes, the current rules should change.	2153	55.39 %
Total number of responses	3887	

7. Which of the following proposals to alter the second chamber's existing powers to delay legislation would you find acceptable (tick all that apply)?

Reduce the amount of time the second chamber can delay legislation by.	781	21.34 %
Allow the House of Commons to overrule the second chamber if two-thirds of MPs vote to do so.	2085	56.98 %
Only allow the House of Lords to block legislation on more than one occasion if two-thirds of its members vote to do so.	1388	37.93 %
Require both chambers to set up a joint committee to work out a compromise if the second chamber rejects the legislation a second time.	2690	73.52 %
Total number of responses	3659	

23 July 2011

TUESDAY 22 NOVEMBER 2011

Members Present

Lord Richard (Chairman)
Lord Hennessy of Nympsfield
Lord Norton of Louth
Lord Trefgarne
Lord Trimble
Lord Tyler
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Mrs Eleanor Laing MP
John Stevenson MP

Members of the Australian Senate (QQ 407–427)

Examination of Witnesses

Senator Lee Rhiannon, Senator for New South Wales, Australian Greens, **Senator the Hon Michael Ronaldson**, Senator for Victoria, Liberal Party, and **Senator the Hon Ursula Stephens**, Senator for New South Wales, Labor Party

Q407 The Chairman: Good evening to you and good morning to us. Let me say how grateful we are to the three of you for making time to come and talk to this Committee. I am still slightly in awe of the technology that enables us to do this over 14,000 miles, or whatever it is, but it is very helpful indeed for us to have a session with Members of the Australian Senate, because we have been hearing quite a lot about the way in which you do business in the course of our evidence, and we would very much like to take it up directly with you. As you know, we are engaged in pre-legislative scrutiny by both Houses of the Government's proposal to reform the House of Lords. Included in that, obviously, is a discussion of the role of the House of Lords. We have been looking at some second Chambers in other countries. In relation to Australia, we have found some points of similarity, which might help us in looking at the Government's proposals here. Perhaps I could start by asking you a rather general question. What do you see the role of the Senate of Australia to be?
Senator the Hon Michael Ronaldson: Perhaps we could introduce ourselves first and then start from there, which might give you some background to where we come from. I will pass to Senator Stephens first, who is the Government Whip on the small group, and then we will go left and right from there.
Senator the Hon Ursula Stephens: Lord Richard, good evening. I am Ursula Stephens. I am a government Senator from New South Wales. With me I have Senator Ronaldson, who is an opposition Senator from Victoria and a former Member of the House of Representatives, so he has a unique perspective on the issues that you are considering. On my left I have Senator Lee Rhiannon, who is a new Greens Senator, formerly a Member of the New South Wales Parliament. She also has a different perspective, which may well help to inform your Committee's work. With me we have Bronwyn Notzon, the Clerk Assistant (Procedure), who may help us out on some of the technical questions that you want to pursue.

Q408 The Chairman: Thank you very much. Could we hear a little on what you consider the role of the Senate in Australia to be? Where does it fit into the general constitution and the political framework and what do you see as the object of its existence? Indeed, perhaps you could say something about the powers that the Senate has at the same time as you are dealing with the role.
Senator the Hon Michael Ronaldson: I was looking through the documentation today, the attachments to your draft Bill and part of the draft Bill itself. What struck me initially is that what you are trying to do with the Lords, to a certain extent, bears some relevance—but in other cases little relevance—to the historical background to the role of our Senate. As I am sure you have heard, our Senate, the House of review, was framed around the desire

of the smaller Australian states at federation to make sure that the larger states of New South Wales and Victoria did not dominate the political process. Clearly, in the lower House—the House of Representatives, which is based on population—the largest states have a significantly greater number of seats, and therefore far more influence. At federation, the smaller states demanded and obtained equal representation in the Senate, which continues to this day. Perversely, the value of a Senate vote in Tasmania—the smallest state, with about 400,000 people—is about 12 times greater than in New South Wales, which has 8 million or 9 million people.
That is the historical background to it. Our upper House, our Senate, can reject any legislation. I was interested to look at the new role of your Senate, where you are going to have professional, full-time politicians. I was interested to see how you thought that that was going to work in the context of them being happy to sit back and watch the Executive in the Commons run with little or no input, which seems to be the case at the moment. I am not too sure what you can or cannot reject. If you could answer that for me, it might make my answer a little easier.

Q409 The Chairman: In theory we can reject anything. We cannot hold up a Bill that is connected with supply—money—but we have the power to reject any normal Bill, if I can call it that, coming from the House of Commons. If the Government then reintroduce that Bill to the House of Commons they can, under the Parliament Acts, get the Bill passed without it coming back to the Lords. In other words, we do not have a veto. We have a right of rejection, but that right of rejection is only once. If the Government insist on using the Parliament Act, they can pass the Bill again in exactly the same form as the one that we rejected and it would become law. We do not have an automatic power of rejection in the way that I gather you have.
Senator the Hon Michael Ronaldson: We have the ultimate right to reject any piece of legislation as often as we desire but, as I am sure you are aware, there are some ultimate sanctions with the dissolution of both Houses of Parliament and fresh elections. That is, I think, the fundamental difference between the two. From my point of view, if you do not have that power I am just not sure how your 300 full-time Members are going to be controlled, for want of a better word, when they are there to deal and review the legislation.

Q410 The Chairman: I am not sure what you mean by "controlled". Are you speaking as an ex-Chief Whip?
Senator the Hon Michael Ronaldson: I am told that that is the language that I always use in the context of the Chief Whip. We replicate in the Senate the party discipline in the House of Representatives, with the two major parties. Senator Rhiannon with the Greens must have some form of party discipline as well. There is really no difference in a discipline sense between the lower House and the upper House. I consider myself a Victorian and Senator Stephens and Senator Rhiannon are New South Wales—all three of us are members of our political parties ahead of our states, although we would never say that publicly!

Q411 Oliver Heald: The voting system that you have is obviously unequal, as you have described. I understand that people also vote on the party ticket in 90 per cent of cases. To what extent does that affect the standing of your House and the way you are looked at by the voters?
Senator the Hon Ursula Stephens: Perhaps I can respond in the first instance, and then my colleagues may add comments. In the majority of issues, when the votes are considered and presented mainly on party lines, the work that goes on within the party to achieve the consensus position and determine the final position on legislation pre-empts the introduction of that Bill into the Senate. Then, even if there is opposition from the Opposition or the minor parties, the Committee process allows a lot of the contentious issues to be explored and, in most respects, unless there is a particular ideological opposition to a Bill, where the Opposition has determined that it will not support the Bill in any shape or form, the strongest role of the Senate is often in moderating the Bill or improving the drafting by suggesting amendments that give legislation coherence. Quite often, much of our work is quite collaborative, consensual and agreeable, unless there is an ideological position of opposition. By the time that the Bill comes into Parliament to be debated in the Senate, we have worked through many of the contentious issues.

Q412 Oliver Heald: Do Australians see the House of Representatives as the primary House—the one that makes the initial decisions which you are then reviewing? If so, do you have constituents in your areas who will get in

touch with you and discuss Bills with you, or ask if you can have a new road in their area? How does the balance between the two Houses work?

Senator the Hon Ursula Stephens: On your first question, yes, absolutely, the people of Australia believe the House of Representatives to be their local representatives. They identify very clearly with their local Member, who works his or her constituency very hard. We do not have fixed terms. We have a three-year, plus or minus a few months, electoral cycle, so it is a continuous campaigning lifestyle for our Members of the House of Representatives. I think that there is a generally agreed view that the Senate performs the role of review. We are there to moderate excesses and to give voice to some of the concerns that may not be able to be given a clear hearing in the House of Representatives.

I will ask Senator Rhiannon to respond to your question about constituencies. I will just explain the Government's method of dealing with that. As a Member of the Government in the Senate, I am allocated a number of seats that are not held by the Government in the lower House in my state. I look after those constituents who do not have a government representative. Those people might come to me about issues and legislation. They might not come to me about a local road, because we have a much clearer sense of the State Government's responsibilities on roads and domestic issues. I will ask Senator Rhiannon to explain how the Greens, who have increased their numbers in the Senate, are tackling that issue.

Senator Lee Rhiannon: Thanks very much. As a minor party, we have nine Senators and only one Member in the House of Representatives. The issue of working with constituents is very important for us and it takes up quite a bit of time. As a small party, we have to spread ourselves fairly thin, looking after our portfolios.

I thought that I might go back to some of your earlier questions. First off, I congratulate you on working on this reform package. I have the portfolio of democracy for my party and it is something that I feel very passionate about. To be frank, when I was growing up the House of Lords did not have a good name for itself among many people in a place like Australia, because you were not elected. When I heard that you were working on reform, I was extremely impressed. I think that it will enhance the democratic process and bring greater confidence to people that they have opportunities to engage with their elected representatives, which is so important.

If I understood the question correctly, somebody asked how the voters view the voting ticket and how they respond. That is a very interesting question. In by far the majority of elections, the make-up in the Senate is not exactly as it is in the House of Representatives. Until the 2010 election, Labor or the coalition in recent times have always formed the Government, and in the Senate we have had a mixture of parties holding the balance of power. There was only one three-year period when power in the House of Representatives lined up with power in the Senate. I think that might help to respond to the earlier question. My interpretation of that is that, while voters make the decision about who they want to govern them in the House of Representatives, in the Senate they are thinking about checks and balances, and therefore we usually have a different system where parties have to come together in some sort of coalition, which I think is an interesting comment on the democratic process. I support the comments of my colleague Senator Stephens about the Committee system. I think it was in the 1980s that our Committee system started to develop, under a former Attorney-General. I think that it is one of the great benefits of the system. Senator Stephens described very well how we work both on legislation and on taking up a whole range of issues. It is quite extraordinary the amount of work that is undertaken through Committees.

Q413 Lord Trefgarne: Lord Chairman, I was going to add to the remarks that you were making earlier about the existing powers of the House of Lords. You referred to the Parliament Act, which in truth is a pretty blunt instrument. It has been used only four times, I think, since the Second World War. Although the House of Lords no doubt sometimes gives in when it is threatened with the Parliament Act, the Government sometimes give in if the House of Lords threaten to make them use the Parliament Act. So it acts in both ways, added to which, of course, we have unrestricted powers in relation to secondary legislation. The Government Bill that we are considering assumes that the powers of the reformed House will remain the same as the powers of the existing House. That may not bear final scrutiny.

Senator the Hon Michael Ronaldson: In that regard, I am interested to hear what you are hoping to get out of the revamped House of Lords, with the 300-odd people, who, from what I can see, will be full-time parliamentarians, for want of a better term. I am just interested to hear what your expectation of their roles is, as that might enable us to give you some better gratuitous advice on how it might be appropriately handled.

Q414 Lord Trefgarne: That has been a matter that we have been discussing and considering very closely in recent weeks. The expectation is that the new elected Members of the House of Lords will not be overly involved in what the House of Commons call constituency matters. Again, I do not think that it will be possible to impose a ban on that, but the constituencies for the House of Lords will be very much larger than those in the House of Commons, and I think it is therefore expected that the new Members will not be involved in such detail in constituency matters as Members of the House of Commons are at present. You referred to the number of 300 or 350. My view is that that number may not be sufficient, but that, too, is a matter on which we have yet to reach a conclusion.
Senator the Hon Michael Ronaldson: I do not think that you can make the assumption that you will not be engaged in constituency-type work, particularly if the elected Lords in an area—as Senator Stephens said—come from the other party. There is almost a constituency review process as well. If you are a Member of the non-ruling party, the Lords might find that they have more people knocking on their doors than they might otherwise have anticipated.
Lord Trefgarne: You may very well be right.

Q415 The Chairman: In the Lords here, we spend a very large amount of our time looking at the fine detail of legislation that has been passed in the Commons. Procedure in the House of Commons now means that the length of time that they spend on detailed consideration of Bills has decreased. They do not go into the same sort of detail as they used to, as some of us who have been in the Commons and come up to the Lords are aware. We spend a great deal of time going through the minutiae of legislation. Do you spend a lot of time on that? Is that one of your main functions?
Senator the Hon Ursula Stephens: We do that analysis and close scrutiny through the Committee process in the first instance. That gives an opportunity for the Senate Committee around a particular Bill to bring in witnesses, who may be government officials or other stakeholders who will be affected by the Bill. They have the opportunity to present on the detail of the Bill, the draft legislation as it is proposed, and the explanatory memorandum that is published with the legislation. That is all up for scrutiny. If that Bill has been referred to the Committee by our Scrutiny of Bills Committee, that then provides the opportunity for a broader consultation process and Committee stage. The Committee then reports back on the Bill to the Parliament, highlighting perhaps strengths and weaknesses and perhaps recommending some amendments. There is an opportunity for opposition Members to add additional or dissenting comments. When the Bill is introduced into the Senate, we have Second Reading stage and then we go into consideration of the Bill in Committee stage. It is not forensically line by line, but it can be section by section, with a question and answer process that can go on for quite a long time. We have had a package of clean energy Bills, where we had in total, I think, seven days of questions and debate. Does that answer your question well enough?

Q416 The Chairman: I think so, yes. You do not go through it line by line and clause by clause.
Senator the Hon Ursula Stephens: No. It would rarely happen that we do that. We go to the purpose and the intent and the consequence of the Bill through those two processes.
Senator Lee Rhiannon: We can do that, but I have never known it to happen.
Senator the Hon Michael Ronaldson: We will go through those clauses that are the subject of the amendments. That is probably the simplest way of putting it. The more the amendments, the greater the number of clauses that are looked at, but it is not a detailed look at every aspect of the Bill.

Q417 The Chairman: Do you have a procedure in the Senate for looking at legislation that is the same as the procedure in the House of Representatives? In other words, do you have Second Reading, a Committee stage and then a Report stage? Do you have those different stages?
Senator the Hon Michael Ronaldson: Yes, we do. The difference is those events that occur around that activity in the House of Representatives. What I mean by that is that while there are some endeavours to expand the Committee structure in the House of Representatives, it is clearly inferior to the Senate. That is the fundamental difference between the two Chambers. Virtually everything that they do, we do, in the context of the passage of a Bill, but it is the rigorous Committee process in the Senate that sets it apart from the House of Representatives.

Q418 Lord Tyler: At the outset, Senator Ronaldson said that of course there were some similarities and some possible differences with what is proposed here. Could I explore some of the differences? As you rightly all said, yours is a federal constitution—we do not have a federal constitution in the United Kingdom—with the result, according to my arithmetic, that a Tasmanian vote is nearly 16 times more powerful than a New South Wales vote. Again, that would be very different here. Secondly, as I understand it, there is a potential change in the representation of the parties in your Senate at each general election—the same time as in the House. Again, that is not what is proposed here. Ours is going to be in tranches of elections. Most importantly, from the point of view of the elector, am I right in thinking that voting is compulsory for the Senate as well as for the House and that if you start voting below the line—I think that is the expression—you have to put a preference number against every candidate? The inducement to go above the line and simply vote for the party ticket is very strong, particularly for those who have been persuaded to vote by the compulsory need to vote. Am I right?
Senator the Hon Michael Ronaldson: Of course the greatest inducement is the desire to get in and out of the polling booth as quickly as possible. That probably tends to drive behaviour more than anything else; as I am sure you will appreciate. Culturally, the view of the community is that very few people vote below the line. It has now become a cultural acceptance that voting above the line is the norm. What was the other question?
Senator Lee Rhiannon: It was about PR and the votes between Tasmania and New South Wales. I think he gave a good summary.
Senator the Hon Michael Ronaldson: You are absolutely right. The only thing that I would say is that if we ever attempted to change that, those who now see themselves as Members of political parties would very quickly see themselves as state representatives and would fight it with great passion, as I am sure you would be aware.
Senator Lee Rhiannon: Perhaps I could add something about the issue of ticket voting. I come from New South Wales and I was in the New South Wales Parliament. The Greens put it to the Government to change the method of upper House voting to get rid of ticket voting because of some serious problems that arose with practices that were legal but were widely seen as abuses of the system. There is no longer ticket voting—parties no longer lodge a ticket as you would understand it and as is the case in the Senate. There is still above the line and below the line voting, but voters who choose to vote above the line can put "1" or "1, 2, 3, 4". If you vote 1 Labor, 2 Green and 3 Liberal, you take the 1 for Labor and add it to the order that they have given to their Members; the 2 vote for Greens is added to the order that they have given, and subsequently. It is still an above-the-line voting system, but it is fundamentally different—the way it is described is that it gives the decision on preferences back to the voter rather than it being with the parties, doing what are often called back-room deals. I am part of a party, so I am not being rude about that, but ticket voting gained a bit of a bad tone, which has arisen with the Senate system.

Q419 Mr Clarke: As you know, this Committee consists of Members of both Houses and I am a Member of the Commons. Can I ask what the risks and benefits are in allowing Senators to stand for election as Members of the House of Representatives? Is that a real issue?
Senator the Hon Michael Ronaldson: You cannot do it, so it is not an issue. You cannot be a Member of both Chambers. I know that you are thinking of introducing a four-year rule, but that does not apply in our system. You can go between both Chambers, but you cannot be a Member of both Chambers at the same time.

Q420 Mr Clarke: Should Senators who switch parties lose their seats?
Senator the Hon Michael Ronaldson: Historically, people who change parties under our system, whether it is in the lower House or the upper House, are in for the chop reasonably quickly. The voters and the parties deal with that very quickly. I do not think you will need to write any rules in that regard. In some respects, I think that we all consider that we are still elected as individuals and that we should retain the right to support the party of our choosing, but having said that we must also respect the right of the party to remove us very quickly if we do not keep our side of the bargain.
Senator Lee Rhiannon: You really have to go back to the first half of the 19th century for when that happened a great deal. It has fallen away enormously. There is only one example that I can think of, Cheryl Kernot. In fact, we can think of two recent examples, but Senator Ronaldson has described it very clearly.
Senator the Hon Michael Ronaldson: Can I ask, when you are looking at this review is it your intention to have an effective requirement that the Government of the day must retain the confidence of both Houses? Under our

system, I think it will forever be the position that neither party will have control of the upper House. Therefore, effectively the Government of the day must retain the confidence of the Senate, because ultimately the Senate can force a Government to an election. They can refuse supply and they can reject Bills, which will force the Government to go to the Governor-General to dissolve both Houses if that is the desire of the Government. The ultimate sanction for the Senate is to reject supply, which will force the Government of the day to go back to the people for a mandate. I was not sure from reading the information that was provided whether you will move to an effective system where the Government of the day will require the support of both Chambers.

The Chairman: The short answer to that is no. The right to throw a Government out remains with the Commons. Indeed, some 15-odd years ago, when I was a very young Leader of the Opposition in the Lords, I tabled a Motion that this House has no confidence in Her Majesty's Government. We had a day's debate and we were beaten by 400 to 100, or whatever it was. The interesting thing was that nobody was sure what the effect of that was going to be. We had a lot of political scientists and various other people rushing around asking, "What happens if the Lords expresses no confidence in Her Majesty's Government?" The answer was that nothing would happen. If by any chance we had won that vote, nothing would have changed. The Government's proposal is, again, that nothing should change and the right to throw Governments out rests with the House of Commons and not with the Lords.

Q421 Lord Norton of Louth: The House of Lords actually did pass a Motion of censure against the Government in 1911, but it had no effect. How are conflicts resolved between the two Chambers? I know that if they are not resolved, ultimately you can end up with a double dissolution and that happened six times in the 20th century, but short of that, how are conflicts resolved if there is disagreement between the two Chambers? To what extent is conflict dictated by party? Stanley Bach makes the point in his book on the Senate that party overrides all, whether it is the base of representation or whatever. So how much does party really drive this?

Senator the Hon Ursula Stephens: I would think almost totally, to be perfectly frank. If there is an impasse between the Senate and the House of Representatives, it will come down to hard-nosed negotiation between the party leaders and the managers of business to try to find a resolution. The resolution may be compromise or, in the most drastic situations, it may well be the Government going to the Governor-General and seeking to dissolve the Parliament, or the Cabinet making a decision to go to an early election. We have those options, but it is very much a case of 11th hour negotiations to get legislation across the line. There is an expression that is often used in Australia—whatever it takes to get those Bills through. It can mean some awkward compromises and amendments to legislation that then has to be further amended in a new Parliament to resolve some of those issues. I do not know whether colleagues have any other comments on that.

Senator the Hon Michael Ronaldson: In many cases those disagreements are overcome by the Government effectively withdrawing the legislation. All our provisions are under Section 57 of the constitution. The final outcome is a double dissolution, but under the constitution there is the ability to have what is called a conference, which has been used only twice since federation. That is only for Senate-initiated Bills and for disagreements on amendments to those Senate-initiated Bills. It is called a conference and it has been used only twice. Basically, the resolution between the two Chambers is either the withdrawal of the legislation, effectively, because it is just laid to one side, or the ultimate outcome is double dissolution. The interesting part is that a Government may well go to an election on the back of the trigger from a piece of twice-rejected legislation and not even bother putting that legislation back in after the election. So it is as much a political trigger as it is a legislative trigger, if that makes any sense.

Q422 Lord Norton of Louth: You stress the importance of negotiations between parties in determining the outcomes. Senator Ronaldson referred to the Section 57 provision. Stanley Bach makes the point that the determining factor for whether that comes into play is whether the Government enjoys a majority in the Senate. So if it does not, it is vulnerable, but if it does, then it is really not an issue.

Senator the Hon Michael Ronaldson: Sorry. Could you say that again?

Lord Norton of Louth: Section 57 would be triggered only if the Government does not enjoy a majority in the Senate.

Senator the Hon Michael Ronaldson: Sorry, yes absolutely.

Senator the Hon Ursula Stephens: Senator Rhiannon mentioned the three-year period when the former Government had absolute control of the Senate and the House of Representatives and was able to enact quite significant legislation that, in the eyes of many Australian electors, was seen as a step too far. It comes back to the Australian voters' perception that the Senate acts as a House of review and moderation on the excesses of the House of Representatives, in many respects. That is why we now seem to have a much greater tendency to have no absolute control by one party. That is happening in our state Parliaments in Australia as well as federally. We are in minority arrangements all the time.

Senator Lee Rhiannon: It is interesting that since that three years, from 2004 to 2007, when the coalition had control of both Houses, a number of commentators, even conservative ones sympathetic to the coalition, often say that they think it was to the disadvantage of the coalition to have gained such enormous power, because their own legislative programme got ahead of where their own voters and support base were at. There is obviously other analysis, but I have always thought that it was interesting to contemplate how that played out.

Senator the Hon Michael Ronaldson: I am very much looking forward to that unfortunate situation happening again, and for a long period.

I think that once you have an elected House of Lords and the public become used to it, you will find that perceptions of the Lords may well change and the role as a reviewing House will be more widely respected by the community. There is absolutely no doubt that a number of people do not vote for the same political party in the House of Representatives and the Senate. As you are aware, it is a half-Senate election normally, every time the House of Representatives has a full election. For a number of years, parties that have won a landslide victory in the House of Representatives do not see that replicated in the Senate. There is a level of maturity about the community's view of the role of the Senate. That is why I think it is so important for the Lords, with this change, to explain what its role is going to be, to engender a similar community view. That will make the Lords work as effectively as I believe our Senate does.

Q423 Mrs Laing: I wanted to explore further the relationship between the two Houses. Lord Norton has asked that question. Can I just confirm that it is not unusual, when there is a clash between the two Houses, that this leads to dissolution of Parliament?

Senator the Hon Michael Ronaldson: It is unusual. The ultimate sanction that the Senate has with the ruling Government is effectively to force that Government and the Prime Minister to go to the Governor-General to seek a dissolution of both Houses. So no, it is most unusual. What is more usual is, as Senator Stephens said, for the legislation to be re-amended or for it to be laid on the table by the Government and not pursued.

Q424 Mrs Laing: Thank you very much for clearing that up. It was also fascinating to hear what Senator Ronaldson said about what happens in constituencies. I think that I am right in saying, Senator Ronaldson, that you said that we should not assume that Members of the upper House will not be involved in constituency work. Does that also mean that they campaign in constituencies? Could we explore a little further what happens on the ground between the Members of the two Houses? Is it normal for Members of both Houses to be campaigning in a constituency all the time?

Senator the Hon Michael Ronaldson: The Senators do not campaign as Senators. They campaign for one of the lower House Members of their own party in a marginal seat, or they vigorously campaign against a marginal lower House Member from another party. Senator Stephens talked about arrangements where we, as parties, will look after various seats. They are described by the Conservative Party as patron Senators. I am patron Senator for a number of seats, some of which are winnable, including one that I very much hope we will win and then become the Government. Senator Stephens will be similarly campaigning in Conservative seats to ensure the election of a new Labor Member or to support the incumbent Labor Member.

Senator the Hon Ursula Stephens: Let me take your question about constituency issues. In my experience—I am sure that my colleagues have the same—in Committee work the Senators tend to become experts in specific areas of policy. Today, there was a very important report tabled in the Parliament about prosthetic hip replacement. The inquiry around a failed surgical implant is a good example of how Committee Members become quite expert in some areas. How that translates into constituency work is that, if you are known to have a level of expertise, you will often find that, because everything in our Parliament is on the web and is very accessible, individuals who have a particular case might seek you out because of your expertise and experience, or your interests or

background. Then you can become, even within your own party, a kind of expert on something quite obscure or specific. That also brings a different kind of constituency to you—one that perhaps you would not have really thought about before.

Q425 Ann Coffey: I wanted to pursue a bit the timing of elections. We had a discussion yesterday in which Unlock Democracy came to give evidence. They were adamant that it was not a good idea to hold elections for the House of Lords and the House of Commons on the same day, because the understanding of what the House of Lords was for would not be helped by the focus on the House of Commons and electing a Government. It is not clear to me whether you have elections for the House of Representatives and the Senate always on the same day. If you do, do you think there is a focus on the election for one House rather than another?
Senator the Hon Michael Ronaldson: There are very limited circumstances where there are separate elections, which is when the timing between the two Houses gets out of kilter. I will not go into that now. On rare occasions, there are half-Senate elections only. From a cost point of view, I think that even if you have them separately once, I suspect you will have them at the same time next time, if possible, because there is little or no justification for holding them on separate occasions. I would think that after your first five-year cycle the community will know very well what the role of the Lords is and it makes enormous sense to me to hold them at the same time. There is a level of maturity in the Australian voting community now and I think they would be quite annoyed if we separated them. They see it as an appropriate course of action and they understand the difference between the two Houses. As I said, they may fill out the ballots to the two Houses differently. They may well vote for the Government of the day in the lower House but for another party in the Senate. So I think there is a level of maturity that I am sure your community would gain very quickly as well.
Senator the Hon Ursula Stephens: Can I make one other comment on that point? That goes to the issue that we have compulsory voting in Australia. Besides the actual costs of asking our voters to turn out twice, the organisation for mobilising that whole process is pretty extraordinary. Having voting for both Houses at the same time reduces the level of informal voting and reluctant voters or non-participation. That is another thing that we keep in mind here.

Q426 Ann Coffey: How do you mean that it reduces the number of informal voters? I do not understand.
Senator the Hon Ursula Stephens: The point that I was making was that, as Senator Ronaldson said, there is a level of maturity and an expectation in our voters that we are not going to be wasteful. The notion of having two different ballot days would mean that people would express their concern and dismay by voting informally. Perhaps it is an Australian thing.
Ann Coffey: What is an informal vote?
Senator the Hon Ursula Stephens: A spoilt paper. We recently had an election in New South Wales where the voters were very disillusioned and there was an extraordinary number of ballot papers that said, "A pox on both your houses". That is an informal vote.

Q427 Lord Hennessy of Nympsfield: What does the Australian Senate not do very well! What should we beware of replicating from your system?
Senator the Hon Michael Ronaldson: What an extraordinary question. We do everything very well. I know that Mr Laurence Smyth is there. I hope you are finding the discussion with the three of us interesting. I think that the success of this change will very much involve the success of your Committee system. I encourage you to have Mr Laurence Smyth spend as much time as possible with our Clerks in relation to the way the Committee system works. I think you will get the same benefits that we do. I do not think that there are any significant downsides to the Senate. I think that we have a role that we play well. I am sure the Members of the Lords will understand when I say that we are the butt of some jokes from the House of Representatives, but I think we perform a very useful role. It is a thorough and meticulous Committee process and I think that our democracy is far better for the institution.
Senator Lee Rhiannon: I came from a state upper House to the federal Senate. We have similar procedures and Standing Orders that have evolved from the Westminster system, but one thing that I have been very impressed with in the Senate is the degree of co-operation and negotiation. Everyone gets a fair go in the procedures, whereas in the upper House in the New South Wales Parliament—I was in one of a number of minor parties

there—we had to work really hard and use procedures, often in ways that I did not want to use them, just so that we could be able to get something into *Hansard*. Here there are negotiations so that you get your fair time. We never had anything like that in the State Parliament, which is interesting considering that our Standing Orders are largely similar. I must admit that I cannot give you any examples of where we could improve—I am sure there are some. I have only been here a short time, but I wanted to flag up the degree of co-operation through negotiations, which I think is very commendable and makes it more democratic.

The Chairman: I gather that we are going to lose the connection in about a minute. On behalf of this Committee, we are very grateful to the three of you for giving up your time and answering our questions. It really has been an extraordinarily useful session from our point of view. Thank you very much indeed.

Senator the Hon Ursula Stephens: Good luck with your deliberations and thank you. We will follow it with interest.

The Chairman: I hope that the weather is better than it is in London.

Senator the Hon Michael Ronaldson: If you have further questions, I am sure that we would be quite happy to have further input, if that was the desire of the Committee. We are rising at the end of the week, but if you have further questions we can be contacted either collectively or individually.

The Chairman: Thank you very much indeed for your help.

MONDAY 28 NOVERMBER 2011

Members Present

Lord Richard (Chairman)
Baroness Andrews
Lord Hennessy of Nympsfield
Bishop of Leicester
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Lord Trefgarne
Lord Tyler
Baroness Young of Hornsey
Gavin Barwell MP
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Mrs Eleanor Laing MP
Dr Daniel Poulter MP
John Stevenson MP

The Archbishop of Canterbury (QQ 428–451)

Examination of Witness
The Most Rev and Rt Hon Rowan Douglas Williams, Archbishop of Canterbury

Q428 The Chairman: Archbishop, thank you very much for coming. We are grateful. I think you know what the Committee is about and the issues that we are faced with. Would you like to make an opening statement before we launch the questions at you?

The Archbishop of Canterbury: Thank you, Lord Chairman. I am very grateful to the Committee for this opportunity to make some introductory remarks. The Committee will have had copies of the submission that the Archbishop of York and I sent, which expresses the views of the Bishops. The Committee will know that we welcome the draft Bill as an opportunity to debate reform of the House of Lords. Our starting point has been to ask what will best serve Parliament and the nation. In a bicameral legislature, what kind of second Chamber do we actually need, which provides a restrained but effective check and balance to the House of Commons? We agree that some reform of the Lords is long overdue, not least in solving the problem of an ever increasing membership and the pressure on seats—we on the Bishops' Benches have noted that particularly in the last year or so. We also see a compelling case for retaining a second Chamber distinctive from the House of Commons in composition and powers. Our view is that a second Chamber should be composed so as to ensure the just use of power entrusted to the Government of the day, one which commands a majority in the House of Commons; so as to ensure true and impartial accountability, scrutinising and revising government legislation with a degree of independence not possible in the House of Commons; and so as to represent the diversity of what I and others have called non-partisan civil society and intellectual life.

Our concern is that the nature of the second Chamber should be shaped by considerations about its purpose—considerations of that sort. We believe that the proposal in the draft Bill to have a much smaller second Chamber which is entirely or almost entirely elected would bring about a fundamental change, producing a second House which is only doubtfully likely to secure those objectives. We believe that it is important that all Members of the second Chamber should have a full understanding of the diversity of civil society. That is where we believe that the Bishops' contribution comes in.

Bishops, of course, are not life Peers. They are Peers of Parliament. They sit in the House until they retire as diocesan Bishops. They serve only when they are in harness in the diocese. They bring to bear their experience of all aspects of civil society in their own diocesan area. It has been said that they are in effect the only Members of the upper House who have something like constituencies. I draw the Committee's attention to the appointments procedure for Bishops—it is not always widely understood. It involves elected members of our Synod and extensive consultation with civil society in the vacant diocese. It approaches and draws opinions from a large number of people in, for example, civil administration, education and a number of other community locations. The appointments procedure takes for granted that a Bishop has a very visible role in civil society.

One of the things that we hear most often in the Crown Nominations Commission from non-church representatives from the diocese who have been consulted is that they want someone who will speak for the city, speak for the county and speak for the region. That is not just a matter of empty words, as I think is shown by the number of diocesan Bishops who have served and continue to serve in regional partnerships, often in the chair. The rooted presence of the Church of England in every community of England and the committed membership of nearly 1 million regular weekly attendees gives Bishops personal access to a very wide spread of civil organisation and experience—perhaps wider than is enjoyed by many comparable public figures. Their personal contribution to the work of the House of Lords therefore draws not on partisan policy but on that direct experience, as well as engagement generally with questions of ethics, morality and faith. Bishops know every church in their diocese. They know the communities they serve—and they serve far more people than church attendance in a narrow sense represents. They take part in civil ceremonies. They visit and are known by hospitals, care homes, the Armed Forces, factories, prisons, universities and community projects. In prisons, they have a statutory right of visitation. Hundreds of primary and secondary schools are Church of England schools. In other words, diocesan Bishops belong in a web of relationships in the communities that they serve and have direct lines of communication into those societies at every level. As I noted, people look to the Church of England to provide focus and a voice for the community at times of shared mourning or celebration.

In many cities, the Church of England acts as the convener for bringing representatives of different faiths together. That is also true at the national level where, in only the last seven days, I have had experience of convening three gatherings of faith leaders on a national basis. I think that that would be borne out by analysis of the church's response to last summer's urban disturbances. All this gives the established church a capacity to express common values in a way that no other organisation is placed to do. The Chief Rabbi has said that if the established church is removed from the public square, common values become more difficult to articulate. It is also fair to say that some Members of both Houses of Parliament look to the Bishops to offer a faith perspective, which they may sometimes hesitate to volunteer in their own right.

I raise these points not by way of special pleading for the Bishops in the second Chamber but to point out some of what might be lost if change is brought about in a simply formulaic way and if we have not addressed what we want the House of Lords to do before considering what composition and basis of appointment best deliver that function. I have not yet touched at length on the particular constitutional relationships of Bishops to the Crown in England, or indeed on the status of three of the named Bishops in the draft Bill as ex officio privy counsellors. That might need further discussion. In short, I agree that the House of Lords needs reform. It strikes me personally—this is a personal rather than a Church of England view—that the package of measures proposed in Lord Steel's Bill provide a very effective basis for a revising Chamber. Beyond that, Lord Chairman, I am happy to invite the Committee's questions.

Q429 The Chairman: Thank you very much. I start by asking what I hope is not a formulaic approach. You believe that the House of Lords needs reforming but you do not accept that it should be an elected or predominantly elected House. If the House of Lords remains a nominated and unelected House, would you then agree that the number of Bishops should be reduced?

The Archbishop of Canterbury: I do not think that it would be particularly helpful to have the proportion of Bishops in the House of Lords increased in any way. If there is a reduction in the numbers in the upper House, the Bishops would have to face the implications of that. In an appointed House, there is a strong case for Bishops retaining their place on the grounds that I have already outlined as speaking for this non-partisan civic perspective. I would hope that, in such circumstances, that case would still be made and accepted.

The Chairman: Yes, but 26 as opposed to 12?

The Archbishop of Canterbury: That is precisely why, Lord Chairman, I said that we would accept the need for a proportionate reduction.

The Chairman: I see. So if the House was to remain as it is and there is no Bill, you think the Church of England should remain entitled to 26 Bishops but, if the Bill goes through, you would come down to 12.

The Archbishop of Canterbury: At the moment, Lord Chairman, the 26 Bishops are deployed on a basis that assumes that none of them is in a position to be a full-time working Peer. The number 26 allows us the flexibility to have enough meaningful participation. A reduction in that number in present circumstances would leave us in a very difficult position if we wish to participate.

The Chairman: Just one final point on this before I throw it open: if the Lords remains as it is and the number of Bishops in the Lords remains at 26, would you be in favour of other faiths being introduced into the House of Lords? Could you say a word about what sort of faiths, how many and which?

The Archbishop of Canterbury: Our own submission makes it clear—we have been clear throughout discussions over the last decade or more—that the Bench of Bishops has no objection to other faiths being included in some way. We also recognise the extraordinary practical difficulties—as you have noted, Lord Chairman—in deciding who should be represented in that way. There would be a number of possible answers. The national Inter Faith Network recognises nine major faiths who are invited as of course to a number of national events. That might be a basis on which to proceed, but I also note the very complex issues that have been put before this Committee and others by, I believe, Professor McLean, on the large proportion of faith representatives that might be entailed if you assumed that all those faiths should be represented on something like the same basis.

Perhaps I may add just one other comment. It is certainly a good idea for any appointments mechanism to take into consideration the representation of minority faiths in some way in a second Chamber. That would not of itself replace the way in which Bishops are acknowledged to be able to convene local faith leaders and represent the particular and far from homogeneous mix of faith communities in different regions of the country. Non-Christian observers have, I think, made the point quite strongly that those who belong to minority communities feel that the Bishop is in a unique position to convene groups of leaders as appropriate in different parts of the country without going through a mechanical box-ticking of who has to be represented. There is a sort of flexibility and local sensitivity there.

Q430 Lord Tyler: I am not declaring an interest; I am sort of confessing. I am a practising Anglican in the sense that I am trying to do it better. I chair the Faiths & Civil Society Unit at Goldsmiths College. Naturally, I have listened with great interest. There are two questions I would ask as an Anglican. Do you think from your experience in Wales that the Welsh nation felt deprived that they were not represented in the House of Lords? Was the Welsh church in any way weaker in the community in Wales because it was not represented in the House of Lords?

The Archbishop of Canterbury: I wondered whether I would get a question on the Welsh dimension—the equivalent of the West Lothian question, I suppose. Of course, for nearly the last century, the Church in Wales has had a very different history from that of the Church of England. The rationale of disestablishment nearly a century ago was that Anglicanism in Wales was very much a minority. Since then, I think that the Anglican Church in Wales has had to work out a way of relating to civil society in Wales on a rather different basis from the Church of England. It did not, day to day, feel all that different, but there were those in the Church in Wales who would have said quite strongly, "Take away the relationship with the state in Westminster and things will also change in Wales". In other words, I do not think that you alter the Welsh situation for the better if there is any question of removing Bishops in England. When the Wakeham commission was doing its work, there was quite a lot of discussion in Wales about whether there should be some sort of representation for the Welsh Christian communities. There was a fairly widespread consensus among those who discussed it in Wales that, were the Archbishop of the Anglican Church in Wales to be invited to sit in an upper Chamber, it would be very welcome.

Q431 Lord Tyler: That seems to lead to some real questions about the link between representation in Parliament and establishment. Am I not right in thinking that the role of the Lords spiritual—who I gather from one of your colleagues at one point actually had a majority in this House because they included medieval abbots

and abbesses—predates the Reformation, the established church and Henry VIII? Is this not really now an anomaly that needs addressing, not least for the people of Wales—or indeed Scotland and Northern Ireland?
The Archbishop of Canterbury: It really depends where you start from. If the question is whether religious bodies in Northern Ireland, Wales or Scotland properly require some kind of voice in Westminster as religious bodies, I have already said that I do not think that that is much helped by removing the Lords spiritual. The second point, of course, is that the Lords spiritual are part of a constitutional settlement. They have a relationship to the Crown, which other church leaders—including the Anglican Church leaders of the other nations—do not. That is part of the background of their being there and part of the set of considerations which affects their appointment—the processes that I have already mentioned in which the public interest, in the widest sense, is very directly involved. I think that there will also be the quite simple question of, anomaly or not, what precisely is the problem that is solved by the removal of the Lords spiritual?
Lord Tyler: Well, it may be that others would say that they would rather like to come in under an appointments system. The established Church of Scotland might say that, if there is merit in the link between representation in the legislature and establishment, here is another curious anomaly.
The Archbishop of Canterbury: The establishment of the Church of Scotland is, of course, a very different thing from the establishment of the Church of England. It does not involve the monarch in any way in the appointment of the Church of Scotland's leadership, to take the obvious example.
Lord Tyler: From an Anglican point of view, that might be a great benefit to the Church of England, I would think, but I had better not go down that route.

Q432 The Chairman: I do not think that you had. I agree with that. Can I just follow this up with one little question? If the offer, so to speak, on the table was that the Church in Wales and the Church of Scotland came in and there was a reduction in the number of Bishops from the Church of England—this is not the Church of England Bishops being all thrown out—to make room for the other churches, would that be acceptable?
The Archbishop of Canterbury: I certainly do not think that it is a zero-sum game that we are talking about here, but I would need to see any such proposals on the table before commenting in detail and I would want to hear the views of my colleagues in Scotland, Wales and Northern Ireland. My sense is that there is not, at the moment, a great deal of pressure from the churches there on this subject, but that is just an anecdotal impression.
The Chairman: Perhaps they should try the Assembly in Cardiff.
The Archbishop of Canterbury: There is a long story there, Lord Chairman.

Q433 Baroness Scott of Needham Market: I was very taken with your opening remark about a voice for the region. I found it rather intriguing, because whether or not an area, a town, a city or a region feels that it has a voice is entirely dependent on whether it happens to have a Bishop at that time. I just wonder if that does not actually make the case for having some sort of geographic link for the whole country, so that everyone can feel that they have a voice in this half of Parliament.
The Archbishop of Canterbury: Let me repeat that I would not at all object to that as a proposal if I could see it fleshed out. The only point that I wish to put on the table at this juncture is that, as I say, it is not a zero-sum game that we are talking about. The virtues of the presence of Bishops as regional voices would not exactly be augmented if they were removed simply because there were no voices from the three other nations.

Q434 Baroness Scott of Needham Market: I have a second question. In the current House there is a wide range of attendance and activity levels, from people who are here virtually every day to others. I think that it would be fair to say that currently the Bishops are at the lower end in terms of that activity level. I wonder two things. First, do you have internal rules and processes for discussing how active you think the Member should be? Secondly, do you think that an issue may emerge when we have a House that is, if you like, more professional—one that is salaried and where the whole atmosphere is different?
The Archbishop of Canterbury: Thank you. Yes, those are two very important questions, if I may say so, so let me take both of them. On the first question, the answer is yes. We have internal systems and, of course, the basic rota for the Bishop who takes Prayers and who is in attendance for a fixed period. That is fixed year by year. We also have meetings of the Lords spiritual from time to time at our House of Bishops meetings. We will discuss what particular pieces of legislation are coming up and who is prepared to attend, to be briefed and to take part

in those. We also assume—again, this is in your papers—that it is quite likely that Bishops will be asked to serve from time to time on Select Committees and so forth, as indeed they have and they do. So we have some system about this. However, and this really goes back to the 26 question, were the House of Lords to change its character—to be smaller or to be more a matter of, as you say, professional politicians—we would have to face the question, which is noted in the submission from the Archbishop of York and me, of how we best facilitated the participation of a smaller number of Bishops in a more demanding regime, as you might say, of attendance and so forth. So we have begun already to look at those questions and to ask how we could reorganise our representation and what the extra demands on those Bishops still present in the second Chamber would be, which we would have to supply and resource as a church. These are very live questions for us and I understand exactly why they are being asked.

Q435 Baroness Young of Hornsey: I have two questions. The purpose of the proposed election is to have democratic legitimacy. If someone says, in relation to the appointment of the Bishops, that the Bishops come from a relatively narrow spectrum of society and that they have separate rules of appointment, separate discipline and no women, does not all that undermine the notion of legitimation either through democratic election or through a rigorous independent appointments procedure? That is the first question. You were talking earlier about the qualities of Bishops, saying that they represent aspects of civil society and have that connection, so the second question is whether you could say why you do not think that it would be okay for them simply to go forward and apply to be one of the 20 per cent appointed Peers, were we to have that particular system, as opposed to having this closed group with a guaranteed position.

The Archbishop of Canterbury: Thank you. On the accountability question first, I have explained that we have a nomination procedure in the Church of England that attempts to canvass as widely as possible in local communities what the perceived needs are to which a Bishop's presence would be material. We take strongly into consideration in that process the likelihood or, in some cases of course, with the senior Bishops, the certainty of a Bishop having to operate within the House of Lords. So within the system of appointment, we have, I believe, some elements of public accountability built in, in the way that we do that particular bit of business. Certainly it leaves the Bishops in a distinctive category in a reconstructed House. The question is whether—this leads us on to your second issue—the guaranteed presence of a particular kind of faith-based voice in the second Chamber is significant. The Bishops are there as Lords spiritual. They are not there—and this may sound a little counterintuitive—to represent the Church of England's interests. They are there as Bishops of the realm, to use a rather old-fashioned phrase, who have historically—certainly in the past couple of decades—more and more taken on the role of brokering and attempting to speak for the needs of the wide variety of faith communities. I think that if you look at some of the debates in which Bishops have been involved—around education and around the Racial and Religious Hatred Bill, for example—you will see that in operation. That is one reason why I think that the Bishops would be reluctant to cede the pass on their particular role as being involved in religious representation in the broadest possible sense and would not wish to be subsumed in the general appointment procedure. You noted also, I think quite reasonably, the somewhat restricted pool from which Bishops are currently drawn—men. You will notice in our submission that we have taken this on board to the extent of suggesting that Clause 28(4) in the draft Bill should drop, to allow the church the flexibility, when women are allowed to be ordained Bishops, to fast-track, so to speak, the first women in that position on to the Bishops' Benches.

Q436 Baroness Symons of Vernham Dean: I do not know whether we are to declare an interest, but I am an active member of the Church of England. Archbishop, you said a moment or two ago that you thought that the Bishops were able to speak for a wide variety of faith members. Would it not be better if those faith members were able to have a place themselves to speak for themselves? You put it rather elliptically when the Lord Chairman asked about other faiths, because you said that you had "no objection" to other faiths. I wondered why you could not be a little bit warmer and why you might not welcome the participation of other faiths in the House.

The Archbishop of Canterbury: I am very happy to be as warm as you like. We would welcome that and we do welcome it, because of course there are members of other faith communities already in the second Chamber. If I may go back to the substantive point, yes, of course it is important that we as Bishops do not assume that we have

the right to speak for other faith communities—that would be very insulting, I think, to other communities—but I think that most Bishops would agree that this is a role into which we have been increasingly, and willingly, shunted by the facts of social and religious life in a variety of localities. The difficulties that I flagged a moment ago are very real ones. People sometimes assume that all faith communities must be pretty much of the same shape and that there must therefore be equivalent national leaders for Muslim, Hindu or Jewish communities. This is by no means the case. It is extremely difficult, I think, to decide how you would set about finding anything like comparable representation. It may therefore be that, for the moment, until we think of some better scheme, the Bishops faute de mieux act as spokesmen because they act as conveners, to use my earlier word, in the localities.

Q437 Baroness Symons of Vernham Dean: A lot of people would argue that it is an anomalous position that we have so many Bishops in the House at the moment and no one appointed from other faiths to represent those faiths, although I hear what you say about the difficulties in doing that. To take Lady Young's point, does not the position of the Bishops become even more anomalous if the House becomes very largely elected and the Bishops sit alone as the non-elected dimension? That would seem to compound what many people already see as a bizarrely anomalous position that the Bishops have in the 21st century.
The Archbishop of Canterbury: The anomaly is very real, I grant you, but the question is whether the removal of the Bishops would be for the benefit or health of either the upper House or the nation at large. The argument that I have been trying to put is that it would not.

Q438 Baroness Symons of Vernham Dean: Can I then put to you a broader point? It comes at the beginning of your paper, in paragraph 12, where you say: "In summary, if, as we believe, the second chamber should remain essentially a revising chamber and if, as we also believe, the primacy of the House of Commons is to be maintained, the argument that such a chamber can only be effective and have proper legitimacy if it is wholly or mainly elected is no more than an assertion." I do not want to put words in your mouth, but you appear to be saying here that you either have elections or you maintain House of Commons primacy. Is that what you saying, as appears to be the point? If it is, can you see any way round it, where you could have elections and still maintain the primacy of the House of Commons by anything other than what I think we are all agreed is the rather silly assertion in Clause 2 of the Bill?
The Archbishop of Canterbury: You are quite right to pick up that that paragraph as key to the feelings that are quite widely shared among the Bishops. I noted it earlier on partly because I want to make it clear that our questions about the reform of the upper Chamber are not simply a matter of episcopal self-interest. We have a genuine concern about the assumption that the only form of democratic legitimacy is the electoral pattern of the House of Commons or even STV. It is a broad question that we are anxious about. Is there another way forward? We can argue, again, about the proportions between election and appointment in a second Chamber. We can argue about the relation between an Appointments Commission and the elected Members of the first Chamber. I am thinking off the top of my head here, but we could also argue about the basis or, if you like, the chemistry of the electoral process. Are we talking about a simple party process in the second Chamber or are we talking about something different? Are we talking about a broad extension of the practices that have grown up around people's Peers and so forth? There would be a number of ways in which we could come at this. The protest that is registered in the paragraph that you quoted was simply against the assumption that democratic legitimacy equals the electoral system as it works in the House of Commons, or something rather like it, on a party basis.

Q439 Mrs Laing: I was going to put Lady Symons's point the other way round. I had also identified that paragraph 12 of your submission is extremely important. If we are declaring interests, Lord Chairman, I do not have an interest to declare, because I am a member of the Church of Scotland, so that is different.
The Archbishop of Canterbury: So I believe.
Mrs Laing: I will not take you down that path, because that area of the argument has already been explored. In the short time that you are with us, I think that it is far more important to l serious fallacy given the unusual nature of our constitution ook at what is said in paragraph 12: "the argument that such a chamber can only be effective and have proper legitimacy if it is wholly or mainly elected is no more than an assertion." It happens that, personally, I agree with your paper on that point, but I wonder whether you would care to expand on that in

the light of paragraph 8, where you say: "The sheer diversity of constitutional arrangements across the democratic world should … in our view, instil a sense of humility in relation to claims that any one approach is manifestly superior to another." Reading those two paragraphs together, I wonder whether you would care to expand on that. Can there be legitimacy without a simple, straightforward party-political election?

The Archbishop of Canterbury: Thank you. Yes, I would be glad to. The word "legitimacy" is key here, of course; it is a very complex and important word. The argument, I think, rests on two basic points. One is the broad theoretical question about the nature of democratic legitimacy and it works in precisely the way that you have cited in terms of the huge variety of practice across the globe. If we say that legitimacy is always necessarily based on direct popular election, a great many legislatures across the world would be under the cosh on that, I think. The second, more practical, point is really to do with a legacy of the Parliament Act and various other things. An elected second Chamber, we believe, runs the risk—this needs to be faced down—of being in competition with the first Chamber in terms of legitimacy, especially if the second Chamber is elected by a method, the single transferable vote, that in the eyes of a good many people, including some prominent people in certain political parties, is regarded as a more legitimate and more credible method of election than the first past the post method. So it is a theoretical question as well as a practical one: does this threaten to upset the balance that the Parliament Act has enshrined in our constitutional arrangements?

Q440 Lord Trefgarne: Like several around this table, I claim to be a practising Anglican, although I was in fact confirmed into the Congregational Church and come from a family of Congregationalists. You, of course, were once the Archbishop of Wales and I wonder whether you are really sue, as you said earlier, that the non-conformist church in Wales would perhaps not be particularly enthusiastic about becoming part of the new second Chamber and whether we should look into that more closely.

The Archbishop of Canterbury: I am sure that it is worth looking into. I am simply reporting the kind of discussion that was around some 12 to 15 years ago, when this was a live issue in Wales. The rather dramatic change in the religious demography of Wales since 1920 means that the Anglican Church in Wales is now considerably larger than the non-conformist churches, which were once superior in numbers and public influence.

Lord Trefgarne: Is that truly the case? I did not realise that.

The Archbishop of Canterbury: Yes. It was one factor that I think shaped that discussion in the 1990s, which, as I say, came to the view that, if there were to be a religious representative from Wales, the person to look to realistically would be the Anglican Archbishop. You are quite welcome to write that off as anecdotal, once again, but it is certainly worth looking into and that will be the background to it.

Q441 Lord Trefgarne: May I also ask you a slightly different question? What do you think is the view of the non-Christians, not only in Wales but elsewhere, about joining the second Chamber?

The Archbishop of Canterbury: You have, I think, submissions from the Muslim Council of Britain and from the Chief Rabbi on this subject. I think that you would see there some fairly strong evidence that the leadership in those communities—again, faute de mieux, to go back to Baroness Symons's question—would say, "Well, we are more confident that the Bishops can represent us as a group than some of our own people." That is not to say that there is any lack of enthusiasm in, let us say, Muslim, Hindu or Jewish communities for representation of some sort in the House of Lords and, as I have said, there are already distinguished representatives—or members, I should say—of those faiths in the House of Lords, who may regard their role as in some sense to carry the flag for their communities in certain circumstances. But when opinion is rounded up on this, it seems to be the view, partly on the basis of what I keep coming back to, which is the local experience of the Bishop as convener of faith communities, that these are figures who are trusted to speak for others.

If I may, Lord Chairman, I will add a brief point to that, which is not wholly immaterial to either of the questions that have been raised. Last week I was privileged to have a long-ish, quite demanding and interesting meeting with a number of very senior pastors in black majority churches, mostly in the London area, whose view was almost embarrassingly emphatic that they trusted the Bishop in the House of Lords to speak for them as well as for others. Given that that is a very significant part of not only the Christian population but the population at large in this country, that is not wholly immaterial to what we are discussing.

Lord Trefgarne: They are largely what I would describe as evangelical churches, presumably.

The Archbishop of Canterbury: Yes, these are churches of largely Caribbean or west African membership with indigenous leadership. They are developing rapidly in numbers and they are developing also their professional outreach in society. We are not talking here about the marginal fringe; there are some very disturbing religious groups around. These are what I would regard as uncontroversially the mainstream among the black majority churches, heavily involved in, for example, combating gun crime in communities, amnesties, mentoring schemes and any number of other things. They are rapidly, if you will excuse the vulgarism, upping their game in terms of educating their own pastors and their own staff. This meeting, which was not specifically on this subject and rather surprised me in its outcome, ended with a number of these leaders getting into a corner and saying, "Is there somebody we should write to to say that we are in favour of Bishops in the House of Lords?" I pass that on for what it is worth.

Q442 Baroness Andrews: Could I follow that up very briefly, Archbishop? That is presumably what you were thinking of, among other things, when you said that many leaders of other faith communities value the fact that we have an established church with a role in Parliament. Am I right in assuming that there is not a pressure that you are aware of for separate representation?

The Archbishop of Canterbury: I think that that is absolutely right. I am certainly not aware of such pressure. I am not aware either at the moment—and this is an interesting shift in my lifetime and the lifetime of most people around the table—of any great pressure for disestablishment from any Christian body, because I think that most non-Anglican Christian bodies in the United Kingdom would now see disestablishment as part of an aggressively secularising programme that they would want to resist. Whatever the historic unease there may have been about the privileges of Anglicans in Parliament, that landscape has now changed, I think, irreversibly.

Q443 Baroness Andrews: May I follow that up very quickly? You say in paragraph 48: "The established status of the Church would not be at an end … but its character would be significantly changed and weakened". I wonder whether you could expand on that.

The Archbishop of Canterbury: Thank you. One of the things that people find very difficult about the established character of the Church of England is that it means a very large number of things. There is no one little thing that you can change or remove in order to disestablish the church. The experience of the Welsh church suggests that it is like pulling a loose thread on a badly made cardigan and finding that you are left with a ball of wool—a lot unravels. That being said, for the Bishops not to be part of the scrutiny and discernment that go on around legislation in this country would be, at the very least, to send a signal that the voice of faith in the general sense was not particularly welcomed in that process. Nobody is looking for a theocracy; nobody wants to turn the United Kingdom into Iran. But there is a strong belief that, particularly in the geopolitical context in which we live at the moment, the role of faith in asking questions and in joining in that scrutiny is very significant. For that to be edged away from the legislative process would certainly not be tantamount to disestablishment but it would make the establishment a great deal more hollow than it is in many ways, because it would alter the sense that British constitutional history has left us with that this is a society and political culture in which the voice of faith is neither dominant nor ignored, which, I think, is a very good place to be—although I would say that, wouldn't I?

Q444 Dr Poulter: I have two questions for you, Archbishop. First, on first principles, it is the presumption of the Bill but also commonly held that it is very difficult to argue for the hereditary principle in the House of Lords. This point has been touched on before, that if we are saying that the hereditary principle is wrong, then it is also an anachronism that we have Bishops in the House of Lords by right. What do you think?

The Archbishop of Canterbury: I am afraid that I think that that is a false analogy. A hereditary Peer is present in Parliament on the basis of heredity. An Anglican Bishop is present in the House of Lords because of a process of appointment, scrutiny and public responsibility that is clearly defined. I do not think that the two are equivalent. I am afraid that anachronism is, to me, a shortcut in an argument.

Q445 Dr Poulter: Well, I disagree with you and think that others here and probably a lot of the general public would disagree as well. On the second point, you make the case that at the moment you have a rota system for how Bishops participate in the House of Lords and that they represent a wide geographical spread. If there is to be a cull of Bishops from 26 to eight, is that not—

The Archbishop of Canterbury: Sorry. Where does the number eight come from?
Dr Poulter: Sorry, from 26 down to a smaller number, as in the model in the Bill.
The Archbishop of Canterbury: I think the number mentioned is 12.
Dr Poulter: Indeed, 12. Will it not be the case that it will be much harder for that rota system to work? You may well end up having faith-based politicians representing the church here. You may also end up with that wide geographical spread—one of the presumptions of your early case—being lost.
The Archbishop of Canterbury: The five named Lords spiritual in the draft Bill already provide a certain level of general coverage. I do not think it would be completely lost even if it were just those five—that is, Durham, Winchester, London, York and Canterbury. As I indicated earlier, we are looking actively at how we might meet some of these considerations. For example, if we were looking to nominate another seven Lords spiritual, we would deliberately set out to identify particular sees in particular parts of the country, which would be assumed to be those associated with the Lords spiritual. We would want to keep that geographical concern very much at the forefront of our minds because it is an important element in what the Lords spiritual have offered.
Dr Poulter: On the second point, about the fact that those seven that would remain would actually have to spend a disproportionately large amount of their time in the House of Lords, they would effectively become much more political in their role here, rather than necessarily dealing with their previous role in the church—the role that they have at the moment.
The Archbishop of Canterbury: It is already taken for granted that the work of the House of Lords is part of what we take into consideration when we nominate somebody as a Bishop. As I said earlier, these questions are very carefully and explicitly raised in the nominations and appointments process. We are not talking about a change of category. As I said in response to an earlier question, we would have to think very carefully about what sort of resourcing would be appropriate with a smaller number to allow our Members to spend longer in the work of the Chamber. I do not think that it is a question of their becoming more political; it is a question of their having to act more like professional politicians in the sense of giving the time.
Dr Poulter: Is that not a case of QED, or quod erat demonstrandum?
The Archbishop of Canterbury: Yes, I know what it means.
Dr Poulter: In that case they are being more political as professional politicians.
The Archbishop of Canterbury: I assume that becoming "political" means becoming partisan in some sense, which I do not accept. Becoming professional participants—
Dr Poulter: Or professional politicians. The whole presumption in what you put across is that they carry independence and a link to groups of people whom they represent. But becoming professional politicians, as you just said, goes against your earlier argument.
The Archbishop of Canterbury: I clearly should not use the term "professional politicians". I am trying to find a way of talking about an increased level of commitment or professionalism among those who already, I think it would be agreed, have a fairly high level of commitment and professionalism in their work in the Chamber. The record is there to be examined. What we have to consider in different circumstances is, as I say, how we resource a smaller number to keep up that level of professionalism in their engagement in the work of the Chamber.

Q446 Mr Clarke: Lord Chairman, the Archbishop has already answered the question that I was going to put, on Clause 28(4). I wonder if he might want to add to what he already said.
The Archbishop of Canterbury: We are very conscious that one of the reproaches that can be laid against the Bench at present is that it is not exactly representative in gender terms. We are in the middle—well, not in the middle, but near the end—of a complex, protracted process about the ordination of women as Bishops, which will come to term, we hope and trust, next summer. As and when women become Bishops, we do not particularly want women Bishops to have to wait until 2025 or something before there is any possibility of their being represented on the Bench. Therefore, we want the discretion and flexibility to allow a little fast-tracking there.

Q447 Ann Coffey: I just wanted to pursue this troublesome business of elections a little more. Civic society is very diverse. It certainly is in my work as a constituency MP. On a regular basis, I meet friends of parks groups, friends of school groups, residents associations and community associations. It is, of course, right that the various churches are involved in that, but I would say that the overwhelming majority of people who take part in civic society are not practising Christians—or indeed practising of any faith at all. Part of the way in which they

choose how they are represented and how their views are represented is through the whole process of elections, even though they may get it wrong. In a sense, you kind of side-stepped this by saying that your case for the Church of England being represented in the House of Lords is that it is good for society, even though that is not tested out through any electoral process. In a sense, you can only hold that opinion if the House of Lords is not elected. You can have the opinion that it is good for the Bishops, experts and others to be in the House of Lords because the House of Lords is about what is good for people, rather than the population electing people there. That is quite a driver for the Church of England holding the position that the House of Lords should not be elected. The second question that I want to ask relates to your saying earlier that you could not see what problem would be fixed by not having the Bishops in the House of Lords. Maybe the problem that would be fixed is that people would perceive it not as a place that is part of the establishment and the elite of this country, but a place in which civic society has chosen whom they send to it to represent their interests.

The Archbishop of Canterbury: Perhaps I may take the second point first, on a place where civic society feels that they have chosen who represents them. I remain unconvinced that the only method of civic society doing that is by a partisan electoral process. If you are not going to have a partisan electoral process, there remains to me a question of whether the best method of approaching a second Chamber is a properly accountable Appointments Commission, with some relationship to other, democratically elected bodies. There are many ways of cutting that cake. I can understand on your first point why you might think that our sudden enthusiasm for an appointed second Chamber is the result of panic about the electoral principle. I really think that it is rather the other way. We are genuinely concerned, as Bishops, about the principle of an elected second Chamber and genuinely believe, as I have argued with a number of people in this Palace, that there is an issue of a kind that I have mentioned around the Parliament Act, which has to be faced in some way in this whole process. The question of whether unelected Bishops remain an intolerable anomaly in an otherwise wholly elected second Chamber is one that I find quite difficult to answer because I accept that it is an anomaly. It is of course an anomaly if you allow ministerial appointments in a second Chamber. There is any number of anomalies that we tolerate because we believe that they are constitutionally on the whole good for us.

Ann Coffey: Good for people.

The Archbishop of Canterbury: Good for people. I hear the reproach of paternalism coming through, yet if proper accountability is built in and we are not simply talking about a wholly unaccountable, self-appointed Appointments Commission, we are in some way plugging it into what people believe they need. Therefore, I think that an appointed House is democratically justifiable. Within that, the rather peculiar and distinctive modes of appointment of Bishops fit in. With the elected House, of course it is anomalous, but it is not a unique anomaly. I think it is just about a bearable anomaly because, on balance, I think it is a constructive one.

Q448 Lord Hennessy of Nympsfield: I have an interest to declare. I am a Catholic but with an affection for the Anglican Church that almost amounts to fellow travelling. Archbishop Rowan, Gladstone once said that he was in favour of the established church carrying on because he "clung to the notion of a conscience … in the State". Do you think that that idea still has some vitality?

The Archbishop of Canterbury: Yes, in a word—not the sole voice of the conscience of the state but a significant one. Again, it is a reminder of our constitutional settlement, which assumes that the voice of faith has a role, as I said earlier, in the discernment around legislation and scrutiny of proposed legislation. I think that it is important to have voices, among which the religious voice is extremely significant, that are not determined by particular sorts of party politics.

Lord Hennessy of Nympsfield: I agree with you that disestablishment is not exactly a runner at the moment. Mark Harper, the Minister, when he gave evidence, said that they were not considering it, which I am sure was a great relief to you. But if you were disestablished, this argument of Gladstone's and yours would fall just like that, wouldn't it? If you were not established, you could not sustain that argument.

The Archbishop of Canterbury: The church would continue to be the church, I believe. It would engage in other ways. I said that the Anglican Church in Wales had to find other ways of earning its place at the table, so to speak, in public discussion. I think that it did that over the near century of its existence. But I do not see any compelling reason why the Church of England should have to go through the same process.

Q449 Lord Hennessy of Nympsfield: Could you argue that your independence and your relationship to the people and the constituency who produce your Bishops through your consultation processes were enhanced when there was a little bit of the unravelling of the wool of establishment when Mr Brown decided that he would not interfere in the choice of Bishops by the church and that he would just act as a postman to Her Majesty the Queen? David Cameron has done the same. Does that not put you in a slightly stronger position, or is that the beginning of the wool unravelling?
The Archbishop of Canterbury: I do not think that it is the wool unravelling at all. I think that what we have is, if you like, a rationalisation of a position agreed several decades ago, in effect, which was that the Prime Minister would not interfere in the process of nomination. There would be a moment of choice, but it has not been exercised for a very long time.
Lord Hennessy of Nympsfield: Tony Blair interfered once or twice, didn't he?
The Archbishop of Canterbury: The proceedings of the Crown Nominations Commission are wholly confidential and I do not know the answer.
Lord Hennessy of Nympsfield: You know as well as I do, but that is another question.
The Archbishop of Canterbury: I genuinely do not know.

Q450 Gavin Barwell: Archbishop, thank you very much for your joint submission, which, along with the answers that you have given, make very clear your views on what the Government are proposing. I just want to press you a little bit about what you collectively feel would be the right kind of reform, because the paper recognises that there is a case for some change. Perhaps you would just humour me for a minute or two. In paragraph 4, you say: "For so long as the majority of the House of Lords consisted of the hereditary peerage there was manifestly a compelling case for reform." Then you go on in paragraph 16 to say: "It seems to us that reforms which bring the second chamber further under the control of the main political parties … will … damage the independence of the House of Lords". I think that it is unarguable that the change that happened in the late 1990s did that, because there was clearly a move from having hereditary Peers to a second Chamber of which a large chunk was appointed by the leaders of the political parties. Indeed, there are several other references in here, most notably in paragraph 2, where you note the fact that there will not be a ban on MPs becoming Members of the second Chamber. That implies to me that your view is that a preferable second Chamber would be one in which there were far fewer ex-politicians present. Will you elucidate that? There are several other references that I could quote that imply that without saying it bluntly.
The Archbishop of Canterbury: Yes, the answer is that I would not be averse to a second Chamber with fewer ex-party politicians or continuing party politicians. I have already indicated, I think, that there would be ways of constructing an Appointments Commission that would develop in some ways the people's Peers model. There are a number of ways forward there. For the moment, given that an absolutely global reform of that kind is not envisaged, we have, as I say, some sympathy with Lord Steel's proposals.

Q451 Oliver Heald: Somewhat oddly in the draft Bill, there is a provision that says that Members of the House of Lords would not be able to stand for the Commons for four years except for Lords spiritual. There are two other exemptions that I will mention to you. In terms of punishment, there is going to be provision for expulsion and suspension of Lords in certain circumstances except for the Lords spiritual. When it comes to non-domiciled, offshore tax people, they are all going to be deemed to be domiciled in the United Kingdom in order to deal with that problem except for the Lords spiritual. I just wondered if you had any idea why that was.
The Archbishop of Canterbury: The implication is quite correct that the number of Lords spiritual who are building up vast tax fortunes in the Cayman Islands is quite small—it may even be vanishingly small. I think that you would have to ask the drafters of the Bill to explain the rationale here. The church has not sought any of these exemptions, I should say, and would be perfectly happen to see them fall. I think that the assumption as regards disciplinary action and expulsion was that the internal disciplinary regulations of the Church of England are arguably more severe than those at work in the parliamentary framework, but any appearance of looking for special treatment is certainly something that we are not interested in.
Oliver Heald: And any suggestion that the reason why you all might want to stand for the House of Commons is that you are being reduced in number in the Lords can be firmly denied, can it?
The Archbishop of Canterbury: I think that that is wildly unlikely, I have to say.

The Chairman: Archbishop, I thank you very much indeed on behalf of the Committee for giving us your time and for answering such questions that we had in such an open and thorough way. Thank you very much indeed.
The Archbishop of Canterbury: My thanks to you, Lord Chairman, and the Committee.

The British Humanist Association [Andrew Copson] and Theos [Elizabeth Hunter] (QQ 452–463)

Examination of Witnesses

Andrew Copson, Chief Executive, British Humanist Association, and **Elizabeth Hunter**, Director, Theos

Q452 The Chairman: Thank you very much for coming. I apologise for the fact that we did not start you at 6.45 but we got hung up before the Archbishop arrived and the Archbishop, understandably, took a little longer than we had expected. I apologise for that. Would either or both of you like to make a short statement before we start the questioning?
Elizabeth Hunter: Hello and thank you very much for the invitation to give evidence this evening. My name is Elizabeth Hunter and I am the Director of Theos. We are a Christian think tank and carry out research into the role and place of religion in society. We work with a wide variety of denominations and other non-Christian faith groups, but it must be stressed that we are a research organisation, not a lobby or campaigning group. We cannot be seen to speak on behalf of any religious institution or for religion in general. That said, like all think tanks, we have a broad perspective: that religious people and institutions already make a significant, positive contribution to society. We have sketched out how in our written submission. We believe that having religious voices in a reformed second Chamber is well within the logic of the draft Bill and we would say a good thing per se. In 2007, we published a report on this issue, *Coming Off the Bench: The Past, Present and Future of Religious Representation in the House of Lords*, which concluded by endorsing the Wakeham commission's recommendation of a reduction in the number of Bishops in a reformed second Chamber and a broadening of that religious element to reflect the increased religious diversity of the United Kingdom. This draft Bill obviously creates a very different scenario from the situation that was looked into by the Royal Commission in 2000, but we would be in favour of a similar arrangement in principle—that is, the principle of religious voices as a good thing per se and a broadening of those religious voices. However, we see a number of ways that these principles could be applied in practice under the general proposals of the Bill. I am sure that we will speak about those.
Andrew Copson: Thank you. My name is Andrew Copson and I am the Chief Executive of the British Humanist Association. Our position on the questions of Lords reform and religious representatives is that we are against Bishops or any religious representatives ex officio, as of right, having a place in a reformed House of Lords. We have laid that out in our submission to your Committee. Our views are also extensively explored in the really good House of Lords Library note that I was just reading this morning. It is excellent. We think that ours is inside the mainstream of the view of the issue that people take outside this room. In 2002, 85 per cent of those who responded in the Lord Chancellor's consultation to the question of Bishops were for their removal. The ICM opinion poll in 2010 found that 74 per cent of people surveyed were against the presence of Bishops as of right in the reformed Chamber.
We have four main responses to the four principal arguments that are made in favour of Bishops as of right in the Chamber that lead us to this view. First is the argument from tradition—the idea that it has always been this way. We do not think that that argument has any particular potency at a time of reform. The question is not what problem the removal of the Bishops would solve but why they should be there in the House of Lords as part of our Parliament. We certainly reject the idea that their removal would have any negative effect on establishment. We are with the Wakeham Commission when it said that there was no direct or logical connection between establishment and Bishops in the Lords. Secondly, we certainly do not think that Bishops provide a unique or significantly distinctive spiritual insight, as many Members of the Lords may do so. Even if they did, it would only be one narrow view. Clearly, there are many lay members, as your declarations showed in the previous evidence session: many people from the Christian religion are present in the Lords and make that contribution. Thirdly, we do not accept the argument that the Church of England can somehow represent a co-establishment of all people of faith. They obviously only ever speak for people of other faiths with whom they are in agreement.

It would not be true to say that Bishops in the House of Lords speak for Hindus, for example, who are against faith schools. Clearly they associate themselves only with Hindu groups that are in favour of faith schools, as the Church of England is. Fourthly, we reject the idea that, as the UK's largest NGO with penetration into every local community, the Church of England should have ex officio a right to seats in the Lords. Why not other NGOs that are just as significant or, in the case of NGOs like the National Trust, perhaps even larger in terms of their national membership? For those four reasons and obviously our main reason of principle—that we believe in a secular state where no one is disadvantaged or privileged because of their religious beliefs or lack of them—we do not think that Bishops in the House of Lords ex officio is a good idea.

Q453 The Chairman: Let me start by following on immediately from what you have just said. It is the ex officio bit that you really object to.
Andrew Copson: Yes it is.
The Chairman: You do not mind Bishops or any other religious denomination being represented in the House of Lords so long as they are not there as of right.
Andrew Copson: Yes, I think we would have no problem if there were to be an appointed Chamber—whether wholly or partly appointed—in which Bishops came through the Appointments Commission and were only incidentally Bishops.
The Chairman: Would you find it objectionable supposing Bishops had been appointed and there were 12 Bishops sitting in the House of Lords as part of an appointed system, either on the recommendation of the Prime Minister or anybody else, and they had gone through an Appointments Commission?
Andrew Copson: My objection would perhaps not be to their actual presence but to the means by which they ended up appointed through the procedure. If 12 Anglican Bishops ended up in a smaller, appointed House of Lords, I would question whether it was a wise and proportionate exercise of appointment powers by the commission to have ended up with so many Anglican Bishops.
The Chairman: So it not their theology that you object to but their status.
Andrew Copson: Personally, I object to their theology but, when it comes to making a constitution, I would object to the method of selection.

Q454 Bishop of Leicester: I note that in your submission, Andrew, you say that the BHA does not take a position on what a reformed House of Lords should look like. That intrigues me because it sounds as if you really do not mind what it looks like as long as it does not have Bishops in it. Is that actually your position? Are you really a single-issue lobbyist here, with no wider view at all about what kind of House Bishops should be excluded from?
Andrew Copson: I could not claim that I or the BHA has any wider personal expertise on what sort of second Chamber would best suit our Parliament in the future and the type of reform. I am and the BHA is particularly concerned with discrimination within our constitution on grounds of religion or belief. That is a narrower range of concerns than one might have if one was concerned with everything. The BHA is committed to democracy, human rights and the rule of law, as many NGOs of course are. I think it would be difficult for us to find a knock-down argument in favour of a wholly elected or wholly appointed Chamber within the confines of our mission in those terms. It is quite right to say that election is not the only democratic method. You could choose your Peers by ballot, through an Appointments Commission or have them ex officio because they ran a learned society or whatever. Personally, I see all sorts of interesting solutions that could present themselves. The BHA as an organisation, being concerned predominantly with religion or belief discrimination in the constitution, would not take a view one way or the other.

Q455 Bishop of Leicester: Could I just pick up a point that arises from that? You also say that the best constitutional system is one that is secular—that is, one where state institutions and religious institutions are separate and the state is neutral on matters of religion or belief.
Andrew Copson: Yes.
Bishop of Leicester: It does not sound as if your argument is neutral on matters of religion or belief.
Andrew Copson: In what way is it not neutral?

Bishop of Leicester: You have already declared the fact that you are against religious representation and against the theological position of the Bishops. You have a view. My point is: is it not an illusion to argue that a secular state is a neutral state? A secular state is one that has an attitude towards religion.
Andrew Copson: I understand your point. No, I do not think it is an inconsistent position. I would also be against the President of the British Humanist Association ex officio having the right to sit in the House of Lords, in the unlikely event that you proposed that. Neutrality in that sense is about objective, fair and balanced treatment of people of different religions and beliefs in the system. I am not opposing Bishops in the Lords because I do not like Bishops; I am opposing ex officio places for Bishops in the Lords because I think that that is unfair.

Q456 Bishop of Leicester: Perhaps I could ask just one more question, arising out of what Andrew said. You said that this argument, which I think you described as specious, that Bishops in some way can speak for other faiths and other interests beyond the church and that other faiths support our presence here is supported only by those who happen to agree with us and that there is a wider faith view. How do you square that with what, for example, the Muslim Council of Britain and the Chief Rabbi, who are two very significant voices, have said? Do you just discount those as being in some way a distorted voice and completely unrepresentative of the wider faith communities of this country?
Andrew Copson: My point was not that the other religious groups that might speak up for Bishops in the Lords and the establishment of the Church of England did so only because they agreed with the Church of England. My point about that was that the Church of England could claim to speak for other religions only to the extent that they were speaking for the other religions that agreed with them, so the point that I was making was the other way round. On the second point, about my view of those things, it is relatively easy to stitch up a sort of multi-faith consensus on the question of establishment among the leadership level of national religious organisations, but I would be very surprised if that 74 per cent of people who are against Bishops in the Lords as of right did not contain any Muslims, Jews, Hindus or people of other religions. I can see very easily how in discussions you might come to a particular agreement with the Chief Rabbi, but I do not think that that should be taken as indicating any particular views among British Jews.
The Chairman: I think that Theos ought to comment on that.
Elizabeth Hunter: We need to be careful about taking one answer from one survey as creating a broad picture of public opinion. We have tried to look at as many different polls as possible and I think that the picture that you get is one of ambivalence. What we see is that, in that same 2010 ICM poll, 43 per cent of people thought that it was very or fairly important for institutional religion to a role in public life. In 2007, a YouGov survey found that 46 per cent of people were indifferent to the question of Bishops in the Lords, followed by 28 per cent who thought it was a good thing and 17 per cent who thought it was a bad thing. In that same year, a BBC and ComRes poll showed that there was 48 per cent support for Bishops in the Lords versus 43 per cent against. We need to look at a broad spectrum of information and come to the conclusion that there is no easy or clear argument to make here from public opinion.
Andrew Copson: Although none of those figures indicates a majority of people in favour of Bishops.
Elizabeth Hunter: That is true. There is no easy or clear argument in either direction.
The Chairman: It is like a ping-pong match.

Q457 Lord Trefgarne: Can you give me a clue where you are coming from in all this? I have to confess that I am not as clear as I should be about what exactly humanists stand for.
Elizabeth Hunter: I cannot answer that.
Andrew Copson: I am the humanist. A good definition of a humanist would be someone who had a view of life that was not religious, who located values and meaning in the here and now, who trusted to a scientific and rational approach to finding out about the universe and who had a human-centred, present-world-centred approach in deciding what was right to do and what meaning there could be in life. The British Humanist Association is an organisation that promotes education about and public awareness of that view of things. It also provides certain community services—for example, non-religious funerals and other services that non-religious people in the community find it difficult to access where those things have traditionally been provided by, for example, religious groups. A third area of work that we engage in is advocacy and public policy issues,

particularly in questions of discrimination either in public life or in the treatment of individuals on the basis of religion or belief. Our interest in this particular question is in having a constitution in this country where there is no in-built privilege in favour of or disadvantage against anyone on grounds of their religion or belief.

Q458 Lord Trefgarne: Where does Theos come from?
Elizabeth Hunter: Theos comes from a broadly ecumenical Christian perspective. We are a research organisation seeking to draw on Christian political thought in our thinking around what makes a good society. We look at the place of religion in society and the role it should play in 21st-century Britain and the role that it is playing. We draw both on empirical research and on theological, philosophical and sociological existing arguments.
Q459 Lord Trefgarne: Thank you both.

Q460 Baroness Andrews: This is a question for Andrew. Perhaps you could clarify this point. You say in paragraph 8: "The proposals do not simply maintain the status quo but create a new, independent and largely unaccountable bloc for the Church of England in Parliament." Do you think that Bishops currently act as a bloc?
Andrew Copson: Obviously not in terms of all voting together or all turning out on particular issues necessarily, but I can think of a couple of instances where one might describe their activities as bloc-ish. One example is when they were speaking up on Equality Act exemptions on grounds of sexual orientation—they were looking for exemptions for religious groups, the Church of England being one of them, from the duty to treat people equally on grounds of sexual orientation. I think that their behaviour then was that they were of one mind and behaved in that way. Obviously, the Bishop of Leicester is about to tell me that that is not true, but I think also that, in relation to the Private Member's Bill on assisted dying for the terminally ill, an impartial observer would have seen their behaviour as caucus-like. Generally, obviously, I accept the point that they are not all there at the same time and that they have different portfolios, responsibilities, areas of interest and specialisms, but none of that affects my view that they should not be there as of right at all.
Elizabeth Hunter: Might I come in on that? I would just like to make it clear that in neither of those cases were the Bishops' votes decisive. In the Joffe case in 2006, we saw 14 out of 26 Bishops, which was the largest turnout in a very long time. I would like to point out that there will be cases in which all kinds of Peers end up in the same Lobbies, because they have shared convictions. Not agreeing with the way that they voted is not necessarily a reason to assume that they are indeed voting as a bloc.
Andrew Copson: I would agree with that, of course.
Baroness Andrews: I think that I will cede to the Bishop of Leicester.
Bishop of Leicester: On the Equality Bill, the issue was: where is the boundary of state interference appropriately located and how far should it legislate for the internal organisation of faith communities? That was the issue on which the Bishops stood together—to try to define where that boundary should be. I just make that point for the record, Lord Chairman.
Baroness Scott of Needham Market: Before I take any notes from the Bishop, I would ask him the question the other way round: where does one appropriately define the boundaries of how far the church can interfere with the state in terms of legislation? Nevertheless, he is not in the witness stand. I really wanted to ask Theos a question. At the moment, Peers do not represent anyone. We are here in our own right. Clearly we all have interests. Many of us have a sort of representative role but it is not formalised in any way. The only exception to that is the Bishops, who are there as of right in a particular way. Why do you think, of all the groups one could possibly have sitting in the House of Lords by right, Church of England Bishops should be the one group?
Elizabeth Hunter: I would like to make it clear that we are not ideologically committed to that mode of achieving the objective of having religious voices represented as religious voices. That is one way and there are lots of pragmatic and symbolic reasons for it. We see the House of Lords as a constituency of constituencies. We see institutions of civil society represented—of rather, reflected. We need to be quite careful about the language of representation. Any appointed section of a reformed House of Lords would not be in any commonly understood sense representative. As the Archbishop of Canterbury pointed out, the existing Lords spiritual do not see themselves as representative of the Church of England or indeed Christianity. They are individual Lords of Parliament. It may be that the rest of the world assumes that that is what they are doing, but that is now how they conceive of their role. We do not think a system where religious voices are seen as representative is workable. We think that in that appointed section, where the voices and major institutions of civil society and important

groups within the UK today see their voices reflected, it is entirely within the spirit of the Bill that religious voices are among those.
Baroness Scott of Needham Market: I was simply trying to make the point—which, with respect, I do not think you addressed—that all these other organisations and organs are not represented as of right. They may happen to be represented by Members of the House of Lords who happen to be there, but there is nothing constitutionally that ensures that different parts of civil society are represented, except for Church of England Bishops.
Elizabeth Hunter: That is certainly the case.

Q461 Lord Hennessy of Nympsfield: Andrew, I respect your position—genuinely I do—but of all the people to get upset about, the Anglican Bishops are almost entirely herbivorous and socially sensitive. They are great company. You seem to have a real animus towards them, which I am sure does not fit with your aim. That is just an observation. My question is about this: the opinion surveys suggest that, even though we are a very secular society, particularly in England, we are still very strongly in the UK a believing but not a belonging society. People do not turn up on the day. A million people still go to Anglican churches every Sunday or most Sundays, but by and large people do not go to church in the way that they used to, even when I was younger. But opinion surveys show that they still believe. Normally, about three-quarters of the population on most surveys still believe. So in many ways the C of E in particular speaks to many people's faith instincts in this country. I just want you to recognise that. I rather have the feeling that you do but the manner of your attack on my herbivorous friend, the Bishop of Leicester and his colleagues has perhaps taken my breath away.
Andrew Copson: I have absolutely no animus against Bishops per se, only against the position that Bishops are accorded in the current set-up of the House of Lords. It is worth pointing out that although they may be mainly herbivorous—in the sense that I think you meant to imply of placidity, mild manners and so on—they have taken actions where I think they have done great damage. For example, if you are someone who believes in the right of someone who is terminally ill to have access to an assisted death, you would have a slightly more carnivorous view of what they have done and the effect of it than the one that you have expressed. In terms of the second point, that we are a society that is believing without belonging, I do not think that that is true. There is data to suggest quite the opposite—that actually people are more belonging than believing. More people describe themselves as Christians than believe in Jesus Christ, for example, or God. The percentages of people taking on that self-identification are much higher than the percentages of people believing. Professor David Voas of the University of Manchester is probably one of our best demographers on religious matters. His very good article on belonging without believing is the corrective to that view.
Lord Hennessy of Nympsfield: Perhaps you could send me that.
Andrew Copson: Yes, I will do, certainly.

Q462 Gavin Barwell: I will try to ask a question of each of you to give you both a chance to express a view. I am not sure if you have had the chance, Andrew, to see the written evidence that Theos put in.
Andrew Copson: No, I have not seen the Theos evidence.
Gavin Barwell: I will very briefly summarise the point that I wanted to make. They make four arguments about the principle of religious representation. One of them you will not agree with, but there are the other three. A significant proportion of the population still have religious observance—one can argue about the exact figure, but there is certainly a significant proportion. High levels of social capital come from that. Some of the issues that Parliament looks at are moral issues and it is right that people of religious backgrounds and faith should be part of the mix of people who get to comment on that and make observation on it. I entirely understand your arguments against anyone being there as of right but I was quite surprised when, in the Lord Chairman's question to you at the start that suggested that you might have 12 representatives out of 300, say, in the House, you thought that that was a large number. I put it to you that, given the number of people in the UK who have some kind of religious faith, that does not seem to be an unreasonable number. I am not talking about being there by right, but if an Appointments Commission placed that sort of number of people of a faith background into an appointed second Chamber, that would not strike me as unreasonable. Can I ask the other question at the same time? In the Theos evidence, you say in paragraph 4b, in terms of the Bishops being appointed: "The existing arrangements are ecclesiologically and theologically appropriate to the Church of England". Do you

think they are constitutionally appropriate to the UK? You say that they are right for the church but are they right for the UK as a whole?

Andrew Copson: I will try to answer both points of your question very quickly. In relation to the first part, obviously there are people in Britain today of many different and contrasting religious and non-religious world views, beliefs and practices. I hope that an Appointments Commission would end up with—whether they were clergymen, ministers or not—an appropriately representative range of those views, either just incidentally or, I suppose if they specifically wanted to plug some gaps, maybe that way. As I said, there are plenty of Christians in the House of Lords who are not Bishops and plenty of Members of the House of Lords of other religions who are not clerics in the same way. The second question—

Q463 Gavin Barwell: Can I just push you on that? Do you think that leading people of the major faiths in this country have not unique but particular expertise on moral questions that come before Parliament?

Andrew Copson: Leaders? People who are particularly high up in the hierarchy?

Gavin Barwell: Yes. They might not have unique expertise, and there may be others with expertise, but would you accept that they have expertise?

Andrew Copson: I should think that probably the Archbishop of Canterbury has an equivalent level of expertise as a chair of moral philosophy at some university. If you were going to have one, I could see that you would have the other—through an Appointments Commission. I can see that there might be expertise there. On the second point about the number 12, I was answering specifically the question of whether 12 Anglicans in a Chamber of that size would be appropriate. I think you were asking in your question about 12 religious people generally. Professor Iain McLean in his little table of all the different numbers of different religious people whom we would have in a truly representative House, with 77 religious people including 16 Anglicans and 17 Roman Catholics in order to achieve that sort of representation, gives a reason why it is not possible. That is to take an obviously unworkable number of people within any appointment mechanism.

Elizabeth Hunter: My answer would be that, yes, it is constitutionally appropriate, given where we are now, which is that establishment is part of our unwritten constitution and we are constitutionally, at least, a Christian nation. We are not here to defend establishment, but that is a fact of our current situation. Also, we probably want to echo what a 2007 UCL Constitution Unit report, *Breaking the Deadlock*, said. Reform of the House of Lords and the establishment of the Church of England are two very complex and intertwined issues. It is probably sensible, given that there is no major consensus or real clamour for disestablishment or to move in that direction as part of the reform of the House of Lords. Bishops in the Lords are not entirely necessary for establishment. We know that it is an ecology of things, a cord of many strands. But any removal of Bishops from the House of Lords as part of this reform would move towards disestablishment and that is a significant knot to begin to unpick. I will just make the further point that we are not in any way aberrant across western Europe or among flourishing democracies in having intertwined relationships between church and state. The now truism that only Iran has religious representation like that in the House of Lords becomes a little jaded when you see that, across western Europe, Finland has an established church, Denmark collects taxes and pays the clergy, and Greece, Germany and Switzerland all have very entangled relationships between church and state. It does not seem to hamper their democracy unnecessarily. I think that is a long way of saying, "Yes, at the moment".

The Chairman: Thank you very much. I understand that we are about to become non-quorate, in which case I fear that we have to call this session to an end. I thank both of you for coming. You have been very helpful. What you said in conjunction with the papers that you put in has made things much clearer for us. Thank you very much indeed, as it was very helpful.

Archbishops of Canterbury and York—written evidence

General principles

1. More than a decade ago, the then Archbishops' submission to the Royal Commission on House of Lords Reform said that **the test of reform was whether it would enable Parliament as a whole to serve the people better**. That has remained the consistent position of Church of England submissions since.

2. As with any constitutional change, it is important, therefore, that there is clarity over the problems that reform is intended to address and a reasonable measure of assurance that the proposed solutions will work and avoid unintended consequences. Fundamental changes to how we are governed should also command a wide measure of consent within the country as well as in Parliament.

3. In his initial response of May 2011 to the White Paper and Draft Bill the Lords Spiritual Convenor, the Bishop of Leicester, said: "***Some reform of the Lords is overdue**, not least to resolve the problem of its ever-increasing membership. But getting the balance of reform right, so that we retain what is good in our current arrangements, whilst freeing up the House to operate more effectively and efficiently, is crucial.*"[52] In particular, the proposal to reduce the overall size of the House is welcome. But it is far less clear that wholesale reform of the House of Lords along the lines now envisaged gets the balance right.

4. For so long as the majority of the House of Lords consisted of the hereditary peerage there was manifestly a compelling case for reform. Whatever the arguments for appointment as against election there was no cogent case for a legislature where the hereditary voice was potentially predominant—indeed still around two-thirds of the total membership in 1997.

5. The 1999 legislation has, however, largely addressed that issue. The appointed component of the House has now increased from around a third in 1997 to around 85 per cent. A case can certainly be made for completing the process of reform and ending the practice of reserved places for hereditary peers. Introducing retirement ages for appointed peers and the ability for them to resign also makes sense.

6. The more fundamental issue however, is the rationale for going beyond this and substantially reducing—or even abandoning—the appointed component in favour of a partly or wholly elected House of Lords.

7. We recognise both the nature of arguments for election motivated by concerns for democratic legitimacy, and the political consensus reflected in the 2010 General Election manifestoes. Any reform that enables parliament as a whole to maintain a wide and enduring level of public respect is likely to attract our support. However, the declared view of the three main parties that the Upper House should be wholly or mainly elected does not appear to proceed from any settled view as to the fundamental purpose of the second chamber of the legislature, what its powers should be and—crucially—what its relationship should be with the House of Commons.

8. The Church of England and its bishops claim no special expertise in relation to systems of governance. The sheer diversity of constitutional arrangements across the democratic world should, however, in our view, instil a sense of humility in relation to claims that any one approach is manifestly superior to another. It also makes us cautious of changes which derive their justification from abstract theory or supposed universal norms.

9. Constitutions appear to reflect the particular histories, cultures and circumstances of each nation. The fact that ours has evolved over a particularly long period is not an argument against its further significant evolution. But it does seem to us to create a presumption in favour of adaptation and specific reforms to address manifest problems rather than far-reaching changes which sweep away all the familiar landmarks.

10. At a time of considerable public concern over our national political life and the conduct of those who serve the nation in Parliament, it must at the very least be highly questionable whether a reformed House consisting very

52 *Statement on Government white paper on House of Lords reform*, 17/5/11, online at: http://bit.ly/l0oR2u

largely or wholly of those elected from party lists would increase public confidence in our constitutional arrangements, or be a recipe for effective and accountable government.

11. Nor at a time of great economic uncertainty, when very substantial sums are being removed from the public purse, does it seem easy to justify a salaried House at substantially increased cost to the Exchequer, in the process, depriving Parliament of the expertise (brought far less expensively) by a very substantial appointed component.

12. **In summary, if, as we believe, the second chamber should remain essentially a revising chamber and if, as we also believe, the primacy of the House of Commons is to be maintained, the argument that such a chamber can only be effective and have proper legitimacy if it is wholly or mainly elected is no more than an assertion.**

Powers, Functions and Legitimacy

13. In their speeches in the House of Lords on 29th June the Archbishop of York and the Bishop of Leicester argued that there was a compelling case for retaining a second chamber that, both in its powers and composition, was distinctive from the House of Commons.

14. The Archbishop of York identified three objectives for the second chamber: **to ensure the just use of power entrusted to the government of the day,** which necessarily commands a majority in the House of Commons; **to ensure true and impartial accountability**; and **to represent the breadth and diversity of civil society and intellectual life.**

15. Consistent with this, the Bishop of Leicester underlined the crucial role of the second chamber in scrutinising and revising government legislation with a degree of independence not possible in the House of Commons.

16. It seems to us that reforms which bring the second chamber further under the control of the main political parties, especially if the governing party or coalition can rely on a majority in the second chamber, will inevitably damage the independence of the House of Lords and its ability to require governments to think again about specific legislative proposals.

17. There are several conclusions that could fairly be drawn from the claim made in that debate that over the past five years some 40 per cent of the legislative amendments passed by the Lords against the advice of the Government have subsequently passed into law. They do not include casting doubt on the effectiveness of the present House of Lords as an effective second chamber.

18. The objective embodied in Clause 2 of the draft bill- to maintain the present relationship between Commons and Lords- seems to us to be right but inconsistent with the rest of the legislation. Once the second chamber were granted electoral legitimacy- not least under a proportional system which many would see as conferring greater democratic legitimacy than the first past the post system- the two Houses would over time increasingly find themselves in conflict with each other. In this respect we concur with the relevant conclusion of the November 2006 report of the Joint Committee on Conventions, chaired by Lord Cunningham.

19. Moreover, it seems to be the common experience with all legislative assemblies created in recent times (the European Parliament, the devolved bodies) that the moment their members are elected they demand more powers. The Royal Commission expressed its strong opposition '*to a situation in which the two Houses of Parliament had equivalent electoral legitimacy. It would represent a substantial change in the present constitutional settlement in the United Kingdom and would almost certainly be a recipe for damaging conflict.*'[53] Whatever reservations there might now be about the specific proposals of the Royal Commission, its conclusion on this point seems to us compelling.

20. Speaking in the Lords in 2009 the Bishop of Liverpool described the value of the present arrangement in the following way: "We need to recover the unity of Parliament in the constitutional debate—two Houses, but one Parliament: a Commons that is elected and with the authority of having the last word, and a revising Chamber to advise, revise and refine the legislation….A mutuality between the two Houses, each distinctive in character and

53 11.6, *A House for the Future*, report of the Royal Commission on the Reform of the House of Lords (2000)

composition but mutually dependent, the elected looking to the other for the wisdom of experience, the appointed deferring to the elected and acknowledging their authority to have the last word as the voice of the people: one Parliament of two Houses under the Crown, as a sign that our own accountability is in two directions; below to the people, above to the source of our moral intuition."[54]

21. **We are concerned that the proposals in the Draft Bill may, by leading inevitably to a more assertive approach to conflict and disagreement with the Commons, make it harder for the institution as a whole to sustain the trust and confidence of the electorate. The then Bishop of Durham, also speaking in the Lords in 2009**, said: "*Legitimacy does not arise just from having people vote for you. Legitimacy is also sustained by doing the job and being trusted. Public consent and approval can come through the ballot box, or in other ways. When you do not get the second form of legitimacy, sustained trust, people lose interest in the first, the ballot box.*" [55]

22. Selection as a party candidate for election to a second chamber of the kind proposed in the draft bill would in all probability become a consolation prize for those who failed to gain selection for a seat in the House of Commons. Whilst the provision in Clause 55 to introduce restrictions on former members being elected as MPs is a useful guard against the use of the House of Lords as a springboard to launch a bid to become an MP, the lack of any similar restrictions on MPs seeking to stand for election to a reformed House of Lords is notable. It is not clear what substance there is to the assertion in paragraph 146 of the White Paper that the reformed House of Lords should "*attract individuals with different qualities from members of the House of Commons*".

Other provisions in the draft bill

23. The proposal to establish a **statutory Appointments Commission** to appoint non-party political members of the Lords is welcome. Our support for this measure dates back to the Church's response to the Royal Commission in 2000.

24. Whilst we understand the rationale for the powers in Part 5 of the Draft Bill to enable the Prime Minister to appoint Ministers to a reformed House of Lords supernumerary to overall numbers, it is crucial that such powers are used sparingly and not as a means to ensure majorities in the Upper House. **There is a case for inserting a maximum number in the bill for Prime Ministerial appointees rather than leaving this for secondary legislation.**

25. Retaining the peerage as an honour and breaking its link to membership of the second chamber seems right.

26. We note that the White Paper leaves the question of identifying the best **transitional arrangement** between the existing and reformed House of Lords to peers to decide collectively. Of the options set out, we believe that on balance the one used in the Draft Bill is the most preferable, though we have some points of detail in relation to the transitional arrangements for the Lords Spiritual (see Annex).

27. We note the **disqualification provisions** in Part 7 of the Draft Bill. The serious offence condition in Clause 47 sets a sentence of more than 12 months as the bar for disqualification. This seems too high in the interests of retaining public confidence and propriety.

28. We welcome the measures in Part 8 that allow for the **expulsion, suspension and retirement of members of a reformed House of Lords**. Lords Spiritual have advocated for the early and separate adoption of similar provisions by Government, the speedy introduction of which would be in the best interests of both the House of Lords and Parliament more widely. In that regard we would suggest that the Private Member's Bill of Lord Steel (which also contains provision to end hereditary peer by-elections) is worthy of Government support.

29. If fundamental rather than evolutionary reform of the House of Lords is to be examined, the question of civil society representation does, in our view, require closer deliberation than is evident in the Draft Bill and White Paper. The need is to see how this might be further broadened. It is significant that the Lords already does well across a range of diversity indicators, particularly when compared with the Commons. As the Bishop of Leicester said in his

54 Lords Hansard, 11/6/09, Col. 760

55 Lords Hansard, 11/6/09, Col. 765

response to the publication of the Draft Bill: "*at its best the House of Lords is uniquely a national forum in which the voices and concerns of all strands of civil society can be convened and heard.*" [56]

30. The White Paper and Draft Bill focuses in large part on questions of election and appointment, predicated on existing systems of party political representation. If there is to be far reaching reform, we would wish to see wider exploration of the possibilities for parliament to increase the breadth and diversity of representation by civil society and intellectual life.

31. Responsibility for ensuring a breadth of civil society representation is already a matter for the existing Appointments Commission. It may become harder for civil society bodies in the voluntary, community and charitable sector to have a voice in parliament if the proportion of appointed members is to be so radically reduced.

32. The rooted presence of the Church of England in every community of England and its committed membership of nearly one million regular weekly attendees give its bishops personal access through their diocesan networks to a wider spread of civil society organisations and experience than many other comparable public figures. That informs the distinctive role they are able to play as Lords Spiritual and underpins the willingness of the Established Church to continue to make a contribution to a reformed Upper House in which there should continue to be a voice for civil society.

The Lords Spiritual and religious representation

33. **We welcome the proposal in the White Paper and Draft Bill for continued Spiritual representation and a role in a reformed House of Lords for the Church of England as established by law (paragraph 92 of the White Paper). We also wish to see, through the appointments process, the presence of leaders from other denominations and faiths.**

34. Speaking in a parliamentary debate on House of Lords reform in 2007, the Archbishop of York described the constitutional and historical place of the Lords Spiritual as follows: "*The Queen in Parliament is sovereign, but is also Queen in law, in council, and in the Executive. That is the constitutional Arrangement…The Lords Spiritual remind Parliament of the Queen's coronation oath and of that occasion when the divine law was acknowledged as the source of all law. We do not see ourselves as representatives, but as connectors with the people and parishes of England. Ours is a sacred trust—to remind your Lordships' House of the common law of this nation, in which true religion, virtue, morals and law are always intermingled; they have never been separa*ted." [57]

35. By their presence and in leading the House in prayer at the start of each sitting, the Lords Spiritual are a reminder of the historic understanding that, as a people, we are still governed 'by the Queen in Parliament under God'. Their presence is a further reminder that our key constitutional institutions, the monarchy, our systems of justice, education, healthcare and our charitable sector were all shaped by the Christian tradition.

36. While much voluntary and charitable activity takes place under the auspices of the large service-delivery (and now largely secular) charitable organisations, a substantial proportion of voluntary and community activity in this country continues to be carried out under the auspices of the Church of England, other Christian denominations and other faiths.

37. There is therefore a compelling case for maintaining within the second House the presence of religious leaders who can speak for that substantial part of civic society, as well as contribute thoughtfully on matters of ethical importance..

38. The trend towards increasing engagement and participation by Lords Spiritual in the day to day business of the House—identified in our submission to the 2008 White Paper—has continued in recent years. At present Lords

56 *Statement on Government white paper on House of Lords reform*, 17/5/11, online at: http://bit.ly/l0oR2u

57 Lords Hansard 13/3/07, Col. 580.

Spiritual are to be found on four parliamentary committees, including the Joint Committee to which this submission is made.

39. Whilst the Lords Spiritual are bound together by their collective identity as bishops of the established Church of England, they come to parliament not as peers but through their historic identity as independent 'Lords of Parliament'. There is no 'Bishops' Party' and whilst bishops take advice, no whip is either imposed or observed that binds their activities to the expressed view of their diocese, the General Synod or Archbishops' Council.

40. On legislative matters Lords Spiritual are as much to be found taking divergent views as uniform ones—and the parliamentary record shows that they will speak and vote accordingly. As the Lords Spiritual do not conceive of themselves as a 'bloc', or behave as one, there has been only a handful of occasions when, in very close votes, their votes have been decisive.

41. The number of Lords Spiritual has remained constant at 26 since the Diocese of Manchester Act of 1847, but that number has, over time, represented a varying proportion of the total membership of the House as its size has ebbed and flowed. Before the introduction of life peers in 1958 it represented just over 3 per cent of a total House of around 800. By 1999 it was a mere 2 per cent, but following the removal of most of the hereditaries it rose again to 4.2 per cent. Since then it has gradually declined as the size of the House has increased.

42. Through its established position, and through generations of hard work building bridges inside and between mixed communities, the Church of England is a key agent of interfaith dialogue and cooperation in all the major cities of England. The Government-backed Near Neighbours programme is both an acknowledgement and a consequence of the value and strength of those networks. Many leaders of other faith communities value the fact that we have an established Church with a role in Parliament. The Lords Spiritual also fulfil an important role in the legislature as an enduring voice for the concerns of people of all faiths, especially at a time of increasingly secularising currents in our public institutions and services.

43. Ever since our May 1999 submission to the Royal Commission chaired by Lord Wakeham, the Church of England has, however, been consistent in its view that an increased presence from other denominations and faiths would be welcome in a reformed House of Lords.

44. In 2000 the Archbishops endorsed the view of the Royal Commission that there should be broader denominational and faith representation in the House of Lords, and in their response to the 2003 Government consultation explained some of the rationale: "*in an era of growing interest and concern about relations between faiths, their approach to moral and ethical issues and their impact on the modern world, the House of Lords has considerable potential as a forum for serious and well-informed debate on these matters.*"[58]

45. Like the Commission—and successive Government documents—we acknowledge that providing reserved places for formal representatives of other denominations and faiths would be problematic in practice. But **we believe that there is a strong case for placing the Appointments Commission under a duty to ensure, among other things, the presence of those from across the United Kingdom who have or have had senior responsibility in churches and faiths other than the established Church.**

46. If, as successive governments have accepted, there is a continuing benefit to this country in having an established Church, the presence of the Lords Spiritual in the House of Lords is one of the most important manifestations of that special relationship between Church and State.

47. The Church of England, by law established, holds central to its mission a commitment to minister to the whole community, to people of all faiths and none. According to Professor Tariq Modood: "*the minimal nature of the Anglican establishment, its proven openness to other denominations and faiths seeking public space, and the fact that its very existence is an ongoing acknowledgement of the public character of religion, are all reasons why it may be far less*

58 Response from the Archbishops of Canterbury and York, on behalf of the Church of England, to the Consultation Document Constitutional Reform: next steps for the House of Lords, December 2003.

intimidating to the minority faiths than a triumphal secularism."[59] Whilst in his submission to the Royal Commission, the Chief Rabbi, now Lord Sacks, said *"disestablishment would be a significant retreat from the notion that we share any values and beliefs at all. And that would be a path to more, not fewer, tensions. Establishment secures a central place for spirituality in the public square. This benefits all faiths, not just Christianity.*"[60]

48. The established status of the Church would not be at an end if the Lords Spiritual no longer had a place in parliament but its character would be significantly changed and weakened.

49. Some consequential issues would also have to be addressed. Since 1919 the Church of England has, through its own national legislature (now the General Synod) had power to pass Measures which, once they have obtained Parliamentary approval and Royal Assent, have the equivalent effect to Acts of Parliament. Draft Measures are scrutinised by the Ecclesiastical Committee of Parliament, consisting of 15 members of each House, and are then submitted to the House of Commons and House of Lords for approval.

50. In the Commons the relevant motion is then moved by the Second Church Estates Commissioner—traditionally a member of the governing party who is appointed by the Queen and must be a communicant Anglican. In the House of Lords the relevant motion is moved by one of the Lords Spiritual.

51. More detailed comments on Part 4 of the draft bill, paragraphs 91-103 of the White Paper and paragraphs 194-226 & 488-492 of the Explanatory Notes are in the attached Annex.

6 October 2011

59 Tariq Modood, "Establishment, Multiculturalism, and British Citizenship", *Political Quarterly*, 65 (1994),

60 Written submission to the Royal Commission on the Reform of the House of Lords by Dr. Jonathan Sacks, Chief Rabbi of the United Hebrew Congregations of Britain and the Commonwealth (1999).

Annex: The Lords Spiritual—Detailed Comments

1. We agree with the proposals in the Draft Bill (Clause 65 (3)) that the Lords Spiritual should continue to be diocesan bishops of the Church of England. This is both a continuation of a longstanding constitutional arrangement and a reflection of the historic settlement that bishops come to the House as individual Lords of Parliament and not formal 'representatives of the Church of England'.

2. The ambiguity in the definitions contained in paragraphs 91 and page 8 of the White Paper is not entirely helpful (they say respectively: "*Although historically they sit as independent members of the Lords they are widely regarded as representatives of the Church of England*" and "*in the reformed House of Lords, there would be up to 12 places for representatives of the Church of England*").

3. We welcome the proposed continued parity between the rights and powers afforded to the Lords Spiritual and those enjoyed by all other members of the House, appointed and elected. The Lords Spiritual are committed to playing a full and active role in the life and work of the House and this will enable that role to be performed to its fullest potential.

4. **We agree that, as with the proposal for Government Ministers in the Lords, the numbers of Lords Spiritual should be supernumerary to the overall size of the House.**

5. The Draft Bill proposes that after all reforms have been completed the House should contain 12 Lords Spiritual, with the reduction from the present 26 being introduced in three stages across the transitional period. The draft bill proposes that 12 would comprise five "Named Lords Spiritual" (those who have existing membership of the Lords by virtue of their occupancy of senior sees, namely the two Archbishops and the Bishops of London, Durham and Winchester) and seven "Ordinary Lords Spiritual" (diocesan bishops of the Church of England).

6. In both our response to the Royal Commission and to the 2008 White Paper, we expressed our view that any reduction in the number of bishops below 20 would pose difficulties in terms of maintaining current levels of service to the House. It would place greater burdens on the remaining bishops in balancing their diocesan and parliamentary responsibilities, necessitate a change in the seniority system by which bishops come into the House, and require an overhaul of the duty bishop system that has been in place for over a century.

7. However, given the proposed reduction in the size of the House we accept that these difficulties will have to be faced and that the Church of England will have so to arrange matters that 12 of its bishops will be able to serve the reformed House effectively.

8. We note that the White Paper (paragraph 12) states that "*the Government expects members of the reformed House to be full-time Parliamentarians*", but also the passing reference within the explanatory notes (paragraph 490) to the membership of the Lords Spiritual being "*both ex officio and part-time*".

9. We believe that, alongside the professional full-time politicians, there should be ample room within a reformed House of Lords for a significant number of members who are informed by a diverse range of outside experiences and interests. We hope that a reformed House along the lines proposed would continue to respect and understand that many amongst its number, including bishops, will continue to have regard to their significant outside commitments—and that this should be considered a positive attribute for informed parliamentary debate.

10. We support the continuation of the principle that translation from one diocese to another should not affect a Lord Spiritual's continued membership of the House.

11. We agree with the Draft Bill's proposal (Cl. 26) that there continue to be a distinct category of Lord Spiritual (described as "Named Lords Spiritual") with membership linked to occupancy of a senior see. We agree that Named Lords Spiritual should continue to receive a writ of summons automatically, mirroring the present arrangement.

12. **We have more doubts whether continuing with the arrangement of five reserved places for the occupants of the senior sees would still be right for a Bishops' Bench rather less than half its former size.**

13. Occupants of senior sees inevitably have greater competing outside commitments than other bishops, and in the interests of maximizing the continued effectiveness of the service that the Lords Spiritual offer parliament there may be a case for a greater proportion of the membership of the Bishops' Bench to be drawn from the numbers of the other diocesan bishops (categorized as "Ordinary Lords Spiritual").

14. We recognize that this is a matter on which the Archbishops, Lords Spiritual and wider Church would wish to reach a settled view before a final figure for Named and Ordinary is commended to the Government. But we note that there are three Lords Spiritual (the Archbishops and the Bishop of London) who are members of the Privy Council and one alternative to the provisions in the draft bill would be for these three sees to be Named, leaving nine places to be filled from the other 39 English diocesan sees.

15. The Draft Bill proposes that the reduction from 26 to12 Lords Spiritual should be introduced over the two transitional periods, with 21 bishops entering the first period, 16 entering the second and 12 entering all subsequent parliaments. Clause 30 (7) prevents the Church replacing any of the Ordinary Lords Spiritual during the transitional periods unless a failure to do so would result in the total number of bishops falling below 12.

16. The Government has proposed that the present number of 26 Lords Spiritual would reduce to not more than 21 at the beginning of the reform process, not more than 16 at the end of the first Parliament and not more than twelve at the end of the second Parliament. Given the pattern of episcopal retirements in recent years the inevitable effect of Clause 30 (7) would be to hasten the timescale in which that baseline of 12 would be reached.

17. As an illustration, in the years 2006–2011 there were 20 departures from the Bishops' Bench, 18 of which would be categorized as from the 'Ordinary Lords Spiritual'. The combined transitional period outlined in the Draft Bill is for a maximum of ten years.

18. Clause 30 (7) could therefore mean a more rapid transition from the current to the reformed House for the Lords Spiritual than for those on other benches. This is probably an unintended consequence of what the Government has proposed and, without changing the overall numbers, we believe that some greater flexibility over the transitional mechanism may be needed.

19. The White Paper and Draft Bill (at Clause 27) place a requirement on the Church of England to make the selection of diocesan bishops to serve as Ordinary Lords Spiritual "*in whatever way it considers appropriate*".

20. 27 (7)-(9) sets out a mechanism by which the Church of England's choices would be formally notified; namely by requiring the Secretary General of the General Synod to notify the Clerk of Parliaments before the beginning of each electoral period (or as soon as practicable if during an electoral period) who the Church had selected as its Ordinary Lords Spiritual for the next Parliament.

21. **We agree that it is sensible for the legislation to specify a notification mechanism and not to seek to prescribe the mechanism adopted by the Church for making appointments from among its diocesan bishops.**

22. These provisions would afford the Ordinary Lords Spiritual the opportunity to consider the natural break offered by 5-yearly elections to the House, to decide whether to continue their membership into the next electoral period, or whether to resign their membership of the House at that point (whilst potentially continuing as a diocesan bishop).

23. They would also provide the Church with the ability to select diocesan bishops for membership of the House on the basis of a range of factors including, though not exclusively, any particular expertise, national roles held within the Church, diversity of Spiritual representation, the requirements of the diocese, and geographical variation.

24. The method by which the Ordinary Lords Spiritual would be selected requires further reflection on the part of the Archbishops, Lords Spiritual and the wider Church, given that the inevitable move away from the present, automatic, seniority based system raises a number of important issues.

25. At Clause 28 (1) the Draft Bill proposes that going in to the first transitional period, a person can only be selected as an Ordinary Lord Spiritual if "*immediately before the relevant Parliament is dissolved, the person is entitled by virtue of being a bishop to receive writs of summons to attend the House of Lords*".

26. Going in to the second transitional period the Draft Bill states at Clause 28 (4) that Ordinary Lords Spiritual must be drawn from the existing pool of Lords Spiritual. After the transitional periods, in a fully reformed House of Lords, there is no requirement for the seven Ordinary Lords Spiritual to be drawn from those already sitting in that capacity in the preceding parliament. The effect of this is to afford the Church of England thereafter the opportunity to determine which seven diocesan bishops will make up the Ordinary Lords Spiritual at the beginning of each parliamentary term, for the duration of that term.

27. Given the intention expressed in Clause 27 (6) and elsewhere to allow the Church of England to determine its own method of selection for Ordinary Lords Spiritual for each coming parliament in a fully reformed Upper House—and replacements for those that retire or resign mid-term—**there is a case for affording the Church the broadest possible choice from among its diocesan bishops at an earlier opportunity than at the end of the two-term transitional process.** This would require the removal of Clause 28 (4) and clarification that Clause 28 (1) referred to all diocesan bishops and not simply existing Lords Spiritual.

28. This would enable the Lords Spiritual in the transitional parliaments to be selected from the widest possible pool of those who were diocesan bishops at the time. This could be of particular significance that if the General Synod were to approve the present draft legislation to enable women to become bishops.

29. We agree with the proposal that in a fully reformed House of Lords and during the transitional periods Ordinary Lords Spiritual should be permitted to retire from the House of Lords whilst continuing as a diocesan bishop of their see.

30. **We agree that Lords Spiritual should not receive a salary** given the special (ex-officio and part time) status of the bishops in the House. We agree that Lords Spiritual should continue to be allowed to claim reimbursement for expenses necessarily incurred in the course of their parliamentary duties.

31. **We agree that the Lords Spiritual should be subject to the same disqualification provisions as other members of the reformed House of Lords. We question whether the exemptions proposed by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension are necessary. We did not seek them and unless there are legal or constitutional reasons of which we are not aware, we believe that the Lords Spiritual should be in the same position as other members of the House on these matters.**

British Humanist Association—written evidence

1. The British Humanist Association (BHA) welcomes the opportunity to give evidence to the Joint Committee scrutinising the White Paper and Draft House of Lords Reform Bill. Our remarks in this submission are limited to the issue of the place of Bishops in the House of Lords and we make particular comment on the specific proposals set out in the White Paper and Draft Bill. We have attached as an appendix to this submission a comprehensive briefing *Religious Representatives in the House of Lords*, which we commend to the Joint Committee and request that it is accepted as supporting evidence to this submission.

2. The BHA believes that the best constitutional system is one that is secular, that is one where state institutions and religious institutions are separate and the state is neutral on matters of religion or belief. We believe that such a state is the best way to guarantee individual human rights, to ensure everyone is equal before the law, and to protect against privilege or discrimination on grounds of religion or belief. The BHA does not take a position on what a reformed House of Lords should look like, whether it should be elected or partially elected. However, it is our position that there should be no reserved places for Bishops of the Church of England, or for any other religious representatives, in Parliament.

3. We have long argued for the removal of the right of Bishops to sit in the House of Lords, especially since the prospects for reform became (slightly) greater in 2002, and the public are strongly on our side in wanting to remove this religious privilege. Last year the BHA worked with Power 2010 on an initiative which saw thousands of people write directly to the Bishops in the House of Lords, calling on them to engage positively with democratic renewal.

4. An ICM survey conducted on behalf of the Joseph Rowntree Reform Trust in March 2010 found that 74 per cent of the British public—including 70 per cent of Christians—believe it is wrong that Bishops have an automatic right to a seat in the House of Lords[61]. Many parliamentarians from across Parties and Peers in the crossbenches would share that view, and both the Labour Party and the Liberal Democrats have policy positions on Lords Reform which would mean an end to reserved seats for the Bishops[62].

5. We are extremely disappointed that the White Paper and Draft Bill ignores the strength of feeling amongst people and organisations, both religious and non-religious alike, who want to see an end to the privileged place for the Church of England in Parliament through having reserved places for its Bishops in the House of Lords. However, we welcome the statement in the White Paper that the Joint Committee will 'consider options including a wholly elected House' (p12). We could not urge the Joint Committee more strongly to look again at the issue of the Lords Spiritual and to recommend that there are no automatic, reserved places in any reformed chamber.

The proposals

6. The White Paper and Draft Bill propose to retain reserved places in Parliament for the established Church[63]. The UK is the only democratic state to do this, and this is in spite of the fact that the Church of England commands little public support, with only 23 per cent of the population professing to be affiliated to the Church of England, according to the 2010 British Social Attitudes survey (and of this number, half never attend church).

7. The presence of the Church of England in the House of Lords entrenches a privileged position for one particular branch of one particular religion that cannot be justified in today's society, which is not only multi-faith but increasingly non-religious. It is at odds with the aspiration of a more legitimate and representative second chamber and with recognition of a plural society. Moreover, by virtue of their position as Bishops of the Church of England, the proposals effectively reserve seats in the House of Lords for heterosexual men, or celibate gay men, of the same denomination. This unabashed discrimination has no place in a modern Parliament.

8. The proposals do not simply maintain the status quo but create a new, independent and largely unaccountable bloc for the Church of England in Parliament.

9. The House of Lords Reform Draft Bill and White Paper propose to retain the right of Bishops to sit in Parliament but with a reduced number of 12 Bishops (from 26) sitting as ex-officio members 'in line with proposals for a reduction in the size of the second chamber' (p8). However, in a smaller chamber of 300 Peers, that would represent a proportional increase from 3 per cent to 4 per cent. We cannot see any good reason to maintain the reserved seats for Bishops and certainly can see no legitimate justification for increasing their proportional place in the chamber. We recommend that the Joint Committee rejects this proposal.

10. The White Paper and Draft Bill also propose that the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester will continue to be members of the House of Lords, and to give the Church of England new powers to decide which of the remaining 7 of the 12 Bishops will sit in the chamber. If there are to be reserved seats for Bishops of any number, we cannot see any reason why the Church should be permitted more say than at present over who takes those places in the House of Lords.

11. Although they would have the same speaking and voting rights as other members of the reformed House of Lords, the Bishops would continue to sit in Parliament on a different basis from other members. Following transition periods, in a fully reformed chamber, the Government proposes that (p23):

61 ICM Research, Lords Survey, March 10-11 2010 http://www.ekklesia.co.uk/content/survey_on_bishops_icm.pdf

62 The Labour Party's policy is for a wholly elected House of Lords, as set out in its 2010 election manifesto http://www.labour.org.uk/uploads/TheLabourPartyManifesto-2010.pdf, and the Liberal Democrat's longstanding policy is also for a wholly elected House of Lords and they reaffirmed at their 2011 annual conference that even in a partially appointed chamber, there should be no reserved seats for Bishops.

63 Although it is important to note that there is no constitutional link between establishment and having reserved places for Bishops in Parliament. See Appendix, *5) Wouldn't removal of the Bishops mean disestablishment of the Church of England?* for details.

- Bishops would not be entitled to a salary or pension in the reformed House of Lords;
- Bishops would be exempt from the tax deeming provision;
- Bishops would be entitled to claim allowances under the scheme administered by the IPSA for members of the reformed House of Lords;
- They would be subject to the disqualification provision;
- They would not be subject to the serious offence provision and those on expulsion and suspension as it is anticipated that such members would be subject to the disciplinary procedures established by the Church of England.

12. Through maintaining a special status for Bishops in a reformed chamber where they will not receive a wage (although they would be entitled to other benefits), they will not be accountable to Parliament in the same way as other members. More important, arguably, is their exemption from the serious offence provision and those on expulsion and suspension. These provisions ensure that on the most serious matters, Bishops in the House of Lords will be accountable to the Church of England and not to Parliament.

13. We believe that these proposals are counter to the aims of creating a more democratic and accountable chamber, and as such cannot be justified. Indeed, no justification is provided in the White Paper for creating an essentially new position for Bishops in a reformed chamber, over which the Church of England has far more control and say than at present.

14. If there are to be reserved seats for Church of England Bishops in the House of Lords (which we strongly oppose) there are a number of ways that the Draft Bill could be amended so as to ensure that Parliament, and not a religious institution, has authority over those who sit in Parliament and we urge the Joint Committee to examine the proposals with a view to amending them in line with the cross-Party commitment to creating a more democratic chamber.

About the BHA

15. The BHA is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. Founded in 1896, we have over 28,000 members and supporters and over 90 local and special interest affiliates.

7 October 2011

Theos—written evidence

1. **Introduction**

a) Theos is a Christian think tank which carries out research into the role and place of religion in society. Though we have worked with a number of churches and other faith groups, we are not aligned with or funded by any particular denomination. We do not represent the views of any faith institution.

b) We operate on the principle that religious voices should be given a fair hearing in the public square, for reasons set out below. Our key piece of work on the issue of 'religious representation' in the House of Lords (*Coming off the Bench: The Past Present and Future of the Religious Representation in the House of Lords*, 2007) endorses the Wakeham Commission's recommendation of a reduction in the number of bishops in a reformed second chamber and the addition a broader religious element that reflects the increased religious diversity of the United Kingdom.

c) This submission outlines how that recommendation might be explored in the context of the Draft Bill.

2. **The principle of religious representation**

a) We recognise that some groups argue that there is no positive case for a religious presence in a reformed chamber. Against this argument we observe that:

i) The religious demography of the nation is increasingly complicated, but it is still the case that a significant part of the population not only identifies with a religious tradition, but practices a faith. The British Social Attitude Survey reports that 21 per cent of the population attends religious services or meetings once a month or more, and 49 per cent claim a religious affiliation. These figures equate to approximately 32 million and 14 million people respectively. In comparison, the Labour Force Survey suggests that 26.6 per cent of the labour force is in union membership (6.5 million), and it is estimated that well under five hundred thousand people are members of political parties.

ii) There is strong evidence to suggest that religious affiliation correlates with high levels of social capital. Research into the UK Citizenship Survey and the European Values Survey data sets shows that religious people in the UK are more likely to volunteer regularly in their local community; to feel a greater sense of belonging to their local community and Britain; to have higher levels of trust in other people and social institutions; and to feel that they can influence decisions locally and nationally.

iii) The House of Lords often debates issues of deep moral import. Given the long history and broad extent of religious traditions within Britain, it is important that they are present and visible as participants in such contentious debates.

iv) It is often argued that the presence of the Church of England bishops is anachronistic and that any religious presence at all would be internationally anomalous. The relationship between religion and state in every country round the world, including those in apparently secularised Western Europe, is complex, intertwined and the result of years (centuries) of history particular to that nation. In Western Europe alone, there are instances of multiple established churches (e.g., Finland), of states collecting church taxes and paying clergy (e.g., Denmark and Iceland), along with various other arrangements (Norway, Greece, Switzerland). It is simply wrong to say that the UK position is somehow aberrant. We should not seek to imitate some theoretical, abstract, model of alleged church-state neutrality, but rather to work within the boundaries of the traditions and existing social conditions that are particular to the UK.

3. **The existing arrangements**

a) The factors outlined above do not mean that there should *necessarily* be religious voices—whether Church of England bishops or otherwise—as of right in any reformed second chamber. However, to provide space for such voices is entirely within the logic and the spirit of the Draft Bill as it stands. It would also align with public support for a second chamber which includes independence, expertise and the ongoing presence of figures who would not ordinarily seek election.

b) The bishops currently provide a service to the House which is deep but narrow. On the one hand, they bring a degree of 'connectedness': through an early ministry in parish life, the life of their diocese/region, the broader life of the worldwide Anglican Communion, and through working closely with civil society organisations, locally and nationally. On the other hand, and while there is evidence of increased activity, most participate in the House infrequently. Quite legitimately, their proper focus is their pastoral ministry in their own community. Members of the Committee will know that this means that the Lords Spiritual do not and could not act as a 'religious party' in the House. They do not tend to vote in numbers, and when they do they are often found in different lobbies. They have only affected the outcome of divisions in very rare cases.

c) On this point, it seems to be that a majority of the work in the House of Lords is done by less than half of the bishops. The Church of England's work in Parliament would not, therefore, unduly suffer if their numbers were reduced to 12. It may be that they could fulfil a similar level of activity with an even smaller number, provided that the remaining bishops were given the appropriate level of support in their Diocese. We acknowledge, however, that there are practical considerations which must be borne in mind (for instance, daily prayers and the passage of Church of England legislation). Similarly, their number should not be so small as to force them into

acting simply as bishops to the House of Lords: it is advantageous that they retain strong diocesan links and carry out work beyond Parliament.

d) Public opinion polls—specifically the 2010 ICM poll for the Joseph Rowntree Reform Trust—have been cited in support of the removal of the bishops from the House. We note that other polls have shown public views to be fairly evenly split on the issue (e.g., a 2007 ComRes poll for the BBC). Here, in the event that the episcopal presence was to be maintained, 65 per cent thought that the entitlement to sit in the upper chamber should also be extended to non-Anglican religious leaders.

4. **A broader religious presence**

a) The bishops of the Church of England are unusually, but not uniquely, well placed to serve in a House that offers independence and expertise. Leading religious figures (e.g., Lord Sacks and Lord Singh) are offered seats in the House of Lords under the ordinary criteria of the Lords Appointments Commission (though all parties in the appointments process could be encouraged to be more proactive when it comes to similar candidates).

b) The existing arrangements are ecclesiologically and theologically appropriate to the Church of England, since its place is founded both on the historical and symbolic link between church and state, and on the substantive contribution that the bishops have been able to make over time. These arrangements clearly do not pertain to other religious traditions. Not only do they have different internal structures but also different understandings of the proper relationship between church and state. Roman Catholic Canon law prohibitions on clerics taking up positions in legislative assemblies are a case in point.

c) Therefore, the question of what mechanism could be deployed in order the select broader religious representation is clearly a vexed one. It is our view, however, that this is a *practical* difficultly, rather than one that in *principle* should prevent a broader religious presence in the House.

   i) In the first instance, it is probably misguided and unnecessary to approach this on a principle of seeking to create a socially reflective religious presence in the House of Lords.

   ii) It seems wise to adopt a more flexible approach in which the Appointments Commission takes the lead. It would rarely be appropriate to have religious appointees who, like the bishops, would take their seat *qua* a senior clerical position, though some non-Anglican Christian denominations might more naturally produce figures of internal authority. Nevertheless, the existing approach of the Appointments Commission—which in many ways could be described as acknowledging the way in which some religious figures command broad public respect over time—could be formally acknowledged and strengthened.

   iii) Beyond this, we see several ways in which the Bill could be shaped. One way forward would be to approach each five- yearly round of appointments with an explicit intention to see religious traditions represented in the wider appointed portion of the House, separately from the 12 (or potentially fewer) positions for the Church of England Bishops. Another would be to reduce the number of bishops still further (perhaps to 8, including London, Canterbury and York for the sake of the symbolic connection with a further 5 selected from the wider pool) and to have the remaining supernumerary 'Lords Spiritual' positions filled by the Appointments Commission with a mix of individuals from non-Anglican Christian communities, and then prominent lay figures from religious minorities.

5. **Concluding points**

a) The Draft Bill and White Paper suggests that the 12 bishops should be selected by the Church of England, but without specifying a mechanism. We recommend that the Committee should give further consideration to this issue. Transparency of process is clearly an important test for any remaining appointed element.

b) The Establishment of the Church of England is an important background concern. Clearly, the presence of the bishops in the House of Lords is not a necessary condition of Establishment. However, it is clearly part of the 'ecology' of Establishment. There is no groundswell of opinion amongst religious minorities for an undoing or substantial renegotiation of this relationship. Indeed, anecdotal evidence strongly suggests that religious

minorities in the UK are particularly keen on the visible presence of religious figures qua religious figures in the House of Lords, and this is key to remember in the attempt to create a fair, responsive and representative second chamber.

24 November 2011

MONDAY 5 DECEMBER 2011

Members Present

Lord Richard (Chairman)
Baroness Andrews
Bishop of Leicester
Lord Hennessy of Nympsfield
Lord Norton of Louth
Lord Rooker
Baroness Shephard of Northwold
Baroness Symons of Vernham Dean
Lord Trefgarne
Lord Trimble
Lord Tyler
Baroness Young of Hornsey
Gavin Barwell MP
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Tristram Hunt MP
Dr Daniel Poulter MP
John Stevenson MP
Malcolm Wicks MP

Lord Adonis and Lord Carter of Barnes (QQ 464–509)

Q464 The Chairman: Thank you both for coming. It is good of you to come and assist us with these deliberations. I think that you know what we are about and I think that you know the issues that we hope to hear from you about today. Would either or both of you like to make a short opening statement before we launch into the questions?
Lord Adonis: I am happy, Lord Chairman, just to pitch straight into the questions.
Lord Carter of Barnes: I am happy to follow my colleague's lead.
The Chairman: Fine. Let me ask you the first question, then. What is your view of the draft Bill's provision that people appointed as Ministers should remain as Members of a reformed House only for as long as they are actually Ministers?
Lord Adonis: I think that it is workable but very novel and, in my experience of constitutional arrangements, novelty tends to militate against their being accepted. But since all the proposals that you are discussing, Lord Chairman, are extremely novel, alongside elections to the second Chamber and all that, this, I suppose, is less novel than many of the others.
The Chairman: It may be novel, but do you think that it has merits?
Lord Adonis: Yes, I do. I think that the idea of making it possible for Ministers to have a seat in Parliament by virtue of membership of the second Chamber is a plus in our current constitutional arrangements, because of course a number of people—including both Stephen and I—were appointed to the second Chamber essentially to be Ministers. It is a debatable argument, but it is a strong argument that that membership should cease when ministerial office ceases.

Q465 The Chairman: That is the bit that I am interested in. Why do you say that there is a strong argument for that?
Lord Adonis: Because the whole reason for appointments and the legitimacy of the appointment was to hold ministerial office, so there is an argument for it. There is also, of course, an argument against, which is that you have different classes of Members of the second Chamber.
The Chairman: And different classes of Ministers.

Lord Adonis: Yes, but I suppose that another way of looking at it is that we have different classes of Minister at the moment. Some are Members of the first Chamber and some are Members of the second Chamber.
The Chairman: Yes, but the thing that I was thinking of was that a ministerial career does not necessarily start on day one and continue smoothly until the end. There may be gaps in the middle and those gaps cannot be filled if Ministers have to withdraw from the Lords when they cease being a Minister after their first appointment.
Lord Adonis: If the other provisions of the draft Bill were to be enacted, then of course it would be open to a former Minister to seek membership of the second Chamber in their own right.
The Chairman: Yes, but that there would be a gap.
Lord Adonis: There would be, yes.
The Chairman: It seems to me that if someone is a Minister in the Lords and it looks as though he is likely to stay a Minister in the Lords, but there is going to be a two-year or three-year gap before the next election, it is a bit hard that he should have to withdraw and then come back it.
Lord Adonis: If the second Chamber were wholly elected or 80 per cent elected, with the non-elected Members as the Cross-Benchers, the sole legitimacy of that person being in the Lords would be their possession of ministerial office, so the argument for their membership ceasing when their ministerial office ceases is logically and democratically very strong. That of course would mean a discontinuity of membership. I do not think that anyone has a right to continue as a Member of the second Chamber for any longer than Parliament judges it to be in the general interest that they should, which is, of course, why you are having these hearings at the moment—to work out what you think is the right legislative framework for Members to belong to the second Chamber.

Q466 The Chairman: What about the idea that they should remain Members of the second Chamber until the next election?
Lord Adonis: I had not considered whether there should be a sort of grace period after, but a lot of them would not want that. My experience of those who have gone to the second Chamber essentially to be Ministers is that quite a number of them basically stopped playing a part in the Lords once they had ceased being Ministers. It is very much horses for courses. I think that for those who wish to remain a Member there is a strong argument for saying that they should then seek election in their own right.
The Chairman: If you look at the people who have come in as Ministers, certainly under the last Government, some of them have stayed, some of them have not stayed, some have been active since they have stayed and some have been not quite so active since they have stayed. It is a mix.
Lord Adonis: You actually have examples of both in front of you. I have remained active, while Stephen has not. I think that it is a great idea that I am a Member of the second Chamber and hope that people will think that it is a great idea henceforth. I would have strongly supported the view that you have just set out, Lord Chairman, that because I am such an excellent person, I should remain a Member of the Second Chamber. Perhaps there should be a special clause in the Bill that would enable me and others who are keen to remain to do so. Stephen has taken up an appointment that means that he has not wished to remain an active Member, so he would be in a very different camp.

Q467 The Chairman: Lord Carter, do you have views on this issue?
Lord Carter of Barnes: On the idea of an Adonis clause to allow Andrew to stay in perpetuity?
The Chairman: Not necessarily an Adonis clause.
Lord Carter of Barnes: First of all, thank you, Lord Chairman, for the opportunity to give a view. I should caveat my comments with the fact that, as Andrew said, I am not an active Member of the House, although part of the reason why I am not are the rules determined by the House and others on what you are allowed to do as an ex-Minister, which I think goes to the heart of the question of expertise in Parliament. When I stood down as a Minister, I was advised that I would be required to seek approval for any employment that I would seek to take for up to two years. If you are a professional businessperson, as I am, rather than a serial non-executive or adviser, essentially it was pretty obvious that it was unlikely that I was going to be able to go from being the Minister for Technology and Telecommunications to running a technology or telecommunications company in the United Kingdom, so I moved to France and run a French technology and telecommunications company to avoid any suggestion of impropriety. As a consequence, I applied for leave of absence from the House. When I

return to the United Kingdom, which I will do next summer, it will be my intention to apply to the House to re-enter. That is just to put my own situation on the record.
As to the more general question, my experience is that, certainly in the case of the Prime Minister whom I knew, he came to the conclusion that it would be useful in specific areas to have individuals who were experts in their area rather than experts in politics or parliamentary activity and procedure. As it happens, given that we are having this conversation today, I think that that is a rather resonant reality. If we look at what is happening around Europe, there is quite a trend towards the value of expertise in specific areas as opposed to generalism. If there is going to be reform of the second Chamber, which clearly is a matter for some debate, I would applaud having a mechanism that allows Prime Ministers to be able to exercise that judgment.

Q468 The Chairman: Let me ask the same question that I asked of Lord Adonis. Do you think that the Minister should stay until the next election, once he has stopped being a Minister?
Lord Carter of Barnes: I think that the current system is unclear about what to do with professional experts who are not career parliamentarians. I think that the rules on post-ministerial employment are tricky.
The Chairman: That is nothing to do with being a Minister in the Lords.
Lord Carter of Barnes: It is to do with the follow-on. What do you do once you have ceased to be a Minister? At that point, if you are in the upper House, you need to go back to your day job. If your day job is restricted, then it has a direct impact on what you can or cannot do.
The Chairman: The only point that I am making is that the restrictions on what you do when you cease to be a Minister are not restrictions because you are a Minister in the Lords; they are restrictions because you have been a Minister, full stop.
Lord Carter of Barnes: Indeed. Like Andrew, it seems to me that the proposal in the draft Bill is intellectually coherent. To have a mechanism to allow a Prime Minister to appoint Ministers to the second Chamber can bring a level of knowledge and expertise in an area that the electoral system may not necessarily throw up, so one hopes that it augments the skills set in the Government. It is intellectually coherent that that term finishes either at the end of the ministerial term or possibly at the end of the term of that Government, just to make it neater. As you rightly say, the disadvantage of that is that you then lose the expertise, knowledge and wisdom gained in participating in the House. It is a way of bringing individuals into the parliamentary system who would not have come in through another means. It is imprecise and it is certainly not democratic, but it is strangely effective, which is a reasonable description of the House of Lords.

Q469 The Chairman: I will take that as a compliment. Thank you very much. I have one thought in the back of my mind: if we go down the road of Ministers being appointed and then leaving, that slightly eats into the general constitutional principle that Ministers should be in Parliament and it veers, does it not, in the direction of the United States where people who have no connection at all with the parliamentary system are appointed as Ministers.
Lord Carter of Barnes: Andrew is far more knowledgeable than I am on those things and certainly on things to do with government. I think that that touches a little on my previous comment about how you balance expertise with electoral legitimacy. As we all know, there are different models in different countries. Currently, I live in France, where there is a different model of political appointments to Cabinet positions. We have a mix. One thing that I did observe while a Minister was that there was a period when there were quite a number of Ministers in the House of Lords—indeed, there were two Secretaries of State in the shape of Andrew and Peter Mandelson—and that had the effect of creating an energy in debate in the House around the Government's programme. Those are judgments as to how you get the balance right between electoral legitimacy and independent experts.
Lord Adonis: The comment that I would make is that it happens at the moment. Individuals are appointed to the second Chamber to become Ministers at the moment. I was appointed in 2005 to the second Chamber to become a Minister, as was Stephen a while later. Two members of the current Government were appointed to the House of Lords: James Sassoon and Jonathan Hill were appointed to the House of Lords to become Ministers. It happens at present, but at present you are appointed to become a Minister and then your membership continues thereafter, but the reason for the appointment was to become a member of the Government. As I understand it,

the draft Bill is seeking to enable that possibility to continue so that it will continue to be possible to appoint people to the Government and to do so by giving them membership of the second Chamber.
Of course, it would be possible to have a more radical notion, which is to make it possible for Ministers to appear in one or other Chamber of Parliament without being a Member, in a way that is quite common internationally. Ministers would be accountable to Parliament, speak in Parliament, defend their policies in Parliament and answer questions, but they would not be Members. Before the election, we actually got close to introducing that revolutionary innovation here, when the question of whether Peter Mandelson and I should answer questions in the Commons was debated in the House of Commons. There was quite a head of steam behind that idea. I was personally strongly in favour.
As a Secretary of State, I felt that I should be able to speak directly to MPs and the proposal that the Secretaries of State should take debates and answer questions in Westminster Hall, to start with, and possibly in the Chamber, was considered. A very interesting debate took place in the Commons between those who were in favour of it, because they wanted to make Peter and I more accountable, and the usual channels and the conservatives—with a small "c"—who were violently against the proposal because it might make it possible for more Members of the House of Lords to become Ministers. It was quite amusing watching the debate from a distance. We could have had a terrible situation where it would have been possible to appoint several Members of the House of Lords to ministerial office. That dire eventuality was dealt with by stalling. We got to the election and still no decision had been taken about whether Peter and I were going to answer questions. I was very nearly in the situation of being the most accountable Minister possibly ever, through answering questions and debates in the House of Lords and questions and debates in the House of Commons, all to make it possible to be a Secretary of State in the House of Lords. The more radical notion would be to break membership of the Government from membership of Parliament, but if you do not go for that radical notion and you still want to make it possible to appoint individuals who are not currently Members of Parliament, effectively the proposal in the draft Bill is the status quo.

Q470 Malcolm Wicks: My question very much follows on from what Andrew was saying. If you were accountable to an electorate, you would have been even more accountable.
Lord Adonis: That is a perfectly fair comment.
Malcolm Wicks: You were suggesting that that is unfair. In my experience, Ministers are quite regularly called to attend and, in a sense, to be accountable to House of Lords Committees. I found that quite a regular occurrence when I was Energy Minister. I think what you were saying at the end is really very interesting. I am not arguing for this, but I would like to put forward a teasing question. Do we need Members of the House of Lords who are Ministers? I can see that Ministers, from time to time, need to attend the House of Lords, but why should House of Commons Ministers not be able to attend the House of Lords to answer questions, to guide legislation through and to make statements, but obviously not as Members of the House of Lords because they would still be Members of the House of Commons? Obviously, much of this depends on the bigger debate about the functions of the House of Lords, but it is at least worth asking that radical question: should Members of the House of Lords be Ministers if other possibilities present themselves?
Lord Adonis: It would be a breach of the fundamental constitutional doctrine at the moment.
Malcolm Wicks: But apart from that, is there a practical reason? You are being very conservative today.
Lord Adonis: If the reason for doing that is that Ministers are elected, I have some sympathy. As it happens, I do not agree with the argument that all Ministers should have to be elected; there is a difference between the Executive and the legislature. However, if your principle, which is the only principle that I can see behind that question, is that Ministers should be elected, of course the proposal in the draft Bill is that Members of the second Chamber should be elected. I cannot understand the enhanced democratic legitimacy of a Minister who is a Minister by virtue of being elected to the House of Commons rather than elected to the House of Lords.

Q471 Malcolm Wicks: I thought Lord Carter made an interesting point that, when there were two Secretaries of State in the House of Lords, that brought a certain je ne sais quoi or grit to the debate. I suppose that my proposal would mean that quite regularly Secretaries of State from the House of Commons could attend House of Lords debates and in a sense be accountable.

Lord Adonis: I think that the argument for that is much stronger if you have an unreformed House of Lords, because you could then sit on the general principle that Ministers should be people who have been elected. If you are going to have a second Chamber that is itself elected, I think that that argument is much harder to sustain. As always, in this typically British fashion, we have a halfway house at the moment. When I was a Minister, and particularly when I was Secretary of State, I appeared constantly before House of Commons Select Committees. When I was Secretary of State for Transport, I did a deal with the Chair of the Transport Select Committee that I would appear for a special question session in the Commons Transport Select Committee after each session of Oral Questions in the Commons, which is much more than any Secretary of State in the House of Commons does. I appeared before House of Commons Select Committees far more regularly than a Secretary of State in the Commons, but I willingly did that. Indeed, I promoted the idea because, being marooned in the House of Lords and being aware of the question of whether it was legitimate to have a Secretary of State in the House of Lords, I was very anxious to go overboard in making myself as accountable as possible to the Commons, including appearing before Select Committees whenever they wanted me. I never sent my junior Minister; I went myself, including seeing the Speaker myself and suggesting that if he wished to promote a mechanism that made it possible for me to speak in Westminster Hall or any other forum he wished, I would comply immediately.

Q472 Lord Norton of Louth: One of the benefits to the Government of appointing Ministers is the one that you have mentioned in bringing in people from outside who may have particular expertise in a particular area. Are there not two other advantages from the point of view of government? One is the necessary one for getting business through the House and the other one is that, unlike other ministerial colleagues, you do not have constituency responsibilities, which therefore allows people to be appointed perhaps with more time to devote to ministerial responsibilities. Did you find that to be the case and how did you get on with other Ministers from the Commons?

Lord Adonis: There are two remarks that I would make on that. Not having a constituency meant that it was possible to do different things. For example, when I was Minister for Schools and Secretary of State for Transport, all my Fridays were spent, in the case of being Secretary of State for Transport, literally on the road or on the railways. Every Friday, I made a point of getting out. When I was Minister for Schools, every Friday I was out visiting schools and local authorities. I was able to do a wider range of visits than constituency MPs, who, by and large, on Fridays were restricted to their constituencies.

The other point is that, as you very well know, as do Members of this Select Committee, Ministers in the Lords work extremely hard. There is only one of you for each department in the Lords and you have to cover the whole waterfront of business. Sir William Harcourt, when he was Leader of the House of Commons, once famously said, "When I'm ill, I'm in bed and when I'm not, I'm in the House of Commons." I often felt that that was the same for a Minister in the House of Lords; there were weeks on end when I barely left the place. As there are so many Ministers in the Commons, that tends to be less true. Secretaries of State in the Commons of course do not do anything in terms of legislative work besides Second Reading of Bills; everything is done by junior Ministers and most debates are done by junior Ministers, too. In the Lords, you have no one to pass anything off to, except occasionally a Whip. I always felt that it was slightly unfair expecting a Whip, who has to cover many departments, to take on my business when I could do it without the preparation that they would be required to do. Ministers in the Lords work extremely hard and, if you balance out the extra time that they have to spend on parliamentary duties as against Ministers in the Commons and as against the constituency work of an MP, I am not sure how the balance comes out.

Lord Norton of Louth: Perhaps Parliament benefits in that context rather than, say, constituents.

Lord Adonis: Yes.

Q473 Gavin Barwell: I think that you both made it clear in your initial answers to the Lord Chairman that you see some merit in Prime Ministers being able to appoint Ministers from outside the House of Commons. Lord Adonis, you just touched on the more radical idea that Ministers would not have to be Members of either House and could just be called to debate or to answer questions before both Houses. Would you support that radical option?

Lord Adonis: Yes, I would personally. The government of the country is a very important business. It should be possible for a Prime Minister to draw on the whole range of talents that are available. However, it is essential that

those Ministers are fully accountable and they could be more accountable because they could be required to appear in either House. It is vital that such Ministers are accountable, but to my mind the composition of the Executive should not depend wholly on membership of the legislature, which is the position in almost every democracy in the world besides ours.

Q474 Gavin Barwell: Lord Carter, do you share that view?
Lord Carter of Barnes: I certainly share the view that, as the world gets more complex and interdependent, and individual nation states find it much harder to make unilateral decisions in almost any area of policy, let alone politics, the complexities and challenges of running a Government go up. Logic would take you to the conclusion, therefore, that the Prime Minister should be able to draw on a range of talents beyond just the elected Chamber. That is easy to say round the table, but it is a fundamental change in our relationship with government, which you step into by asking questions about the legitimacy of the second Chamber in a democratic sense and that then opens up a much broader discussion about the role and nature of the Executive versus the legislature. I served a term as the independent regulator for my sector of telecommunications and broadcasting. As a competition and sector regulator, I exercised more decision-making power than I did as a Minister. The mechanisms for accountability there were accountability to both Houses of Parliament through Select Committees and public scrutiny. Indeed, many of these institutions have been created as a means of creating pools of expertise in complicated areas where specialist skills are needed. It seems to me that all of these are patchwork solutions to a more fundamental question, which is that the job of executive government has become more difficult and we are trying to make the existing institutions work around them as best we can. This Bill deals with the question of the reform of the second Chamber. I am not so sure that that is the first-order question.

Q475 Gavin Barwell: Therefore, you both prefer the radical idea. Do you think that there should be any limit on the number of Ministers who come from outside the legislature? If you do not think that, is it not the case that the radical option is significantly better for this reason, which is that if a Prime Minister were appointing significant numbers of Ministers to the second Chamber, in the context where it was wholly or primarily elected, he or she would be altering the political balance that the public had put into that Chamber? Is there not another argument that, if you appoint large numbers of Ministers who are not from the legislature, it is better to go down the more radical route than the route in this Bill?
Lord Adonis: There is a principled position and a pragmatic position. I am a radical pragmatist on most issues, including this issue. I do not think that there is a hope in hell of getting through the House of Commons any proposal that you would divorce entirely membership of the Government from membership of the House of Commons. The best that you could get away with would be to have a certain number, probably quite a small proportion—10 per cent or 15 per cent—of the Government that could be drawn from outside Parliament, provided that those individuals were fully accountable to Parliament. I think that that is the only way that you would conceivably get it through because the size of the House of Commons is being reduced.
We have far too many Ministers, full stop, at the moment. We have far too many Ministers in the House of Commons and my judgment is that it significantly undermines the independence of the House of Commons that the Executive is so physically dominant inside the House of Commons. After all, 100 Members of the House of Commons are members of the Government and that is 100 out of a parliamentary party typically of 300 to 350. Someone once put it to me that almost the only third of the governing party that is capable of holding office does hold office—Members of the House of Commons could discuss whether that is fully true. None the less, there is a strong case for reducing the number. If you reduce the number of Ministers in line with the reduction in the size of the House of Commons and you make it possible for more individuals to be appointed from outside, whether in the Lords or completely from outside, you would need to specify the number quite carefully.

Q476 The Chairman: Can I be clear about this? You would agree that there should be a limit on the number of Ministers in the Lords.
Lord Adonis: I was answering Mr Barwell's question about the number appointed from outside Parliament.
The Chairman: I know. I am trying to push you further. Let us go back to the original set of questions.

Lord Adonis: I would not favour introducing more rigidities than we currently have. At the moment there is no rule about the balance of Ministers between the two Chambers. There is a kind of convention that you have around 15 Ministers in the Lords, but it is a convention. It varies between Governments, so I would not favour more rigidity than we have at the moment.
The Chairman: Is there not a danger, as Mr Barwell pointed out, that the Prime Minister could pack the House by appointing Ministers and change the political balance that way?
Lord Adonis: I think that you would have uproar in the House of Commons if any Prime Minister tried to do that, not least on the governing party's side. Of course the governing party is full of MPs who are very keen to be Ministers. In practice, I do not see that a Prime Minister would veer in that direction to an unacceptable degree.

Q477 Gavin Barwell: Sorry, my point was that even appointing 15, say, could, in a proportional system affect the balance of the second Chamber. It is quite different when the public have decided what the balance of the second Chamber is. Even 10 or 15 appointments could make a significant difference, if they were active.
Lord Adonis: It could. In the real world, I cannot see that that would happen even if there were no reduction in the size—the present Government have given a commitment that the size of the Government will reduce once the size of the House of Commons is reduced. The total size of the Government is, of course, just over 100 Ministers, of whom about 15 are drawn from the second Chamber. It is inconceivable that the Prime Minister would want to appoint any but a handful of Ministers in the second Chamber from outside the second Chamber because, on the governing party's own side, you have large numbers of Members who have an expectation of ministerial office. Although I understand the theoretical concern, in practical terms I do not think that it is likely to arise.

Q478 Baroness Symons of Vernham Dean: Lord Adonis, you gave a description of your life as a Secretary of State, but of course, as you pointed out, you and Lord Mandelson were very exceptional—I think that you were the first departmental Secretaries of State, apart from Baroness Amos, in the Lords. You would accept—or would you?—that it is very different being a Secretary of State with ultimate political responsibility from being a Parliamentary Under-Secretary or Minister.
Lord Adonis: Absolutely. It is fundamentally different.

Q479 Baroness Symons of Vernham Dean: Let us come back to the point that Lord Carter was making about the restrictions on his activities after he had been a Minister. Lord Carter, were you aware of what the restrictions were going to be on your appointment after ministerial life at the time you accepted ministerial appointment?
Lord Carter of Barnes: I think that it would be fair to say that I learnt many things after joining a life in politics that I was less aware of before. As I recall, I think that the rules changed in transit. I think that originally the cooling-off period was a year and then got upgraded to two years, but I could be wrong.
Baroness Symons of Vernham Dean: No. It was always two years. It was two years for me and I left in 2005.
Lord Carter of Barnes: Well there you go.
Baroness Symons of Vernham Dean: But nobody pointed it out to you.
Lord Carter of Barnes: I think that they probably did, but at the time I did not perhaps give it the scrutiny that it might have merited.

Q480 Baroness Symons of Vernham Dean: How much of an incentive was it for you to become a Member of the House of Lords in accepting ministerial appointment, or did it not matter to you at all?
Lord Carter of Barnes: I am not sure that I understand the question.
Baroness Symons of Vernham Dean: Well, I think that a lot of people would very much like to be Members of the House of Lords, however much those of us who are like to pretend that it is not that. You mentioned that Lord Sassoon and Lord Hill had come in with their expertise, but of course so did Lord Green, but Lord Green joined the Government very much later—this is a matter of public record—because it was very, very difficult to fill that job. I am asking you whether, when you were offered a job, it was an incentive to you to become a Peer, or did it not matter to you?
Lord Carter of Barnes: I think probably yes and no. The conversation, from my perspective, was about whether I would regard it as a privilege and opportunity to be the Minister for what was my industrial sector, if you like.

That was attractive. Equally, while I am someone who would not put myself forward for election, making a contribution to the parliamentary process was also attractive. So I would say yes and no. The start point of the conversation was, "What could you do for the sector and those people and companies who operate in that sector?" The mechanism for doing it was joining the House of Lords rather than the other way round. That is how I would describe it.

Q481 Baroness Symons of Vernham Dean: Why are you going to apply to end your leave of absence next year? I take it that the two-year period will be over, but why do you want to come back to the Lords?
Lord Carter of Barnes: Because I think that, at its best, the House of Lords is a feature of the British system that allows a debate and discussion around policy, more than politics, which generally enhances the outcome. Having the privilege of making a contribution to that is a great thing, I think. You would not necessarily design it; if we all sat round a table with a blank sheet of paper and said, "How would you design this process?" you would not design it in this way. But it works. If I draw an analogy with my professional life, it is not unlike the difference between executives and non-executives. No one is under any illusions about who runs the company—the executive management runs the company—and no one is under any illusions about who runs the country: the House of Commons runs the country. But having a mechanism for guidance, wisdom, expertise and perspective that is slightly once-removed and based on a set of individuals' areas of expertise, that works. That is my personal observation.

Q482 Baroness Symons of Vernham Dean: Would you get that expertise to which you refer in an elected House of Lords?
Lord Carter of Barnes: I am not sure that I am qualified to judge that. I suspect that this Committee and others will do their finest—
Baroness Symons of Vernham Dean: Come, come. You must have an opinion.
Lord Carter of Barnes: You are going to draw on a different talent pool. If I understand the proposals correctly, the talent pool that wishes to spend 15 years as full-time parliamentarians is a different talent pool from that that wishes to contribute while having multiple lives and multiple sets of experience in other areas.

Q483 Lord Hennessy of Nympsfield: Andrew, you said roughly a year ago at the Covent Garden debate on the future of the House of Lords that in an 80:20 Chamber the politicians should all be elected. But the ministerial appointments would not be elected, would they, so you would exempt them from your overall concern that the politicians should all be elected people.
Lord Adonis: Yes.

Q484 Lord Hennessy of Nympsfield: Lord Carter, in 1983, Sir John Hoskyns, who was running Mrs Thatcher's policy unit, having been head of the computer software firm that carried his name, gave a public lecture when he finished. He was extremely offensive about the House of Commons at that time. He said that it was a talent pool that would not sustain a single multinational company.
Malcolm Wicks: Like the Royal Bank of Scotland
Lord Hennessy of Nympsfield: I am not saying that I agree with it, Mr Wicks. Would you put it that way, Lord Carter? My view, for what it is worth, is that it is a different job; the House of Commons is not a multinational company and of course it is an absurd thing to say. But you were veering in that direction in saying that they bring different things to the party. You were putting it rather tactfully, weren't you?
Lord Carter of Barnes: Let us be clear for the record that I was not veering anywhere near that direction. I think that you are right: they are very different jobs. Being an elected Member of Parliament—or, indeed, an elected parliamentarian of either the House of Commons or a prospective second Chamber—is a very different role. Where I was veering was that, in the mix of government, history would say that multiple Prime Ministers have come to the conclusion that they need a blend or that having a blend is advantageous. From that blend, you get better outcomes. Having a mechanism that allows for that blend seems to me to be pragmatic and sensible.

Q485 Lord Hennessy of Nympsfield: Andrew, would you put a cap on the number of Ministers whom a Prime Minister can parachute in, to prevent the Walpolian instincts that they quite often have?

Lord Adonis: Yes, I would. It would be a perfectly sensible thing to do. Putting a cap would also meet the concern that Mr Barwell raised that you might engage in packing.
Lord Hennessy of Nympsfield: What would it be?
Lord Adonis: I would put a very low cap—a handful, although I do not know precisely what that handful should be.
Lord Hennessy of Nympsfield: Single figures?
Lord Adonis: Yes, definitely single figures—perhaps five. Being realistic, what flexibility does a Prime Minister need? They are not realistically going to want to appoint more than about five, unless the objective was to sway the balance of parties in the Lords, I would have thought.

Q486 Lord Hennessy of Nympsfield: Lord Carter, you were saying that the challenge of government gets tougher and tougher. The technocratic temptation has been much in people's minds with the Mario Monti case and so on. I do not for one minute think that we would ever go down that road in this country, but is there not a temptation that the Monti route could be that bit in the House of Lords—the Walpole bit, the patronage bit?
Lord Carter of Barnes: And would you end up with a disproportionate number?
Lord Hennessy of Nympsfield: If you wanted to have a third of the Cabinet as technocrats, you could use your quota of whatever it was—the Andrew Adonis figure of seven or eight—in the technocratic direction, if you were tempted that way, could you not?
Lord Carter of Barnes: You could. Genuinely on these things, I defer to Andrew's experience and wise judgment on government. My experience as a regulator was that I was always rather loath to put hard numbers into regulatory or statutory instruments because, over time, they tend to change. My experience, based on my period in government, is that Prime Ministers have a very highly developed sense of tolerance of how far you can go. Do you need to put a specific number on it? Perhaps. But common sense tends to prevail and you get the blend that you are looking for. To go back to where the previous question was going, that tends, in particular, to be in jobs where specific skills are very much needed. Investment in trade is a very good example, where having somebody with, for example, Lord Green's background, or when I was in government, Lord Davies's background and expertise, is highly useful.

Q487 Lord Hennessy of Nympsfield: Andrew, I think I am right in thinking that in World War 2 the imports—some of whom were very formidable figures, like Ernest Bevin, the Minister of Labour and National Service, and later Foreign Secretary in Mr Attlee's Government—were, by and large, given safe seats rather than a place in the House of Lords. Lord Woolton came into the House of Lords from the retail trade, but Sir Andrew Duncan came in from iron and steel. As far as one can recall, Ernest Bevin never had the slightest feel for the House of Commons, because it was not malleable like the Transport and General Workers' Union and he never quite understood the difference. When you needed to bring in people with definite gifts to represent wider interests in the land, the bias was to make them Members of Parliament, rather than Members of the House of Lords, was it not?
Lord Adonis: It was. Of course, Ernie Bevin went on to be an extremely successful Minister and Foreign Secretary, so it clearly worked. It is a horses-for-courses judgment, is it not? It was probably somewhat easier before. Whenever I discuss things with Lord Hennessy, I think of trading historical examples going back over a very long period. It was clearly easier in the war to parachute people in to safe seats in the Commons. It is not that easy now to parachute people in to the House of Commons in by-elections in particular, because by-elections are extremely unpredictable.

Q488 Lord Hennessy of Nympsfield: Would you rather have been an MP?
Lord Adonis: Yes, definitely.

Q489 The Chairman: Can I just clarify the figure five that you gave of Ministers who you thought would be the right number to be parachuted in to the Lords? Of course, if the Lords was an elected Chamber, the Prime Minister could presumably make Ministers of the elected Peers in his own party, so five is on top of that, is it?

Lord Adonis: Yes. I took it as read that any of the elected Members would be capable of being Ministers. I presume also—I had not thought this one through—that a Prime Minister might conceivably appoint, if you had 80:20, some of the independents as Ministers as well, so in that case you might have a third category of Minister.
The Chairman: At the moment, the Prime Minister is bound by an Act—I have forgotten the name of it—but he can appoint only a certain number of Ministers who can be paid. He can also appoint ones who do not get paid.
Lord Adonis: Yes, Prime Ministers have been quite good at appointing lots of unpaid Ministers.
The Chairman: Yes, I know. It is a trend of which I thoroughly disapprove.

Q490 Baroness Young of Hornsey: This question follows on from some of the points that have just arisen. I find it interesting that you, Lord Adonis, do not have a problem with the Prime Minister appointing people to ministerial positions without the electoral legitimacy that this Bill seeks. I wonder whether you could say a little more about that. Earlier you referred to the notion of accountability in that role and what that accountability might be. Perhaps you could expand on that. Following on from what was said just now, would you think that prime ministerial appointments to ministerial positions should be vetted by the Appointments Commission? Should all the conditions under which other Peers, whether appointed or elected, serve be the same for the appointed Ministers?
Lord Adonis: There are a lot of question in there. Let me take as many as I reasonably can. Should ministerial appointments be subject to the Appointments Commission? I do not think so. I think that that would be a fundamental breach of the principle that the Prime Minister decides whom he or she wishes to appoint to the Government. Of course, those individuals are then fully accountable to Parliament by virtue of being Ministers. The reason I slightly hesitate is that, if you were to expand the remit of the Appointments Commission to include all new Members, you would be faced with the argument of why you are going to have just one category of Member who does not go before the Appointments Commission. So, if you were to expand the remit, there would be an uncomfortable tension between those two principles. Of course, at the moment, the Appointments Commission does not consider party nominees, except on propriety grounds; it does not give an opinion whether they are, in any other respects, suitable individuals.
On the fundamental question of how you could justify having unappointed Ministers in a wholly elected Parliament, I do not have any difficulty with that concept at all. Parliament is a legislative body. It holds the Executive to account. The Executive is a separate body. It is a matter of constitutional development that we have located the members of the Executive in Parliament in this country, but that is not a common international phenomenon. Commonly, members of an Executive are separate from members of a Parliament and that enhances the capacity of a Parliament to hold the Executive to account and to make the law on an independent basis. My view of the matter is that the independence of Parliament, and its capacity to hold the Executive to account, would be very significantly enhanced if there were a greater separation between the Executive and the legislature. At the moment, the fact is that the Government controls the House of Commons, not only by virtue of being the majority party.
Baroness Young of Hornsey: I am struggling to hear your last remark.
Lord Adonis: These are contested views and you form your own judgment on them.

Q491 The Chairman: Perhaps I can ask about the Appointments Commission and Ministers. If the Appointments Commission is going to vet everybody for propriety when they come into the Lords, should it not do the same for Ministers appointed to the Lords by the Prime Minister?
Lord Adonis: There would be a case for that.
The Chairman: Otherwise you could get an astonishing situation in which the Prime Minister could appoint a villain. No one would be capable of checking up on whether the Prime Minister appointed someone who turned out to be a villain, but nevertheless, the ordinary Member of the House of Lords would have been vetted.
Lord Adonis: I think that if the role of the Appointments Commission is solely restricted to propriety, it would be very difficult to argue that that should be so. If it were to play an enhanced role, that would be quite a significant limitation on the ability of the Prime Minister to appoint Ministers.

Q492 John Stevenson: I have a few very simple questions. First, do you think that the Ministers who are appointed by the Prime Minister, but who are not elected Members, should be entitled to vote on any legislative matters?
Lord Adonis: No.

Q493 John Stevenson: That is straightforward. Secondly, could you turn it around? Could you have a situation whereby those who are elected could not be Ministers, so that they could only ever be legislators but never be members of the Government?
Lord Adonis: I do not think that it would be reasonable to do that in respect of the second Chamber but not in respect of the first. A constitutional principle is at stake here, which is whether Members of Parliament—
John Stevenson: But, on that point, there is an argument that we are trying to differentiate between the two Chambers and the two Chambers are very different from each other.
Lord Adonis: I do not understand the principle that would lead you to think that Members of the first Chamber can be members of the Government, but not Members of the second Chamber.

Q494 Baroness Andrews: Andrew, in the White Paper, as we understand it, the idea is that the reformed House of Lords will have the same function as a revising Chamber. You have been quite critical of the deployment of expertise in the House. Do you think that your prescription for improving that depends on the Bill and does it depend on this Bill?
Lord Adonis: That is a much wider question, is it not? I take the view that people who make the law should be elected—period. That is the general international practice in respect of democracies. We are highly exceptional in not applying that principle and we are becoming increasingly exceptional in doing so. There will come a point in the future—it is just a question of when—when that principle will be applied. It is the tendency of democracy. Therefore, you are dependent on ensuring that the body of people who are elected—this is where largely you depend on the political parties—enables you to do that job well. To my mind, like a lot of these big questions that you face in politics, it is a simple as that. Do I think that the current House of Lords does a thoroughly conscientious job? I do. I think that many of the Members, including those who are friends of mine, do the best job that they can to fulfil the role of the second Chamber, but they are, as am I, incapacitated to a very considerable degree by the fact that we have no mandate from anybody except, in my case, Tony Blair, who thought that it was a good idea that I should a Member of this place. That is a fairly big weakness in my position, although I am not saying that it would have been any stronger had it been another Prime Minister.

Q495 Baroness Andrews: In terms of the specific criticisms that you have held of the way in which the House has used its expertise, have you judged it to be appropriate and more effective to reform the House rather than to deal with the inhibitions that make it difficult for us to become better at what we do in the present circumstances? That is really my question.
Lord Adonis: I think that the Lords can and should improve the way in which it does its business and I have set out ideas for that. Indeed, the committee on the working practices of the House has taken a number of those ideas forward, notably the idea of introducing Select Committees on domestic policy, which I strongly support—I am glad to see that that proposal has been made. But none of those changes deals with the fundamental point of principle, which is that the people who make the law should be elected. If you hold to that principle, as I do, everything else is essentially tinkering; it does not address that fundamental principle.

Q496 Baroness Andrews: Do you think that what is proposed in the Bill in terms of STV will produce a House that meets one of your requirements, which is that the House captures expertise and deploys it in the best possible way?
Lord Adonis: I believe that it would, yes. I believe that if you had several hundred—depending on the number that you have decided to recommend—individuals who were elected, then, as in the House of Commons, you would get a wide spectrum of experience and expertise. The House would also be much more capable of making an impact, because those individuals would be elected, whereas, with the best will in the world at the moment, the impact that Members of the second Chamber can make is limited, as there is no democratic legitimacy attaching to them. I think that it would be an improvement, but if there is a concern to see that certain types of

expertise that would not be brought forward by an election—particularly in relation to those who have for substantial periods held significant public offices, or expertise of that kind—are represented in the second Chamber, that of course is an argument for having your 80:20 solution rather than your 100 per cent elected solution, so that there is still represented in the second Chamber a group of individuals who do not have a party attachment and have a type of expertise that is unlikely to be produced by elections.

Q497 The Chairman: Lord Carter, do you want to follow that?
Lord Carter of Barnes: As a debating point, it either is impossible or has become impossible—we could have a debate about which—to disagree with the democratic legitimacy point but, once that threshold is passed and we have an elected second Chamber in whole or in part, it will be interesting to see what happens. You can write down in a Bill that the role of the House does not change, but the sense of itself may be fundamentally different. Once you give someone democratic legitimacy, to use Andrew's phrase, you will inevitably start to redraw the boundaries between the second House and the House of Commons.
More broadly, as I have listened to the discussion, I have tried to look in on it, asking, "When people look in on our country, do they think that the democratic structures are a fundamental problem?" I am not entirely sure that they do. If I was forced to make a binary choice—it is a false choice—between refining and changing the democratic structures of the second House or looking at the challenges of government, I would think that the second is an area that is worthy of more focus. That is not to deny the power of Andrew's argument, because it is unarguable, but I do not feel that, in the challenges of the 21st century that we are facing as a nation and, indeed, as a world, it is where the main event is right now.

Q498 Bishop of Leicester: Most of what I wanted to ask about has been explored by Baroness Andrews, but I wonder if I could push it just a little bit further and pick you up, Andrew, on your word "incapacitated". Could you clarify precisely in what respect Members of this House are incapacitated by not being elected, not just in principle but in practice? In what practical ways would you expect this House to behave differently if it were not incapacitated as it is now?
Lord Adonis: I have no doubt at all that Members of the second Chamber would behave in a more forthright manner if they had a democratic mandate behind them. I personally think that that would be a jolly good thing. That is my judgment. I do not think that we suffer from an excess of parliamentary power vis-à-vis the Executive in this country; on the contrary, I think that the problem is that the Executive is too dominant in our system. Unless there are massive rebellions inside the governing party, which admittedly have tended to happen more frequently of late, but they are still the exception rather than the rule, the Government gets its way in the House of Commons. It can usually, although not reliably, ultimately get its way in the House of Lords. Even if the House of Lords in the first instance chooses to question particular proposals, it almost invariably caves in when faced with a straight choice of whether it will or will not seek to exert its will against that of the House of Commons. That is highly exceptional. We can count on the fingers of two hands the number of issues of any substance in recent years where the Lords has sought to hold out against the Commons. My view is that that is not a good thing for the health of our parliamentary system. It means that the whole of Parliament is too subservient to the will of the Government. Having a stronger second Chamber is one of the reforms—although not the only one—that would ensure greater accountability of the Executive to ongoing public opinion.

Q499 Bishop of Leicester: Just to be absolutely clear, you would not support the assertion in the draft Bill that the Bill does not alter the relationship between the two Houses.
Lord Adonis: No. That is clearly an absurd proposition. An elected second Chamber would clearly be more powerful and much more forthright, which is part of the reason why I support having an elected second Chamber. The idea that, if you have 300 people on the red Benches who are elected, they will behave with the degree of self-restraint that Members of the House of Lords currently do is, of course, palpably absurd.
The Chairman: Lady Shephard?
Baroness Shephard of Northwold: Lady Andrews asked almost all that I wished to ask, Lord Chairman.

Q500 Lord Rooker: I would like to ask you both about an area that has been tangentially raised early on, particularly in relation to the areas of expertise. The proposal in this Bill, if enacted, either for the 80:20 or the

100 per cent elected is that the Members of this House will, unlike now, be covered by the House of Commons Disqualification Act. Lord Carter, you were the regulator prior to coming into this House. When you come back, you could go back to being the regulator as a Member of this House. You would not be prevented from doing that under the present rules. Under the proposals in this Bill, anyone with expertise would almost by definition be prevented from going into any of the areas where there is interaction between the public and the private sectors, particularly the public sector, simply because of the barred positions. Do you have a view on that, given that the proposal is that people come in here to be full-time once the House is sitting—maybe for 150 days a year—but will not have any constituency duties or responsibilities and will be expected to occupy themselves in another way? In other words, Members of the two Houses will be treated the same, unlike now, but there is a consequence to that particularly for those who come in with an expertise.

Lord Carter of Barnes: I am not sure that I am sufficiently familiar with the detail of the restrictions either way, but my observations would be twofold. First, it seems to me that the proposals in the Bill, which in whole or in part have the effect of making the second Chamber significantly greater in its democratic clout, will create a different type of parliamentarian in the second Chamber from what we currently have. In those countries where I do business now and where I often deal with different parliamentarians, there is an elected second Chamber with Senators, as they are often called, and they are very powerful individuals. They are professional politicians often of a different nature from the first Chamber professional politicians, but they are professional politicians. Therefore, it seems logical that you should apply similar restrictions but, if you apply those restrictions, you are inevitably going to remove from participation a swathe of people for whom that is neither practical nor desirable. I think that that is worthy of being thought through in order to allow the system to have access to people who wish to contribute and to participate but who wish to have other lives and who wish to be able to come and go from the public to the private.

If you look at some of the other challenges that we are having—I go back to an answer to an earlier question—what are some of the great tensions that we are dealing with at the moment? We are dealing with an enormous tension of the interface between the public and the private. Why would you create higher barriers to entry for people who have a deep understanding of the realities today of operating in those worlds? The more we try and, understandably, manage the propriety issues, which I entirely understand and accept—perhaps I overbound myself by those in order to avoid any criticism—the more it has a limiting effect on participation. That has to diminish the quality of the currency and contemporaneity of the debate. I think that that is an area that is worth some further scrutiny.

Q501 Mr Clarke: As I have listened to the excellent responses to the questions, I have been thinking about what I might personally regard, as we look forward to changes, as the elephant in the room in the shape of the British Civil Service. I had a mere 15 months' experience as a Minister of State and your experience is much greater than that. It certainly was not enough time for me to understand what the Civil Service was all about. I found that I would give an instruction and a week later something different would happen; when I asked for an explanation, I was told again and again, "Oh, a misunderstanding, Minister". It was amazing how often the misunderstanding coincided with the view of the adviser to that department. Was I the only one who had that sort of problem or am I worrying too much about what might happen?

Lord Carter of Barnes: Our ex-ministerial colleague Lord Jones has written and talked on this subject with great verve and vigour, as is his norm. When I became a Minister, my senior civil servant, who knew me well, as it happened, took me into my office, rather than his, to have the Civil Service-to-ministerial encouragement chat, which in his case started with, "Stephen, you have to understand that you are not a chief executive; you are, in your language, a non-executive chairman." We then had a discussion about the depth of expertise in the policy functions in the department. I think you touch on an equally important question, which is about the muscular capabilities in the policy aspects of the Civil Service.

In my own area, people will say, I think honestly and privately, that one of the consequences of creating an independent—as it was dubbed at the time—super-regulator in media and telecommunications was that it had the effect of diminishing and perhaps denuding the policy capability in government, because there was a sense that it was being done somewhere out of government and, therefore, the need to have that muscularity, knowledge and relevance in government was not so great. Indeed, when I crossed the Floor of the House, so to speak, from being a regulator to being a Minister, I was struck by the fact that the department was stretched very

thin on multiple areas of complex policy. In an area that is very technical—information and communications technology—we were travelling light, which is not a criticism of any of the individuals, as the individuals who were doing it were often excellent, but the depth of the resource and the depth of the capability were not there.
Lord Adonis: These points are well made, but I do not think that reform of the second Chamber will, of itself, produce any difference in the quality of the Civil Service. I think that those are very separate issues. There is a set of issues around reforming and improving the Civil Service, but I think that they are very largely separate from the issues around reforming Parliament. In so far as Ministers have difficulty in getting the Civil Service to do their bidding, I do not see that reform of the House of Lords will make much difference to that one way or the other.
Mr Clarke: Anything else?
Lord Adonis: I have nothing to add to what Stephen said in that regard.

Q502 Lord Trefgarne: If the Appointments Commission can veto a ministerial appointment, is there not a risk that that will unacceptably inhibit the Prime Minister's choice about who should be his Ministers? Is it not the case at the moment that, if there is a real problem with a potential ministerial appointee, the Prime Minister is advised privately and takes that into account in making his disposition? That should be the way that it should remain.
Lord Adonis: I think that there is an argument that can be made on those lines. Where I think iteratively we were getting in our earlier discussion is that, if the role of the Appointments Commission were restricted purely to issues of propriety, it would be quite hard to say that the Appointments Commission should look at the propriety of all those who have been nominated to be Members of the second Chamber except those who have been nominated to be Ministers. I think that that would be quite hard.
Lord Trefgarne: It can advise the Prime Minister, certainly, but to be able to veto ministerial appointments seems to be going too far.
Lord Adonis: Does it advise or does it veto at the moment? Other Members will be more knowledgeable than I am.
The Chairman: It does not really arise.
Lord Adonis: It advises at the moment but does not actually veto, so it would be the situation that currently applies.
Lord Trefgarne: You mentioned that you and Lord Mandelson were the only two Secretaries of State. I think that we have had Carrington and Young.
Lord Adonis: I did not say that we were the only two. There have been a number.

Q503 Lord Trefgarne: I misunderstood you. Finally, if ministerial appointments to the House of Lords are made by the Prime Minister under some of these new arrangements and they remain Members of the House of Lords, will not the problem, as we have at the moment, of the size of the House of Lords ever increasing be worse still?
Lord Adonis: If we are talking about the numbers referred to earlier—a handful—that a Prime Minister can make, that will be rather different from the 140 or however many Members have been made since the election, and my lot made quite a lot of appointments before.
The Chairman: I am advised that the figure is 117.
Lord Adonis: So I do not think that we would get to the kind of situation that we have at the moment, where we are just about creating the largest legislative assembly in the world outside China. I think the numbers would be quite small if it were only ministerial appointments that could increase the size of the House.

Q504 Ann Coffey: Andrew, you were the Minister in charge of the academies and it was, as you know, a very contentious issue in the House of Commons. A lot of my colleagues felt very passionately that they were representing the views of their constituents in opposing the academies programme. You were very assiduous in seeing Members of the Commons and talking to them and discussing it with them. Did you feel sometimes that there was a bit of tension in that situation and that, as elected Members representing their constituencies, they were having to talk to you as a Member of an unelected House? Did you feel a tension in that?

Lord Adonis: I did not, because I was representing the policy of the Government and the Government is a legitimate entity which is fully accountable to the House of Commons. So I never felt any concerns on that point. Would I have preferred to be elected? Yes, without any doubt whatever. I would much have preferred to have been elected, because I would have felt that much more confident personally in making the arguments to colleagues in the House of Commons. But I did not feel that there was any illegitimacy in the position that I held, because in our system we have Ministers who are Members of the second Chamber and the Government are collectively responsible for policy to Parliament, including of course in the case of the Department for Education. When I was there, I was the one Minister who was a Member of the House of Lords and there were four or five Ministers at any one time who were Members of the House of Commons. We were collectively responsible to Parliament for those policies. The Secretary of State for Education was always a Member of the House of Commons and was accountable and responsible for the policy of academies and all other aspects of education policy, as I was.

Q505 Ann Coffey: I understand that, it is the constitutional answer. You talked about feeling uncomfortable at times. Often it is a matter of little concern who Ministers are, because the areas in which they are Ministers are not contentious; they are technical. However, sometimes issues come along that people feel very passionately about and then it matters who the Minister is and where the Minister is based. Although there was a Secretary of State for Education in the House of Commons, you were the Minister for academies; you were the one making the decisions and you were developing the policy, and the Commons knew that. Bearing in mind that there might have been something uncomfortable about it, even though constitutionally it was a perfectly proper position, would that not still be a problem? If the Prime Minister were to appoint a Minister in this new elected House of Lords, whom he might appoint again to another very contentious brief, that Minister's relationship with the rest of the House of Lords and the House of Commons would be different because there would be more people coming through the electoral process and unelected and appointed people would be an even smaller minority.

Lord Adonis: I make two observations on that. The first is that, on the proposition that there would be Ministers, including Ministers who, from time to time, hold contentious briefs, in the second Chamber, that is the status quo; that is the position at the moment, so there is no change. The second comment I would make is that of course it is entirely open to the House of Commons, if it wished to do so, to ask or indeed to require Ministers who are Members of the House of Lords to be directly accountable to them. As I said, we got very close to that being the position with Peter Mandelson and myself when we were Secretaries of State. To make that change is entirely within the prerogative of the House of Commons. Up till now, it has not chosen to do so. I was simply observing earlier the irony that part of the reason why it has chosen not to do so has been a collective concern that this might make it easier to appoint more such contentious Ministers from outside the House of Commons. If the concern were purely to see that those highly contentious and controversial people like me could be more properly held to account, then there is an immediately available remedy, which is to make it possible for such people to be directly accountable to the House of Commons. If you did that, it might have the consequence of making it possible to appoint more such people.

Lord Carter of Barnes: Perhaps I could come in on that, Lord Chairman. As a Minister, I was involved in two pieces of legislation, both of which were quite technical. Indeed, I was personally deeply involved in one of them, which was the Postal Services Bill. The other was the Digital Economy Act. Perhaps because I do not have Andrew's yearning to be democratically elected, I recognise the situation that you describe on two levels. One was that I felt at the time that, while other ministerial colleagues were presenting the legislation, it was work that had been done by a very specific team with quite specific expertise and, therefore, I was very supportive of the move to allow Ministers in the second Chamber to be able to be held to account in the House of Commons. Another dimension is that certainly I, as a Minister, always had a very developed sense of the primacy of the House of Commons. It had a consequence that criticism from the House of Commons, or demand for clarification or further engagement, carried an enormous weight, and rightly so, because it is the democratically elected Chamber. When that change is made, I wonder how that intangible difference, which will disappear, will reflect itself in the tension in legislative development between the two Houses. That is a very intangible thing but, as we all know, it is often in the intangibles that we find the real value.

Q506 Baroness Shephard of Northwold: Lord Carter, I was very intrigued by your last answer, which is of course the question that we are wrestling with on this Committee. I was very struck by your reply to Lord Rooker about the need for a Government to have people who can represent the enormous questions of our time. You gave us an example of the interface between the public and private sectors. You might just as easily, coming from where you come from, have talked about the rapidity of technological change outstripping the speed of legislative ability of Governments. I wonder whether you could say a little more about whether you can identify any other such issues. I do not want to ask a leading question, but how would you solve this problem, which will only become greater, for our Government? As things stand, the existence of the House of Lords with appointed people, or possibly an appointed element, is one of the ways in which it can be solved. Your own appointment is testimony of that. Could you address those points please?

Lord Carter of Barnes: The other day, when I was clearing out my study in Paris, I found my ministerial pager. I now live, eat and breathe technology, so I can speak to you in an alphabet soup of technological acronyms. I looked at it rather fondly. However, when I was given it, I remember thinking, "How absurd. Why can't there be a technological solution which does not require me to run across London physically to dash through a Lobby, often not knowing why I am there or what I am voting for?"

It seems to me that the root analysis of this debate is the question that we all wrestle with, which is engagement. I suspect that there might be a more popular uprising or a more popular level of debate around this if we were riding higher on a level of engagement in public participation, public discourse and public policy. I think that some of that has to do with technology. There was an amusing quotation. When President Obama came to power he appointed a CTO for the nation—a Chief Technology Officer for the United States of America—which was a grand innovation. After he had been in government for about six months, I think, the CTO was asked what it was like. He said, "Going from my life"—he had been a technologist—"into government was a little like going from a Sony PlayStation to a handheld 16-bit Nintendo games console". He felt that he had gone significantly backwards in the way in which government and the Executive engaged in the development of ideas and in the development of debate and discourse. This Committee and others have to wrestle with institutions, with structures, with quotas, with caps and with guidelines, but the biggest issue is that of fast, excited, excitable engagement with public discourse and public debate, regardless of political party. That is where I would welcome a greater focus and discussion.

Q507 Baroness Shephard of Northwold: I do not think that you have answered my question at all, but I enjoyed your answer. Thank you very much. I accept your point about engagement, but do you think that a reformed House of Lords, whether it is wholly elected or partly elected and partly appointed, could result in that kind of engagement, or do you think that, as it stands, with many people who are extremely exciting in the lives that they continue to lead outside the House of Lords, it is more likely to increase that kind of engagement?

Lord Carter of Barnes: I am an optimist by nature, so I certainly think that it is possible. One reason why it is possible to get more specific is that the second Chamber, as it stands at the moment, allows us to bring into the political and policy process a range of experiences and approaches that is very different. If you take someone aged 25 and put them into the political process, once they have been political professionals for 30 years, inevitably, like all of us, they become conditioned by the world that they know. The diversity of the second House is one of its richnesses. In that diversity, you get a higher level of engagement. I think that it could be a source of increasing the engagement in terms of diversity of gender, background, experience, motivation and passions. All those things change the tenor and the nature of the debate from a solely party-political one into a broader one. It is that broader debate that many people outside the political process think is lacking.

Q508 Oliver Heald: I have seen this proposal in the White Paper as really being that you are either elected or you are appointed; that is the basic structure of the House and these appointments for bringing in Ministers are really rather an exception to the overall position. Given that it is a rather unusual thing, and we have talked about limiting the numbers, do you think that it should be for a limited period and that we should perhaps say, "You'll be appointed until the next general election," or something like that? If you want to get elected, like Lord Adonis, then you can.

Lord Adonis: If the reason for the provision is so that you can appoint Members of the second Chamber to be Ministers, the logic should surely be that they remain Members of the second Chamber for as long as they remain Ministers. That should surely be the principle on which you operate.
Oliver Heald: Let me just challenge you a little on that. The elected Members of this House are the political Members and there is nothing really much more political than being a Minister, so should they not get their election if they are going to stay? I can see that there might be a case for bringing in a technocrat in particular circumstances, as Lord Carter was saying, maybe even for a particular Bill or set of Bills, but is it really right to say that you could be in the House for 10 or 15 years—however long your party stays in power—without getting elected when everybody else who is a politician does?
Lord Adonis: I think that we are coming to this fundamental issue about whether you take the view that members of the Executive should have to be elected. As I say, that requirement is internationally the exception rather than the norm. If you take that view, then of course you would take the view that the sooner they get elected, the better. Indeed, you might take the view that it should not be possible to be a Minister without being elected. That is not our constitutional practice at the moment and it is not the international norm, and it is not for a very good reason: we are electing a legislature and we are not directly electing an Executive. There are countries that also elect their Executive and have elected Presidents, but we are not one of them. We have an Executive that is drawn from Parliament at the moment, but the House of Commons is elected to be a legislature and not an Executive. You have different principles at stake here. I can understand the point of view that says that all members of the Government should be elected and, if you take that view, of course you will think that the sooner they are elected, the better.

Q509 Oliver Heald: It is an argument that I am putting to you against having this four-year gap for people who have been appointed as Ministers. I think that what ought to happen is that, if they are appointed as a Minister, they either do their technocratic job for three or four years until the next general election and then go, or, if they want to be in there for longer, they should then stand for election. I do not know whether Lord Carter would care to comment on that.
Lord Carter of Barnes: I think that it has the merit of being practically useful as an idea. I agree with you that if we are going to keep the system that we have at the moment—and, again being pragmatic, it is highly probable that we are—where we elect the legislature and from the legislature we choose the Executive, rather than facing a separation, which we could have a debate about but it is not where we are, and if you then recognise the need to bring in expertise to augment it, albeit in limited numbers, whether you cap it or not, it seems to me to be perfectly sensible that that should have a term on it, much as you do as a regulator, for example, where you serve a term. The only caveat or gloss that I would put on that is that we need to work out how we make it easier to come in and out, because two years is just impractical. Whether you know it or whether you do not, and whether you sit down and work through the practicalities of it, it is just too long. Equally, you want to avoid the other side of the coin, which is this revolving door of ministerial influence, which then gets traded for private sector gain. I personally was very alive to that. That needs some thinking about. I do not have an answer to it, but if we want to encourage an increase of traffic in the system that you describe, it is tricky if you have a two-year exclusion zone.
Lord Adonis: You could get yourself into the absurd position, though, where the only people who would not be capable of being appointed Ministers under your regime were those who had been Ministers in the past, because you have come up against whatever length of time you say is permissible. I do not understand the logic of that. Surely, prima facie, there is a good case for arguing that those who have some experience of being a Minister might make perfectly good Ministers going forward, rather than requiring them, because of the law, to be people who have no experience whatever because others have come up against their term limit. If you are going to have this provision—and you could debate whether it is legitimate or not—surely the logic is that people should remain Members for as long as they remain a member of the Government.
Oliver Heald: The concern that I have is that you get to a general election, your party loses and suddenly the Secretary of State is not able to be the shadow Secretary of State. He is out on his ear because he was appointed as a Minister. I think that that is a mistake. It should be possible to stand immediately at the general election.
Lord Adonis: In my experience, there are precious few people who have been Secretaries of State who end up shadowing that department after an election anyway. If we lived in a more rational world, perhaps that might apply, but it does not seem to apply very much at the moment.

Oliver Heald: That is very true.

The Chairman: Thank you very much indeed. I thank the two of you for coming. It has been a stimulating session and I think that we have learnt a great deal. We have certainly exposed a number of views. Thank you. It has been very helpful. We are much obliged.

MONDAY 12 DECEMBER 2011

Members Present

Lord Richard (Chairman)
Baroness Andrews
Bishop of Leicester
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Baroness Shephard of Northwold
Lord Trefgarne
Lord Tyler
Baroness Young of Hornsey
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Tristram Hunt MP
Mrs Eleanor Laing MP
Laura Sandys MP
John Stevenson MP

Independent Parliamentary Standards Authority [Professor Sir Ian Kennedy and Dr Andrew McDonald] (QQ 510–528)

Examination of Witnesses

Professor Sir Ian Kennedy, Chair, and **Dr Andrew McDonald**, Chief Executive, Independent Parliamentary Standards Authority

Q510 The Chairman: Sir Ian, I thank you and Mr McDonald very much for coming this afternoon. I think that you know what we are about. Would you like to make some opening statement or would you prefer just to launch into questions?

Professor Sir Ian Kennedy: I think that, given the time, we would be quite content to take your questions as they come, Sir.

The Chairman: I will start then. The Bill envisages IPSA paying the salaries and allowances of all Members of the transitional House. What effect will that obligation have on your organisation and staffing?

Professor Sir Ian Kennedy: May I turn to Andrew?

Dr McDonald: Clearly, it would depend ultimately on the final shape of the legislation in terms of the responsibilities that we would take on, the way in which it bears on the design and expenses scheme and whether or not salaries are to be paid to Members of the reformed upper House. If we work on the basis of the consultation paper from the Government as it is currently before us, we would envisage some increases to our staffing to enable us both to deliver an expenses scheme and to pay the salaries for Members of the House, both during the transitional period and thereafter.

The Chairman: Any idea how many?

Dr McDonald: It would depend on the final shape of the legislation, but we are not talking about large numbers; we are talking about a handful.

Q511 The Chairman: I see. Let me turn, then, to the proposals in the White Paper. The White Paper says that any salary of elected Members should be determined by you and should be "lower than that of a Member of the House of Commons but higher than those of members of the devolved legislatures and assemblies". Do you think that that is a reasonable basis for starting? Is it a good starting point?

Professor Sir Ian Kennedy: That is really a question for you, Sir, rather than for us. We devise the scheme and then we administer the scheme. Whatever the legislative proposals ultimately produce, we will operate within that, but I think that those sorts of judgments are for others.
The Chairman: What would you expect to take into account in determining pay?
Professor Sir Ian Kennedy: That, if I may say so, is the crucial question. Under the existing legislation, which governs our jurisdiction as regards the House of Commons, we now have the responsibility for setting salary as well as pension. That is a significantly important constitutional role and decision, because it will, as you know, be the first time that any external body will have been given that responsibility. We take it very seriously and we intend to create the possibility of discourse both with Members of the House of Commons and with the public more generally so as to work on what might be deemed to be an appropriate package of remuneration. I see business costs, expenses, pay and pensions as all part of a fundamental question—what I call the "big exam question"—which is: what does a modern, 21st-century legislator need from the public purse so as to do his or her job? That, I think, is the same question as would relate to Members of the House of Lords, again, of course, conditioned by the responsibilities and role that the legislation ultimately gives to them.

Q512 The Chairman: Having asked the question of yourself, could you answer it?
Professor Sir Ian Kennedy: It would be presumptuous of me to answer it, given that I intend to provoke a conservation that will last some period of time. It is better to listen at this point rather than to—
The Chairman: Can you not give us a glimpse of where you would start the conversation?
Professor Sir Ian Kennedy: The glimpse is that we need to be aware that, as regards the House of Commons, there is a history of 30 years or more of Prime Ministers saying, "Well, whatever the SSRB may have recommended from time to time, it is important for whatever contingent economic reasons that we do not accept its recommendation." They have then, as it were, propped up the system through allowances. We introduced a system that did not provide for that, so it is clear that we need to revisit the question of how you approach what a legislator and elected representative should receive from the public purse. One route would be to look at comparators, which is certainly something that the SSRB did historically. Another would be to look at the rate of responsibilities; another would be to compare it with the devolved legislatures; and another would be to look at comparative examples across Europe and the rest of the world. We intend to do all of that, but at this point we have an open mind.
The Chairman: But you have some guidance in the White Paper, which is that it should be "lower than that of a Member of the House of Commons but higher than those of members of the devolved legislatures and assemblies".
Professor Sir Ian Kennedy: Yes, of course, although there is a slightly question-begging proposition as regards "lower than that of a Member of the House of Commons", because we have not yet determined what that is. In so far as that still calls for further determination, we do not know what the bracket currently is.
Dr McDonald: It is perhaps worth adding on that point that that power has only relatively recently been passed to us. The review to which Sir Ian refers prospectively would begin in the course of next year. We intend it to be a fundamental review of remuneration, taking in both pensions and pay for the Commons.
The Chairman: Yes, but can I come back to the guidance that I have just read out? Do you think that it is sensible that pay for a Member of the House of Lords should be a bit lower than that of a Member of the House of Commons but a bit more than that of a Member of the devolved Assemblies? Does that strike you as a sensible approach?
Professor Sir Ian Kennedy: Perhaps I can answer that by saying that it really depends on what it is you are asking Members of the House of Lords to do. If they, for example, have constituencies or constituency responsibilities, that makes them more comparable in terms of their responsibilities to current Members of the House of Commons. Let us see what the job description, if I can use such a crude term, is before we get to what we think is an appropriate level of pay.

Q513 Baroness Scott of Needham Market: There are scenarios in which there is a transition period, which could be quite lengthy. On your last point, there will be an even broader mixture of performance, if you like, among Members of the new House of Lords, with some being full-time, elected and salaried and a whole bunch being in transition. Do you imagine that the transitional Peers will continue to receive a per diem? Do you see

any particular issues in that, particularly if they end up working almost as hard as the others but are not salaried and are not getting office provisions or pension provisions?

Professor Sir Ian Kennedy: That is precisely the sort of level of detail that we need to explore. My default position as regards transitional arrangements is that ordinarily we would wish to treat every parliamentarian the same, given that they have similar responsibilities. To the extent that the Act as it finally appears differentiates and says, "This is all you have to do," then we can consider that and factor it in, but currently we do not know.

Baroness Scott of Needham Market: But it would surely be fairly apparent that the current system is designed for a House of Lords in which at least some of the Members attend infrequently and make a contribution on topics on which they are experts. The per diem system exactly reflects that variety. Among the transitional Members, that variety will still pertain, will it not?

Professor Sir Ian Kennedy: May I suggest that it is not the distinction between salary and per diem that is relevant? What is relevant is the range of responsibilities and how you remunerate them. You can remunerate them by a salary that is fixed at 100 and you get 50 per cent or 20 per cent or you can remunerate them by using a per diem. It is not the difference between salary and per diem; it is really a question of, number one, the range of responsibilities and, number two, the mechanism for remuneration.

Baroness Scott of Needham Market: Have you had any thoughts about what that mechanism might be, given that there is a broad spectrum of what I might call performance among current Peers?

Professor Sir Ian Kennedy: Not in any great detail, save to the level that I have just said—namely, it is not the form of remuneration but what you are remunerating, which is a function of what the legislation, among other things, will say.

Q514 Lord Trefgarne: What should be the role of the Speaker's Committee of IPSA? Should it have a role in connection with the House of Lords when we get there? Do you have any concerns about what is proposed in the Bill?

Professor Sir Ian Kennedy: As I understand it, the idea is that the Speaker's Committee should be suitably expanded to take account of membership of the House of Lords as well as the House of Commons. A Speaker's Committee is one way—and, if I may say so, a good way—of ensuring a measure of accountability. In the context of the uneasy notion of independence, the current SCIPSA does the job, so why should it not be expanded somewhat? One of the important things about the SCIPSA is that because we have the role of an independent regulatory body, which represents something of a cultural change from the past 300 years or more, our principal responsibility is ultimately to the public interest. So the SCIPSA has on it three members of the public in addition to Members of the House of Commons. That is an important additional accountability mechanism. The matter of whether that number should be increased in light of membership of the House of Lords is perhaps one for discussion further down the road.

Q515 Lord Tyler: Sir Ian, you said just now that you would have to be absolutely certain what the responsibilities were of the Members of a reformed second House. I think that there is a consensus among all those who have looked at this—and certainly among those in this Committee—that a constituent's problems and constituency activity, which can take up to half the time of a Member of Parliament, as I know to my cost, will be explicitly excluded from their responsibilities. Therefore, would it not be reasonable to assume that the primary responsibility is simply to attend the House? Given that that is perhaps on half the total days of the year—and half the total days that an MP is active—would that not be a good starting point?

Professor Sir Ian Kennedy: You are absolutely right. The assumption would be rather more than to attend; it would be to attend and do something, having attended. However, I take your point. I am quite sure that, even though there would not be constituency responsibilities in a reformed House, there might be a need for some kind of office in Westminster or at least in London, so one would factor that in. But you are right; if the legislation were as you described, that would be an interesting and helpful starting point.

Q516 Lord Tyler: I have a second, separate question that goes to the root of the role of IPSA. As you may recall, during the passage of the legislation that set up IPSA some of us spent a great many hours looking at this. Our primary concern was, as far as possible, to remove from the decision-making process those who were going to benefit from it. It was increasingly invidious for Members of Parliament to vote and to have a decision in these

matters. Do you agree that Members of a second Chamber should be as far as possible divorced from decision-making about both the format and detail of any remuneration scheme?
Professor Sir Ian Kennedy: I would look at it slightly differently but would come to the same conclusion. If what is juxtaposed between the remuneration and the Member of the House of Commons is an independent external regulatory body, and that is deemed to be a good thing, there is a serious question to be asked about why it should apply only to one House of Parliament rather than to both.

Q517 Tristram Hunt: IPSA's level of understanding of the job and life of a Member of Parliament is pretty appalling. What research are you planning to do into the life and job spec of the Members of the newly reformed House—or will it be a case of imposing another model and then trying to unpick the worst excesses in the ensuing months?
Professor Sir Ian Kennedy: Mr Hunt, I am not here to defend IPSA against what you say, although I do not accept it. Between MPs and IPSA there were undoubtedly teething troubles. We both had to learn new ways and we are both learning those ways still. As regards the notion of understanding what Members of the upper House do, of course that will be part of what we will seek to do. If Members of the House of Lords wish to help us, so much the better. Do you want to add anything, Andrew?
Dr McDonald: I am very happy to. A couple of things will be different between the run-in to the start of the Commons scheme and the run-in to the scheme for a reformed upper House. We would have longer, there would be a transitional period ahead of time and we would be able to build on our understanding of parliamentarians in the Commons—an understanding informed by a programme of constituency visits and visits to MPs in their offices here. That understanding will allow us to deliver a good quality of service.
Tristram Hunt: A large amount of the time of MPs' staff is spent on managing IPSA, both officially and unofficially. Will there be capacity—or are you planning to allow capacity—in terms of staffing budgets for Members of the reformed House to deal with you?
Dr McDonald: On your first premise, the amount of time spent online on the system—
Tristram Hunt: That is a very different issue.
Dr McDonald: Perhaps I could carry on. It is 33 minutes per week.
Tristram Hunt: That means nothing.
Dr McDonald: Beyond that, there is time spent on accounting for expenses more generally, other than online, as there was under the previous system. We take the view that it is appropriate to spend time accounting for the use of public money. We are committed to reducing the administrative burden on MPs and their staff. Consequently, about three-quarters of expenses by value may now be processed directly using payment cards and direct payments. That is much less onerous for MPs. At the moment, only about 30 per cent go down that route. We have a responsibility to ensure that we work with MPs and their staff to encourage greater use of payment cards and direct payments. That will reduce the burden on them.
Tristram Hunt: Perhaps I may suggest, in this mutually helpful learning process, that in your system for the Members of a reformed upper House you allow in your budget for staffing capacity for dealing with IPSA. Whether or not you think it is the case, you will find that much time is spent on IPSA by the staff of MPs. If IPSA is going to take over the running of the salaries and staffing budgets of Members of the upper House, those Members will need a similar capacity.
Dr McDonald: Perhaps in that same spirit of mutual understanding I may say that we are currently running a public consultation exercise in which the main focus is staffing. We would very much welcome your response.

Q518 The Chairman: How much of IPSA's time in relation to MPs is spent looking at their expenses and allowances as opposed to at their salary?
Dr McDonald: Most of our activity is focused on expenses.
The Chairman: I see. So in a situation, as in the House of Lords at the moment, where there are very few expenses and virtually no allowances, it should be a fairly simple job. It is assessing the salary up here that you have to do, is it not?
Professor Sir Ian Kennedy: Perhaps I may suggest that it would be better not to use the word "expenses" without disaggregating what it relates to. It relates to business costs—mainly staffing and the rental of office accommodation, either in the constituency or in London—and to what traditionally might be regarded as

expenses. What takes up most of our time is administering the system that we have created. We inherited the salary that is paid to MPs. We now process it and ensure that it is paid into the MP's bank account. When we come to consider what the salary should be of MPs and Members of the House of Lords, it will involve the process that I have just described: namely, consultation, proper discussion and discourse. Once it is resolved, it will be a relatively simple matter, as it is currently, to process the salaries and make sure that they are paid on time.

The Chairman: At the moment, as you know, the scheme up here is very simple. If you turn up, you get paid; if you do not turn up, you do not get paid. There are very few expenses or allowances on top—however you define them—apart from travelling expenses.

Professor Sir Ian Kennedy: My understanding is that there is already a distinction in the House of Lords between expenses that are properly so called and the daily allowance. This is a matter for discussion. Clearly expenses will stay, but it is a matter of what is comprehended within that concept. The other question is whether, as Baroness Scott asked earlier, the route of per diem, salary or some other mechanism is used. That is what the conversation must be about.

The Chairman: The point that I am making is that the per diem route seems infinitely simpler than paying people salaries.

Professor Sir Ian Kennedy: I have suggested to you that a salary in and of itself is not a complicated matter once it has been fixed. Per diem allowances might have a degree of bureaucratic underpinning that a salary will not have—not least the necessity to discover whether they are appropriately paid, what evidence is required for them and so on.

The Chairman: Do you know the system up here at the moment?

Dr McDonald: Yes, we do.

The Chairman: The system is that if you are seen going into the Chamber or you attend a Committee—in other words, if you attend a sitting of the House or one of the Committees of the House—you are entitled to your daily allowance. That seems terribly simple; I am not sure why it should need any complication.

Dr McDonald: As Sir Ian says, in terms of the salary part of the equation, which relates to at least part of the per diem allowance, it would be a relatively straightforward matter to add 300 Members of a reformed House to the payroll. That part would not be complicated.

Q519 Ann Coffey: It appears to me, listening to this conversation, that what people need is some kind of certainty for the future. It would be helpful for the existing Members of the House of Lords and for those people who are thinking of coming to the House of Lords to know exactly the terms and conditions of their salaries and allowances. I understand that, in responding to a question about how much a Member of the House of Lords should earn, you will say that it depends on how we decide to pay Members of the House of Commons. But when the Bill is discussed, do you not think that it would be easier for all concerned if there were accompanying it an agreement about what the salary should be—for example, 80 per cent of the salary of a Member of the House of Commons, or the same salary, or whatever, along with the attendant principles of an allowance system? There is nothing worse—I think that this is why the House of Commons was so scarred by the experience—than having things changed halfway through a Parliament so that you do not know what to expect. Would it not make it easier for us and for you if it was set out? Discussions could take place before then so at least there would be a principle of understanding and we would not get ourselves into the terrible situation of trying to have discussions after we had legislated.

Professor Sir Ian Kennedy: I cannot speak for Andrew, but I think that there is enormous merit in what you say. The question is: can we have that conversation about what is the appropriate level before we get as far as the situation you described? As a proposition, it is very helpful and it must be a good idea.

Q520 Baroness Andrews: One question that we ask ourselves in the course of this Committee is whether we can project the future expenses of a reformed House of Lords. I was very interested in what you said about the review that you are conducting of what it will take to ensure that a legislature for the 21st century is properly equipped. You mentioned pensions, salaries and expenses. Later you mentioned that office costs would have to be factored in. Will they be factored in to the assumptions that you will make about the salary package of the individual and what they will cost, or to what the system as a whole will cost? Other things that one will need to

take into account to make the two Houses equivalent in their ability to deal with the challenges of the 21st century will be the best sort of research assistance and IT support, and the capacity to build up intelligence and networks. To what extent will you be able in your review to anticipate all those costs?

Professor Sir Ian Kennedy: Thank you for that very helpful question, if I may say so. I will answer it on two levels. You are absolutely right that there are a number of strands to be considered. They should not be regarded as other than separate. There is the salary and there are business costs, which are additional because no one doing the job, if it is as the draft legislation suggests, should be out of pocket from doing it. So business costs, expenses, salary and pension are severable. We will look at them in the round and then it will be a matter for others—ultimately the SCIPSA, suitably reconfigured if appropriate—to determine, when we come up with the sums about what it will cost the taxpayer, whether they regard the estimate as appropriate. That is the way the system currently works. We will cost it up exactly as you described. We are not there yet for a variety of reasons. One is that we would not presume for a moment to indicate what you should be doing to do the job; that is what you have to tell us.

Baroness Andrews: If we presume that in the new House we will have a powerful revising function, it will depend on our being able to draw on expert assistance as individuals as well as institutional experience such as perhaps an enhanced Library or research service. These are the sorts of things that you could build in to your assumptions. Do you have conversations with the authorities of the House about any recommendations you might make on the services of the House? For example, an assumption that every new Senator would need in their office at least two researchers and one PA would have implications for the way that the Library is used. Do you have those sorts of conversations?

Professor Sir Ian Kennedy: I will ask Andrew to answer that after I respond to your initial point, which is absolutely critical. For a Member in the reconfigured House of Lords to do their job properly, clearly he or she would need what is part of the necessary armamentarium of staff and facilities. That would be settled after a discussion in which you would tell us what you need. We would then factor it in. Andrew will know about conversations with the House. It is of course of concern to us to ensure that if the House provides certain facilities we should not also provide them, because that would be an inefficient use of taxpayers' money. These conversations go on all the time.

Dr McDonald: I will simply confirm that, in respect of our services to MPs at present, we have just that sort of dialogue so that we can be made aware of what services the House is providing and can complement them.

Q521 Lord Norton of Louth: In a way, this relates to Baroness Andrews's point. Clause 59 of the draft Bill is in very broad terms; it is really a process rather than something that tells you what to take into account. As you have indicated, you are going to have to make certain decisions about salaries but also then about allowances. On the salaries side, I think that you are indicating that you would base that on what the job is supposed to be, following conversations. What the job is supposed to be and what it may turn out to be may be rather different. I was thinking particularly about the point that you made about salaries. You say that there is no constituency responsibility expected to be fulfilled by the Members, but it is difficult to legislate against people writing to those who are elected to the second Chamber, so there might be a burden that they acquire. I am wondering how you adapt to that. Would it be a review of salaries or would one have to compensate for it or deal with it through allowances?

Professor Sir Ian Kennedy: I think that that is a very important question, if I may say so, but it means that in what I have called a discourse we will have to do a degree of brainstorming on what might be the implications, so that we are not caught on the hop when this or that happens. We will not identify everything but, if we were able to identify 80 per cent or 90 per cent of what might happen, we would have factored those into the costings overall. That said, you are absolutely right that there must be a capacity to review from time to time without, of course, constantly changing things so that people do not know where they are. We would expect that capacity to review to be an integral part of the scheme that we would set up and be empowered so do to. Then, of course, in that review we would wish to consult all those whom we had consulted at the outset.

Lord Norton of Louth: In the example that I gave, it would be a review both of the salary and of allowances.

Professor Sir Ian Kennedy: It would be of what I would prefer to call costs and expenses, absolutely. If it is found, as Baroness Andrews suggested, that one's responsibilities are greater than what one has been led to believe they

would be, we will have the capacity to adapt. Indeed, we have already adapted as regards the House of Commons, have we not?

Q522 Oliver Heald: On this same point, if people are elected to the second Chamber to represent an area, there clearly will be an expectation among the people who live in that area that they will be represented and it will be very hard not to do the job. Certainly, the experience in Australia, where the system is very similar to what is proposed, is that that is exactly what happens—there is constituency work. Do you agree that as IPSA you need enough freedom in this process to be able to meet the realities rather than the pious hopes of Government?
Professor Sir Ian Kennedy: Absolutely, yes. The first stage is to ask, "What is it that the new Member of the House of Lords is going to do?" The second stage is to cost that out with a bit of brainstorming about what might be done down the pike, as the Americans would say. The third stage is to put a cost. The fourth stage is to take that to the SCIPSA with a view to them running their eye over it. It is, after all, taxpayers' money. It is not for us; we would merely administer it. It is not our money. We would administer it pursuant to that which SCIPSA thinks is the right sum and we would have done those sums with your help.

Q523 Lord Rooker: I just want to go back to the beginning. What is the timeline for the review that you are doing for Members of the Commons? When do you expect to have a figure?
Dr McDonald: Prospectively—and the board has yet to take a view on the final timescale for this—the public consultation will begin in the spring of next year, but that is to be confirmed, running through to—
Lord Rooker: But are you aiming to have a figure for the next general election, in 2015?
Dr McDonald: The review prospectively on the current timetable would run through to the end of the next calendar year, so, yes, there will be a view taken by the end of the next calendar year.

Q524 Lord Rooker: It is envisaged that this legislation would be up and running and new Peers would be elected at that election. I just want to take you through the other parts of the Bill. You asked about the job description. The draft Bill envisages that the role and function of the Lords will remain the same. You do not have to do any research on that. The thing that changes is the composition and how they arrive. The intention is to keep everything the same—the conventions stay the same and our functions stay the same. That is what the draft Bill says; that is the Government's intention. So you do not have to wait to do any work to find out what our job description is, which is why I was a bit surprised to hear you say that. I also wanted to ask about the point that you made in answer to one of my colleagues—it was the Lord Chairman, in fact. At the present time, there are not any expenses other than travel for someone living outside the Greater London area. There is nothing there for office costs or secretarial costs—there is nothing. You talked as though there was, but there is not. On the issue of the elected Members, would you envisage, given that they are elected for a constituency for 15 years, that there would be, for example, complete freedom of unrestricted travel to that constituency and within that constituency by an elected Member? I am not raising the issue of office costs or whether there will be constituency work or not, but would you envisage that?
Professor Sir Ian Kennedy: First of all, Lord Rooker, the conversation that we have just had about the possibility of having a constituency, having office costs and doing research in London raises with me the fact that there may not wholly be agreement here in this room as to what is contemplated by the legislation. It is not for me to judge. On your question about travel, clearly—well, I say "clearly"—if there is an elected Member who has responsibility to a constituency, coming and going to the constituency is part of doing the job and the cost would be met by an appropriate expenses regime, yes.
Lord Rooker: I just want to be clear about this, because the idea is that there will not be any constituency duties, even though the Members would be elected for a constituency. We are asking you whether barriers would be placed in the expenses or allowances system—or the business support system, as you rightly call it—to prevent elected Members of the Lords from doing that role.
Professor Sir Ian Kennedy: It is quite the opposite, Lord Rooker, and I am grateful to you for the question. IPSA has, despite what might be said in some quarters, absolutely no interest in doing anything other than facilitating the possibility of MPs currently doing the job that they have been sent to Parliament to do. Therefore, equally, in the case of a Member of the reformed upper House, that would be precisely the same principle.

Q525 Mr Clarke: I wonder whether either gentleman has given some thought to the role of Ministers in this new Parliament, if I can call it that. If they have, based on their experience of dealing with the House of Commons, do they see any problems there?
Dr McDonald: Perhaps you could help us a bit further with the question, in terms of which problems you might foresee.
Mr Clarke: Well, I was hoping that you would be able to tell me if you had had problems with Ministers. If you have not, should we therefore try to reflect how the House of Commons is dealt with in terms of Ministers?
Professor Sir Ian Kennedy: Do you mean in terms of additional salaries and so on?
Mr Clarke: All of that.
Dr McDonald: We have not strayed into the territory of ministerial salaries. They are regulated and paid separately, so we have continued to regard them as being a distinct matter.
Mr Clarke: If I had not asked the question, I might not have known that, even though I was a Minister. This is a very open forum on all sides.
Professor Sir Ian Kennedy: As I understand it, they are a charge on the department rather than on the IPSA.
Mr Clarke: And would you expect that to continue in the new Parliament?
Dr McDonald: There is no plan of which we are aware to make any change to it and we have no such intention. It is not within our gift.

Q526 Mr Clarke: I have just one last question, Lord Chairman. From your experience, which must have been extremely interesting, of dealing with the House of Commons and expenses and so on, do you think that you have learnt anything that might be helpful in the next exercise—the setting up of whatever Parliament decides should replace the House of Lords, if that is the view?

Professor Sir Ian Kennedy: Andrew will give you a considered response, but my immediate response is that we have the very great advantage, should this legislation go forward, of having time, space and the opportunity to consider carefully, to consult widely and to put in place something that we can even pilot for a while. The difference in setting up IPSA was that we had about two or three months to put in place something that could not be piloted; we were learning as we were introducing it. Of course, the imperative in introducing it was not to be a historical but to remember what had just happened and, if you like, to be secure about assurance, accountability and all those things. Once those are in place, we can move to a system, as we have, that is much more streamlined and will, from our point of view, take people out of this system, which will cost less to the taxpayer and so on and so forth. That was a learning process, which, as Mr Hunt quite rightly said, MPs also had to engage in. We may be able to take advantage of that experience when we deal with the upper House.
Dr McDonald: There is plenty of learning that we would happily deploy. I have said in different contexts that the brief that we were given meant that we had to ignore pretty much every basic tenet of change management. We were not able to pilot the scheme ahead of time and we were not able to work with those who were themselves going to operate the scheme subsequently. That was the brief that we were given. I am proud of what we achieved in terms of the implementation and I am proud of the clean bill of health that the Office of Government Commerce, for example, gave us in saying that the impossible had been delivered in the implementation. But there is plenty of learning, as I have said in other contexts, and we will very happily deploy it, not least by working with Members of the transitional House and the House authorities to make sure that the introduction is as smooth as it possibly can be.

Q527 Ann Coffey: The other pressure will come from the fact that there are bound to be comparisons between the costs of running the House of Commons and the House of Lords. I noticed from our figures that there was a 16.4 per cent increase in the running costs of the House of Lords between last year and this, and I believe that the figure is now higher than that for the House of Commons.
The Chairman: There are 117 new Peers.
Ann Coffey: Whatever the reason, that is the figure. When the new system comes into place, there is bound to be a simplistic comparison and there will be pressure to bring the costs into line with each other. How much pressure will that put on you when it comes to determining salaries and allowances?

Professor Sir Ian Kennedy: You are absolutely right that those sorts of comparisons and many others will be made. Our position is that we will seek to carry out our legislative mandate by reference to principle. Perhaps Lord Rooker will allow me to say that there will be some business costs, as well as expenses, salaries and pensions. We will work them out by reference to principle and then we will cost them up. Then it will be for the SCIPSA to say whether the figures are right or wrong. In terms of pressure, of course we will be exposed to pressure. We were exposed to pressure even before we took responsibility for this. If I may say so, it comes with the territory and we deal with it as we have always dealt with it: we will argue the case.

Q528 Bishop of Leicester: I will ask a bit more about that pressure and about the learning process that you referred to. I am not sure whether the question is appropriate, but I will put it and see. Clearly, IPSA was set up partly in response to the public perception of an abuse of the previous system. Can you tell us anything from that learning process about how the public might receive and react to the prospect of a full-time, salaried, reformed House that would be substantially more expensive than the present one?

Professor Sir Ian Kennedy: There are many questions there, if I may say so. My first point is that our own surveys and that of the National Audit Office suggest that public confidence in the institutions of Parliament and in the preparedness of MPs to live within the established scheme has risen by close to 60 per cent. Having an institutional mechanism that is transparent and clearly rigorous and that demonstrates that Members of the House of Commons are living within it—99.3 per cent of claims are slap bang within the scheme and most of the ones that are not are the result of administrative errors—means that there is now a sense among the public at large that there is a scheme that acts as a guardian of public money. The National Audit Office said that IPSA safeguards public funds more effectively than its predecessor.

The next question was how, in the light of that, the public would respond to a remunerated upper House. My response is in two parts. I cannot manage, and I do not know, how the public will respond to the argument that this is an appropriate constitutional development. In my view, that is how it should be put. The second part of my answer—will the public have confidence in the fact that IPSA is administering it?—is that evidence suggests that they will have increasing confidence.

Dr McDonald: On that last point, I would say that the polling evidence from the end of last year bears out precisely that point, with 59 per cent of people expressing confidence in the work of the regulator just a few months after our establishment.

The Chairman: Thank you, Sir Ian and Dr McDonald, for coming. You have exposed us to a novel and perhaps even daunting prospect of what the future may hold for Members of the House of Lords. But it has been instructive and very helpful to us. Thank you.

Professor Sir Ian Kennedy: No less daunting for us, Sir.

Committee on Standards in Public Life [Sir Christopher Kelly and Mr Peter Hawthorne] (QQ 529–540)

Examination of Witnesses

Sir Christopher Kelly, Chair, and **Mr Peter Hawthorne**, Assistant Secretary, Committee on Standards in Public Life

Q529 The Chairman: Sir Christopher, thank you very much for coming. You will have gathered what we are trying to discover and what the Committee is about. Would you prefer to make an opening statement or launch straight into questions?

Sir Christopher Kelly: In view of the shortage of time, I will make only two points. The first is to introduce Peter Hawthorne, who is the Assistant Secretary of the Committee on Standards in Public Life. The other is to say that my committee has not yet spent a great deal of time on this issue. Therefore, although I am delighted to be here to offer what help I can, I suspect that in answer to most of your questions I shall express a personal view rather than the view of the committee as the whole, and therefore my answers will have as much or as little value as that implies.

Q530 The Chairman: Thank you very much. Perhaps I may ask the first question. The White Paper notes: "The wisdom and experience of people who are pre-eminent in their field and have done great things can be of benefit to Parliament's consideration of legislation". It proposes that such people should be appointed to the reformed House. Are there distinctive issues of standards and propriety around such appointments? What criteria would you have?

Sir Christopher Kelly: Clearly the process is different from that of electing someone. However, there is a precedent for appointments to the House of Lords and I imagine that any arrangements that were made would build on that. In particular, it would be extremely important that there was transparency both in the process of those appointments and in the reasons for them.

The Chairman: The reasons for the appointments?

Sir Christopher Kelly: Yes. I have in mind the fact that, when people other than political appointees are appointed to the House of Lords, a citation giving the reason why they are thought to be appropriate is made public.

The Chairman: I do not think that that happens at the moment.

Sir Christopher Kelly: It does happen at the moment, but not to the same extent in relation to politically appointed Peers.

The Chairman: I am advised that what I verily believed is true: one has no clear idea as to why people are appointed to the House of Lords. Even the Appointments Commission does not say: "We are appointing Lord X because he has a particular skill in 1, 2, 3 or 4." It is never as detailed as that.

Sir Christopher Kelly: Then I stand corrected. My belief was that a citation was published.

The Chairman: I am told that it is a job description of what they have done.

Sir Christopher Kelly: Then we are using different words to describe the same thing.

Q531 The Chairman: I am not sure about that. Do you think that there is any difference if appointed Members are part-time or full-time?

Sir Christopher Kelly: Do you mean that there must be a difference in respect of their ability to do other things at the same time as being a Member of the upper House?

The Chairman: How much do you think that that should be taken into account?

Sir Christopher Kelly: I think that that is one of the difficult issues that will have to be addressed. On the one hand there will be an issue about whether you are creating two types of Member of the House of Lords. On the other hand it seems that a key issue will be the extent and manner in which you handle the potential conflicts of interest of people who, if they are appointed part-time, wish to continue doing their existing jobs.

The Chairman: The question is about not only conflict of interest but keeping on top of the job that they are doing. A doctor would need to keep very much on top of his specialty.

Sir Christopher Kelly: Indeed.

Q532 Lord Trefgarne: Are you consulted at present on any appointments to the House of Lords?
Sir Christopher Kelly: No, there is a separate commission chaired by a Member of the upper House.
Lord Trefgarne: So you are not consulted.
Sir Christopher Kelly: Not at all. I would not expect to be.

Q533 Baroness Young of Hornsey: Would a full-time Chamber in which most Members were elected provide an opportunity to look at issues around the approach to standards and propriety? In other words, do you think that the current standards around propriety, transparency and so on are fit for purpose, or is there a need to look at or change how they might operate in the hybrid House that has been proposed?
Sir Christopher Kelly: I think that the principles remain exactly the same. They are the seven principles of public life. The public's expectations also remain the same. There is potential ground for giving some thought to the application of those principles in the particular circumstances of a newly constituted House of Lords.
Baroness Young of Hornsey: Would you care to elaborate on that?
Sir Christopher Kelly: Well, I am not entirely sure what the circumstances might be, pending decisions that are yet to be taken. However, there will be issues such as the one we have just discussed about how, if you wish to continue to have in the House of Lords people who are also active in other jobs, you will handle potential conflicts of interest.
The Chairman: Well, we handle that problem now. In theory it could happen at any moment, but on the whole it is handled reasonably well in the Lords.
Sir Christopher Kelly: That is also my impression.
The Chairman: So I do not think that that will be a great problem in the future. I am more worried about a 15-year term; you serve 15 years and then come out, or something of the sort. There is a question of intellectual staleness, if I may put it that way. It is rather important. You appoint somebody because he has a particular skill in a particular area, but it will not last for 15 years.
Sir Christopher Kelly: That is not a standards issue, but I can understand why you might think that it is an issue. A lot will depend on the age at which people are appointed.

Q534 Baroness Andrews: This may be another version of the same question, I am afraid. You specifically mentioned the notion of two types of Members. The code of conduct that we presently operate under is still sometimes quite difficult to implement as we approach what we choose to speak on and how we choose to represent things. It is, of course, entirely about conflicts of interest. Perhaps I may press you further on whether the code would have to be revisited precisely because we would have a genuine difference in the ecology of the House if there were two sets of Members coming from different routes.
Sir Christopher Kelly: I am not sure whether the important difference would be between the two sets of Members coming from different routes. The Lord Chairman suggested that one set of Members would be more part-time than the other set. If that happened, it would create a potential difficulty. It would be most unlikely that the code of conduct would not need to be looked at again if the composition of the House changed as radically as is proposed.
Baroness Andrews: Would the minority of people who worked part-time, were chosen on the basis of their expertise and were expected to go on deploying that expertise and keeping up to date come under the scrutiny of the rest of the House, for example, precisely because they were there to do that particular job? At the moment we all do that job in theory.
Sir Christopher Kelly: If the question is whether the House as a whole would have to have a mechanism for making sure that people who were appointed stayed within reasonable bounds in handling their conflicts of interest, the answer of course must be yes.

Q535 Bishop of Leicester: The draft Bill gives a reformed House—if there is an 80:20 split—greater disciplinary powers but exempts Bishops from those powers. The Archbishops in their submission indicated that the Bishops and the church seek no such exemption. Do you see any reason why Bishops should be excluded from such disciplinary powers?

Sir Christopher Kelly: I suspect that there are issues buried in that question that are well beyond me. I would have expected the default position to be what the Archbishops proposed—namely, that Members of the House should be treated in the same way unless there was good reason to do otherwise.

Q536 Lord Trefgarne: I am concerned about the position of those who will be appointed to the new House for the specific purpose of being Ministers and will leave when they cease to be Ministers. What arrangements will there need to be to ensure that they can return to their earlier profession as necessary? Otherwise, they will be unemployable.

Sir Christopher Kelly: I am aware that that issue has caused problems in the past. I am not an expert on the way in which the Advisory Committee on Business Appointments works. In principle, as I understand it, it is able to take a considered view on whether someone can legitimately and immediately take up a role on leaving either House without creating an actual or perceived conflict of interest. There are clearly some roles that you would not want someone to go to. The obvious example is that you would not want a Procurement Minister immediately going to an organisation from which they had procured services. On the other hand, clearly there are other roles where no such real or perceived conflict of interest would arise. It seems that the arrangement under which an independent but informed body takes decisions on that ought to have the capacity to work well and recognise different circumstances.

Lord Trefgarne: It is going to be pretty difficult for, say, someone attracted from the financial services industry to be a Minister if, at the end of his five or 10-year period as a Minister, he cannot go back to what he was once doing.

Sir Christopher Kelly: Whether or not he or she can go back to what they were doing depends a lot on the role that they performed as a Minister. If the alternative is that someone should be able to perform a function as a Minister that directly benefits, or might be seen as benefiting, the organisation to which they go back, that would not be an admirable thing, either.

Lord Trefgarne: Do you think that the problem can be handled?

Sir Christopher Kelly: I think that it is a real problem and that the best way of handling real problems like that is not to set down rigid rules but to do very much as the present arrangements provide: that is to say, have an independent body to scrutinise such appointments and take a balanced view on where the balance of advantage lies.

Lord Trefgarne: There is an existing organisation for senior civil servants, I believe, who want to retire and take up business appointments. Perhaps something similar could be devised for former Ministers in the House of Lords.

Sir Christopher Kelly: As I understand it, the Advisory Committee on Business Appointments does apply to Ministers. I think that the difference used to be that its rulings were obligatory for civil servants but not for Ministers. Has that changed?

Mr Hawthorne: No, it is still the same.

Lord Trefgarne: The problem is, of course, that Ministers can be dismissed at a moment's notice and it is a bit hard if there is no job there that they are allowed to go to.

Sir Christopher Kelly: I understand the issue. As I say, it is problematic.

Lord Trefgarne: Is it not a problem that you ought to address?

Sir Christopher Kelly: I have described the existing arrangements and suggested that, if the right people are appointed to the committee—and I have no reason to think that they would not be—it ought to be possible to operate the system with a degree of flexibility that both recognises the public interest in not allowing inappropriate appointments to be made and at the same time recognises the need for people to earn a living.

Lord Trefgarne: I am looking at it from the position of the hapless junior Minister tossed out in a reshuffle.

Ann Coffey: It has always been the way.

Lord Trefgarne: It does happen, you know.

Sir Christopher Kelly: I understand the issue.

Lord Trefgarne: Then could you please think of a solution for these people?

Sir Christopher Kelly: As I tried to say, I am not aware of a better solution than the one that exists at present with the Advisory Committee on Business Appointments.

Lord Trefgarne: Three months' pay is what we get.

Q537 The Chairman: Perhaps I may ask a question that may be slightly tangential but is on this point. The ministerial code, as I understand it, prohibits any lobbying by former Ministers for two years. What is lobbying? Have we a workable definition yet?
Sir Christopher Kelly: No.
The Chairman: So how is it done—by the length of the Chancellor's foot?
Sir Christopher Kelly: By what?
The Chairman: I asked whether it is done by the length of the Chancellor's foot. It is what they used to say about equity jurisdiction in the courts a few centuries ago. I am sorry about that professional jargon.
Sir Christopher Kelly: I apologise for not recognising the allusion.
The Chairman: No, I should apologise. Is it a personal, subjective view? How do you decide what is lobbying?
Sir Christopher Kelly: In the end it has to be slightly subjective and has to rely on the common sense of both parties involved.
The Chairman: The Chancellor's foot is not very long now. Lord Norton?
Lord Norton of Louth: My question has been covered.
The Chairman: Mr Hunt?

Q538 Tristram Hunt: Lord Trefgarne asked my main question. In terms of oversight of the Appointments Commission, we talked last week of a committee of MPs and Peers to oversee the commission. Do you have any thoughts on this?
Sir Christopher Kelly: It is difficult to conceive that any model for the oversight of an independent body that nevertheless provides sufficient accountability is going to be perfect. At first sight, the model suggested in the Bill seems as appropriate as any that I can think of.

Q539 Lord Tyler: Sir Christopher, you said at the beginning that your committee had not yet looked at the Bill and the White Paper. However, you recently published a very important document on political party funding. Through the centuries, as you identified, there has always been a connection between political patronage and political financial support—I am putting it as neutrally as I can—and you made some important recommendations. Is it your view that whatever the other outcomes of this exercise, we ought to be able to deal with that problem as a result of the reforms because in future there will not be the opportunity for political patronage of that sort?
Sir Christopher Kelly: If by political patronage you mean appointment to the upper House—because there are plenty of other ways in which financial support for a party can be translated into inappropriate advantage—then at least that potential avenue should be brought to an end.
Lord Tyler: Does the work that you did on the issue—obviously, no one else has done it recently—bring into focus the fact that the vast majority of active Members of the current House are political appointees? I hold up my hand; I am one. Does that mean that on the whole your view is that it would be beneficial to have an appointments system that was completely separate from political activity of any sort, given an 80:20 composition?
Sir Christopher Kelly: No, I am not sure that I necessarily take that view. The existing Appointments Commission has on it some members appointed because they have a political background. My own committee has on it people appointed directly by the political parties because they have the expertise and the understanding to help us. The Electoral Commission has recently moved to the same model, despite resisting it initially, and finds it potentially quite useful. I see some advantage in an Appointments Commission or whatever body is set up still having some people on it who have political experience. I think that it helps sometimes to have people with lots of experience who are not necessarily expecting to be appointed to the government Benches.

Q540 Lord Rooker: Sir Christopher, I hope that you do not feel that you have been put in the dock. I got the sense from some of your answers that bodies other than yours are responsible for the issues that we raised today. Whether there is a reformed House of Lords on an 80:20 or 100 per cent elected model, or if it stays the same, given the role of the Lords in legislating, primarily, and its work in the Chamber in debates, and given the role of Members of Parliament, why should there be a difference between the way in which Members of the Lords are

treated in terms of the requirements to have openness and good standards of conduct in public life? When I arrived here, there was no Register of Members' Interests—and God, they fought in the ditches to stop it. That was only 10 years ago. Why should there be a difference between the two Houses when Parliament as a whole is there to serve the people? I am not asking you to do this; I am just asking for your view. Surely the same set of rules should apply on lobbying or paid advocacy—nobody is arguing against advocacy—and on a full declaration of interests, including family or partners, which is now required in a lot of public bodies following the Nolan principles. Why should it be different? Why should there not be one collective set of rules for Parliament?

Sir Christopher Kelly: I could not agree more. I hope that I have not said anything to imply anything different.

Lord Rooker: No.

Sir Christopher Kelly: I began by saying that of course the same principles should apply. All the things that you mentioned, such as the prohibition on paid advocacy and an open declaration of interests, should of course apply to both Houses. The only thing that I was trying to say was that at the margins there might need to be some difference. Because of the existence of appointed Members of the House of Lords it might be necessary to find another way of making sure that the principles are followed. However, here I am referring very much to the margins.

The Chairman: Sir Christopher, thank you very much indeed. I think that perhaps we got you here prematurely.

Sir Christopher Kelly: No, I arrived because I wanted to hear what Sir Ian had to say.

The Chairman: Was it illuminating?

Sir Christopher Kelly: I think that your questions were more illuminating than the answers.

The Chairman: Thank you very much indeed.

MONDAY 19 DECEMBER 2011

Members Present

Lord Richard (Chair)
Baroness Andrews
Lord Hennessy of Nympsfield
Bishop of Leicester
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Baroness Shephard of Northwold
Baroness Symons of Vernham Dean
Lord Trefgarne
Lord Trimble
Lord Tyler
Baroness Young of Hornsey
Gavin Barwell MP
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Dr Daniel Poulter MP
Laura Sandys MP

Dr Alan Renwick and Professor Iain McLean (QQ 541–568)

Examination of Witnesses

Dr Alan Renwick, Reader in Comparative Politics, University of Reading, and **Professor Iain McLean**, Professor of Politics, Nuffield College, University of Oxford

Q541 The Chairman: Good afternoon, gentlemen, and thank you very much for coming. It is nice to see you again. You know what we are about. Would you like to make some kind of opening statement or would you like to go straight into questions?

Professor McLean: I will make a very brief statement, Lord Chairman. First, I apologise for my appearance, but I have to go straight from this to a carol concert for the homeless in Oxford—it is their Christmas dinner. Secondly, I understand that the purpose of this session is only to discuss electoral systems, but I have, as Members will know, given more wide-ranging written evidence, in conjunction with Simon Hix, and I have published an entire book on the subject. I understand that the purpose is not to go into other matters this afternoon and I will try to resist the temptation. The only other thing that I have to say is that I was also involved with the Political Studies Association pamphlet, which, as you know, was authored by Alan. I was on the commissioning body for the pamphlet, so we think that we are in a very similar place.

Dr Renwick: If you want me to offer some thoughts on the issues that I think the Committee should be talking about, I am happy to do so, but if you would prefer to go straight into questions—

The Chairman: By all means have two or three minutes to start off with.

Dr Renwick: Okay. I thought that it might be helpful to flag four issues that I think are at stake when we are thinking about the choice between the single transferable vote system and the open list system, which are, of course, the two systems that are mentioned in the draft Bill. There are four points that I think are particularly important. One is the degree to which voters can express a choice or preference among candidates. The second is the degree to which those preferences actually make a difference to who gets elected from within political parties. The third is the likelihood of electing people who are entirely independent of political parties. The fourth is diversity within the Chamber. With regard to the first of those—the degree of voter choice—there is the question of whether you allow a party vote to be expressed at all, which is possible in different forms under both the list

system and STV. There is also the question, particularly under list systems, of just how much choice you allow voters to express. The option given in the draft Bill is the simplest form, in which voters can express one preference for one candidate, but many other options are available that the Committee might be interested in. The second question is the degree to which these preferences can determine who gets elected from within political parties. Thinking particularly about list systems, there may be an option for voters simply to express a list vote without preferences within that list, so that the preferences within the list entirely determine who gets elected, but more commonly you would have some kind of process of combining the parties' ordering and the voters' ordering. There are many ways of doing that which it would be important to investigate. Thirdly, with regard to the electability of independents, the evidence is pretty clear that that is more likely under STV than under an open list system—I can certainly talk about that. With regard to diversity within the Chamber, the evidence is increasingly that, in a country where voters are not opposed to the election of women, it does not make terribly much difference which form of proportional system you use, except that, if you want to have quotas, those are more likely to work with a closed list system than with any of the alternatives. That is with regard to women; we do not have terribly much evidence on other minorities and ethnic minorities in particular.

Q542 The Chairman: Thank you very much. Let me start with the question that you identified, I think, as the one that we are really interested in here. The White Paper favours STV but then says that a case can be made for an open list system. When we had the first run around the course on this, I think that we were veering towards an open list system rather than STV. I am bound to say that, having looked a bit more at some of the documents, I am starting to veer back in the opposite direction. Can you encapsulate the different arguments in favour of the one rather than the other?

Professor McLean: I do not want to take sides, because they have different properties and I do not think that it is for me to say which properties are more important. Because, as you all know, STV is more candidate-centred and open list is relatively more party-centred, STV is the system that probably gives more choice to the individual voter, albeit that the voter can make a choice within open list—how effective that would be would depend on the detail that Alan has just referred to of which variety of open list it was. If it were a matter of concern to ensure that candidates entirely independent of party were elected, then STV would probably be more appropriate. I sense from reading the transcripts of previous sessions that there is some confusion between different concepts of independence—independent of party as against independence within party. My view is that the second concept of independence—people who take a party Whip but are perhaps not as beholden to that Whip as they might be if they were in the House of Commons—is secured by the non-renewable fixed term and that the electoral system is irrelevant to that point.

Dr Renwick: Yes, I agree with all that. The only clear difference between the two systems is that you are more likely to get independents—people who are independent entirely of party—under STV. If we look at the evidence from around the world, there are very few independents elected anywhere using any list system, whereas rather more are elected using STV, particularly in Ireland. There is a logic underlying that. If you are a very popular independent, under a list system you might win enough votes to secure three or four seats, but you can only fill one of them, so your voters are disadvantaged and you have an incentive either to gather extra people on to your ticket, in which case you cease to be independent, or to give some of your votes to parties. Under an STV system, however, you can be a very popular independent, but your votes can then transfer if you have more than you need in order to be elected. With regard to any other matter, it depends on how you devise the open list system. Under a simple open list system, where voters can express one preference, there is less choice for voters than under STV.

Q543 The Chairman: Pause there for a minute. I think that it would be helpful to the Committee if you could briefly run through the different types of open list system, giving us the pros and the cons.

Dr Renwick: Okay—

The Chairman: But quickly.

Dr Renwick: With regard to the preference that voters can express, you can have simple systems in which voters can simply express a preference for one candidate from within the party list; you can allow them to express multiple preferences, with multiple Xs, giving an X to several different candidates; you can allow them to rank in order the candidates from within the list; or you can even devise a system where they can express preferences

going across party lists, so that either some part of their vote goes to a different party or you have other immensely complicated ways, as in Switzerland, of working out exactly how that vote is allocated. Those are the options with regard to the preferences that voters can express. There is also the issue of whether voters must express a preference within the list or whether they have the option of expressing a simple list vote without changing the order at all.

The Chairman: A sort of above-the-line vote.

Dr Renwick: Yes, exactly so. If, for example, you allow for an above-the-line vote and you say that above-the-line votes count for the order of candidates preferred by the party, the party has considerable control over which people get elected if many voters use that option.

If, by contrast, you do not give those votes much weight or you do not allow those votes, the preferences of the voters determine the order in which candidates get elected.

The Chairman: I think that I understand.

Q544 Baroness Scott of Needham Market: Can I just ask you to rerun what you said with regard to size of constituency? It seems that, if we are talking about using existing regions, there may be differences in the way that one would approach the electoral system if you are looking at pretty large constituencies.

Professor McLean: If it was a question of simply using the standard regions—that is, European Parliament constituencies—as the constituencies for this House, as suggested in the White Paper, which then rather backs away from it, academic specialists are clear that that would not work with STV. That could work with open list, but I would prefer the decision to go in the opposite direction: decide which electoral system you want and then decide the optimum size of each constituency. For STV, it should probably not be bigger than a seven-Member seat max. Of course, that interacts with other decisions that Parliament will have to take on whether it is 300 Members or larger and whether it is 80 per cent elected or 100 per cent elected. Within the suggestions that have been made, it seems to me that the outer limits for each standard election would be that the smallest number of places to be filled would be 80, if you go exactly with the scheme in the White Paper; the largest number would be 150 at each filling, in the event that there was a feeling that the size should be 450 and that it should be all elected. Either of these is perfectly manageable under either open list or STV. Open list is an easier system to run with particularly large districts. That is my first take on the question.

Q545 Baroness Young of Hornsey: I have three relatively quick, relatively practical questions. First, do you think that it would be necessary to explain to the public, who are not used to voting in this way, how the system works in terms of the preference and the ability to vote across parties, and to what extent would there need to be some sort of education programme on that? Do you think that the extra cost of STV is significant enough to deter making that the system of choice? As I understand it, if you want to overcome the issue of alphabetical bias, you need to introduce a system to ensure that that does not happen. Finally, do you think that the additional time taken to perform the count with STV is a significant deterrent to making it the system of choice?

Dr Renwick: I think that it would be necessary to have an education programme with either STV or an open list system; for example, if a voter simply gives one preference for one candidate, what that means and what effect that has is very different depending on whether you have STV or an open list system. It would be important for voters to understand that. With regard to the cost of STV, is your question about the extra cost relative to open list PR?

Baroness Young of Hornsey: Yes.

Dr Renwick: With regard to the issue of the alphabetical bias, I do not think that there is a significant cost there. The ideal way of tackling the alphabetical bias is to have what is sometimes called Robson rotation, where you have different versions of the ballot paper printed with the candidates in different orders. They do this in the Australian Capital Territory, and the Electoral Commissioner assures me that it does not cause them any trouble and it does not create any significant cost that causes any concern there. The greater issue of potential cost with STV relates to the counting process—we get into horrible details here—and how you transfer the votes of candidates who have already been elected. There are several different ways of doing this. The best way from the point of view of ensuring that the result reflects what voters intended is called the inclusive Gregory method, which involves transferring fractions of fractions of votes, and it gets very, very messy. Scotland uses this for local government elections and concluded that using vote-counting machines was the only sensible way of doing it. It

is possible to run it by hand, but it certainly takes time. There would be a strong case for using vote-counting machines in that scenario and that would of course entail an extra cost.

Professor McLean: Perhaps I may come in with a supplementary point to that. There is software out there—it would of course have to be tested and approved by Parliament—and although the task that Alan has just described, the inclusive Gregory transfer, is indeed very messy for human beings, it is trivially easy for computers.
The Chairman: I can see that Lord Trimble wishes to speak on this one.

Q546 Lord Trimble: I just cannot let this go on. What you call the inclusive Gregory method is the only proper way of doing it. It is the way in which it has always been done in Northern Ireland, since 1973. To say that it is messy is simply wrong. It is very simple indeed. Votes will transfer at different values depending on the circumstances and the stage of the count, and all you have to do, very simply, is to have each bundle of votes properly labelled. There is no problem. You are making a mountain out of this. I am sorry to interrupt your evidence, but what you are saying goes completely against 40 years' experience.
Dr Renwick: I agree absolutely that there is a very straightforward mathematical procedure that you follow and there is no uncertainty about what you should do. It just takes some time to go through it. The question is whether it makes sense to have these long counts that take several days to do, or whether it is cheaper in the long run to have some equipment that, as Iain says, can do it very quickly.
Lord Trimble: The problem you will have with a counting machine is a lack of confidence in the machine, particularly if it tries to do several stages of the count rapidly. That would mean that the candidates and the parties would have great difficulty in verifying what was going on at that stage. You have to bear in mind that, if people ask for a recount, you can only get a recount of the latest stage—you cannot have a whole recount. Therefore, you have to go slowly so that the candidates and the parties can be sure that an accurate result has been taken. If you try to rush that, you will have a very serious problem in terms of popular confidence in the outcome.

Q547 Oliver Heald: There is a sort of voter who is looking just to go into the booth, do something relatively simple and then come away; then there are sophisticated people who no doubt wish to have all sorts of different considerations reflected in their votes. It is possible with both STV and open list to have an above-the-line vote, where you just go for the party. Which of the two systems better fits in with that?
Dr Renwick: The list system is designed to be based on political parties in a way that STV is not. However, if you wanted to introduce a party element to STV, I do not see any reason for not doing so. The only difference that needs to be considered is that, with a list system, when it comes to the counting of the votes, you can, if you wish, give more emphasis in deciding the final order of the candidates on the list. You can give more emphasis to those voters who have chosen to express a preference than to those who have not; you can try to weight things against the parties' preferences dominating that. However, under an STV system you cannot really do that, because there is not a separate party vote in the same sense.
Oliver Heald: Of course, in Australia they eventually decided that they needed an above-the-line vote and they do that with STV now.
Professor McLean: Here is one area where the Australian experience is not very helpful for us. Australia not only introduced an above-the-line option but imposed what academics regard as ridiculously stringent rules for those who do not choose to vote above the line. Basically, unless you put every single number from one to 45, if there are 45 names on the list, once and once only, your vote is counted as what the Australians call "informal", which is a term of art that I was amused to see that your Australian guests used and understandably mystified Members of this Committee. "Informal" is Australian for "invalid", and in the view of most academic commentators that is a ridiculous system and that ridiculous stringency may have led to the extremely high proportion of Australian voters who vote above the line in Australian Senate elections. Once above-the-line voting goes into the 90 per cent to 95 per cent range, which it is in Australian Senate elections, then it no longer makes sense to say that the system is STV, but Members should bear in mind that there is an Australian peculiarity here that would not be replicated in the UK.

Oliver Heald: I think that it is the case that a lot of the votes are informal in Australia—is that correct? The percentage of above-the-line votes is so high relative to the votes that are accepted because there are a lot of informal votes that are just thrown away.
Professor McLean: My sense is that the number is not that high, but it would be easier for us to supply you a note on that.
Dr Renwick: It is a bit higher than it is in the UK, but that is also partly because there is compulsory voting in Australia, so it is not really comparable.

Q548 Laura Sandys: To follow on from that point, out of STV and an open list system, what would you expect in terms of invalid votes? What sort of attrition rate do you get? Does the size of the constituency also matter?
Dr Renwick: Evidence from Northern Ireland—Lord Trimble can no doubt correct me—is that in most elections it has been about 1 per cent, which is the same essentially as for a Westminster election under first past the post.
Lord Trimble: We have very intelligent voters.
Laura Sandys: That is STV, but what about the open list system? I suppose that that depends on which open list system you adopt.
Dr Renwick: I cannot give you a figure for that, I am afraid.
Professor McLean: Alan is the best placed person in the UK, as the only one who knows about the Hungarian electoral system, to answer that question. If he cannot, then I am afraid that we will have to come back with a note on that point.
Laura Sandys: Okay, but there is very little difference. People say that it is too complex and all the rest of it, but the attrition rate is not very different from that in our existing system of first past the post.
Dr Renwick: There are not big differences between different voting systems on this point. There are differences produced by whether you use different electoral systems at the same time, which is a concern, and there are differences produced by whether you have compulsory voting, but simply by the electoral system there is no evidence of which I am aware of big differences.

Q549 Laura Sandys: Professor McLean, you talked about—I hope that this is not going back over old ground for us; I am just interested in what you say—the hierarchy of decision-making. You said that you need to decide your system and then the number of people whom you are electing and that that then defines in some ways the size of your constituency. Is that the hierarchy? We decide the system and the number and that then throws up what the constituency would look like, or is the hierarchy different?
Professor McLean: Certainly in my view deciding district boundaries comes last of those three tasks. The draft Bill, of course, provides for that task to be delegated to an expert committee, who no doubt would act in the light of the decisions that had been taken upstream about the electoral system and House size. I do not think that the electoral system and House size in any real sense depend on each other, so long as the decision on district boundaries is taken last, as I understand the scheme in the draft Bill allows for, as it is delegated to an expert committee.

Q550 Mr Clarke: Could I go back to the points that were made about independents? I might have got this wrong, but it seems to me that we are all accepting that it is a good thing to have independents and to elect independents. Is that necessarily the case? We have talked—and I underline "talked"—about a 15-year term. Heavens, you could elect a one-trick pony who opposed the closure of a hospital and find that over 15 years he or she could do whatever he or she liked. Am I being over-emphatic?
Dr Renwick: I do not want to express a strong view on whether there should be independents. There is polling evidence that the public like having independents in the second Chamber and a lot of the debate surrounding the House of Lords has suggested that many people find it desirable to have independents. I merely flag that as being an issue that seems to be of concern in the debate rather than one on which I have a strong position myself.
Professor McLean: I second that.

Q551 Dr Poulter: I just want to pick up on the issue of invalid votes that has been raised. It is almost certainly going to be the case that the elections for the reformed second Chamber will be on the same day as a general election or another election. You may have different voting systems in place at the same time. You will have first

past the post if there is a council election or a general election and, alongside that, you will have potentially an open list or STV. Do you have any evidence from examples overseas or elsewhere of how different voting systems working alongside each other impact on spoilt ballots?

Professor McLean: Perhaps I can go first and then hand over to Alan. The awful example of Scotland 2007 may be in the mind of a lot of Members, when there undoubtedly was a high rate of invalid votes due in part to the conjunction of different systems at the same time. But I think that the report that was done on that calamity after the fact discovered that other factors, which would not be replicated because the lesson has been learnt, were more important in leading to the high ratio of invalid votes. My impression is that Scotland 2011 has settled down back to the previous level of invalid votes. At that point, I will hand over to Alan, if I may.

Dr Renwick: Yes, I agree with that. The only other piece of evidence that comes to mind is that which Professor Jon Tonge has submitted to the Committee. He suggests that, in Northern Ireland this year, as a result of combining the STV elections with the AV referendum, there was a very small increase in the number of invalid votes—from about 1 per cent to about 2 per cent. Whether it was due to the fact that there were different forms of election or vote taking place at the same time, we do not know.

Dr Poulter: Is the experience that it is the established voting system—first past the post, say—that is disrupted by the introduction of a new system? Is it more likely to cause more spoilt ballots in that system or is it more likely to cause more disruption to the new system? Where does the balance normally fall? Clearly, if it is at the same time as a general election, there would be some concern that the introduction of a new voting system could have a disproportionate effect on the outcome in marginal seats.

Professor McLean: I do not think that there is any evidence on that from Scotland or Wales—or, indeed, Northern Ireland, since Northern Ireland also, as we know, uses first past the post for general elections. Are you aware of any evidence either way, Alan?

Dr Renwick: No, but one would expect it to depend in part on what returning officers were willing to consider to be a valid vote. If returning officers are willing to take an X in a box in an STV election as a first preference vote for that candidate, you would not expect too much of a problem in combining first past the post and STV. Similarly, if a returning officer is willing to take a rank ordering of candidates in a first past the post election as a vote for the first preference candidate, there is not too much of a problem.

Dr Poulter: And you think that, if the system was adopted, it would be useful to have very clear advice that, where a voter's intention is clear, that should be adopted as their preference of vote or candidate. For example, if under first past the post someone were to rank the candidates, that could invalidate the ballot paper, but if there is clear intention the returning officer should be mindful of it.

Dr Renwick: Yes.

Q552 Baroness Symons of Vernham Dean: In the list system that you have described and in comparisons that you have done with other countries, what level of the party concerned—national, regional or local—decides who should go on the list? Where are those decisions usually taken? Are they usually taken nationally or are they usually taken locally?

Dr Renwick: I think that there is considerable variation between different countries on that. I am not aware of a general pattern, to be honest.

Professor McLean: Nor am I, I am afraid. If it is not specified in the legislation, it would be a matter for the parties, I would have thought.

Q553 Baroness Symons of Vernham Dean: Okay. Do you support proportional representation in general?

Dr Renwick: In general seems irrelevant. For the House of Lords, it strikes me that, given that the near universal preference is for a system in which no one party has an overall majority, it is necessary to have a proportional system.

Baroness Symons of Vernham Dean: But would you have it in the House of Commons?

Dr Renwick: I really do not think that my personal view has any bearing on this issue at all, because I think that it is perfectly possible to advocate different systems for different Chambers.

Baroness Symons of Vernham Dean: It is a perfectly reasonable question to put to you. If you do not want to answer, because it is embarrassing, then do not, but I would have thought that it was a reasonable question to put to you.

Dr Renwick: My personal view is that our current system tends towards one extreme on the proportionality issue. A fully proportional system tends towards another extreme. In most such matters, some kind of middling compromise is probably better.
Baroness Symons of Vernham Dean: Can I ask you the same question, Professor McLean?
Professor McLean: Yes. I have no embarrassment in giving my views, as I am in print on the subject. The discussion of this matter, in my view, is pretty inadequate in most places. People talk about parliamentary elections but, if Parliament comprises two Houses elected with different purposes, it is a pretty basic principle that it makes no sense to have the two Houses elected by the same system. Given that the overall objectives of the scheme in this White Paper are what they are, it is necessary, as Alan has just said, for the electoral system to the upper House to be proportional. It follows that I am in favour of retaining single-Member districts for the House of Commons and I have said so in print, so I have no embarrassment on that.
Baroness Symons of Vernham Dean: And therefore first past the post.
Professor McLean: Not necessarily.

Q554 Lord Trefgarne: Is it not the case that, whatever form of PR you use—party list, closed list, STV or AV—you almost always end up with a smaller turnout than you do with a first past the post system? Why do you think that is the case and what can we do about it?
Dr Renwick: This is a point on which we have very clear empirical evidence from a large number of countries, which is that, at least in advanced democracies, turnout is on average 8 percentage points higher under proportional systems than under majoritarian systems. So the evidence is, in fact, the opposite of what you have just stated.
Lord Trefgarne: But when we have PR-based elections here, such as European elections, the turnout is sometimes derisory.
Dr Renwick: It is less derisory than it was under first past the post before 1999.
Lord Trefgarne: Perhaps that is a European consideration rather than an electoral one.
Professor McLean: Perhaps I can help here. Political scientists recognise first and second order elections. European elections are second—or perhaps nth—order and public interest in them is very low. That is held to be the reason for the differential in turnout between European elections and House of Commons elections.
Lord Trefgarne: If the system that we decide on is too complex, one fears that, even if they do vote, people will spoil their papers, perhaps inadvertently, and so we shall need a good educational arrangement if that is what we decide on.
Professor McLean: My answer to that would be to appeal to the intelligence of voters in Northern Ireland, as Lord Trimble already has. It has not been found to be difficult there.
Lord Trefgarne: I must confess that I do not know the turnout figures for Northern Ireland—they are very good, are they?

Q555 Bishop of Leicester: In response to the Lord Chairman, you gave us some very helpful summarising observations about the relative merits of these two systems. Listening to the conversation, I think that these merits seem to be weighed in terms of voter behaviour, voter understanding and outcomes. I may have missed it but I have not heard from you an equally clear summary of political behaviour related to these two systems. Perhaps you could provide that. Is there some academic analysis of the way in which politicians elected under one system behave relative to those elected under the other system that might help us? I am sorry if that is a naive question, but I come as a non-expert.
Professor McLean: There is a lot of assertion in this area as to how politicians elected under the different systems behave. I am sure that this has already been presented as evidence to you, but the evidence of how politicians behave under single transferable vote is quite different in Northern Ireland from what it is in the Republic of Ireland. From that, I conclude that the electoral system is not the main thing that determines how politicians behave. I think that the behaviour of politicians elected to the House proposed in this White Paper would be influenced most of all by the non-renewability of their term. Therefore, the worries that a number of people have expressed about what is seen as the unduly particularistic behaviour of members of the Dáil of the Irish Republic competing against other members of the same party are not an issue with this scheme. I end up as I started by

saying that, since the same electoral system leads to politicians behaving in quite different ways in two parts of a single island, it is impossible to make any generalisations based on system alone.

Dr Renwick: I agree with all of that. The issue of behaviour during election campaigns might be a concern—as well as behaviour after elections—and there is not a clear difference there between open list and STV because it depends on the nature of the open list system. If you have an open list system that places a lot of emphasis on party, the campaign will largely be a party campaign. If you have a system where candidates are competing rather more against each other for the vote—in the election campaign, not subsequently—there would be more of an individual campaign, as you would expect under STV.

Bishop of Leicester: If the electoral system is not a key determinant of subsequent behaviour, what would you say the key determinants are?

Professor McLean: I can only repeat that the most important fact about this scheme is its non-renewability. People will behave as they behave. Different people will bring different skills and attitudes to the upper House and will, I am sure, behave in quite different ways. Some will be party loyalists, some will not; some will wish to serve on scrutiny Committees, some will not. But that is going beyond our expert brief and I would rather not say more than that.

Bishop of Leicester: That is when it begins to get interesting. Is the implication of that that the outcome of what is proposed in the Bill—15 years non-renewable—is fairly difficult to predict or determine on the basis of available academic evidence?

Dr Renwick: If we try to simply derive knowledge from evidence, there is no Chamber with a 15-year non-renewable term. There is only one national parliamentary Chamber with a non-renewable term, in Mexico, and I do not think that we can garner very much evidence from that. We can hope to derive some insight from general patterns that operate elsewhere, but we cannot take direct evidence.

Professor McLean: If it helps, quite a number of executive posts are term-limited, the most obvious being the President of the United States, but no lessons can be drawn from that because the situation of a term-limited single person is completely different from that of a body of 300 Members, each of whom is term-limited but who retire in three different tranches.

The Chairman: On the issue of political behaviour, surely the existing House of Lords is very interesting. Life Peers are here for life; they cannot be thrown out. Nevertheless, the loyalty of the individual life Peer to his or her political party is really quite extraordinary. If you look at the voting, the extent to which Labour Peers vote Labour and Conservative Peers vote Conservative in Divisions in the House is really very considerable. It seems that political animals tend to act politically—I do not know whether that is a particular insight.

Dr Renwick: Yes, and I do not see any reason to expect significant change in that as a result of any of what is proposed.

Q556 Lord Hennessy of Nympsfield: I take Mr Clarke's point about independents riding in on the back of one particular issue and then being there for 15 years, but there does seem to be a groundswell, wherever you stand on the question of the Lords—whether you want it to remain much as it is now or whether you want it to be largely elected—that you need a very stiff dose of independence of spirit in the upper Chamber. I take Richard's law, as I now call it, that political animals tend to act politically, as well. Can you think of a cunning plan to increase the chances under STV, as would happen under this Bill, of that happening, bearing in mind John Major's dictum that the answer is not more politicians? If you can think of a cunning plan, you could have your footnote in political science for ever as "Rotating Renwick" and "Inclusive McLean". Do you have a cunning plan lurking in your little grey cells?

Professor McLean: That is a very hard question because it is not clear that all Members of this Committee actually want to maximise independence of spirit, so anything that we said would be acceptable to some but not to others. Fundamentally, it is a decision for the British people. It is for the British people to decide how much independence of spirit they want in their elected representatives. So I am afraid that I have no "McLean Plan", at any rate.

Dr Renwick: As I suggested when I was here last time, the bigger issue is not the process by which people are chosen but the terms of service that they then serve under. The notion of being expected to serve full-time for 15 years seems likely to put off many able candidates with other good things to do whom we might want to continue

doing those things during their time of service. That is where I would focus attention on that point, rather than the electoral system.

Q557 Lord Hennessy of Nympsfield: Mr Heald asked about Australia and your answers covered very well why there are so few independents there. The Republic of Ireland has a considerable number. Does that reflect the fluidity of Irish party politics? What are the other comparisons in the world? What systems and what countries tend to produce a more fluid mix in elected upper Chambers?
Dr Renwick: If we are looking at proportional systems, Ireland is the only country that has any significant representation for independents: there are currently 15. Australia has one, as you said. Malta is the only other case with STV; it has no independents, but it has a very strong party system. In Ireland, 15 independents is a post-war high, and that presumably reflects dissatisfaction with the political parties surrounding the current economic crisis. Background popular sentiment towards parties is a more important factor. There are very, very few independents elected in any form of list system. In fact, at present there is a total of five in the world in national Parliaments; those are all in Chile. Chile has a proportional electoral system in which you elect only two people from each constituency, so it is barely proportional; it does not really work as a proportional system. Apart from that, if you look at list systems at the national level, there are no independents. Of course, the Scots will point to Margo MacDonald in the Scottish Parliament, so it is not impossible but it is very rare.
Lord Hennessy of Nympsfield: So the conclusion is, as was put rather well by somebody who knows about these things, that the British people seem to want elected experts in the House of Lords, which is the one thing they cannot have, and what you have just said seems to buttress that conclusion.
Dr Renwick: It depends on who chooses to stand for election, more than anything else. Given the popular interest in having independents, it seems reasonable to expect that, as long as they have some name recognition, given the very large regions that you would need, some would be elected.
Professor McLean: Of course, it also depends on parties' strategies for nominating their candidates.
Lord Hennessy of Nympsfield: Is there not a danger that the celebrity factor is the one that would make the weather? The independents would either be local celebrities or have national name recognition. Is that not the problem—the Jeremy Clarkson factor?
Professor McLean: National name recognition is not relevant because we are talking about sub-national constituencies. Within Scotland Margo MacDonald undoubtedly has national name recognition, but in general that is not a relevant factor.

Q558 Ann Coffey: To follow on from that, people who stand in the name of a party have considerable support from their party. One of the problems of standing as an independent is that you do not have that kind of support, and it is probably quite expensive to stand for election without a party organisation. If one of the reasons for proposing STV was to ensure that more independents were elected, rather than party politicians behaving more independently, what do you think about giving greater support to people to stand outside the party system as a way of getting more independents elected?
Professor McLean: If it were a policy aim to have more people who were independent of party elected, I would imagine that either the Bill or secondary legislation would have to have detailed provisions in which various thresholds were lower for independent candidates than for party candidates. I do not think it very likely that the UK Parliament would vote for such a set of regulations, but that is what would be required.
Ann Coffey: What about financial support? I was not thinking about having different criteria for election for independents.
Dr Renwick: I think it would be difficult to introduce financial support for independents because the question would arise of which candidates to give support to. There is unlikely to be a previous election for an independent that you could use as an indication of levels of support. I would be more inclined to favour tight spending limits as a way of restricting the parties' advantage over independents rather than trying to boost independents.

Q559 Ann Coffey: If you were thinking of having a House of Lords with 400 Members, comparable to the Commons, on a regional system based on the current European parliamentary regions, what system would be best for ensuring transparency and ease of voting and maximising voter choice, in electing both independents or the party of their choice?

Dr Renwick: If a criterion is electing independents, in my view that already means STV—
Ann Coffey: No, just maximising—that is not the sole criterion.
Dr Renwick: You can have either an STV system or an open list system in which voters have a decent chance to express a range of preferences. As Iain suggested, in either case it is sensible to restrict the number of people being elected from each region in order to prevent the choice from becoming excessively burdensome. The proposal for five to seven seats per region is reasonable for achieving that under either STV or a form of open list system that gives voters quite extensive choice. If you have an open list system that gives voters less choice, you can allow bigger regions. However, if you want to give a lot of choice, you should restrict the size of the regions.
Professor McLean: As I said in my earlier answer to Laura Sandys, it seems that that is a downstream decision, both as a matter of this draft Bill and as a matter of common sense. You decide the prior matters first and then, if this draft Bill is enacted, you hand the decision on district size to an external expert body.

Q560 Lord Rooker: I want to ask you about your points about vacancies on page 3 of your note, but I will start with a general point. In the main, would your answers change according to whether there was going to be a 100 per cent elected House of Lords or the 80:20?
Dr Renwick: No.
Professor McLean: I think not, although some of the points made by Lord Hennessy are clearly easier to deal with in an 80:20 House than in a 100 per cent elected House, but that is again straying outside our area of expertise.
Lord Rooker: So the 20 per cent of experts and "independents" would be here already in the one system. You have made it clear that for you STV is a candidate-centred electoral system as opposed to the others, which are party-centred. We are told that this Bill is supposed to bring about new politics and smash up the party system. I agree with that, by the way. We are not electing a Government in the House of Lords; we are electing a revising Chamber, so why the hell have parties got to have a role in it? In other words, for a candidate-centred system, whether or not it is the 80:20 or the 100, it would still be STV, albeit constrained by having six or seven candidates elected. Would that still be the situation?
Dr Renwick: We should remember the distinction that Iain made at the start. I do not think that you can dichotomise between candidate-centred and party-centred, because you can be candidate-centred within parties or you can be candidate-centred in the sense of having independents. STV clearly favours having independents. With regard to whether the system is party-centred or candidate-centred within political parties—this is about the amount of power the parties have—the simple choice between STV and open list does not make very much difference. The form of open list makes some difference but, given non-renewable terms and so on, probably not very much.

Q561 Lord Rooker: The paragraph on page 3 of your paper that refers to the "obscure aspect" in the Bill about filling vacancies suggests that the parties can basically rig the system by not putting up sufficient candidates so that there is no failed candidate to take a by-election—you cannot fill a vacancy in that way. What is the solution to that?
Dr Renwick: My expectation would be that parties would put up candidates in case they had to fill vacancies. The rigging that could happen if you did not have that procedure for filling vacancies—"rigging" is a bit of a strong word—would be that parties might put up only as many candidates as they thought would be elected and voters would not be able to choose among candidates from the same party. You guard against that possibility by having this procedure for filling vacancies in that parties have a strong incentive to put up more candidates than they think they are going to elect first time round because, if they do not and if there is a vacancy, they lose the seat and it goes to someone else.
The Chairman: I have two names left—Lord Trimble and Lord Norton—and then I want to ask another question, because we have been concentrating on this for a very long time.

Q562 Lord Trimble: I have several questions, actually, but I will try to run through them quickly. First, on a matter of information, looking to our neighbourhood in terms of Europe and the electoral systems there, how many closed list systems and how many open list systems are there?

Dr Renwick: Gosh, I cannot give you the figures off the top of my head. I could sit here and add them up, if you want. In terms of fully open list systems, in which the voters have full power to determine the order of candidates, there is Finland, Latvia, Lithuania, Greece—and that is about it. In terms of systems in which voters can express a preference or not and there is a combination of voters' choices and parties' preferred ordering determining the outcome, you have Belgium, the Netherlands, the Czech Republic, Slovakia, Slovenia, Iceland, Norway and Sweden.
Lord Trimble: Are the remainder all closed list?
Dr Renwick: Most of the remainder are closed list. There is also France, which has a majoritarian system, and Malta, which has STV.
Lord Trimble: So the really fully open list is only in a handful of comparatively small states.
Dr Renwick: The more common system is one in which voters have a choice to vote for the party list as a whole or to express a preference.
Lord Trimble: Of course, as we know, only Malta uses STV.
Dr Renwick: And Ireland.
Lord Trimble: Well, that is on the other side; I am looking towards Europe at the moment. Why has there been no campaign within Europe to have STV if STV is so much better?
Dr Renwick: Because political parties choose electoral systems, on the whole.
Lord Trimble: So it is purely because of the political parties. There is no popular feeling on this issue.
Dr Renwick: For public opinion to get excited about the electoral system, funny things need to happen. It does not happen very often; it has not happened terribly much. Also, you need people in influential positions who are able to steer the debate in the direction of STV.
Lord Trimble: There must be some significance in the fact that STV is such an eccentric choice. It hardly ever happens that people actually choose it.
Professor McLean: Perhaps I can follow Alan on that one. The triggers have not occurred in Europe, but they have occurred elsewhere. There was a trigger in New Zealand, as people know, and a trigger in Italy.
Lord Trimble: Ireland never decided to have STV; STV was imposed on Ireland, in both parts.
Professor McLean: That is certainly true.
Lord Trimble: It was never a choice.
Dr Renwick: It was supported by Sinn Féin in 1922.
Professor McLean: As Lord Trimble and, I am sure, other Members will know, although STV was imposed on both parts of Ireland by the British, it was the Irish who rose up twice against their political parties to retain the system when the then dominant party attempted to abolish it.
Lord Trimble: The public worked out the propensity of the Government towards gerrymandering, but that is by the way. Professor McLean, you said that there was a difference between Northern Ireland and the Republic of Ireland in the extent to which parochialism was a consequence of STV. I am just curious to know why you think that Northern Ireland varies from the Republic in this case.
Professor McLean: I would hesitate to offer an opinion on a subject on which you, Lord Trimble, are more expert than I am. I merely comment on the well-known fact that particularism and a desire for favours, not just for a Dáil constituency but for one corner of a Dáil constituency, have been a well-remarked feature of Republic of Ireland politics for decades, and I am not aware that it has been a feature of Northern Ireland politics.
Lord Trimble: I would suggest that it can be seen in Northern Ireland in the desire of people to retain district council seats. We are now trying to bring an end to this double-jobbing and we have managed to get a certain amount of popular support to end double-jobbing. But left to themselves the Members overwhelmingly wanted to stay in local government as well as being in the Assembly. Indeed—and this is a judgment that may not make me popular with Members of the Northern Ireland Assembly—this has tended to result in the Assembly being dominated by district council types and the parochialism is just as marked. The clientism may not be as significant as in the Republic of Ireland, but parochialism is. Sorry, I am making speeches again. I will stop now.
Ann Coffey: I find it quite interesting, actually.

Q563 Lord Trimble: I must stop now. Reference was made to the experience of filling vacancies. Have you any views on the two different systems that have been adopted for filling vacancies? There have been three altogether:

the original system followed by two different systems for filling vacancies in Northern Ireland—have you any views on them?

Dr Renwick: My view is that any system that involves the parties or the legislature merely choosing people at the time of the vacancy loses the benefit that I was discussing in relation to Lord Rooker's question.

Lord Trimble: Would you take account of the fact that the reason why there has been a move towards nomination on vacancies rather than having by-elections is that, if you have by-elections under an STV system, the by-election can distort the party balance as a determinant of the election?

Dr Renwick: Absolutely, yes. I think a by-election is not a good idea. With regard to the second Chamber, there is the further issue that we have large regions and therefore a by-election would be expensive.

Lord Trimble: It would be no more awkward than an individual independent running in the region at a by-election. If you have a by-election, you are electing one person for the region and that is the same if an independent is contesting the region. It is the same awful uphill struggle in that respect.

Dr Renwick: Sure.

Lord Trimble: One other thing—

The Chairman: We are getting a bit Hibernian, I think. Perhaps we are concentrating too much on Northern Ireland.

Q564 Lord Trimble: On STV generally, have you any views on the way in which parties try to manage votes and the vote management systems for STV?

Professor McLean: Those systems exist. They do not always achieve what the politicians who designed them intended them to achieve, notably in the Republic of Ireland. I do not think it is that much of an issue in these proposed elections. For example, under STV a party may want to maximise the number of its candidates who get elected. There is not a lot it can do. As to which of its candidates get elected, the party can make its own view clear. I am not sure that clever Irish strategies can do much better for it than just making clear which is its favourite candidate.

Dr Renwick: The main concern about party management strategies that I am aware of comes from Australia, where "how to vote" cards are used by most voters. Again, we have to remember that Australian voters have to fill in all the preferences unless they just tick the box at the top, so the burden is greater.

Lord Trimble: I do not wish to invoke the ire of the Lord Chairman, but I have to say, Professor McLean, that I disagree with your comments.

Q565 Lord Norton of Louth: As has been mentioned, the intention is that Members of the second Chamber would not have constituency work and the limited single term is designed to discourage that from happening. Would not the obvious electoral system therefore be a closed list system, in that open list or STV would encourage potential competition between candidates in the same party, and the danger is that, to distinguish one from the other, they may be making promises to the constituency?

Professor McLean: On the other hand, a closed list system would give very extensive power to the Whips of whichever party it was to nominate in first position the kind of person who would be expected to cause least trouble to the Lords Whips of that party.

Lord Norton of Louth: As happens with the European list.

Dr Renwick: That seems to me a greater danger, given the points that have already been raised. If you have non-renewable terms and very large regions, there is not a significant danger of that kind of constituency focus in the proposed second Chamber.

Lord Norton of Louth: So there would not be much difference between open list and closed list.

Dr Renwick: You give voters a greater sense of being able to influence who gets elected. You give parties an incentive to come up with candidates who will attract votes. There are other benefits.

Lord Norton of Louth: But there is little likelihood of voters exercising that independent choice if you have constituencies on that scale.

Dr Renwick: I do not see any reason to think that. Voters would not be exercising that choice on the basis of perceptions of who would serve the constituency most effectively, although people who speak up for Scotland and Wales are likely to do rather well—and Northern Ireland, of course.

Lord Norton of Louth: What do you assume they would make the choice on the basis of if they are going to distinguish between candidates of the same party?
Dr Renwick: Hopefully who they think would do the best job. I do not think we can presuppose what voters will think that means, but it strikes me that they will have rather little opportunity to vote for people who are selling themselves as doing the best job in terms of bringing the pork back home to this little local area.
Lord Norton of Louth: Or large local area.
Dr Renwick: Exactly. It is not a little local area, so that argument does not work.

Q566 The Chairman: Does the fact that the proposal is for a 15-year non-renewable term have any effect on your answers?
Dr Renwick: It has a huge effect. For example, if the proposal were to have regions of this size but with renewable five-year terms I would expect the Members to make more effort to appeal to their region. They could not do that in the way that is possible in a local constituency—it would be very different from what is possible in a local constituency.
Professor McLean: We all know that that already happens with MEPs. We all get letters through our door from each of our MEPs saying what they have done for our region. It is the non-renewability, not the length of term, that makes this system entirely different from the situation of MEPs.

Q567 The Chairman: If you have an open list, with the possibility of selecting individual candidates from different parties, which is one of the possibilities that we have been looking at, what is to choose between that and STV?
Dr Renwick: First you would work out the total number of seats won by each party, which would be determined by the total number of votes won by each party. Under STV, the total number of seats won by each party is a product of counting the votes for individual candidates. You would start off by aggregating the votes within each party and then use votes among the party's candidates in order to determine the distribution of those seats among those candidates.

Q568 The Chairman: I have one final question. We have heard that counts in Ireland, both north and south, tend to take a long time. Is that an inevitable factor as far as STV or open list is concerned, even without counting machines?
Professor McLean: My view is that it is a relatively small point either way, given that the technology exists. There is a question for computer scientists rather than for us as to how that technology is validated in real time on the night, but my view, for what it is worth, is that that is a secondary consideration.
Dr Renwick: Yes. I have seen some concerns about the notion that a count in Northern Ireland might take two days. That seems to me utterly trivial. It may cause upset among the candidates who are waiting but from a broader perspective it really does not matter.
The Chairman: It does if you are a candidate. To be hanging on 48 hours after the polls close before you know whether you are going to be elected or not does not seem like a very good idea.
Thank you both very much for coming. We have learnt a great deal. You have exposed our deficiencies and I am very grateful to you.

Professors Simon Hix and Iain McLean—written evidence

1. We are responding to your call for evidence on the White Paper and Draft Bill, Cm 8077. We are academics with a long-standing interest in this area. We co-authored, with R.J. Johnston, a 2010 report published by the British Academy Policy Centre on electoral systems. IM assisted the Cabinet Office Bill team on the sections of the draft bill that deal with the electoral system and constituency boundaries. He is the author, most recently, of *What's Wrong with the British Constitution?* (Oxford 2010) which proposed a scheme very similar to that embodied in the draft bill. SH is an expert on comparative democratic constitutions, has won several prizes for his research on electoral systems, and was recently appointed to the American Political Science Association's Task Force on Electoral Systems. We are both Fellows of the British Academy.

2. We address a number of the headings in your Call for Evidence. We tackle the first four together, and then add comments on size, electoral system, Bishops, and Ministers.

Background

3. Proposals for a predominantly elected Upper House were in the 2010 election manifestoes of all three large parties, and in the Coalition's Programme for Government. The Liberal Democrats and their predecessors have favoured one since they wrote the Preamble to the Parliament Act 1911. The Conservatives appointed a party committee on the subject chaired by Lord Mackay of Clashfern. Its Report of 1999 produced a scheme which is the direct precursor of the scheme in the draft bill. The Labour Party committed itself to an elected upper house in its 2010 manifesto. Numerous unofficial and official committees of legislators have refined the scheme that now appears in the draft Bill. The elected house of Parliament voted in 2007 in favour of either an 80 per cent elected or a 100 per cent elected upper House. The House of Lords itself has always voted to remain unelected.

4. This is the first occasion on which there has been a cross-party consensus in favour of Upper House reform. The reforms of 1911 were achieved only after two General Elections and the threat of creating peers. The last attempt at comprehensive reform, in 1969, failed through lack of cross-party support.

5. Nevertheless, a number of concerns have been raised, notably in the initial debates in both Houses on the presentation of this draft Bill. Some of these concerns raised doubts about the very idea of an elected Upper House. However, as everybody who voted for any major party in 2010 voted for a manifesto commitment to the principle of an elected upper house, the mandate of the Government to introduce this Bill is unquestionable. We therefore proceed to consider whether the proposals in the draft Bill meet the objections of those who favour an elected upper house in principle but have anxieties signalled by your questions for discussion.

The political make up of an elected house

6. The electoral system proposed in the bill, of regional districts with no greater than 7 members elected in each district, and single-transferable-vote, is likely to lead to a broadly proportional translation of party vote-shares to seat-shares in each region.

7. But, given voting patterns in recent British elections—where there has been a decline in the combined vote-shares of the Conservatives and Labour in recent elections to the Commons, as well as significantly lower combined vote-shares for the two main parties in non-Commons elections (such as elections to the European Parliament, Scottish Parliament, and Welsh and London Assemblies) than in Commons elections—it is highly unlikely that any party would win a majority of seats in an elected House of Lords under the electoral system proposed in the bill.

8. Proportional representation in relatively small districts will make it difficult for small parties or independents to gain any seats. In a district with 5 seats to be elected, for example, a party would need to win at least 1/6th of the votes in the district (almost 17 per cent) to win 1 seat. The Green Party and UKIP may be able to achieve this in some constituencies, but it is unlikely that the BNP will be able to achieve this.

9. There are, nevertheless, two uncertainties in the way elections to the House of Lords might work, as set out in the draft Bill. First, the single-transferable-vote is a strongly 'candidate-centric' electoral system, which will encourage

candidates to campaign directly to voters, and will favour candidates who have name recognition (e.g. are prominent in the media) or who can raise and spend a significant amount of money in a campaign. In Ireland, for example, STV has allowed many independents to win seats in the Dail (although independent candidates have been less successful in the Australian Senate, which also uses STV).

10. The second source of uncertainty arises from the fact that an election for the House of Lords will be held at the same time as an election for the Commons, which raises the question of what proportion of votes will vote for two different parties in the two elections (which in the US is known as 'split-ticket' voting). The proportion of split-ticket voters is likely to be low in the first election, as votes would not have learned yet how they could use their two votes to influence outcomes. In subsequent elections, the proportion of split-ticket voters is likely to rise, and could reach as high as 20 per cent, which is the estimated proportion of voters who changed their votes vote for a two different parties in the 2009 European Parliament election and the 2005 Commons election. One possible consequence of a large proportion of split-ticket voters is a decline in support for the Conservatives and Labour and an increase in support for the Liberal Democrats, UKIP, the Green Party, other smaller parties, and independent candidates.

11. In general, though, the electoral system should ensure that an elected House of Lords is a reasonably pluralist chamber, with a good representation of all the major political views in different parties of the country. Another virtue of the electoral system is that all the major parties are likely to win seats in all regions in the country, which is not the case in the first-past-the-post elections for the House of Commons.

How independent would the Lords be from the Commons?

12. Two opposite concerns have been raised here. One is that, in the lapidary words of Lord Howe of Aberavon (in *Prospect,* May 2004), an elected house would comprise 'clones of the clowns in the Commons'. The other, implied in your second and fourth questions for discussion, is that an elected House would destroy the balance between the Houses; imperil the conventions that govern their relationships; and threaten the primacy of the Commons.

13. An elected house would in fact be less likely than the present House to be a clone of the Commons. The present House contains 199 ex-MPs, out of its total membership of 827; they tend to be among the more active members. Recent voting patterns in the existing house have been quite partisan Recent research by Meg Russell, at UCL, suggests that 'party voting' in the current House is surprisingly high, and considerably higher than it was before the hereditary Peers were removed. A single 15-year term for an elected Lords, combined with a preferential electoral system (either STV or open-list PR) is likely to ensure that the members of an elected House will be more independently minded than many of the current members.

14. Also, some parties with significant support in recent elections are not represented in the present House—such as UKIP, the Green Party, and the Scottish National Party.

15. The long fixed term and "quarantine" (members who have completed their term ineligible to be elected immediately to the Commons) proposed in the Draft Bill mean that elected members, although no doubt mostly elected on a party ticket, will feel less beholden to their party, and particularly to its Whips, than their equivalents in the Commons. As all would-be candidates will know that these are the rules, election is likely to attract people interested in the scrutiny role that is generally regarded as the jewel in the present House's crown.

16. As to the opposite concern—that an elected Upper House would threaten the primacy of the Commons—we note, first, that the staggered terms in the Draft Bill mean that the mandate of the Commons will always be more recent than that of the upper house—two-thirds of whom will have been elected more than five years ago.

17. A successor to the non-statutory "Salisbury convention" is urgently needed. That convention in its most recent form derives from the 1945 agreement between Lord Cranborne (later the 5th Marquess of Salisbury) and Lord Addison, respectively leaders of the Conservative and Labour groups in the House at the time.

18. As stated in a Lords speech by Lord Cranborne in 1945, the convention, or doctrine, states that "it would be constitutionally wrong, when the country has so recently expressed its view, for this House to oppose proposals which have been definitely put before the electorate."

19. However, the Liberal Democrats in the present Lords have stated that they were not parties to the agreement in 1945, and do not feel bound by it. Also, the Lords debates on the Parliamentary Voting System and Constituencies Act 2011 show that numerous (especially Labour) members of the existing House no longer feel bound by it either.

20. Finally, the convention did not envisage a coalition government. Which of the present Coalition's proposals can be deemed to have been "definitely put before the electorate?" One possible answer is "All of them", but that answer raises as many problems as it solves.

21. Therefore, somebody needs to work on a revised convention to cover the extent to which, and the time within which, Government business must get priority in the Lords. This work is needed whether or not the Draft Bill makes progress.

22. A possible body would be a Joint Committee of both houses, perhaps under the sponsorship of their Speakers. But as the public has an interest in the outcome, it should be open to extensive public consultation.

23. Once both houses have accepted the recommendations of such a body, they should continue to bind an elected upper house.

The size of the proposed House and the ratio of elected to non-elected Members

24. The proposed size of 300, namely half the size of the Commons as it will be after 2015, seems to us to be in the normal and reasonable range for upper houses. However, we would also be relaxed about a House of up to 450 members,

25. An 80 per cent elected house would find it easier to ensure that all the expertise required to scrutinise legislation was available to it than would a 100 per cent elected house.

26. If the house is 80 per cent elected, we support the proposals in the White Paper for a statutory Appointments Commission.

The electoral term

27. We support the 15-year term as proposed in the White Paper, as this would in our view help to recruit the sort of people likely to be able to help the house with its work.

28. Concerns have been expressed about the length of this term. We would be comfortable with its being reduced to, say, 12 or 10 years, but not lower, as that would defeat the purpose of the scheme.

The electoral system

29. Either an STV or an open list system for electing members is acceptable.

30. However, STV becomes unwieldy in a district of more than about 6 seats. Therefore if STV is adopted, it will be important that electoral districts are of this size. How big they have to be will be a function of the decisions on overall House size and the proportion of elected to appointed members. The number of seats to fill at each election could thus range from 80 to perhaps 150.

31. If an open list system is adopted, then the option of using the 12 European Parliament Constituencies—which are also the UK's "NUTS1" standard regions—as the electoral districts becomes feasible.

32. It will be important to preserve the floor of three seats to be filled in any election in Northern Ireland.

33. Completing the unexpired term of a Member who has resigned or died is easier under open-list (where the seat would normally be filled until the next election by the highest-placed unsuccessful candidate of the same party) than under STV, but we regard this as a secondary issue. Given the purposes of the House, it might be acceptable to leave casual vacancies unfilled until the next election.

Bishops, Ministers, and hereditary peers

34. The position of Bishops in an elected house is anomalous, whether that house is 100 per cent or 80 per cent elected.

35. If it is 100 per cent elected, then there cannot be a role for any non-elected members. The White Paper implies at paragraph 92 that the Government accepts this.

36. If it is 80 per cent elected, the proposed 12 seats for Church of England bishops (all male, under the church's current arrangements) would make them by far the largest interest group among the non-elected members. It would be impossible for the Appointment Commission to apply any diversity or range criteria with only perhaps 20 non-Bishops to appoint at each election.

37. There should therefore be no ex-officio religious representatives in an elected house. The Appointments Commission could be charged with ensuring that the House maintains a representative range of religious and non-religious opinion.

38. As to Ministers, we agree with the proposals in paragraphs 67–8 of the White Paper.

39. We agree with the proposals for hereditary peers in the White Paper at paragraphs 87–91. We suggest that all members of the present House, including its hereditary members, should be offered club rights for life.

23 September 2011

MONDAY 16 JANUARY 2012

Members Present

Lord Richard (Chair)
Baroness Andrews
Lord Hennessy of Nympsfield
Bishop of Leicester
Lord Norton of Louth
Lord Rooker
Baroness Shephard of Northwold
Baroness Symons of Vernham Dean
Lord Trefgarne
Lord Trimble
Lord Tyler
Baroness Young of Hornsey
Gavin Barwell MP
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Dr Daniel Poulter MP
Laura Sandys MP
John Stevenson MP
John Thurso MP

Campaign for a Democratic Upper House [Damien Welfare and Daniel Zeichner] (QQ 569–589)

Examination of Witnesses

Damien Welfare and **Daniel Zeichner**, Campaign for a Democratic Upper House

Q569 The Chairman: Good afternoon, gentlemen, and thank you very much for coming. I think that you know what this Committee is about and what it is attempting to do. Perhaps first you would like to introduce yourselves and then make a short opening statement before we launch into the questions.

Damien Welfare: Lord Chairman, good afternoon and thank you very much for the invitation to come to speak to you. My name is Damien Welfare. I am the co-ordinator of a group called the Campaign for a Democratic Upper House. My colleague is Mr Daniel Zeichner, who is a long-standing supporter of that campaign. Unless Mr Zeichner wants to add anything at this stage, perhaps I could take up your invitation briefly to make a statement.

The central objection to democratic reform of the House of Lords, it seems to us, are fears and concerns over the primacy of the House of Commons. Everyone agrees that the House of Commons should be the primary Chamber. In our view, the answer—or answers, as they may be various—lies in our hands. A number of variants have been put forward or can be put forward to deal with that question. The Government has put forward in its draft Bill a traditional set of structural provisions to secure the position of the House of Commons—long terms, single non-renewable terms, an appointed element and a different voting system. Mr Zeichner will respond on the question of non-renewable terms, if you wish to discuss those. The last two in particular—the appointed element and a different voting system—can certainly have their place, but our suggestion to you in the evidence that we have put forward is that there is a better course, which is to decide the framework that you want, set up the rules to sustain it and put those in place, in advance or alongside the reform, in advance of its coming into effect.

The fears that have been articulated to you in the evidence that you have received are about what happens if you reform the composition of the House and do not to any significant extent reform the powers. What happens in

consequence? The fear that has been put to you is that there would be a degree of chaos or instability in relation to the House of Commons. We believe that the powers and the opportunity to deal with that lie in our own hands and that the moment to address that concern is now or in the course of reform, not worrying about what will happen afterwards. You could proceed, as part of the package of reform, in a way that would prevent that instability from happening, using the consensus that exists at the moment against it to set up, in advance, a framework within which the new House would operate, so that politically, as well as in terms of powers, the new House would not be able to act in that way were it tempted to do so. You could create a permanent settlement now as part of the reform process.

What are those steps? They are in the paper at paragraphs 55 to 64. In brief, the Houses could consider establishing a statement that sets out first of all the acceptance that the House of Commons is primary. It would set out the basic building blocks for that: the House of Commons chooses the Government, controls supply and taxation and secures its legislation. That is drawn up between the two Houses, perhaps by a Joint Committee, advised by the Clerks and others. In that statement also goes a statement of the roles of the Houses—we define that and reach a consensus on it. You also define the functions. There is an outline of the existing legislation—the Parliament Acts and possible amendments to them if they are thought to be necessary. The conventions should be defined in terms of the 2006 report—our evidence to you is that the Cunningham report sets out the conventions as they stand at present. Those conventions should be defined with some changes, which are suggested in the evidence. That draft, once produced, agreed and perhaps looked at by another Joint Committee, stands to inform the debate on the draft Bill while it is going on.

Once that has happened and the legislation has been passed, it is open to the Houses to pass identical resolutions—there are models for this going back 300 years—referring to the statement, which set out the joint understanding that that is the basis on which the Houses see the settlement taking place. You then promulgate it, you simplify it and you make it known publicly. The Joint Committee continues to review the conventions as they evolve and recommends adoptions of new ones. Essentially, you have set up a political and institutional framework around conventions and such legislation as there is which has been decided by the Houses themselves. That can be put into legislation as one option, but the option that is being proposed here is that it can be put forward as something that the Houses have defined themselves, thereby respecting parliamentary privilege in so far as that can be achieved.

I will not go through all the changes that are desirable; they will perhaps emerge in what we have to say in our evidence. That is the concept that we were trying to put forward of a way in which to approach this, the basic point being that the machinery is there or can be created in different ways to deal with the question of the primacy of the House of Commons in a way that, it seems, everyone wants to see—that is to say that it is made clear, asserted and put on to a reliable basis that can be seen to work in effect as the legislation comes through.

The Chairman: That is really a policed concordat between the two Houses.

Damien Welfare: Yes, I think that you could describe in that way.

Q570 The Chairman: I see. Could I ask you a rather fundamental question before we go into the details? How important do you think it is that the second Chamber should have a democratic mandate?

Damien Welfare: I think that it is a matter of principle that, as you have heard from other witnesses, legislators and those who scrutinise legislation, who act as a constitutional back-stop and so on,—should be elected in order to have the legitimacy and accountability to carry out their role. If we do not accept that, we are saying that we are content here with the position where half of Parliament, having exported democracy around the world, should not be elected. That is one reason, but there are others for the importance of the democratic mandate. The second Chamber needs the democratic legitimacy of elections in order to perform its functions most effectively and to give it the weight within Government so that its views count. Our evidence to you is that, in the past and perhaps for much of the time in the present, the views of the Lords count when there is some other factor in play—when timing is in play or when adverse publicity is in play—but not when their view is being put forward on behalf of, or with the legitimacy of, the mandate that they have behind them. Thirdly, an elected second Chamber could—this may be apposite in relation to recent developments and issues—act as a forum for the voices of the nations and regions of the UK to be heard in an institutional way at Westminster. Finally, it would enable Parliament to take a more integrated view of itself, because the differences between the two Houses, in terms of one being elected and one not, would fall away over time—or, if you had a largely elected House, would

fall away in large part. That would enable more joint working and a better culture of understanding between the two Houses; the lack of which at times, although I hesitate to say this to a room of Members of both Houses, can perhaps lead to misunderstandings, or a lack of a sense of Parliament as a whole vis-à-vis the Executive and the way in which the two Houses can work together.

Q571 The Chairman: Following on from that, we have heard a lot about the argument that if the Lords were elected they would become more assertive. In terms of the democratic process and the parliamentary process of this country, do you think that that would be a good thing or a bad thing?
Damien Welfare: For the House of Lords to become to a degree more assertive, as it has been doing since 1999—and, frankly, as it has been doing since the 1970s, if you look at the records, particularly during the 1980s and 1990s—does not strike me as a bad thing. But you want it to operate within an agreed and understood framework. There needs to be an acceptance that the House of Commons gets its way in the end. It is that fear, I think, that can stand in the way of the acceptance of the democratic principle. If we can establish a framework within which the House of Commons is supreme but the House of Lords is in a position to assert a viewpoint based on democratic legitimacy and to ask the questions that need to be asked, that is a good thing, because what it does from the Government's point of view ultimately is to improve the quality of lawmaking. I think that it was Lady Symons who said that it is important, if you are in the middle of the House of Lords, to have to appeal to the Cross-Benchers. Certainly there is an argument that, in a mixed elected and appointed House, that would still be the case and would be something that the Government would have to consider. In terms simply of being able to defend its provisions in the face of scrutiny in two Houses, with a second Chamber that was much more public and in which there was greater public interest and understanding, that, too, would be good for the quality of lawmaking and for the strength of Parliament and its legitimacy in the country.

Q572 Baroness Symons of Vernham Dean: Thank you very much for that introduction, which I found enormously helpful. I think that you said that everybody agrees that the House of Commons should have primacy. Everybody certainly agrees that the House of Commons has primacy at the moment, by virtue of being elected, where the House of Lords clearly is not, so that in any disagreement the House of Lords must give way to the elected House. If, as you suggest, half of Parliament acquires legitimacy and accountability through election, why should the primacy of the Commons prevail? What is the argument in logic that the primacy of the Commons should be protected? Why could we not have a system that was more like the American system, where you have a means of reconciliation? Why does one House have to prevail over the other?
Damien Welfare: I am not against a means of conciliation; indeed, our evidence is that it would be a good idea to have such a system. The basic point that I am making is that, in almost all two-Chamber systems, one Chamber has primacy over the other. In many cases, that is decided by a written constitution, but a decision is made as to which has primacy. We have come to a position where the House of Commons, over a long period of time, is the House that provides the Executive—the Executive's legitimacy rests on its position in the House of Commons. Some people may take the view that that is not right and that there ought to be an equal balance between the two Houses, but that has not been reflected, as far as I can see, in the evidence that you have had; nor, as far as I am aware, within Parliament as a whole, other than perhaps conceivably in individuals here and there. The consensus is that the House of Commons should retain primacy in the way that it carries it out at the moment, with control of taxation and funding and so on. Given that that is the case, we have the opportunity now—this is really why I was giving you this dry set of proposals in the introduction—to make that decision explicit and to confirm what we already have, having set it out in terms that both Houses could agree before reform takes place. Having done that, we then proceed to decide what the relative balance between the two is and what the rules are that govern that.

Q573 Baroness Symons of Vernham Dean: I think that you have set that out more clearly than an awful lot of the witnesses that we have had, but I do not think that you are right to say that everybody accepts that the primacy continues. We have had a lot of—my colleagues will argue with the word "evidence"—opinion that, were the basis of getting people into the Lords change to elections, the primacy of the House of Commons would come into play. That has been the crux of quite a lot of the argument. Can we just examine your point a bit more? Let us accept your proposition that everyone agrees about the primacy in principle, but it seems to me—forgive

me if I have got this wrong—that what you are saying is that we should revisit the Cunningham report. Cunningham was quite clear that, if firm proposals were brought forward, the conventions would have to be revisited. In the sequencing that you gave a moment or two ago, I think that you said that you would have to do that before legislation and before the first people came into the Lords on an elected basis so that the settlement was clear from the beginning. That seemed to me, if I may say so, a rather more sensible view than the view of life that says, "Well, let's wait and see what happens". Forgive me if I have got that wrong, because I would like you to clarify the point. Are you saying the sequencing goes that we do this report, that Cunningham is revisited by us or by whomsoever, but by a Committee of both Houses, which is what I think was agreed in both the Lords and the Commons, and that at that point we move forwards to legislation once we have that settlement clear?

Damien Welfare: Not entirely. The Cunningham report has defined the conventions as they stand, although I grant that it said that the conventions should be re-examined if the House were reformed. In our view, which we set out in the evidence, there are some changes that will clarify the present position and probably ease it which would not be of themselves terribly substantial and which fall into the field of conventions. One of them would be to clarify the convention in relation to Bills of aids and supplies to remove any question of a veto on a Finance Bill or anything of that kind. Equally, you could see some sensible developments in conventions in relation to ping-pong and exchanges of amendments. The introduction of a conciliation procedure could be created by a process of this Joint Committee. The sort of changes at the level that we have been suggesting could be done, if I may say so, by this Committee in outline or by another Committee looking fairly briefly at a package that went with this reform Bill, or something like this reform Bill. It does not seem to me that it would be sensible to re-open the whole Cunningham process, which might take another couple of years, as a result of this Committee's deliberations, but that is for you to determine—that is the view that I put to you. In terms of producing a workable package that strikes a sensible balance with the Commons, you start with Cunningham and you reduce some of the powers—that is in practice what we are talking about—in order that they are a little more workable, so that there is an understood outcome. Then you set up a process of review, which could be periodic or continuous—it could be that you are going to have Cunningham again in 10 years' time. We have suggested a continuous Joint Committee, but you have some process that looks at conventions as they evolve and makes recommendations as you go along.

Baroness Symons of Vernham Dean: And that is done before you introduce the legislation to elect Members of the House of Lords.

Damien Welfare: If this Committee were to take on something like what I am suggesting, it could be encompassed in its report. It may not go that far and the feeling may be that out of this Committee could come some sort of process of agreeing a statement of the existing conventions plus some minor modifications, in order to produce a workable package. That process would be, I suggest, another Joint Committee, but it would work alongside the Bill process. With all due respect—I do not want to embarrass the advisers to this Committee—it seems to me that the Clerks of both Houses would probably be in a position to produce a statement that reflected Cunningham and the existing conventions within a time that would fit within the sort of timescales that are under discussion, although clearly there would need to be a process of agreeing it and accepting it.

Q574 Lord Trimble: I am going to stay largely on the same topic as Baroness Symons. You are quite right to say that most of the opinions that have been expressed on this subject are that the primacy of the House of Commons should be maintained, and most of the time I am of the same view myself. But increasingly I am coming around to the idea that if we have a wholly or predominantly elected House, what is the argument in principle for limiting the functions of that elected House? Even though you have quite an elegant system to get what you call the new settlement in place—I note that the process is to be gone through before reform takes place and that the new, elected and legitimate House is to have no say in it—what happens if the new elected House just decides, irrespective of what might be the end resolution, that one day it will vote down a government Bill at Second Reading?

Damien Welfare: If I may, I will answer that in a second and comment on the first part of what you said. You asked why an elected or largely elected House should be constricted in the way that I am suggesting. My reply is simply that in almost all the systems that have been looked at—and we have had the benefit of evidence in relation to a number of them—that is what happens. There are elected Chambers, but one of them has executive authority and one has a revising role within a framework. All I am suggesting is that there is an opportunity here

to strike that framework—not to guess at or worry about what might happen in the way that some witnesses have suggested, but to describe the framework.
You asked whether the new House would want a role in relation to what the rules are. If the new House has been created within that framework and consensus, those who stand for election to it would be accepting the basis on which they have signed up to the deal, if you like. That is the basis on which the job has been offered to them. That is why, were the House then to start voting down Bills, not only would it be stepping outside the conventions—and you might take the view that there would need to be legislation rather than convention behind that; there is an argument for that—but essentially it would be stepping outside the political framework within which it had been created, and thereby acting illegitimately. I very much doubt that an elected body would do that, particularly a new elected body, because it had been created with a job in mind and with a frame of reference and a political role that, if it was seen to challenge it, would automatically put its actions outside the framework in which it had been created. It is a secondary Chamber and it would have been created in that way.

Q575 Lord Trimble: I have just two brief supplementary questions on the second point. The body would still have the legal capacity to do that.
Damien Welfare: If that was what the framework said, but the resolutions of the House would have been that it should not do so. For the sake of argument, the Cunningham committee said that if it were a Bill that had to any significant degree manifesto support behind it, it would not be voted down at Second Reading, it would not receive wrecking amendments and it would be passed at Third Reading. That is what the Cunningham report says. So in relation to that sort of report, the House would be stepping outside what it had itself already agreed—
Lord Trimble: But it would still have the legal power to do so.
Damien Welfare: If that is what the framework said. If you were to go into legislation saying that it should not have the power to do so, going beyond what I have said, then that would be different.

Q576 Lord Trimble: Sorry, but a resolution or an agreed framework is not law. What is the law at the moment is that the House has the power to vote down Bills. In practice it does not do so, but it has that power. If it did exercise the power, it would be doing so lawfully. There may be political and all sorts of other consequences to it, but the framework is not law.
Damien Welfare: I am not arguing that it is law, I am arguing that it is within the sense that we have conducted politics in this country up until now—that is to say that a large part of it is dependent on convention. It is open to politicians to decide that the second Chamber should continue to rely on what are, if you like, agreed conventions which have been discussed and that that process would be carried into the new House. As I say, you can go beyond that and take the view that it is not strong enough. My own view is that it would be, because you are harnessing the consensus behind reform and the consensus behind the relationship between the two Houses that could be expressed and accepted publicly.

Q577 Lord Hennessy of Nympsfield: Could I ask you some questions about what the Lord Chairman called the "policed concordat"? Is your proposed conciliation committee going to be the same body that would look like a permanent commission on the constitution, or this part of it anyway, and would look at the changing geography of conventions and how the new system is bedding in? Is it the same group of people?
Damien Welfare: I had not envisaged it as the same group of people; I envisaged it as a committee of the two Houses separate from that which would look at the conventions.
Lord Hennessy of Nympsfield: So the conciliation one would be in permanent readiness for rows—the choreography of showdowns, as it were—and the other one would come in every so often to see how the landscape had changed and try to get a feel for the tacit understandings on which we operate.
Damien Welfare: In effect, yes; and to make a recommendation to the effect, say, that an issue had thrown up something which had not been thought about. The course of a Bill might throw up something which perhaps should be looked at. It would consider what the relationship between the two Houses should have been or should be for the future in a situation of that kind.
Lord Hennessy of Nympsfield: Is there a case in your model for making it the same group of people, because they would have been living every minute with the bumping and grinding between the two Houses, which no doubt will continue?

Damien Welfare: I had not considered that but the reason why I had not—and I do not say that there is not a case for it—is simply that you would envisage the conciliation committee perhaps being, for the sake of argument, the Leaders of the Houses or their representatives, the relevant Front Benchers who were involved in an issue, and perhaps someone else from one of the smaller parties who had been particularly involved in the Bill. It would be a group that was involved in a particular measure and might well be comprised of those who had to thrash out the compromise.
Lord Hennessy of Nympsfield: I see, so your conciliation committee would be a kind of gilded usual channel.
Damien Welfare: You may choose to characterise it in that way. I know that before Christmas you had evidence from the Australian Senators in which they described the process whereby a committee gets together and comes up with an answer. Doing it the way I have suggested is only one model. You could have a standing group of conciliators, it is true, but whether they would be the best people to map the constitution, I am not sure. However, I am not against the idea.

Q578 Lord Hennessy of Nympsfield: I have just a final quick supplementary question. In the movement for the Wright reforms in the other place, which in my personal view is terrific, there is a movement not to let the great offices of state and the usual channels dominate any more. Would it not be cutting against the new grain to have the conciliation committee as a gilded usual channel?
Damien Welfare: What one is looking for here is something that is going to be an acceptable outcome from the point of view of the Government, the House of Commons, the House of Lords and all the interests involved. It seems to me that the Government ought to have some sort of voice if their legislation is the matter in issue, and that the Opposition should have some sort of voice, assuming that it is principally they who have been opposing it. However, it may be some other group. But the group that has been involved ought to have some voice on the committee, even if it is more a voice of me speaking to you and the conciliators who decide separately. I would suggest that there needs to be a process that includes those who have been involved in the legislation.
The Chairman: Lord Trefgarne?
Lord Trefgarne: My point has been made, Lord Chairman.

Q579 Dr Poulter: I want to pick up on a couple of the points that you have made. You pointed out the issue of primacy and that people standing in elections accept implicitly the role that different elections to a House implies. You also made the point that since the 1970s and 1980s the House of Lords has evolved in its wish to flex its muscles, if you like, and obviously there was a change with the last reforms made by the previous Government. In terms of making sure that primacy is maintained, the potential is that over a period of years a House that is largely or fully elected might begin to flex its muscles more. Would it be useful in maintaining primacy to have a House that was 80 per cent elected and 20 per cent appointed, or 100 per cent elected? Would it make any difference?
Damien Welfare: I need to distinguish my own view from that perhaps held by the majority of the supporters of our campaign, who I suspect would probably come down in favour of 100 per cent rather than 80 per cent. My own view is and always has been that, although I can see 100 per cent working, the 80 per cent split would work better for a number of reasons, including the ones which the Government have put forward and others have put forward in the past. The independent element obviously affects the arithmetic and nature of the second Chamber, and brings into play a different strand of argument in terms of expertise. At the same time I am critical of expertise relied on in extenso for the House as a whole. For those reasons, I think that an 80 per cent elected House would be less likely to develop the aggressive tendencies that some fear, and that would be a good thing. I am grateful for the way you put it; I think that if a House or a legislative body is constituted, people are invited to seek election to it with a particular role and status in mind. However, it is expecting a lot of their political acumen to step outside that status and make a success of trying to challenge it right from the start. It seems to me that the public reaction to that would be adverse in the extreme.

Q580 Laura Sandys: Obviously you are developing quite an elaborate process in order to resolve the problems that might arise in the future. We have found in a few of our discussions that, first, it is difficult for us to predict what those problems will be before they arise and, secondly, that conventions in the past have evolved through a conflict or crisis that needed to be resolved, and in a strange way that is what has kept the relationship quite

dynamic and interesting and, indeed, constantly evolving. Do you feel that the Parliament Acts and the more recent Fixed-term Parliaments Act offer the framework into which at a later stage conversation, debate and conventions can evolve when we see how the relationship between a 15-year-term elected Chamber works with a five-year mandate that is much quicker and more responsive?

Damien Welfare: If I have understood you correctly, implicit in our evidence is that the Parliament Acts would continue and, as the Government have put it, would form the underpinning at least of the legislative powers of the second Chamber in relation to primary legislation. That is an important building block or foundation for the discussion that I have tried to suggest might take place in some sort of Joint Committee, but that is only one structure through which it could happen. I also accept that, at least in part, conventions have evolved in relation to events and crises, and that is the idea of the permanent review, but setting the rules first so that you know what you are starting with. That might be thought to be an argument for keeping at least some convention in play rather than going all the way towards a complete set of Parliament Acts that govern the entire relationship. I could also see, either because it was thought necessary at the start because of the concerns, for example, that Lord Trimble has pointed to, or because that is how things evolve over a shortish period of time, that people want to get to the stage where it is specified in legislation. It is often said that we have an unwritten constitution, but quite a lot of our constitution is written down, for example, in the Parliament Acts.

Q581 Laura Sandys: What I am asking is whether the existing Parliament Acts represent enough security to establish primacy, or whether by going through yet another iteration, one is merely pre-empting a relationship that has yet to be cast.

Damien Welfare: There is a danger, or there could be a criticism, of trying to make provision for what may happen in the future before it has happened. At the same time, in setting out a set of rules and establishing a framework, you are conditioning what is going to happen. Are the Parliament Acts in themselves sufficient to deal with the range of things that might occur? No, they are not. That is why our evidence suggests a wider range of changes, perhaps simplifying the period of delay for Bills and, in particular, creating a power of delay rather than a veto for statutory instruments. That would make it less threatening and more usable, and less troublesome to a Government were it used. However, it would enable the second Chamber to express its view. Those sorts of limited changes could find their way into the Parliament Acts because they do not have to be done by convention. In putting forward something heavily weighted to convention, I suppose I was concerned to try to offer something that respected the boundaries of parliamentary privilege if there were concerns over the role that the courts might otherwise be drawn into.

Q582 Mr Clarke: Lord Chairman, before I put my question, I wonder whether Mr Welfare would mind explaining to me—it may be my fault that I do not know—a bit more about his organisation. Is it a UK organisation? How did it come to be formed? What is its raison d'être?

Damien Welfare: Shall I say something first and then perhaps my friend would like to say something too? I am sorry—I thought that this had been made known to you. We are entirely within the Labour Party. We are quite a small group. We are a loose group of parliamentarians and party members who, since 2000 when we were formed, have pressed for a second Chamber that is wholly or largely elected. Therefore, quite a lot of our activities have been within the Labour Party but we were quite active in lobbying Parliament for the 2003 and 2007 votes. We made a submission in response to the White Paper in 2008 and we have made other submissions at other times. We have also had quite extensive discussions with constituency Labour parties—ordinary members, if you like—and Mr Zeichner has been closely involved in that. We also have a larger number of people who have signed up to a website at various stages expressing general support for the principle that we have put forward.

Mr Clarke: I am very grateful. Is your colleague coming in?

Daniel Zeichner: No. I am very happy for Damien to continue. He is very learned.

Q583 Mr Clarke: My question is quite simple. Can you think of any international comparisons for the model that you are promoting this afternoon?

Damien Welfare: It is difficult, isn't it, because there are very few other systems that rely as much as ours does at the moment on convention. In that sense, I think that it would be difficult to say that that were the case. It seemed to me that in what you heard about the Australian model there are some quite close similarities, albeit

that that is set out more clearly in their constitutional arrangements. All that I have been trying to do is, if you like, to suggest some gaps and fill in some of the powers and questions that might arise which did not necessarily rely on a constitutional or legislative arrangements and which could be done by agreement between the two Houses. I think that Australia is the closest model, but I think that I would leave it at that, Mr Clarke.

Q584 Lord Rooker: I agree with Lady Symons that you have been far, far clearer than most of the witnesses that we have had, but there is one area where you are not clear in the paper and where you have not been as clear today as I think you ought to be. Are you in favour of codifying the conventions or legislating the conventions? You refer to both in your paper as if they are interchangeable and that has come out today.

Damien Welfare: I am sorry that that is not clear. It is rather like the word "supremacy", which I was going to come back to. What do we mean by it? Do we mean the ability of the House of Commons to flatten the House of Lords or do we mean something where there is a reasonable balance? It seems to me that codification can mean different things, if I may say so. If, Lord Rooker, you are asking whether I am in favour of setting out in legislative form the relative balance between the two Houses and the various powers and so on, I am not against that at all. In some ways, I think that a written constitution would be a good thing, but that is not the issue that is being raised, or the position that we are in at the moment. I have tried to come forward with something that can be agreed between the two Houses, as I say, and therefore is largely a matter of convention. It would codify that to the extent that it would write it down in one place. I have suggested an agreement between the two Houses that would set out their understanding of the relative balance between them and their powers. If that is codification, then yes, but I do not think that it is, as it is understood; because it would be for the Houses to determine how that then developed and not for anyone else to judge. In the sense of legislation, no, but in the sense of a coherent statement of the balance that could be agreed, yes.

Q585 Lord Rooker: Let me put it in the way that Lord Trimble did. Anything short of legislation is unenforceable. It does not mean to say that the following Parliament could keep to the same rules. If we legislate and get precision legislation, would you be in favour of the use of the Parliament Acts to do the legislation on the conventions?

Damien Welfare: I am not sure that I understood completely, but if this were all put into legislation—

Lord Rooker: If the conventions were put into legislation, would you be in favour of the Parliament Acts being used? That would effectively give massive security for the Government, because you only need a majority in the Commons. That is the point that I want to ask you about. Which way do we go, because that is the consequence?

Damien Welfare: Do you mean using the Parliament Acts to put through the package or do you mean give the Parliament Acts—

Lord Rooker: No. Go back to the Cunningham report. There is a set of conventions there and we all know what they are because we operate them. To get precision, you can write them down and, in getting the agreement of the two Houses, you do it short of legislation. I am talking about getting precision and legislating for them in an Act of Parliament, if that was the process—and this avenue could be gone down—but where there could not be agreement between the two Houses on the setting in legislation of the conventions, would you be in favour of using the Parliament Acts to put the conventions on to the statute book in the first place?

Damien Welfare: In as much as they would at that point stop being conventions and become legislative rules, and if it was thought at the time by the House of Commons in particular that there was consensus behind them, which I believe there would be—first to have reform and secondly to have a structure of that kind that gave a reasonable crack of the whip to the second Chamber, but left the House of Commons with the final say—then, yes, I would not object to that, if that is what it had to come to. But I do not myself believe that it has to come to that point, in as much as one can predict these things. I suppose that in part what I am trying to put forward is a way of trying to find an alternative path to that outcome based on agreement, but within an acceptance that there is a considerable measure towards reform.

If you will allow me one more sentence, I think that it has been said that, because the three parties all said the same thing, more or less, in the last manifesto round at the last election, there is not a mandate for reform to proceed because it has not been tested. It seems to me, with respect, that that is not the position. What has happened is that the parties have moved towards public opinion over time, to the point at which they consider that they are reflecting it. That is why they do so. It would seem to me wrong to hold back at that point and to say that there is not a mandate when the parties are reflecting what they believe public opinion to be.

Q586 Oliver Heald: The proposals document says that there would be no constituency work for the elected Senators. There is considerable concern in the Commons about Senators meddling within constituencies of Members of Parliament. We spoke to the Senate in Australia, where each Senator has a number of Representatives' seats allocated to him or her, usually from another party, so that they are actively meddling with political purposes in the constituencies of the Representatives. In this set of proposals, there is this statement that there would be no constituency work, but how would you stop it? I notice that in your document you talk about three things. You talk about having a clear statement of the roles and functions of the two Houses and you talk about having a job description for Members of the new second Chamber. You also say that they should not have any money to do constituency work. How is this to be enforced—the job description and the statement that you are proposing—or is it unenforceable?
Damien Welfare: The statement that I am proposing is the one that I am suggesting should be agreed between the two Houses through resolutions, so in that sense it would be a matter of agreement and it would be something that both Houses had signed up to. How would you enforce there being no constituency work? I do not think that you can. I think that most of the other witnesses have said to you in some form or another—and I think that this is right—that you cannot stop people doing it. Peers already have people writing to them about particular concerns; usually, I suspect, on policy issues rather than on matters to do with their drains and housing, if I can put it that way. I do not think that you can prevent that from happening, but I think that the constituencies would be so large that the likelihood of its being a practical proposition from the point of view of somebody who was trying to get their local problem sorted out, is small.

Q587 Oliver Heald: On that point, that is what happens in Australia. The Senators are for a whole state, but the parties allocate part of the state that is not in their party's hands to the Senator and he goes there, waves the flag for his party, does constituency work and encourages support for his party in the House of Representatives by being a particularly active Senator in only part of the state. How would you stop that happening in a region?
Damien Welfare: I read the evidence. I took it to mean that the activity was more, as you say, political flag waving than necessarily taking up every single case—it might be a matter of resources as to whether they could do that. I have described what I call a job description rather loosely, but it is part of the idea of defining the roles and the purposes of the second Chamber. If there is nothing in it about constituency work, or if it is made clear that this is a further route through which someone can go but it is expected that they will go to their MP first—who after all has direct access to senior Ministers in the Commons and so on, it seems to me that you create a culture in which the public expectation is not that that is what they are there to do. Then it seems to me that you need to engage with the parties, if this is what you want to do, to say, "Look, we need not to follow that particular example." I dare say that in practice some of it would follow, but the concerns about MPs having a Senator from the same party or background trying to do their work for them is rather different from an MP saying, "Look, you may have gone to Senator X but I am representing you as MP Y from a different party. You may read into the fact that he is interested in your problem as well, something more than that he is simply taking up your constituency concern."
The Chairman: I have three potential questioners. We are three minutes over time, so a minute each, please, for the three.

Q588 Baroness Andrews: You have followed the evidence very closely. What is your verdict on Clause 2?
Damien Welfare: Clause 2 as it stands is a statement of an aspiration. It is an understandable aspiration. The Government have, as I said, put in place certain structural features for the long term which are designed to try to produce that outcome. My own view, and this has been expressed many times in the Committee in different ways, is that more has to be done to answer the questions that Clause 2 raises. I have sought to do that in the evidence that we have put forward. We have not come on to what those changes might be, but they are in the evidence and are to do with the various powers that could do with moderate amendment.
Baroness Andrews: Many of our witnesses who are in favour of reform have used language such as, "Clause 2 is an absurd proposition." Whatever you have come up with, ultimately the clause is about constraining the powers of the new House of Lords. Why do you say, therefore, in paragraph 13, "This would strengthen both Houses of Parliament"?

Damien Welfare: There is a question as to the powers relative to the House of Commons and there is a separate question of whether a Parliament that has the legitimacy of democracy behind both halves of it is in a position to stand to express popular will and to stand in relation to Government in a stronger position than the House of Lords with the House of Commons does at the moment. There is not a zero-sum game between the Commons and the Lords in the sense that, yes, it is necessary to deal with the concerns and fears over Commons supremacy and, yes, it is necessary to deal with any perception that something is being created here that is intended as a rival to the Commons, because it is not; but, once you have dealt with that in the ways that you might choose to do—we have suggested a number—you then have a position where Parliament as a whole has the legitimacy of democracy, which until now it has not had and which exists in every other two-Chamber system, bar one or two.
Baroness Andrews: Just finally—
The Chairman: The Bishop of Leicester now.
Bishop of Leicester: To save the Committee's time, I will pass this time.
The Chairman: In that case, Kay Andrews may ask her question sharpish.

Q589 Baroness Andrews: I was just simply going to say that in paragraphs 13 to 17 you give your account of the present lack of legitimacy of the House of Lords. I am very interested to know the sort of research that you have done that allows you to say that the House of Lords in its current form and with its current expertise does not have that much impact, given that the sort of changes that it has effected, particularly in the pre-coalition House of Lords, have been perfectly evident to those of us who have been Ministers over the past decade.
Damien Welfare: Let me answer that very briefly. I am not suggesting that the House of Lords has not made changes, particularly in relation to the Labour Government, to which you are referring, Lady Andrews.
Baroness Andrews: I am referring to many aspects of government, not just local government.
Damien Welfare: No, I said the Labour Government.
The Chairman: Labour Government, not local government.
Damien Welfare: Undoubtedly, the House of Lords in its semi-reformed state from 1999 has been more active and has wrought more changes. I worked with the House of Lords in the 1980s and 1990s, pre-reform, when it was also possible to wring changes, but they were more difficult, because of the numbers and the structure. None the less, my submission to you is, with all due respect, that where those changes have come about—you have of course been experiencing them week by week—they have not come about because this is a House of expertise. That has not been the argument that has carried the day. It has been either a function of numbers or a function of numbers added with some other factor, such as time or some building political pressure behind an issue, such as the practicalities of trying to get something through. That does not amount to a second Chamber that has the legitimacy and confidence to express its point of view on a day-by-day or week-by-week basis so that the Government responds to it in a democratic forum, or a second Chamber that occasionally carries its view because it comes with a democratic legitimacy behind it in what it is saying.

Q590 Lord Norton of Louth: I want to come back to the point on conventions and your definition of them. As I understand what you have been telling us, you want to see an agreement on a statement as to the relationships which would precede the creation of the new Chamber and which somehow would carry on to the new Chamber. Surely the key point is that Members of the new House would have to be party to the convention in order for it to be a convention, otherwise it is not. I am not quite sure, given the stress in your paper on electoral legitimacy, although you call it democratic legitimacy, how Members coming in and claiming that electoral legitimacy would necessarily feel bound by something that had been agreed by others before they had taken up their position.
Damien Welfare: No doubt if it were agreed, the political parties would be behind it and that, therefore, would influence what they would expect of their candidates and representatives. The candidates and the representatives would have stood for a Chamber—in an election that, by the sound of it, would have been conducted at the same time as a general election—that was expressly secondary. Statements would have been made on many sides, including no doubt by themselves under questioning, to the effect that they understood the role—they would be accepting the role for which they had been put forward. You have heard evidence that, particularly if the elections were conducted on the same day, differential voting can be expected in that situation. I was not so keen on that, but I have come round to accepting that view. If the voters have expressed a different vote for the second

Chamber from their vote for the first Chamber, that is because they expect different things of it. All those things are political expectations of the new Members that will condition what they will be able to do.

Lord Norton of Louth: But if they are elected in that way differently from the first Chamber in the way that you have just said, they would feel that they had the confidence to challenge it. I do not think that electors are going to be too concerned with conventions.

Damien Welfare: No, because the Members' role is to revise legislation, to scrutinise and so on. Their role is not to challenge the first Chamber and not so to exercise their powers that government becomes more difficult than is warranted in the way in which business is conducted, because processes and rules have been put in place to counteract that.

Lord Norton of Louth: But they are not rules.

Damien Welfare: If they are rules accepted between the Houses, then they are rules as far as the Houses are concerned.

My Lord Chairman, I am terribly conscious that I have talked my friend out.

The Chairman: I fear that you have. I am sorry, Mr Zeichner, that we have not had a chance to hear from you.

Daniel Zeichner: Don't worry.

The Chairman: Thank you both for coming. The session has been very useful. It explored various routes that we had not fully explored before and I am grateful to you for coming. Thank you very much indeed.

Lord Cormack and Rt Hon Paul Murphy MP (QQ 591–611)

Q591 The Chairman: Thank you very much for coming, Lord Cormack. You know what we are about. If you would like to make a brief opening statement, we would be delighted, otherwise we can launch straight into questions.

Lord Cormack: Thank you, Lord Chairman. On behalf of Mr Murphy and myself, I thank the Committee for inviting us. We would like to make a very brief opening statement and then to take any questions that you and your colleagues might have.

The Chairman: Before you do so, perhaps I may call on Lord Norton.

Lord Norton of Louth: I declare an interest as a co-chair of the Campaign for an Effective Second Chamber.

Lord Cormack: I am very glad that he has done that because I was just about to explain to the Committee that the Campaign for an Effective Second Chamber was founded by Lord Norton and me some 10 years ago. It consists of around 200 Members of both Houses drawn from all political parties and with a sizeable contingent from the Cross Benches in the House of Lords and with Bishop affiliates. We believe that we are a fairly representative group. We stand for the reform but not for the abolition of the House of Lords or for its replacement by something different. We are committed to the primacy of the Commons and to its unambiguous democratic mandate. We recognise that serious issues need to be addressed by those troubled by the dominant power of the Executive. We acknowledge that there is a strong case for a thorough review of the distribution of power in a bicameral system—which House does what and how, and how it should be composed—and for an examination of the separation of powers. However, this draft Bill does not address these issues at all. It tampers with the delicate mechanism of our unwritten constitution in potentially disastrous ways and creates an agenda for confusion.

I should like to make two specific points, if I may. If we have a 100 per cent elected second Chamber, Senate or whatever it is called, there will not be many independents in it. It will be elected mainly on party-political lines and the Cross-Bench element will virtually disappear. If, on the other hand, we have an 80 per cent elected Chamber with 20 per cent appointed, we would create a situation where the will of the elected could be frustrated by the non-elected. Last week we had a series of votes in the House of Lords which were effectively carried by the Cross-Bench votes. Had this been an elected House, there would have been the makings of some sort of constitutional crisis in that. I believe that, because of the conventions which were referred to in the previous session, we have a situation in the House of Lords where there is a recognition of the supremacy of the House of Commons.

The other point that I should like to make at this stage is that in a Bill which seeks to claim democracy as its hallmark, why is there no provision for the people to pronounce in a referendum? We are going to have a referendum in virtually every town and city in the country where there is a suggestion of an elected mayor. We are going to have a referendum if any changes are made to the European treaties. Last year we had one on AV, yet there is no provision for a referendum here.

I shall leave my opening comments at that. I know that Mr Murphy, who is a very distinguished Member of the House of Commons, has one or two points that he would like to make.

Paul Murphy: I do not want to repeat what Lord Cormack has said, but I shall raise two things for discussion. The first is that I have always been opposed to an elected House of Lords on the basis that it would be a rival to the House of which I have been a Member for a quarter of a century. I have not changed my views after what I have read of the Government's proposals. Ultimately, democratic legitimacy must lie with the lower House and the proposals set out here will threaten that.

The second point, which is more specific and was touched on in the previous evidence session, is the relationship between those who are elected to the Senate and those who are elected as Members of Parliament in the United Kingdom. I know from my experiences on two occasions as Secretary of State for Wales and as a Welsh Member of Parliament about the relationship between Assembly Members and Members of Parliament, particularly with those Members of the Assembly who have been elected by a different system. In Scotland and Wales, although I will confine my remarks to Wales, Members of the national Assemblies are elected either like we are in the House of Commons under the first past the post system or by a top-up PR system. I think that that has not worked. Having two categories of Member in the Assemblies means that they can claim different legitimacies. On the relationship between Senators and MPs, I point to the constituency aspect. From what we heard earlier, I know

that the idea is that Senators will not have constituency matters to deal with and will not do the same sort of thing as Members of Parliament. Pigs will fly, because the reality is that, when they are elected, Senators will be overwhelmingly party political. They would have been selected by their parties and, as a consequence, they will be representing the people. Moreover, as far as they are concerned, they would have been returned by a different method of election which they might well regard as more legitimate. I just cannot see a situation where there are high-flying Senators without any constituency work and whose job is simply to revise legislation. That is not going to happen; they will be party politicians the same as we are. I rather suspect that that is not the idea behind this reform of the House of Lords, but it simply will not work.
The final point I want to make by way of introduction is that we are not short of democratically elected people in this country. In my own constituency I can vote for my community councillor, my borough councillor, my Assembly Member under first past the post and my Assembly Member elected under the PR system. I can vote for myself, possibly for a Senator and for the Member of the European Parliament. I cannot be persuaded that we are not democratically represented in my part of the world.

Q592 The Chairman: Thank you. I should like to ask a fairly basic question. Do you think that an increasingly assertive House of Lords is a good thing or a bad thing? I wonder whether you agree with the proposition that at least part of the argument that you are putting forward, as I understand it, is that if it is elected it will become more assertive rather than less so.
Lord Cormack: That has been made quite plain in what the Leader of the House has said on the Floor of the House in answer to Questions: an elected House would indeed become more assertive. While I think it is right that our present House should use its powers to advise, to caution and to send things back and say "Think again", I believe that, in the end, in all but supreme constitutional matters, which are of course excluded from the Parliament Act, it should not have the power to override the House of Commons. If you had an elected Second Chamber, it would flex its muscles in a very real way and you would have the seeds for all manner of constitutional problems. Although the previous witness talked about codifying conventions and having laws, the fact is that no Parliament can bind its successor. Indeed, as a number of the questioners pointed out, this would be an agreement concocted between the present two Houses and it could not be binding on a Chamber that has not yet been elected.

Q593 The Chairman: That may be, but I am asking a question about assertiveness. As I understand it, you are saying that, if it is unelected, it is good if it is assertive but, if it is elected, it is dangerous if it becomes assertive. I do not understand the distinction because it seems to me that, if you have a more assertive House of Lords, you will then have a more restive House of Commons. The chances are that that would make it more difficult for the Government and in a sense that would be good for Parliament, not bad for it.
Lord Cormack: There are more forms of assertion than this world dreams of. The fact is that you can have assertion which ultimately leads to a constitutional stalemate because the House continues to send things back. You can have the sort of assertion that we are used to in the present House where the Members say "Think again" and perhaps "Think a second time" and maybe even a third time. But at the end of the day, the will of the elected House on matters such as welfare reform and health does prevail.
Paul Murphy: I suppose what would influence me as a Member of Parliament in the lower House in terms of changing my mind, if I am going to take part in a debate and vote as a result of amendments coming from the House of Lords or a Senate, I rather suspect that amendments sent back to the House of Commons which have been agreed by the sort of people who are currently in the House of Lords will have more weight on my decision-making than if they are sent back by a mirror image of the House of Commons simply because it happens to be elected.

Q594 Baroness Shephard of Northwold: I should like to refer to a point made by Mr Murphy. He said that an elected House would be a rival to the House of Commons. Our last witnesses and indeed other witnesses have asserted that there would be no rivalry between the two Houses on the basis of the proposals in the Bill. That is because if people were elected to the House of Lords, they would serve for 15 years and would have been elected under a different electoral system. I shall quote the last witness; he said that the public would come to understand that elected Senators basically can do nothing for them. I do not want to misinterpret the last witness and I am

possibly out of order, but given that both Lord Cormack and Mr Murphy have been elected, as have a lot of people in the House of Lords, I would like to hear Mr Murphy's comments on the proposition that the Bill should suggest that there are two sorts of elected Members but that they would deal with the same issues. Therefore the European Parliament analogy, which is often made, does not apply. Does Mr Murphy or Lord Cormack think that the public would come to understand that it was worth voting for someone who said that he could not do anything for you?

Paul Murphy: Not at all. However, first I shall deal with the 15-year term. If it ended now, it would have taken us back to 1996 or 1995. Huge political changes have taken place over that period, and it would mean that people in the Senate, not necessarily from the same party but from totally different parties, at the end of the day would be party people. The general public—if they think about these things at all, and I have to say that in 25 years in the House of Commons I have not had one letter or e-mail about the House of Lords; no doubt others have, but I have not—will want to go back to the fundamental reasons of why there is a second Chamber. I taught government and politics for a long time before I came into the House of Commons. I said that the second Chamber was deliberative, constitutional and a revising body—in those days it was judicial as well. Those functions are best performed by people with wisdom and experience, and who in my view are not elected, but nevertheless could have an influence on an elected Chamber by virtue of who they are. I rather suspect that people outside would actually welcome the idea that there is a careful, close and in some senses—not always, but then it should not always be—non-political look at legislation. But if a House of Lords or a Senate was overwhelmingly elected, it is almost inevitable that it would look at issues from a party-political point of view. What is the point of having 300 extra politicians doing the same thing as the 600 in the House of Commons? I think that most people would agree with that.

Lord Cormack: The argument is absolutely right. You would have people who had been elected for 15 years who were not eligible to stand again. Where does the accountability go and how could they answer to their constituents? What mischief could they make in the individual Member of Parliament's patch if they chose to do so? Just think of the changes that have taken place if a group of Senators had been elected in 1992. There was a change of government and of ethos. This really is an extremely rash proposal, and one that should not see the light of parliamentary day.

Q595 Baroness Young of Hornsey: You argue in your written submission that democracy is not only manifested through elections and I think that that is right. My first question is this. Can you clarify whether the issue of legitimacy is better achieved through appointment or election? My second question is this. In the House as it is currently constituted, and as far as I can see in some of the suggestions that have been made for reform, do you agree that there is a strong bias in favour of older people in the House? That comes out through people having to be at the top of their profession and to be seen as eminent and as having achieved a certain amount. Do you think that is desirable and, if you do not, do you have any remedies for achieving a better age balance in the Chamber?

Lord Cormack: To answer your first question, we have an entirely legitimate system. In this country we have a constitutional monarchy where the head of state is not elected and we have an independent judiciary where the judges are not elected—we refer to both of these points in our paper. We have a House of Commons which has what I have called the unambiguous democratic mandate and we have an assembly of those who, for all manner of reasons—their various degrees of expertise and experience and from a whole range of walks of life—represent many interests that are not always represented in the House of Commons. I think that we have a better ethnic mix in the upper House. Although what you say about the older Members has a degree of truth in it, you yourself, Baroness Young, are an example of the younger Members.

Baroness Young of Hornsey: It is a little bit sad if I am seen as an example of the younger Members, but thank you for the compliment. I am a pensioner.

Lord Cormack: As we all know, we have people in the House of Lords who are there for all manner of reasons and they are not all in their dotage. It is entirely proper to look at how one appoints people to the House of Lords. The Campaign for an Effective Second Chamber has always said that and has always stood for reform. It recognises that we have to face up to issues such as whether there should be a retirement age and what it should be. It recognises that we have to look at all these issues because if we are going to maintain, as I hope we will, an appointed second Chamber and continue to call it the House of Lords, it is important that there should be an

even better recognition of the various elements in our society than there is at the moment. I believe that it is not too bad at the moment, but of course it is capable of considerable improvement.

Q596 Dr Poulter: I want to pick up on the point that you made about the politicising of potential Lords or Senators in the regions. That seems to be a very difficult argument to make since the regions involved would be extremely large and there would be very few representatives. Baroness Shephard said that this could not be equated to the role of MEPs, but as Members of Parliament we rarely see any activity on the part of our European representatives at the constituency level because they have such big regions to represent. I fail to see the logic in the proposal that Senators are in any way going to take on a constituency role, because they would have to represent massive regions, often comprising 50 or 60 constituencies.

Lord Cormack: Perhaps I could try to answer that question. First, the remit of a European Member is wholly different from the remit of a Member of Parliament. Secondly, a Senator would be a Member of the United Kingdom Parliament and would be dealing with precisely the same legislation and precisely the same things as the Member of Parliament. You have been a Member of Parliament for not too long, Dr Poulter, and I hope that you will be here for many years. I was in the other place for 40 years and Mr Murphy has been there for 25 years, and we know that it is impossible to please every constituent or deal with every issue to the satisfaction of constituents all the time. There would be an inevitable tendency to turn to the Senator and there would be an inevitable temptation, so far as the Senator was concerned, to get involved and put his or her name on the issue. I am sure that Mr Murphy would be happy to amplify that.

Paul Murphy: The Senators are going to be elected on a party-political platform. As soon as you have an elected body of any sort, whether it is the Welsh Assembly, the House of Commons or an elected Senate here in Parliament, the candidates will be selected by the political parties and they will be elected on a party platform. Presumably they will then work, as the Assembly Members in Wales work with us as Members of Parliament, in a party-political way. I am not saying that that is bad because I belong to a political party; I am simply saying that the difference in an elected Senate would be that the platform on which they would stand would be virtually identical to that of Members of the House of Commons.

Q597 Dr Poulter: I should like to make two points on that because there are clear distinctions. First, I think that you are slightly at odds with each other. At the moment, many Members of Parliament do not have an effective working relationship with MEPs because they represent such large regions. If Senators are going to represent the same regions, why would it be the case that we would have a working relationship with them? The second point is that it is a difficult case to argue. If you define clearly what someone is standing for the Lords for as opposed to what a Member of Parliament is standing for, it is clear that the more scrutiny-based role of a Member of the House of Lords would mean that they would not have a constituency-based role in the same way as a Member of Parliament. That would be accepted when they stood for election.

Lord Cormack: Well, Dr Poulter, you and the Senator for, say, Suffolk would be occupying the same building. You would be dealing with the same pieces of legislation. You would be representing to a degree the same people. He may represent all the people of Suffolk and you would represent just one constituency in that county. But it is inevitable that there would be a degree of tension between you. I am absolutely certain that that would happen. In the early days, before they moved on to the list system, MEPs had constituencies. I happened to be a Member of Parliament in Staffordshire and the MEP represented most of Staffordshire and Shropshire. Although we were dealing with different Parliaments and different issues, there were clashes, some of which were well documented. But I believe that that would be as nothing to what would happen if we had two elected bodies in this building.

Q598 Dr Poulter: Is there not a clear distinction in that in those days Members of the European Parliament represented perhaps only eight constituencies, but here we will have regions of constituencies where a Senator from one party would potentially have to represent 60 constituencies. Unlike a Member of Parliament, that would be an impossible job to do on a constituency basis. We are talking about someone representing many millions of people.

Lord Cormack: Until you have finished with this Bill, we do not know precisely what their responsibilities would be. However, what we do know is that there are parts of the country now where the MEPs divide the territory up between them. I had one MEP who saw himself as looking after the interests of South Staffordshire when I was

the Member of Parliament there. We had one very big clash over whether an airport should be built. I did not want it and he did. Just imagine how that could be writ large if, as I say, both of the elected people are in this building and both are claiming a mandate—and perhaps, as Mr Murphy has said, with the Senators claiming a more legitimate PR mandate. Mr Farron, the President of the Liberal Democrats at the time of the AV vote, made a public statement to the effect that he was desperately sad that it had gone down the spout. Of course he was, and it could well be that the most legitimate body—I quote him more or less verbatim—would be an elected second Chamber. Given where he was coming from, it was an entirely legitimate comment, but it makes one think.

Paul Murphy: I think that in some ways there would be a certain remoteness about a Senator. I shall take my own country of Wales where we would be likely to have 10 or a dozen Senators. I do not know how they would be regionally distributed, but what is absolutely clear is that the political parties in Wales, whichever one it might be, would ensure that the Members of Parliament and Senators were elected on the same basis. They would be the same sort of people and would be selected from the same sort of selectorate. There is nothing wrong with any of that, but it is not necessarily what a second Chamber is all about. In my view, that is the difference.

Q599 Baroness Symons of Vernham Dean: Lord Cormack, you said in your introductory remarks that you were committed to the primacy of the Commons. This is the fundamental issue that we are struggling with. Were there to be an elected second Chamber, can you think of any way that you would regard as legitimate of safeguarding the primacy of the House of Commons?

Lord Cormack: No. I cannot think of any way you can guarantee that. The campaign to which I have referred, and which has now been meeting for 10 years, has often wrestled with this very issue. We do not believe that it is possible to ring-fence the primacy of the House of Commons if you have an elected second Chamber.

Q600 Lord Trefgarne: Would you not agree that primacy is a moveable feast? For example, even today there is equal primacy over secondary legislation, in that the House of Lords can reject statutory instruments in the same way as the House of Commons. If the House of Lords in its new senatorial guise became largely or wholly elected, it would certainly seek, and no doubt progressively achieve, more primacy or less subservience.

Lord Cormack: I am sure that it would. Indeed, you make my case for me when you talk about secondary legislation, on which at the moment the House of Lords generally practises a self-denying ordinance—although there was a case three years ago, before I entered the House, when a measure on casinos was rejected by the House of Lords. A few weeks ago there was a suggestion that a Motion moved by Baroness O'Cathain might result in a similar defeat, but she did not press her Motion to a vote because it was clear that the general opinion of the House was that she should not do so. However, if you had an elected second Chamber with the same powers as the present second Chamber, there would be a very real temptation on the part of elected Senators to fight such legislation, particularly if they felt that an issue was not going to play well in their own territories—be those counties or regions or whatever. You would have an adjustment of the relationship between the Houses. As I said in my opening statement, there is a case for looking at all these things in the round, but you should first decide what each Chamber is going to do. You have to get form and function in the right order, as we point out in our paper. That is not the case with this Bill, which takes certain things for granted. Baroness Andrews asked about Clause 2, which states the matter as if it would be absolutely fine and dandy. However, I honestly do not think that it would be. Another point is that one of the Bill's more bizarre proposals is that the ministerial Members, whom the Prime Minister of the day would have the opportunity to appoint to the House of Lords or Senate, would be in the second Chamber for just as long as they were in office. You put them in and, when he sacks them or they resign, out they will go. There is no quantifying of how many of those people there will be. It really is not very well thought out. Even if one wants, as some do, to have an elected second Chamber—and I respect that view—this Bill is not the vehicle for achieving an efficient one.

Lord Trefgarne: If you have an elected, or largely elected, second Chamber, will it not consider itself more legitimate and exercise its existing powers to the limit and soon be campaigning for more?

Lord Cormack: Indeed.

Q601 Gavin Barwell: I thank Lord Cormack for putting the case against reform in perhaps its purest form. For me, regarding the suggestion that the current House is entirely legitimate and that party leaders should be able to put those who fund their political parties into Parliament or bump an MP up into the House of Lords so that

they can put one of their apparatchiks into that constituency, personally I do not consider that entirely legitimate. However, I am grateful for the note that you submitted to the Committee, which challenges the underlying thinking behind the Government's proposals.

I would like to pick up on point 3 in your note, where you say that one of the premises on which the Bill is based is that "That those who make the law should be elected". You then draw the perfectly reasonable distinction between a Member of the House of Commons, which ultimately makes the law, and Members of the second Chamber. However, you sort of suggest that Members of the second Chamber are really only equivalent to civil servants and parliamentary draftsmen. Obviously, those people draft legislation at the instruction of Ministers, whereas there is a big difference, I hope you would agree, between a Member of the second Chamber and a parliamentary draftsman—

Lord Cormack: Yes, but I think—

Gavin Barwell: Let me just very quickly finish the question. It seems to me that one of the principles of democracy is that people should have an equal say on the laws of the land, and that is why we are against things like rotten boroughs. Would you not agree that someone who is appointed to the second Chamber has a much bigger say in the laws of this country than the average constituent who voted for me?

Lord Cormack: Of course Members of the second Chamber have more say than the average constituent—that is self-evident—but that paragraph does not seek to equate them with civil servants, advisers and lobby groups or anything else. All that it says is that there are many people who take part in the lawmaking process and the House of Lords of itself does not have the power to initiate and enact law. Again, that is self-evident. With great respect, I do not think there is anything misleading in that paragraph.

Regarding your other comments with which you introduced your question, I agree with you on many of those points. Of course neither I nor the Campaign for an Effective Second Chamber is seeking to suggest that all is for the best in the best of all possible worlds. Of course we believe that reforms are necessary. Of course we believe that it is necessary to look at methods of appointment. If I may voice a particular personal view, I agree with you very much that somebody should not be in the House of Lords—if this has happened—purely on the basis of giving donations to a political party, although of course it is perfectly possible for somebody to be both an innovator or thinker and also a donor. Those things are not mutually incompatible.

Q602 Mr Clarke: I welcome this discussion, and I believe that Lord Cormack and Paul Murphy have given us some very interesting insights into the kinds of things that we are expected to decide on. I hope that they will forgive me if I say that I know what they are against but I am not terribly sure what they are for. Do you think that the situation as it exists at the moment should stay? Are you really arguing for the status quo?

Lord Cormack: No, we are not, and I am sorry if that has not come across sufficiently. In the paper that we submitted, we talk about the attributes of the present House of Lords and about the things that can be reformed and improved—I referred in one of my earlier answers to such things as retirement ages and the number of Members. I cannot answer for the group by saying that the House of Lords should have 300, 400 or 500 Members. I believe that 300 is far too small, and I believe that the argument in the paper that on average 388 Members turn up per day is a fallacious argument, because the same people do not turn up every day—some people come for certain things, and some for others. However, I believe that one should, over a period, aim for a defined number. The group does not have a view on that, but my personal view is that the total should be somewhere between 450 and 600—probably nearer the smaller number than the larger one—but that should be achieved over a period. After all, even with this Bill, we are talking of a period between now and 2025. It should be very possible, with proper restraint and sensitivity, having regard for people's contributions and all the rest of it, to reach a situation whereby by that time you have a defined number, you have a retirement age and so on.

There are many things that can and should be done but, if I may say so, there are also many things that can, should and indeed must be done in the House of Commons to balance the position vis-à-vis the Executive. There is a real case for a Joint Committee of both Houses to look at the balance within our constitution. This piecemeal approach is not really in the interests of the House of Commons or in the interests of the country. At the end of the day, you are dealing with an extremely delicate mechanism with the British constitution. When you start taking this bit out—as with taking out a piece of a well-constructed watch or clock—all sorts of unforeseen consequences can follow. The one law that we have been repeatedly successful in passing in this country is the law of unintended consequences.

Paul Murphy: I agree with that. I particularly agree with the proposal that Lord Steel has consistently put forward in the House of Lords for major changes to the way in which the House operates.
Lord Cormack: And I would say that the Steel Bill, as Lord Steel would readily attest, came out of discussions in the Campaign for an Effective Second Chamber.

Q603 Lord Tyler: Lord Cormack, is an example of one of the reforms that you would support a retirement provision? Given that the Library of the House of Lords said that, at the last count, four Members were under the age of 40 and 19 Members were over the age of 90, exactly how do you think that reform should be implemented?
Lord Cormack: With determination and sensitivity. One has to recognise—you know these people as colleagues, as I do—that there are people in the House of Lords who are fairly well advanced in years but who make an outstanding contribution to our deliberations. There are some in your party, some in mine, some in the Labour Party and some on the Cross Benches. We both know who they are and I am not going to mention names any more than you would, but we know they are there. That is why I said that one thing we could accept in this Bill is the timescale of 2025 and work towards a situation where you would indeed have a defined number—the number you have been trailing in your recent interviews, or maybe not. We also have a retirement age, which might be 80 or 85, I do not know. People are living longer and people are making contributions. We also have rules about people appearing in the House of Lords and being able to discharge their parliamentary functions. All these things are entirely legitimate for us to discuss and we should be seeking to move towards that situation, as I said earlier, with determination and sensitivity.

Q604 Lord Tyler: I think that you have illustrated how invidious a piecemeal approach is. Perhaps I may ask another question, which both of you might like to answer. You have both put great emphasis on the importance of preserving the primacy of the House of Commons and, as a former Member of the Commons, I accept and endorse that. What exactly do you anticipate if, in the 2012-13 Session, the Government come forward with an improved Bill as a result of our efforts around this table? Would your advice to your colleagues be that they should recognise the primacy of the Commons, should the Commons support that Bill, and that they should accept it at Second Reading, seek to improve it and not vote against it at Third Reading?
Lord Cormack: I shall be very interested to hear what Mr Murphy has to say in response, and he has a little time to think about his reply. I will be very clear on this. I made the point earlier that on matters of supreme constitutional importance the situation is rather different. I do not believe that the Parliament Acts would be able to apply, as they do at the moment, to an elected House of Commons and an elected Senate. That is because the Parliament Acts came into being to regulate the position between the two Houses that we have—the House of Commons and the House of Lords. It would be entirely legitimate for the House of Lords to challenge a Bill if it did not feel that the constitutional integrity of our system was being upheld. But you are tempting me into the hypothetical because it is clear that no one can make a definitive statement on this without knowing what is before us. In certain circumstances it would be entirely legitimate to resist, but in other circumstances it would not. However, we need to know what we are dealing with. Your Committee will no doubt be telling us in due course, but we also need to be assured of the unanimity of your Committee, because that, too, has to be taken into account. If your Committee comes up with an absolutely unanimous recommendation, that is one thing, but I think it might not. We will see.
Paul Murphy: My fear is that, whatever emerges in legislation, if in the end there is a majority elected House of Lords, it is inevitable that it will challenge the supremacy and the primacy of the House of Commons. My experience tells me that new democratically elected bodies almost inevitably want to increase their powers. It has happened in Wales and I agreed with that proposal; indeed, the Lord Chairman of this Committee had a lot to do with it. It is happening in front of our eyes in Scotland, where there is a huge debate on independence. I have not the slightest doubt that, if we had a majority elected Senate, eventually the Senators would want to flex their muscles. They would argue that their legitimacy was greater. If there were different parties in the different Houses, there would be enormous difficulties. Those are the problems that I think we will face. What I will say, though, is that whatever happens during the passage of any Bill through both Houses, it would have to have the legitimacy of public agreement through a referendum.
Lord Cormack: That is something on which Mr Murphy and I are absolutely at one. It is clearly the case that you cannot argue that there is a constitutional case for a referendum on Much-Binding-in-the-Marsh having an

elected mayor but no case for the people of this country deciding whether their second Chamber should be elected or not. So if a set of proposals finally emerges, the ultimate sell should be with those who used to elect Lord Tyler and me and who currently elect Mr Murphy.
Paul Murphy: And then the debate should go to the country.

Q605 Lord Tyler: Can I ask one supplementary question of Mr Murphy? Did you in any of the elections since 1997, but more specifically in 2010, tell your electors that you did not agree with your party's policy on the reform of the House of Lords?
Paul Murphy: The party's policy changed during the course of those years and it is quite difficult to remember what the policy was as the years went by. But I have to say that not a word was said by me or to me about the House of Lords. It simply was not an issue. That is the point of a referendum, of course. If we feel that this is a hugely important issue for the people and if Parliament decides accordingly, there will be an opportunity for everybody to air their views and then eventually, just as we have had extra powers granted in Wales by referendum, that could happen so far as the powers of the House of Lords are concerned. But you would not see it in my manifesto.
Lord Cormack: And of course in any referendum it is important that people are told about the cost of the new Chamber.

Q606 Ann Coffey: Members of the House of Commons are under intense scrutiny by the press, while the House of Lords is less so. Perhaps the reason for that is that the House of Lords is not seen as central to making law in the same way as the House of Commons is. One of the good consequences of that kind of close scrutiny by the press is accountability and things being transparent. Do you not think that a good outcome of having a wholly or partially elected House of Lords would be the scrutiny of the press that would accompany that development? Do you agree that that would be helpful to the overall democratic process?
Lord Cormack: I think that your question is based, if I may say so, on a false premise. The House of Lords has indeed been scrutinised by the press over the past couple of years. I do not know whether they are still there or not but, much to my sadness and that of others, some Members of the House of Lords have been sentenced to terms in jail—
Ann Coffey: I was not talking about them.
Lord Cormack: They have been given as much publicity as any of the expenses scandals in the Commons. I believe that the House of Lords is just as open and subject to press examination, but the fact that the press do not always choose to report it as extensively is, I think, the public's misfortune. I say that because the quality of debate in the House of Lords is often extremely high. That is one of the reasons why I am absolutely persuaded that it would be sad if we got rid of an institution that, by accident of history and a degree of incremental reform in 1958, 1999 and so on, has resulted in a House where no party has an overall majority, where there is more accumulated wisdom and experience than in any other second Chamber anywhere in the world and where the quality of the debate, whatever the subject, is exceptionally high. It is a pity that the press do not look at the House of Lords a little more closely; I wish that they would.
Ann Coffey: If you will excuse me, I was not actually talking about the expenses scandal by way of example. I was talking about normal reporting and the close scrutiny of what people say and who the people are who are saying it.
Lord Cormack: That is what I just said
Ann Coffey: Yes. You said that it is a pity that the press do not report the House of Lords. I wanted to suggest that an elected or partially elected House of Lords would be seen by the press as important to the legislative process and would bring about those things that you yourself desire.
Lord Cormack: May I answer that? In an elected second Chamber, what the press would not see in a health debate is some of the most eminent physicians and surgeons in the country taking part in it. In an elected second Chamber, what the press would not report about a debate on defence would be the fact that former Chiefs of the General Staff and so on were able to take part.

Q607 The Chairman: Only in a wholly elected House would they not be able to see that. I am sorry, I do not want to join in the argument too much, but you have provoked me on this one. I find the idea that the 20 per

cent of Cross-Bench Members proposed by the Bill are going to sit there supine, not taking part in debates on subjects of which they have intense and detailed knowledge, extraordinary. Of course they will take part. If the doctors are sitting on the Cross Benches and the rest of the House is elected, of course they will participate, and so will the generals.

Lord Cormack: Lord Chairman, I think that you have jumped in a little too quickly. In a 100 per cent elected House, what I have said is absolutely right, but in an 80 per cent elected House, you have the disadvantage—this is a point that I made earlier—that the 20 per cent appointed element would be regarded as second-class Members. They would have the right to vote but they would not have been elected. I believe that a hybrid House, with all the possibilities of Governments being defeated by non-elected Members, would be constitutionally extremely dangerous.

Q608 Oliver Heald: You have raised the concern about regional Senators interfering in particular House of Commons parliamentary constituencies. This is something that was referred to when we had our video link with Australia, where the Senators who are elected for the state apparently have allocated to them a number of Representatives' constituencies, where they actively take part with political purposes. This is something that Paul Murphy suggested might have happened in Wales with the list Members interfering or doing work in constituencies of Assembly Members who were elected for those particular constituencies. A way of tackling this, which has been suggested to us by the Campaign for a Democratic Upper House—the previous witnesses—is to do three things. The first is to have a clear statement of the roles and functions of the two House backed up by agreed resolutions in each House; secondly, not to give the Senators any money for doing constituency work, so no allowances; and, thirdly, to have a job description for Members of the second Chamber saying that they are not allowed to do constituency work, or words to that effect. I just wondered whether you felt that that would work.

Paul Murphy: No, I think that it is a load of nonsense. It does not reflect the real world in any respect. When I say "constituency work", I am not necessarily talking about taking up Mrs Jones's back kitchen, although that sometimes happened with MEPs taking up individual issues like that. I am talking more about the politics of the region or area and the issues of the day. That is fine, but it is presumably not the role of an elected Senator. The role of an elected Senator is to revise, deliberate and do all the things that the House of Lords now does. I cannot see this working. It is different in Australia, where there is still a problem, but you can understand how it works in a federal system, where the Senators have a specific role to represent their states or provinces in a federal Parliament. Our Parliament is a unitary one, although I personally think that there is a case for somehow dealing with Scotland, Wales and Northern Ireland within the House of Lords, but that is another issue. Elected, party-political Senators in any part of our country will be party politicians. That is what they are there for. The idea that they will keep their noses out of this or that issue is just absolute tripe.

Lord Cormack: I could not put it more strongly. The only other point that I would make, Mr Heald—and Mr Murphy is completely correct—is the one that I made earlier. No Parliament can bind its successor, so I do not think that whatever cosy agreement was arrived at would stand the test of time.

Q609 Lord Hennessy of Nympsfield: Do you think that a referendum is the only way to solve—"solve" is probably the wrong verb—or settle the question of the Lords for a couple of generations? If there is consensus in the country, it may well be that we cannot go on like this. It has absorbed a phenomenal amount of energy and time since 1911 and, although it is a tremendous diversion for constitutional buffs like me and my great friend Lord Norton, it surely cannot go on like this. Do you think that a referendum is a desirable way to do it?

Lord Cormack: If any Bill emerges from this Committee that commands great support and goes through both Houses, I think that there has to be a referendum. My own view is that at the end of the day that probably is the best way of solving it, but it is difficult to say much at the moment in that context, because it is a hypothetical situation. Your Committee has not made a report to either House yet and we do not know how the Houses will react to whatever report you make. But at the end of the day I think that, yes, probably a referendum is necessary.

Paul Murphy: There is no question about that. In my view, certainly since the late 1990s, all the major constitutional questions have been resolved by a referendum—obviously Northern Ireland, Scotland, the recent increased powers in Wales and, of course, the alternative vote. It seems to me that if those things can have a referendum, surely the way in which our Parliament is organised should also be subject to a referendum. To be

perfectly honest, I see great benefit in the public debate that will be held about it. You can have as many opinion polls as you want; it depends on the questions that are asked and all the rest of it and there is no debate. A referendum would generate a proper debate and people in the country could make their minds up. It would also obviously give legitimacy to the solution.

Lord Cormack: This is an issue that the Campaign for an Effective Second Chamber is addressing. We have not produced a paper on a referendum but I think that we may well do so at some stage, although I am speaking very much personally in answering your questions.

Lord Hennessy of Nympsfield: Do you think that it would be wise to wait until the Scottish question has been settled? It is a first-order question—a constitutional question with bells on.

Lord Cormack: Absolutely, yes. I think that that would be extremely sensible. To gum up the machine with two major constitutional issues, for one of which there is great public demand and interest and for the other there is no public appetite or demand, would be injudicious, to put it mildly.

Q610 John Stevenson: The White Paper and draft Bill from the Government are about composition, not about powers. Effectively, it could be argued that the Government are saying, "We accept that the new House of Lords will only have the powers that already exist, which are very extensive. We also accept that an elected House of Lords is likely to be more assertive and to use those powers." Would you not agree that that would be a good thing for parliamentary democracy? It is a good thing to challenge the Executive more and we should move away from being an elected dictatorship towards being far more of a parliamentary democracy. At the end of the day, if there is a conflict between the two Chambers, as a matter of law the 1911 Parliament Act gives primacy to the House of Commons.

Lord Cormack: It may give primacy to the House of Commons at the moment, because it deals with the House of Commons and the House of Lords as they currently exist and as they have evolved, but there are legal minds far more eminent than mine who say that they do not think that the Parliament Act would apply to a wholly different second Chamber.

John Stevenson: May I just interrupt on that? When the 1911 Act was passed, women did not have the vote and not all men had the vote, so, if you were to take your point of view, you could argue that the Parliament Act would not apply now.

Lord Cormack: No, but the Parliament Act of 1911 was of course superseded by the Parliament Act of 1949, which is the one that we are really dealing with. That is the one that reduced the power of delay to one year, as you well know. There are those who argue, and this is a legal matter, that the Parliament Act could not and should not apply to two wholly different assemblies from those for which it was designed. The very important question that you asked at the beginning is the one that we all, wherever we sit in either House, should be addressing: given that we do not have a separation of powers in this country, how do you maintain a system where the Executive is drawn from the legislature and at the same time adequately hold within the elected Chamber the Government to account? I think that you would only be muddying the waters if you had a second Chamber also elected with an attempt to curb its powers in the way that this Bill suggests. That is an issue that you and your colleagues on the Committee will obviously be wrestling with as you come to your conclusions.

Paul Murphy: Incidentally, when the Chamber is as it is, although we both agree and the campaign agrees that it should be changed, agreements, conventions and even laws certainly would be followed, but the whole situation changes when people are elected to it. You can have all the agreements and conventions in the world, but realpolitik takes over.

Q611 Bishop of Leicester: We can deal with this very briefly. I wonder whether I could invite you, with your combined 65 years in the House of Commons, to speculate as to whether there might be a comprehension deficit among some MPs about the functioning of the House of Lords and, if so, whether that matters. Also, what could be done about it?

Lord Cormack: That is an extremely good and pertinent question. I am very conscious of the fact that, although I had been a regular visitor to the House of Lords and had many friends in the House, and I knew it pretty well, I have inevitably got to know it a great deal better over this last year or more that I have been here. I have been become increasingly conscious when I talk to friends in the House of Commons—not just those who have been recently elected—that there is not enough interchange between the two Houses. There is not a sufficient

appreciation by each of the other. That is why I have always been an advocate of Joint Committees. I sat on one or two myself during my time in the House of Commons and I am glad that this is a Joint Committee looking at these extremely important issues. We ought to find more ways of working together as parliamentarians at the two ends of the Corridor. There is indeed a lack of appreciation and understanding, although that is not exclusively the preserve of one House or the other. I would like to see much more interchange.

Paul Murphy: I agree entirely with that. I endorse the point that Lord Cormack made about Joint Committees. I sit on one or two and I think that they perform a remarkably good function. I also think that there is a role for Ministers in the Government, too, in dealing with the House of Lords in an improved way. I certainly made it my business when I was a Cabinet Minister to ensure that I talked with many Members of the House of Lords who had an interest in the subject for which I had responsibility. I am not quite convinced that that is done enough. The more interchange there is either between Ministers and Lords or between MPs and Lords, the better.

The Chairman: Thank you very much indeed. I thank you both for coming. It has been a helpful and revealing session and we are grateful to you. Thank you.

Lord Cormack: Thank you very much indeed.

Rt Hon Baroness Hayman (QQ 612–620)

Q612 The Chairman: Thank you very much for coming, Lady Hayman. I am sorry that we are a bit delayed, but you have been listening to the proceedings so you know why. I hope that you will accept my apologies for keeping you waiting. Would you like to make a brief statement before we start the questions? Indeed, perhaps it would be a good idea if you did.

Baroness Hayman: Thank you, Lord Chairman, and I thank the Committee for allowing me to give evidence and for being understanding about the fact that I did not feel able to submit written evidence on the timetable set by the Joint Committee, since I had a period of self-imposed purdah on talking about House business after leaving my position as Lord Speaker. I feel that the new year has empowered me to speak more frankly and I am grateful for the opportunity to give evidence today.

Could I start with some fundamentals about my own views? I believe that the House of Lords does an important job as a revising Chamber well, but that it could do the job better and needs to change. I believe that the period since 1999 has seen some stalling in change, partly because of the difficulty of resolving the sorts of issues that have just been discussed around election. I also believe that there are ways in which we could go forward. Picking up on one of the points made earlier, I do not think that the case against election is automatically a case against reform. My experience of living through many attempts at 'reform'—this is not a term of art, but perhaps 'all-singing, all-dancing reform', if I can put it that way—has been that trying to do everything often ends up in doing nothing. So I hope to have the opportunity today to talk about some of the areas where it is possible to build, if not unanimity, then consensus: which in a sense would clear away the undergrowth for resolution of an issue that, as the past hour and a half has clearly demonstrated, is fundamental and deeply divisive: whether election would destabilise the relationship between the two Houses in a way that was detrimental to the performance of Parliament as a whole, and I am committed to improving the performance of Parliament as a whole.

A huge number of the issues that are dealt with in the White Paper and the Bill need speedy action. Let me start with the size of the House. As it is at the moment, the size of the House is unsustainable; that is a quite a neutral word. The White Paper cites, as was mentioned earlier, an average daily attendance of 388. That is not the current figure but one taken for the 2009-10 Session. The current figure, for which I asked the Information Office today, is an average daily attendance of 493. There were six votes in the three months up to 31 December 2011 in which more than 450 people voted, the highest total being 592. We are operating with a size of House that does not function properly and which I think is indefensible. We need to do something about the size of the House and I believe that we could get agreement on that.

I believe that it would also be possible to get agreement on the balance between independent Peers and party-political Peers in terms of the proportion of each in the House. It would be possible, although as I look around the table I think not easy, to get agreement on the view that the hereditary principle should not play any part in the future membership. I also believe that it would be possible to agree to end the link between the honours system and membership of the second Chamber. All of this is in the White Paper.

I think that it would be possible to deal with the issue of time limits for appointments—that is, time-limited appointments. It would be possible to deal with the establishment and remit of the statutory Appointments Commission and with provisions for retirement and exclusion. If we did those things and cleared that undergrowth, the issue of whether what you gain in democratic legitimacy from election outweighs what you lose both in terms of experience and expertise as well as the current focusing of democratic accountability in one place—the clarity that we have at the moment, and the complementarity of the two Houses could be considered. We have had a lot of conversations about referendums. That would be an issue which could be put in a referendum. But at the moment there are so many issues that it would be very difficult to focus the public debate on how to go forward.

Lord Hennessy said that it cannot go on like this. My fear is that it <u>can</u> go on like this. My gravest concern, whatever my views on the proposals in the White Paper and the Bill, is that out of this will come not an elected House but a messy debate that ends up with no progress whatever and what I consider to be a House of Lords that is not improving its performance as a parliamentary Chamber, because we are not making any incremental progress. When I look at my own political lifetime, I remember that I went to secondary school at a time when there was not a single woman in the House of Lords. If I look at the transformation during the timeframe of my political lifetime, I can see that there is an enormous opportunity for continuing that evolution. I know that

many people think that it is some sort of strategy to avoid any change to talk about a two-stage approach. I honestly do not believe that that is so, and that it would be easier and quite possible to focus on the question of whether the party-political Peers of the Houses of Lords are elected or appointed on the recommendation of their party leaders as a freestanding issue when you have dealt with all the other things. Earlier someone asked us to say not just what we are against but what we are for, so I hope I have risen to that challenge.

Q613 The Chairman: Thank you very much. Perhaps I may pursue one of your points, which is the size of the House. You are clearly of the view that the House is much too big and I suppose that, if there is going to be a set of new creations, it will obviously be that much bigger. You say that we can deal with that, but how would you actually reduce the size of the House?
Baroness Hayman: We have to do several things. We could start with a moratorium on new Peers. The second thing would be that in the future we would have term appointments. The third is that we have to come to some sort of agreement on the size of House that we want to see and then see what that size would mean for the party groups and the Cross Benches. Those groups would then have to take on the responsibility of reducing their numbers.
The Chairman: I see. For the sake of argument, let us take the figure that has been in the press recently, that of 450. To reduce the House down to 450, you would have to get rid of about 400 Peers. How quickly would you want to see that done?
Baroness Hayman: My preference would be not to do it overnight, but I am not quite on the same timeframe as the White Paper of waiting until 2025. You could do it over five to 10 years.
The Chairman: I am advised that it would need legislation in order to do it.
Baroness Hayman: Yes. My shopping list involves legislation.

Q614 Lord Tyler: I wonder whether you could go a little further in your interesting analysis from your new vantage point of the way in which the House is currently working. We all accept that the active membership is between 400 and 500. That of course means that 200 to 300 do not come regularly, which is quite interesting. Could you comment on the fact that the majority of those who are active—particularly those who do not just vote but are active all day, every day—are, like me, semi-retired politicians? We are a very political House. The idea that you may have gathered over the past couple of hours, that we are somehow totally independent of party and never take any notice of our Whips, might seem a little rose-tinted from your vantage point. Is that a fair comment?
Baroness Hayman: It depends on whether you like politicians or not. Let me just pick up on the point that just under 500 Peers are active. The average daily attendance is 493, but it is not the same people every day. A lot more people than that are active, so the scale of the problem, as the Lord Chairman has pointed out, is substantial.
Lord Tyler is absolutely right to say that there are a lot of party-political Peers who are active. I am a superannuated Commons politician from a very long time ago. It is interesting that the appointments process encourages the appointment not only of people who have lived their lives in party politics but also of those who have party affiliations and commitments but who have not lived their lives in politics. This is the issue of expertise, if not independence. Whether it is PD James or Melvyn Bragg, people come in as political appointees, but their lives and the experiences that they bring to the House are not purely party political. That is one of the subtleties of the House that I believe would change: it has been put to me, what is the difference between the Prime Minister or the party leaders nominating their list and the party apparatus nominating its list? But I believe that the current culture encourages a wider range of people to come in as party-political appointees. We then get to the issue of age and whether being past ambition frees up most people in the House of Lords in terms of independence in their political activities.

Q615 Lord Tyler: Perhaps I can take this one step further. I think that you would also recognise, from your much longer experience in the House than mine, that the occasions when expertise leads a Member who has been party appointed or belongs to a party group to vote against his or her party are relatively limited.
Baroness Hayman: They are limited. I am glad that you asked me that because I want to take up an issue that was raised earlier. It was asserted that when there are government defeats in the House of Lords, it is not because of

expertise but because of the numbers. Over the past five years I made a lot of visits to schools to talk about the House of Lords. The example that I always gave was the proposal to abolish the post of Chief Inspector of Prisons. The reason why it was defeated in the Lords and why the Commons did not attempt to resurrect it was because it was Lord Ramsbotham, an ex-Chief Inspector of Prisons, who led a revolt of people who had worked in the criminal justice system. I believe that it was that which made the Government change their mind. In many cases I think that it is more about influence than assertiveness.

Yes, people obey their Whips. However, I am tempted to say that I led one rebellion in the whole of my political life. It was on the issue of control orders and a sunset clause for them. The Parliament Act would not have done a lot of good with that because of the time lag. The sunset clause would have applied after a year. We won with an overwhelming majority against some of the—I will not say "blandishments"—threats of my own Whips at the time. It went to the Commons and came back, and we won again. However, I stepped back the second time. The role of the House of Lords is to ask the House of Commons to think again. We asked once, and we asked twice. I then said, "That is it. I am done here". I have to say to the Committee that if I had had any sort of electoral mandate in that situation, I would not have stepped back. So I think that the assertion in Clause 2 of the Bill is nonsense. You can then have an argument about whether you want that to happen, and the benefits of it, but to pretend that it would not happen is, I think, a nonsense.

Q616 Laura Sandys: You are extremely experienced in the political system and how the House of Lords works. I welcome the points that you have made about reform because I am sure we all agree that both Houses should look at a lot of things in terms of reform in order to be more effective. However, what is interesting is the diffidence of those in the House of Lords about being more assertive and exercising greater power. As we have heard from people who have presented their views to us, the House of Lords probably has more extensive powers than any other second Chamber, but in some ways it self-restricts. It appears that you think that that is good, which I find fascinating. My position is that Parliament should be more assertive. We need not necessarily just greater capacity against the Executive, which is the constant issue, but much greater assertiveness and capacity against pressure groups and people running campaigns that we do not have the capacity to counter. On the basis of being more assertive and taking the full powers that are offered to the second Chamber, are you inhibited by the lack of democracy and the lack of election? Because you are not elected, but regulate and self-restrict, do we have a weaker second Chamber?

Baroness Hayman: Self-evidently, we have. We have reached an accommodation between the two Chambers that they should not be rivals; they should be complementary. I absolutely did not have to stop voting against the Government the third time around, but I did so because I respect the sovereignty of the lower House. I am not sure that I see Parliament coming together in that rose-coloured way: becoming stronger for having two elected Chambers—elected on different mandates and with different roles. I fear the problem, which has been discussed already, of clashes between the two Houses. I also fear a blurring of democratic accountability. At the moment, when a government proposal is either overturned or goes through, the electorate can make their judgment in a general election for the lower House. That is where the democratic accountability and power flow. Who do you vote against if it was the House of Lords that blocked a piece of legislation rather than the House of Commons? We have clarity about where democratic accountability lies. I recognise that people take this in different ways. I want to see a more influential House of Lords because it is respected and because that is more justifiable than it is at the moment, but I do not want to see a more powerful House as against the House of Commons.

Q617 Laura Sandys: Perhaps I may pick up on two small things. Each Parliament has its own nature and characteristics. This House of Commons has been much more "rebellious" than any other. Do you not feel that there is a change in the dynamic which also requires a change in the House of Lords? Parliament is possibly evolving into something more assertive, and that offers the House of Lords an opportunity to change. Again, however, is it not inhibited from doing so by its lack of a democratic mandate? May I quickly add one other thing? Among all the other terminology that we need to look at, I am interested in the term "lower House", which is interesting given that the Commons is meant to have primacy. When you are communicating externally, I think that that is a problem. There is also an issue when it is said that there is only expertise in the House of Lords, but we have a lot of doctors, medical professionals and people in the judiciary, including lawyers. We are creating a differentiation that is sometimes not totally fair on the House of Commons.

Baroness Hayman: No, and I would not like to undermine the expertise and experience or, indeed, the value of the House of Commons. What I felt when I was a Member of the House of Commons was the extraordinary thing that, as a friend of mine used to put it, you have been anointed by the popular vote. That is very, very special. It trumps expertise or whether you are a doctor, a scientist or anything else. You have the enormous privilege and responsibility of representing your constituents. That is a unique position.

Q618 John Thurso: I say "Hear, hear" to that. Lady Hayman, in my judgment you have set out brilliantly why the current House of Lords is simply insupportable and I thank you for that. You and I will disagree about election, so I will park that. What you have done is to set out an alternative, which is for an appointed House, with our looking at the numbers, terms of 15 years and so on—all the issues on which we may be able to reach consensus. If we are able to come to a consensus on those things and then the only question left is whether Members should be elected or appointed, and if those who believe from the bottom of their hearts, as I do, that election is the preferable route but they are prepared to compromise and go with appointment for the time being, why can we not move to that within 12 months, as we did with the hereditaries? The 800 of us who were surplus to requirements took our P45s with a hop and skip and left.
Lord Rooker: A hop and a skip?
John Thurso: Actually, I recall that we tottered off with a glass of bubbly wine and a canapé. Why can we not just get on with it? If we have 500 or 600 people who are absolutely brilliant, as has been the evidence to date, and we decide that 450 is the right number, why do we not just make the changes in 12 months and have done with it?
Baroness Hayman: My recall of the hop and the skip is slightly different from yours, but let us not quarrel about that. I expect that the answer is that I have become rather sentimental. I can see the argument for moving more swiftly on reducing the numbers than I have suggested. It could be done, and I think that we have to make progress on it. I hope that I have not suggested that the House of Lords is "insupportable" at the moment, which was the word that you used. I said that it is unsustainable. The pressure is becoming overwhelming. As a parliamentarian, I find it offensive that there is seating in the Chamber from which you cannot speak or make an intervention. I do not think that that is right. There are a lot of things that we need to make progress on.
The House is still doing a respectable job within its current remit. I spent five years talking about second Chambers and meeting people from other second Chambers. They are bemused as to how we have got to where we have, but they are very respectful of the work that the House does. Indeed, I think that the issue of the legitimacy of the output of the House is one that we should look at, as well as the legitimacy of how people become Members, which I think could be improved and made more open by a statutory Appointments Commission with its remit being made public, and so forth.

Q619 John Thurso: I agree with you and I would never question the quality of the work of either the House itself or the Members of the House. It has always been my regret that the Commons does not actually listen very often, which is the real problem. What I am driving at here is a different point. The theory is that, if you elect through tranches, it would act as a form of indoctrination into the better ways of the House of Lords. If, on the other hand, you decide to go for appointment, you will not need that because you already have the people there. Given that, is there any argument other than—not wishing to be too brutal to colleagues—saying, "Gone to appointment, chosen 450, now each party can work it out," as we did with the hereditaries? Is there any argument other than being quite brutal and saying, "We have decided to have 450 Members by appointment. Let's just get it over and done with"? What is to stop that?
Baroness Hayman: There is nothing to stop it. One of the difficulties, I have to say, has been created by the appointment of 110 new Peers in the past 12 months. It means that some people would have a very short period of time in the House. That is why the reality of where we are and the people who are here has to be looked at. It makes it more difficult but not impossible.

Q620 Baroness Symons of Vernham Dean: These are intriguing possibilities. I am very grateful to you for making the clear distinction between influence and assertiveness. You have drawn an important point to our attention. I also agree with the point that being sustainable is different from what is supportable. Let me bring you back to your original ideas about how one might clear away the undergrowth. There may be all sorts of arguments about the exact size of the House, the balance between independent Peers and party-political

appointments and, indeed, the hereditary principle, but most of those—save the difficulties for some of our colleagues—would not cause too much trouble. However, I would like to ask you about retirements. We know that 19 Peers are aged over 90, yet whenever one gets anywhere near a sensible discussion about a suitable retirement age, naked self-interest rears its head as usual. I just wonder whether you have given any thought to what a suitable retirement age for the Lords would be. One of the things that I feel strongly about is the attendance record. We may see different Peers on different days, but it seems to me that if the House sits for only 140 days a year, a minimum requirement should be that Peers attend for 50 per cent of the time. That is not a desperately onerous requirement. I wonder whether you have given any thought to those sorts of limiting factors which would help in winnowing out what I agree is a House of Lords that at the moment is just too big and rather unwieldy.

Baroness Hayman: I have thought a lot about it and have had some difficulty in coming to very clear conclusions. I was taught as a student that hard cases make bad law, but when you see the contribution made in the House by a limited number of Peers who are in fact very elderly, it is difficult simply to set an age limit. I think that the same is true in the Commons. I would go for the basic situation of having a term limit of service. One of the issues is about current expertise and that that may not be the case over time. But I believe that there needs to be some sensitivity and flexibility around this issue.

The Chairman: There is a Division in the Commons and I fear that we are about to become inquorate. Thank you very much, Lady Hayman. I am sorry that the meeting has been shortened by a Division.

Campaign for a Democratic Upper House—written evidence

Introduction

1. The draft Bill, and the commitment of the Coalition Government to the principle of democratic reform, are very welcome steps. The statement of the Prime Minister and Deputy Prime Minister, that they are "fully committed" to holding the first elections to the reformed second chamber in 2015, is also welcome.

2. Democratic reform of the second chamber is central to improving the legitimacy and effectiveness of Parliament as a whole; which in turn has a vital contribution to make in improving the quality of government. Giving greater authority and legitimacy to Parliament as a whole could also play an important part in redressing public disengagement from politics.

3. The draft Bill builds on the significant work which culminated in the White Paper, *An Elected Second Chamber: Further Reform of the House of Lords*, CM 7438, July 2008 (the "2008 White Paper").

Summary of main points

4. This response covers most of the proposals, but concentrates on the following main points:

a) the role and functions of the new second chamber make clear that, while important, its status would remain secondary to that of the House of Commons;

b) the issues of democratic principle involved are fundamental, but also relate to how effectively the new chamber would carry out its role and functions;

c) in order to ensure the primacy of the Commons, the use of a longstanding form of Resolution agreed between the two Houses, based largely on the existing rules and conventions, and possibly augmented by statute, can produce a ***permanent settlement between the two Houses***; whilst allowing for agreed changes via a process of review. These proposals are set out in paragraphs 55-64;

d) ultimately, we have a choice as to the constitutional arrangements we make for the UK.

Role and functions of the second chamber

5. The **role** of the second chamber should be:

a) forming a revising chamber with the power to ask the Commons/Government to think again;

b) providing a forum in which the nations and regions of the UK are represented;

c) scrutinising Government, both as to detail and in relation to larger-scale issues;

d) inquiring into wider issues of national concern, which transcend party debate or raise issues outside politics;

e) acting as a constitutional "longstop" for the country.

6. Only the role of providing a forum in which the nations and regions are represented falls outside the role of the present House.

7. Expressing the role of the House, as an agreed part of a reform settlement, would form an important starting point for maintaining the primacy of the Commons.

8. The **functions** would follow from the role, and similarly form an important foundation for the relationship of the two Houses, as follows:

a) Acting as a revising chamber for legislation: this is the normal principal function of a second chamber in a bicameral system. It provides a process for the detailed scrutiny of amendments, and testing of the policy behind a Bill; and extends to asking the Government to think again by means of an amendment passed against it. This is conducted in a chamber where the position of the Government of the day is not in issue, and accordingly the political atmosphere is less intense. In addition, the present House considers and approves thousands of amendments made by Government to its own Bills each year; enabling officials to rethink the provision, and saving the time of the Commons in doing so;

b) Scrutinising or approving secondary legislation: the function of the House is to scrutinise secondary legislation, where Parliamentary approval or acquiescence is required, on the same basis as the Commons (ie acceptance or rejection, with no power to amend). The lack of a power to amend an SI is a significant constraint on the scrutiny conducted by either House. Suggestions are made below to amend the powers of the second chamber in this area;

c) Scrutinising the actions, policies or decisions of Government (or "holding the Government to account"): by oral and written Questions, or debates to which Lords Ministers or Whips respond; or statements delivered by those peers;

d) Undertaking inquiries and investigations: it is intrinsic to the nature of a second chamber on which the Government is not reliant, that inquiry and debate may more easily be concerned with larger questions which transcend government or party debate. Conversely they may also be concerned with detailed or non-political issues which would not warrant attention in the primary political forum of the country. The present House undertakes much of the Parliamentary scrutiny of the European Community, as well as much of the scrutiny of delegated legislation; notably in responding to points raised by the Merits Committee. More widely, its scientific and *ad hoc* select committee inquiries range across and beyond Departmental boundaries; in deliberate contrast to the Departmental focus of the Commons;

e) Acting as a constitutional longstop: notwithstanding the introduction of fixed five-year Parliaments,[64] the House of Lords retains under the Parliament Acts its power of absolute veto on a Bill seeking to extend the life of a Parliament beyond five years. [65] More generally, the House is widely recognised as having a legitimate interest in, and role in safeguarding, the constitutional arrangements of the country.

9. In terms of the primacy of the Commons, it is significant that the above list of functions does not include any of the following:

a) determining (or having any role in determining) the Government of the day;

b) providing the leadership of the Government of the day, or of the Opposition parties;

c) controlling (or having any role in allocating) public income or expenditure;

d) determining the final content of the Government's primary legislation, where it has been supported by the House of Commons;

e) ultimately approving the secondary legislation proposed by the Government; or

f) scrutinising public appointments.

10. The above list, of functions of the Commons in which the Lords have no effective role, underlines the secondary nature of the functions of the second chamber.

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64 The Septennial Act 1715 was repealed by section 6(3) of, and paragraph 2 of the Schedule to, the Fixed-term Parliaments Act 2011.

65 Section 2(1), Parliament Act 1911

The democratic principle in the second chamber

11. There are four principal arguments of democratic principle for a second chamber which is largely or wholly elected.

(1) Legislators, and those scrutinising Government, should be elected

12. It is a fundamental principle in a democracy that those who participate in making the laws should be chosen by those who are governed; and that they should also be accountable to them. The same applies to those invested with the right to scrutinise Government, or to examine national issues, on our behalf. Ultimately, those who have a role as constitutional guardians should also be accountable to the electorate. As a nation, we have exported the democratic principle around the world, but until now tolerated its absence from part of the centre of our own political system. The onus is on those who argue that democracy cannot be introduced into the composition of the Lords to make their case, which they have not so far done.

13. The problem often claimed to arise with a democratic House—that it could challenge the Commons, or disrupt the balance between the two chambers—need not be the case. In all likelihood, the present rules and conventions, carried into the new system and adapted as necessary, would be sufficient to prevent a clash. A new settlement between Lords and Commons, however, agreed as part of the reform "package" can put the matter beyond doubt. This would strengthen both Houses of Parliament, by improving the quality, profile and confidence of their revision and scrutiny. It could also benefit the conduct of Government business, by enhancing the legitimacy of its measures once they have been approved.

14. With increasing recognition of the need to secure diversity in representation in the House of Commons, there would properly be an expectation that the make-up of an elected second chamber would come over time to be properly representative of the UK population as a whole.

(2) The second chamber should have the legitimacy to perform its functions effectively

15. The legitimacy arising from election is central to the proper fulfilment of democratic decision-making and scrutiny. At present we have a system in which the views and decisions of one House of Parliament lack the legitimacy to give them weight within Government. In the 1980s and 1990s, the House often supported amendments to controversial bills on local government. Its lack of democratic or political legitimacy, however, meant that it could usually be ignored, unless some other political factor (such as Parliamentary time, or adverse publicity for the Government) gave its views weight within the Executive. The inherent merits of the argument, or the expertise of its members deployed in its favour, were not enough to make a significant difference.

16. The House has become more assertive since the departure of the majority of hereditary peers in 1999 (continuing a trend since the 1970s), but there is little to suggest that the position is greatly different. The largely-appointed chamber claims to be a House of expertise, yet this has little place in the argument when it seeks to persuade the Government of the day to accept its amendments.

17. The lack of legitimacy of the Lords weakens the House of Commons too, by denying to Parliament as a whole the standing of a democratic scrutiny body. Conversely, if Government were scrutinised by two democratic bodies, and its legislation revised and passed by two such bodies rather than one, its measures would gain in democratic legitimacy. The quality of legislation would also improve, from having been tested in a more accountable House to whose work greater public attention was paid.

(3) The second chamber should be a forum for representation of the nations and regions within the UK Parliament

18. On either an STV or an open regional list system, the elected membership of the second chamber would be drawn from either large constituencies with a clear identity in the region or nation concerned, or (in the case of Scotland, Wales and Northern Ireland) from those nations themselves. A role in representing the nations and regions within a UK framework could be significant, at a time when, for example, the position of Scotland within the UK is in issue; and there is also some pressure for a greater voice for non-metropolitan England at national level. An elected second chamber could provide a forum for those interests, in a different form than through inter-governmental

processes. In the case of English regions or conurbations, the second chamber could provide a more consensual basis for representation than the abandoned proposals for regional government; with a focus on the impact of national policies and programmes within regions.

19. In devolved areas, both the role and the basis of representation would differ from that of MPs from those countries, the basis of whose legitimacy, as in the case of English MPs, is the direct representation of their constituents. They also have direct access to senior UK Ministers. This role is clearly different from a more general representative role in relation to a region or nation. The "West Lothian question" is due to be examined by a Commission being established by the Government, and expected to report after a relatively short period. The creation of a democratic second chamber will not in itself alter the issues raised by the present asymmetrical structure of devolution, but it could provide a new forum for the representation of views, and examination of common issues; and provide some "constitutional glue" within a UK framework.

(4) A democratic second chamber would enable Parliament to take a more integrated view of itself

20. Many members of the two Houses at present barely know each other. The respective cultures and procedures of each are little known to the other; and assumed to be very different. The introduction of a democratic House could transform the position, since the underlying basis of difference would largely fall away. This could only be welcome in terms of joint working and common understanding.

21. More important, it would assist Parliament to take a more integrated view of itself. On issues such as the correct pattern of scrutiny, the role of Parliamentary Questions, the right balance between Government and backbench business, or the desirable scope of Parliamentary privilege, a more concerted approach between the two Houses could only enable them to take a more rounded and integrated view of their respective functions. Put simply, the "divide and rule" approach to the two Houses, whereby Government plays off one against the other, would be harder to maintain. Government itself would have to develop a more unified relationship with Parliament, which would have the benefit that its positions were better understood.

Why appointment is unsatisfactory

22. Appointment obviously suffers from the obverse of the above features. An appointed House has no democratic legitimacy or accountability. It lacks the legitimacy to make its views count with Government, and thus to fulfil its key functions; largely because it does not *represent* anyone or anything. It is obviously not in a position to provide a representative forum for the nations and regions. It has little prospect, furthermore, of developing integrated relations with the Commons, because of their different natures.

23. It suffers from one further basic disadvantage. Appointment is no substitute for election. The only way in which a person is truly representative of another is if they have been elected by them, for their views as much as for any experience or status they may bring to the role. Although their views may coincide on particular issues, a person who is poor, from an ethnic minority or unemployed will not necessarily share the views of another person in the same position. A person does not represent another simply by sharing social characteristics with them. When a person has been elected, moreover, the ordinary citizen has a claim on their attention, whatever differences they may have of political view or social background. The person who has been elected has placed themselves before the electorate and received their endorsement in preference to other candidates. It is the legitimacy and accountability which the process of election confers, not their social characteristics or identity, which make the elected person properly representative of the community he or she serves.

What does the primacy of the Commons rest on?

Present basis of primacy

24. Restrictions on the powers of the Lords rest on a mixture of statute, convention, and the Standing Orders of the two Houses.

25. It is often assumed that the Commons' superiority rests on the fact that they are popularly elected. In terms of day to day politics, this now represents the obvious difference between the two Houses; but the developing strength of the Commons long preceded the mass franchise, and the claim of the Commons to the primary role over the granting of money dated from the late 17th century.

26. The present relationship between the two Houses is based on a combination of:

i) Important functions which only the House of Commons exercises;

ii) Restrictions on the financial powers of the Lords;

iii) Restrictions on the powers of the Lords over revising primary legislation; and

iv) The powers of the Lords over approval of statutory instruments.

i) Functions which only the Commons exercise

Formation and maintenance of a Government

27. The Government of the day is formed by the Leader of the party (or Leaders of the parties) who can, at the request of the Monarch, command the confidence of a majority of the House of Commons. The House of Lords has no role in selecting or maintaining the political party or parties in power; nor in removing them. No division, resolution, or debate within the House of Lords affects the Government's right to remain in power so long as it retains a majority in the Commons. This remains a convention, rather than a matter of statute. As suggested below, this convention could be agreed between the two Houses as part of the reform package.

Government sits mainly in the Commons

28. The Government sits largely in the House of Commons, apart from a small number of Ministers and Whips in the Lords. While Lords Ministers perform important roles in initiating and explaining Government business there, and responding to scrutiny, their legitimacy in Government (as opposed to their personal reputations in the House) do not depend on decisions of that House.

29. The Prime Minister of the day, and most senior Ministers, sit in the House of Commons. The last Prime Minister, the Marquess of Salisbury, to sit in the Lords left office in 1902. Apart from the possibility that Viscount Halifax would be appointed in 1940, the only recent example was the appointment of the Earl of Home, who relinquished his title and secured a seat in the Commons in 1963 in order to become Prime Minister. It appears inconceivable that a member of the second chamber could now serve as Prime Minister; and this could be made explicit.

30. In terms of senior Ministers, with the removal of the Lord Chancellor from the Lords, only the Leader of the House is required to be a member of the Lords. The present Cabinet includes only the Leader of the House, and the Minister without Portfolio (a Minister of State), as members of the Lords, out of 23 Cabinet Ministers.[66] In the present Government, there are 3 members of the House who are Ministers of State (out of 32, including Law Officers); 9 junior Ministers (out of 37); and 10 Whips (out of 27, apart from the Chief Whip). In all, there are 24 peers in Government posts, out of a total of 119; or 20 per cent of the total number of Ministers and Whips in the Government. No more than 95 holders of Ministerial offices may sit and vote in the House of Commons.[67] There is also a statutory limit on the number of paid Ministers who can be appointed.[68] It could be agreed that no more than (say) 20 per cent of Government Ministers or Whips could sit in the second chamber.

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66 *Ministers in the House of Lords*, House of Commons Library, August 2010

67 Section 2, House of Commons Disqualification Act 1975

68 Schedule 1, Part V, Ministerial and other Salaries Act 1975

31. One possibility for expressing these restrictions could be to widen the Long Title of the draft Bill, in order to include new provisions:

a) a requirement that a Prime Minister must on appointment (or possibly from shortly afterwards) be a member of the House of Commons;

b) provision that no more than 20 per cent of Ministers (or paid Ministers) may be members of the second chamber;

c) a limitation on the numbers of members of the Cabinet, or Ministers of State, who could be members of the second chamber (effectively concentrating appointments in the second chamber on the lower rungs of Government).

32. Such provisions could be simply expressed, with minimal scope for judicial interpretation. Alternatively, all of the above could be set out in agreed Resolutions between the two Houses (see below).

ii) Restrictions on financial powers

33. The Commons' control over finance was historically the most important. The point is often now obscured by the assumption that the main business of Government is its legislative programme. In fact, few of the day to day activities of Government rely on the programme. The main feature of the relationship between the two Houses, the settlement as to financial matters, is now taken for granted. The need in terms of reform is to confirm the same settlement, and make it explicit where necessary.

Money Bills under the Parliament Acts

34. Under section 1 of the 1911 Act, a Money Bill may be passed by the Commons without the assent of the Lords, if certain procedural conditions are met. A Money Bill is a bill which is certified by the Commons Speaker to contain only provisions dealing with taxation, debt payments, supply, the allocation of public income to spending, loans, or subordinate matters (section 1(2), 1911 Act). The Lord may discuss such Bills, or even in theory amend them, but no account needs to be taken by the Government of its amendments. These provisions are now wholly uncontroversial.

Bills of Aids and Supplies

35. The Lords' role in relation to financial matters has long been restricted to giving assent only. Peers can still in theory reject a Bill of Aids and Supplies (ie the modern Finance Bill or Budget; or the Consolidated Funds Bills, giving approval to public expenditure). They are debarred from amending them, by the longstanding claim of the Commons to financial privilege. In practice, the Lords invariably negative the Committee Stage of a Finance Bill or a Consolidated Fund Bill, so that the issue of amendments to those Bills does not arise.

Amendments infringing financial privilege

36. Where amendments have been passed by the Lords which the Commons consider infringe their financial privilege, by convention the Lords does not send back amendments in lieu which clearly invite the same response. The Joint Committee on Conventions[69] in 2006 (the "2006 report") recorded that some instances have taken place against the Clerks' advice. The Report confirmed the convention[70], and that this should not occur. This could be reaffirmed in agreed Resolutions of the two Houses.

Agreed resolutions on financial matters

37. A starting point for a reformed House should be a clear understanding from the outset that it has no role in financial matters, other than possibly in offering advice or scrutiny (eg as to technical aspects of the Budget, by the

69 Joint Committee on Conventions of the UK Parliament, session 2005-6.

70 2006 Report, paragraph 252

Economic Affairs Finance Bill sub-committee). To supplement the 1911 Act, the convention as to Finance Bills and Consolidated Funds Bills should be covered by agreed Resolutions, so that they cannot be rejected, and the resolutions should also cover amendments in lieu which infringe financial privilege.

(iii) Restrictions on powers concerning primary legislation

Public Bills under the Parliament Acts 1911 and 1949

38. As the document accompanying the draft Bill states, the Parliament Acts provide the "basic underpinning" of the relationship. Section 2 of the 1911 Act provides for the Commons to pass a Public Bill with which the Lords disagree, other than a Money Bill or a bill to extend the life of a Parliament beyond five years, where the Commons have passed it again after a minimum of a year from its original Second Reading (and provided the second occasion is in a new session). The Speaker of the Commons is required to endorse the Bill with a signed certificate that the provisions of section 2 have been complied with. The Acts have not needed to be used frequently, and they express a consensus that the second chamber should have a delaying power only in an extreme case of disagreement, which is clearly appropriate in a new settlement.

39. A simpler 12-month delaying period would be better understood by the electorate. The effect of the Coalition Government prolonging the present session until Spring 2012 would have had the effect, should the Parliament Acts have needed to be used, of extending the period of delay until up to nearly two years. Setting the period of delay at approximately twelve months, where the session lasts more than one year, may be worth considering if the innovation of a two-year first session is to be repeated in future Parliaments.

Salisbury-Addison Convention

40. The Joint Committee on Conventions defined the Salisbury-Addison convention in its modern form, as follows:[71]

a) a manifesto bill is accorded a Second Reading in the Lords;

b) a manifesto bill is not subject to "wrecking amendments" which change the Government's manifesto intention as proposed in the bill; and

c) a manifesto bill is passed [ie given a Third Reading] and sent (or returned) to the Commons, so that they have the opportunity, in reasonable time, to consider the bill or any amendments proposed by the Lords.

41. The committee also identified a recent "practice" that the Lords will usually give a Second Reading to any Government bill, whilst pointing to possible exceptions.

42. The Proposals document accompanying the Bill does not refer to the convention. Instead, it states that there is a convention that the Lords "should pass the legislative programme of the Government which commands the confidence of the House of Commons"; and, also that "whether or not a Bill has been included in a Manifesto, the House of Lords should think very carefully about rejecting a Bill which the Commons has approved" (Proposals, paragraph 8). As a description, this goes too far in extending what is described as a convention (as opposed to a "practice") to all bills in a Government's programme; and without discussing exceptions. It also appears to be too limited, however, in not including the exclusion of "wrecking amendments" within the convention.

43. The historical circumstances which gave rise to the original compact have changed. There are also obvious problems with the scope of the "mandate" theory, as the 2006 Report discussed. As a working convention, however, it expresses in its modern form the principle that the main features of measures to which a Government has committed itself before the electorate, should be passed by the second chamber; without preventing the second chamber from suggesting amendments which do not change the policy intention, and provided these are proposed in adequate time for the Commons to consider them.

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71 2006 Report, paragraphs 99-100.

44. In short, the modern convention recognises the legitimacy attaching to the programme of a Government supported by the Commons, provided the broad outline of an individual measure has been put before the electorate. This is an acceptable restriction on the powers of the second chamber, and should remain a significant component of the relationship between the two Houses. It is not acceptable, however, to suggest that either the present or a reformed House should pass *all* bills introduced by a Government, irrespective of their lack of a mandate. In the case of a bill introduced without warning, or without any form of mandate, it would be important that the second chamber had a full opportunity to consider it, while having regard to the general direction of the convention. There can be no objection to expecting the House to "think very carefully" before rejecting any government measure passed by the Commons, but it would not be right to prevent it from doing so. It is suggested that a formulation along these lines could adequately be agreed, and be supported by resolutions between the two Houses.

Reasonable time

45. The 2006 Report recorded general agreement that the Lords should consider Government business in reasonable time, and that there was such a convention. There was no definition of "reasonable time", and no problem would be solved by seeking to define it; nor by imposing time limits on the Lords' consideration of bills. At the same time, the report pointed to an "inexorable rise" in the time spent on bills since the early 1980s.[72]

46. It seems clear that, if a reformed House were to make the passage of Government business impracticable through excessive consideration, it would be necessary to introduce an element of timetabling, in the same way as in the Commons. This possibility could be recognised in the reform "package", and provision made for the Government of the day to introduce such measures if defined criteria were met (eg a measurable increase in time taken for consideration in second chamber, without any exceptional circumstances). This step should perhaps follow, but not depend upon the outcome of, a report by a Joint Committee. The Lords have themselves considered timetabling; but whether or not self-regulation in its present form can be maintained, the prospect of timetabling at the behest of Government could be expected to encourage restraint. The convention, and this reserve arrangement, could likewise be set out in an agreement on the overall reform.

Exchange of Amendments

47. This area has seen remarkably few proposals for change, whether in the 2006 report, the 2008 White Paper or the current Proposals. This might be taken to suggest that the present arrangements are working effectively. There appears likely to be an undercurrent of concern, however, over whether a reformed House could seek repeatedly to insist on its amendments, and oblige the Government to concede important elements of its programme at the end of a session.

48. It is necessary for all two-chamber legislatures to develop mechanisms to resolve conflict over legislation. There is no fundamental reason why the UK Parliament should be unable to do the same. The present rules ultimately rest, in the case of Commons bills, on the Parliament Acts. If both Houses maintain identical positions twice each, a bill is treated as lost. To avoid this risk, each House has to amend its position at the second round of voting on a particular proposal. If this is done, it is possible for a number of rounds to take place.

49. A statement within a reform package, agreed by both Houses, could make clear the convention that the bill must pass within a reasonable time, and set down a desirable timetable or framework of steps. Such a statement could also emphasise the desirability of seeking agreement, and of avoiding the practice of "packaging" of amendments from the Commons.

50. Alternatively, the Houses could agree to revive the former practice of calling a **conciliation conference or joint committee** to seek agreement. In the early nineteenth century, where the House disagreed over amendments, a conference would take place; and if no agreement was forthcoming, the Bill would be lost, without a further opportunity for amendment on either side.[73] Such a process seems a more mature framework for discussion of

72 2006 Report, paragraph 150

73 A description is given in "Random Recollections of the House of Lords, from the year 1830 to 1836", by The Author of "Random Recollections of the House of Commons", (James Grant), Smith, Elder & Co., 1836, pages 26-7.

differences in a legislature, than the present round of hurried late-night divisions; and with a greater bias to compromise. A conciliation committee could perhaps be called after three rounds of voting on an issue. It could have equal numbers of representatives from each House, but be chaired by an MP. Departmental civil servants (or the Minister) or outside groups could possibly be invited to give brief evidence and answer questions. This might be extended to the frontbench Opposition spokesman, or to other leading Parliamentarians involved.

51. More radically, a **limit** could be imposed on the number of occasions on which the second chamber could disagree with the Commons on a particular subject, after which the bill would be deemed to have passed (eg three or four rounds of voting). It would be necessary to allow sufficiently long intervals between stages to enable the issues to be adequately examined, and understood by the public. The Parliament Acts could be amended to produce a similar outcome. This proposal may be thought to tip the balance too much in favour of the Government of the day. A preferable alternative would be to combine the two approaches (ie strengthen the convention, and create a conciliation committee; but with provision for the introduction of reserve powers to limit the number of exchanges). This could be done either in the reform legislation, or via an agreed statement of conventions. In neither case, however, should it be introduced unless recommended by a Parliamentary committee appointed to review the operation of the relationship between the two chambers, as proposed below (see paragraphs 59-60).

Conclusion on primary legislation

52. With a combination of legislation and agreed conventions covering the following areas:

Commons' power to override the Lords over public bills

Salisbury-Addison convention in modern form

Reasonable time convention

Conciliation process, or limit on stages of disagreement

the balance between the two Houses in terms of primary legislation should be capable of definition as part of the reform settlement.

(iv) Powers concerning secondary legislation

53. The history of the House's occasional rejection of statutory instruments is well-documented. The 2006 Report concluded that the present convention was not that no statutory instrument should be rejected by the House; but that the House should not regularly reject them. In exceptional circumstances (of which it gave examples), it may be appropriate for it to do so.[74]

54. The committee considered that the Lords' powers in relation to statutory instruments were "too drastic"[75], and that this would not be the case if Parliament had a power to amend them. A power to amend would be highly desirable, and would improve the precision of scrutiny of statutory instruments. In its absence, however, a short delaying power (eg one month), after which the Government could re-present the same instrument if it considered this appropriate, would give the second chamber the power to cause Government to think again about statutory instruments, as well as primary legislation. If such a power were created, however, it should accompanied by a new agreed convention that, if re-presented in the same form, the instrument would be passed on the second occasion.

New mechanisms for ensuring Commons primacy

55. The document accompanying the draft Bill does not (paragraphs 7-11), set out the full extent of the present restrictions on the House of Lords. It may be inevitable that a democratic second chamber would wish to use its

74 2006 Report, paragraph 227.

75 2006 Report, paragraph 233

powers more fully than the present House has done. It is also the case, however, that including in the reform "package": (a) a clear statement of the roles and functions of the two Houses, and of the balance desired; (b) possibly some further legislation; but, above all, (c) a clear expression by both Houses in agreed Resolutions as to the conventions governing how that balance is to be maintained in practice, would provide a firm and permanent platform on which to operate the new relationship.

56. In 1704 both Houses passed agreed resolutions limiting the scope of Parliamentary privilege, in recognition that privilege, while necessary to the functioning of Parliament, should not be misused. The resolutions agreed that: "neither House of Parliament hath any power, by any vote or declaration, to create to themselves any new privilege that is not warranted by the known laws or customs of Parliament". This agreed position has been observed for the last three centuries; and neither House could now abrogate it without the agreement of the other.

57. It is suggested that a similar model, of agreed identical resolutions passed by each House, should be employed in relation to the reformed second chamber. The resolutions themselves would be short, referring to an agreed statement as to the respective status, roles, functions, financial powers, and powers over primary and secondary legislation of the two Houses; and to any other relevant aspects of the relationship. The resolutions should also state that no amendment to the resolution of the second chamber could be made without the agreement of the Commons. The resolutions and statement would be promulgated in advance of the implementation of reform as a new settlement between the two Houses. They would be passed by the Commons and the present House of Lords, as part of the process of enacting reform; and its implementation should be made conditional on their passage.

58. The agreed statement would be drawn up by a further joint committee, and cover the matters identified above as to roles, functions and powers, including references to those in statute. (If this proposal were to find favour with this committee, it might wish to produce a draft). In the main, the statement would make express the present conventions, as identified in the 2006 Report, although with the changes outlined above (ie removing the theoretical power to reject a Bill of Aids and Supplies; and, creating a short delaying power for statutory instruments). In relation to the exchange of amendments to bills, the statement could adopt the proposal above for a conciliation committee to meet after three rounds of amendment; with a reserve power to introduce an absolute limit on the number of exchanges before proceeding to Royal Assent, if recommended by a joint committee to review the relationship.

59. The latter committee would play a further important (and continuing) role in the relationship. It should oversee a system of independent monitoring and reporting to both Houses of facts and statistics on the operation of the second chamber (eg as to the number of amendments passed; or any statutory instruments rejected). The material recorded under this process would form the background to the operation of the agreed statement; this background being updated on a continuing basis. At the same time, the committee would have the task both of recording new conventions as they appeared to evolve; and of recommending to both Houses, after hearing evidence, that they agree to the adoption of further new conventions to assist the relationship. Once a new convention had been adopted by common resolutions, a description of it would be added to the statement forming the agreed conventions recognised by the two Houses.

60. The committee should also have the role of recommending whether to introduce reserve powers to limit the number of exchanges of amendments, as outlined in paragraph 51 above.

61. There may be advantage in placing more of the basis for the relationship into statute. Rules such as those suggested for the number of Ministers in the second chamber might most conveniently appear as amendments to the relevant legislation. Amendments could also be incorporated to Clause 2 of the Bill.

62. There could be some symbolic value in amending the Preamble to the 1911 Act, to make an express (but unenforceable) statement of the primacy of the Commons. This would relate to the intention expressed in the Preamble in 1911 to legislate in the future "for limiting and defining the powers of the new [ie popularly elected] Second Chamber".

63. One further proposal would be for both Houses to agree to the development of standing joint committees on cross-cutting topics (eg public health challenges such as levels of obesity; long-term demographic trends; geo-political developments of international significance over the next generation) to promote a more integrated approach across Parliament as a whole, and to promote mutual awareness between the two Houses.

64. It is suggested that mechanisms and agreements along the lines proposed above would enable a permanent settlement to be set down, by means of resolutions giving effect to an agreed statement, and supplemented as appropriate by limited legislation. The operation of the relationship would be continuously monitored, and changes by agreement proposed to both Houses. No change to the resolutions would be possible, because of their terms, other than with the agreement of the Commons.

Factors relevant to primacy which are added by the draft bill

Single non-renewable terms of 15 years

65. The draft Bill proposes that elected members of the second chamber should have a single non-renewable term of office of three Parliaments, or normally 15 years, in order to enhance their independence and reinforce their distinctiveness from the Commons.[76] It is recognised that a cycle of three Parliaments would allow the replacement of members by thirds, and that this would prevent the majority of the House (or half, if elected in two tranches) from having a more recent mandate than MPs after a General Election. It would also make it difficult for one party to have an overall majority.[77]

66. It is, however, a fundamental weakening of accountability to have non-renewable terms. A period of 15 years is also extremely long in terms both of a mandate, and of keeping in touch with the electorate. A preferable alternative would be either to elect by halves for 10 years terms; or, if the retention of thirds is considered necessary for the reasons summarised above, to have 10 year terms under that cycle. Under the latter system, a member would be enabled to seek re-election, but not until the end of the Parliament after that in which he or she left the House (ie normally five years). This would also accord with the period after which it is suggested that a former member of the second chamber would be eligible to seek election as an MP. In effect, a politician seeking to return to Westminster would have a choice of pursuing selection for the first or second chambers (but not both).

67. As an illustration, if Member group A were elected in 2015, they would serve until the expected end of the Parliament in 2025. They would then leave the House for the following Parliament, but could seek re-election for another 10 years at the election due in 2030. In terms of the shape of the House, Member group A would serve from 2015 to 2025. Member group B would be elected in 2020, and serve until 2030, and then retire for 5 years. Member group C would be elected in 2025, and would serve until 2035, when members of group B would be eligible to stand again; and so on. At the election due in 2030, the members of group A could in theory all be selected as candidates, and returned for a second term. In practice, some members of group A might form part of a new group D, who would serve from 2030 to 2040.

68. This system of "staggered thirds, plus a gap", would serve the objectives of a long term (10 years), without making it so long as to render the element of accountability negligible. It would allow re-election; but only after a period away from the House. A need to undertake other activities in that period might be thought to be attractive, in terms of differentiating the memberships of the two Houses; and in encouraging people other than solely career politicians to seek elected membership of the second chamber. The same system of 10-year terms could apply to appointed members.

A 20 per cent appointed element

69. CDUH has no position as between 80 per cent and 100 per cent elected membership, although the majority of its supporters would probably prefer a fully-elected House. My view is that an 80 per cent elected House, with 20 per cent of appointed Independent members, would be the preferable outcome.

70. There are three main advantages from retaining an appointed element. First, it would retain the benefit of expertise on a non-political basis. Second, it would further differentiate the memberships of the two Houses. The presence of appointed members, moreover, would make the House by definition less legitimate in democratic terms

76 Proposals document, paragraph 24

77 Proposals document, paragraph 25

than the Commons; which would assist the perception of the correct balance. Third, the arithmetical effect of the presence of unelected Independent members would be to make it more difficult for one party to command a majority in the House; especially if elections were staggered as proposed.

71. The presence of Independents would also prove a more secure basis for the continued inclusion of Church of England Bishops in the House, in reduced numbers. I am personally supportive of this proposal, and would prefer if other faiths or denominations were prepared also to propose small numbers of nominees to sit as part of the Independent element.

Qualification to value of expertise

72. Specialist independent knowledge, essentially from professional or academic persons, or persons with particular experience of a particular field, is valuable; but it is subject to a significant qualification, which also affects claims made for a wholly appointed House. Few people can claim serious expertise in more than one subject area. If there were, for example, six eminent doctors in the new second chamber, their contributions to debates on Health policy would probably be significant. Their enthusiastic participation in debates on Defence policy, however, might be less well-received. On each topic, there would no more than a small number of members amongst the Independents with relevant expertise. At that level, expertise can have a proper place in enhancing debate; but only if it is clearly seen to be an extra element, characteristic of a minority of the membership.

73. The present largely appointed House claims to be a "forum of expertise". The majority of its members have, however, been appointed for their political allegiance. Whatever skills or experience those members may also have in other fields do not constitute the reason for their appointment.

74. The example of the doctors points, however, to the deep-seated problem that would confront a wholly appointed House which was genuinely composed of experts. The reputation of the House in any given policy area would rest on the judgements of the small number of expert individuals. The House would be a fragmented body, with a patchwork of small groups of members qualified to speak only on their topic, and holding no collective view separate from that of those individuals. In those circumstances, the Government of the day could pursue its political objectives by default.

75. The proposal for a largely elected House, with a minority appointed element, offers the opportunity to maximise the contribution which expertise can make, in a manner which is proportionate to its value. It would also recognise the reality that the business of Government, and political choices, ultimately transcend in most cases the contribution of experts.

Salaries in second chamber

76. It would be logical, as proposed, to pay elected members of the second chamber a lower salary than members of the Commons. The reasons should be stated publicly. While these include the lack of constituency duties, as suggested in the Proposals document, the main reason is the subsidiary status of the second chamber. The same approach should be taken to levels of allowances for staff etc.

Additional factors which could be added in relation to Commons primacy

Job description for members of second chamber; and, statement of its role and status

77. A job description for MPs, although beyond the scope of this committee's inquiry, would probably be popular with the public. A job description for members of the new second chamber could set out its subsidiary status, in terms of its role in revising legislation, scrutiny etc; and make clear that its members have no role in relation to the choice or maintenance of the Government of the day, finance etc. A simple statement of the role of the second chamber, widely publicised to enable the public to understand the new body at the time of elections to it, would assist in achieving the objective of making its subsidiary status into a recognised political fact from the outset.

Name of second chamber

78. The Government proposes to retain the name of the House of Lords, "at least for the purposes of pre-legislative scrutiny", and suggests that discussion of the name could be a "distraction from the more fundamental issues". A change of name could, however, be an opportunity to make clear that a new body has been created, in an evolution from the present House, and to make clear its subsidiary status.

79. The cross-party Committee apparently discussed a number of names, including "Senate"; which was also the proposal in the 2008 White Paper. Although acceptable, it perhaps does not sit wholly naturally as a counterpart with the "House of Commons". Alternatives such as "Second Chamber", or "Upper House", would chime more readily with the title of the Commons. It is well understood that in many systems the Lower House is the more powerful chamber. One possibility would be to introduce gradually the terms "Upper House", and "the House of Commons (the Lower House)".

80. The two main criteria for choice of a name should be that it is readily distinguishable from that of the House of Commons, whilst acknowledging the continuation of that name; and, that it is sufficiently descriptive of the second chamber that it would become recognisable over time without further explanation.

Other issues raised by the draft Bill

Timing of elections

81. The proposal to hold elections to the second chamber on the same date as a General Election is intended to maximise voter turnout, to minimise disruption to the work of the Commons, and to be efficient. The danger is that, if similar patterns of voting produced different outcomes (as could be expected as between a proportional system and first past the post) there could be criticism of the result produced by whichever system was perceived to be less fair. I have been concerned about this issue in the past, and advocated the use of an alternative cycle. In the context of the package of proposals as a whole, however, and in particular the proposal for staggered elections to the second chamber by thirds every five years, the current proposal, whilst not ideal, is acceptable. If, as suggested above in relation to Commons' primacy, the relative status of the two Houses can be made fully understood from the outset, their differing roles could in any event be expected over time to produce patterns of differential voting, from which no comparative conclusions could be drawn.

82. The preferable cycle would, nonetheless, remain in my view that of the five-yearly European Parliament elections, normally held in June; particularly if the voting system for the second chamber were to be open regional lists. The next elections to the Parliament are due in 2014, and thereafter in 2019. The European elections would thus, on the assumption of five year UK Parliaments from 2010, fall early in the fifth year of the UK cycle. Members of the second chamber would serve for the majority of the term of a Government, while the election would doubtless be seen as a forerunner of the General Election due less than one year later. It is objected that the turnout for the European elections is low. There is no reason in my view to assume that the turnout in elections for the second chamber would be poor, given their significance at national level; and if the new House were properly explained and publicised. A higher turnout in those elections could assist the level of participation in the European elections.

Electoral System

83. The voting system for the second chamber must differ from that of the House of Commons, to reflect their different roles. The modelling in the 2008 White Paper showed that both First Past the Post or the Alternative Vote would produce a significant possibility that the Government of the day could, if elections were held on the same day as a General Election, secure a majority in the second chamber. It appears to be common ground that this would be undesirable. Both a list system (with open lists) and the Single Transferable Vote would allow large constituencies and provide for a spread of representation. There appears to be a consensus amongst reform proposals, shared by the cross-party committee, for either STV or open regional lists. The former has been the policy of the Liberal Democrats for the House of Commons, but the latter has not been proposed by any party for the House of Commons. For that reason, but also those given above in relation to the possible role of the House in a regional/national context, I would prefer a list system based on open lists; although either would be suitable.

Size of the House

84. It will be important that the new House has sufficient members to ensure a fair balance of political representation, and to fulfil its functions. The Campaign supported the proposal in the 2008 White Paper for an eventual size of 400-450 members.

Transitional arrangements

85. The Bill proposes the removal of one third of the present House at each election, under procedures determined by the House itself (Option 1). Other options in the Proposals document are for all present members to remain until the end of the Parliament immediately before the third election (Option 2); or, to reduce the House to 300 members at the time of the first election, of whom only 200 would be present Members (Option 3). The hereditary peers would have no separate right to remain for a period, although they could be amongst the transitional members.

86. The 2008 White Paper also proposed an option whereby the hereditary peers would leave when the final tranche of elected members arrived, with life peers remaining for life.

87. A preferable option would in my view be for the hereditary peers to leave when the first tranche of elected members arrives. It would represent a significant moment of change, and enable hereditary peers to leave with dignity, their places having been taken by elected replacements; arguably in accordance with the spirit of the Cranborne/Weatherill deal.

88. In the event that the departure of life peers by thirds was not attractive to them, they should be allowed to remain if they wish, whilst being encouraged to consider resignation. The temporary large size of the House which would result for a period should not be seen as a barrier to reform.

Conclusion

89. We have a choice, as a society, as to what constitutional arrangements we wish to adopt. Once it has been demonstrated that an elected second chamber can work in a complementary relationship to the House of Commons, it is up to us to choose what is wanted, and how what has been chosen can be delivered; and then to pursue it positively.

31st October 2011

Campaign for an Effective Second Chamber—written evidence

The Campaign for an Effective Second Chamber comprises almost two-hundred MPs and peers, drawn from, but not confined to, the three main parties as well as the cross-benches in the House of Lords. The group exists to make the case for reform of the House of Lords but is opposed to the Government's proposals for an elected second chamber.

The draft House of Lords Reform Bill is, in our view, fundamentally flawed. It is based on flawed premises. We address these briefly:

1. Election of the second chamber is the 'democratic' option. This premise is taken as given—so much so it comes close to being unstated—but is not self evident. Democracy lies in the elected House of Commons and the government it sustains. It is this power of the Commons that ensures we are governed democratically and to create an elected Lords merely confuses the present clear line of accountability to the people.

2. That it is 'the settled view' of the House of Commons that the second chamber should be elected. It is not clear how Members of the House of Commons in the last Parliament voted on one particular day, and one particular day only (7 March 2007), can be taken as a 'settled view'. This is a novel constitutional doctrine, with rather profound implications for the present Government relative to votes in previous Parliaments. It is also not clear why the vote of MPs on the subject in 2007 should be a 'settled view' when how they voted in 2003 is not.

3. That those who make the law should be elected. The House of Lords does not make the law. This is a crucial point since the House by itself cannot transact any measure into law. The ultimate say rests with the House of Commons. This not a semantic point but one of profound importance. The argument would have more relevance to the Supreme Court, which is a discrete body and as such can determine outcomes. Furthermore, many other unelected people contribute to framing of new legislation, including civil servants, parliamentary draughtsmen, and these days often outside bodies that are consulted. It is ultimately the House of Commons alone which decides the law.

4. That the case for an elected House is supported by the manifestos of the three main parties. This is to ignore the actual wording of the manifestos. They say different things. The Labour manifesto commits the party to holding a referendum. The Conservative Party commits the party to working towards achieving a consensus. (It is fairly clear that there is no such consensus.) Only the Liberal Democrat manifesto is unequivocal in its support for, and only for, a 100 per cent elected second chamber.

We make these points to establish that the Draft Bill is built on tenuous foundations. The White Paper makes no sustained principled case for an elected second chamber. We do not believe Parliament should be invited to legislate on the basis of assumptions that are largely unstated and with which the Government has shown little or no willingness to address.

The relationship between the two Houses of Parliament is fundamental to how our political system works. The Draft Bill is, in our view, poorly drafted and generates more questions than it answers. These questions have not been answered by ministers in debates, but rather swept aside, Lord McNally suggesting that they are questions for the Joint Committee. They are questions which have not been addressed by the Government and so necessarily fall to be considered by the Joint Committee. There is little evidence of sustained preparation or of consultation. The assertion that the issue has been discussed for many years misunderstands the nature of the debate. The debate has tended to be at the level of detail and not principle. There have been myriad schemes for reform (one only has to look at the evidence submitted to the Royal Commission on Reform of the House of Lords) but the starting point has been the need for crafting a new second chamber and not the principles that would justify such action. Once the claim that electing the second chamber is the democratic option is shown not to be self-evidently true, then one has to go back to the drawing board.

In going back to the drawing board, one has to address the relationship between the two chambers. The starting point must be that form follows functions. This is a fundamental point that was recognised by those responsible for the Parliament Act 1911 and is embodied in the preamble to the Act. Any change of composition necessitates a revision of the powers of the second chamber. To adopt a Nelson's eye approach to the relationship—assuming that the functions will remain and be fulfilled as at present—cannot be basis for embarking on major constitutional change. The Parliament Act relates to the existing House, not to two elected Houses, but even if the Parliament Act

were to remain as it stands, which could be regarded as profoundly undemocratic by the elected members of the second chamber and those who supported the method of election used for it, the conventions that have developed have done so to accommodate the fact of an unelected chamber. One cannot simply proceed on the basis that they will remain and that all will be well with the inter-cameral relationship.

How will any conflicts between the two chambers be resolved? Lord Ashdown, in the debate on the White Paper, asserted that the primacy of the Commons would be retained but then went on to suggest that an elected House may have been able to stop an unpopular war. These statements are not compatible. On the question on what would happen if the first chamber voted for war and the second against, Lord Tyler, on Lords of the Blog, has argued that the position would be

'whatever Parliament decides the law should be. I have long thought there was a case for putting a provision into law for a compulsory vote in the Commons on decisions about armed conflict. I think it unlikely that the Lords—particularly if only 80 per cent elected—should have a veto on that, but the matter simply has to be judged one way or another, and put into law.'

But who judges? Rather than supporting the Bill, this rather makes the case that it has not been thought through. The argument of 'let's pass the Bill and decide later who gets to decide war' demonstrates the extent to which fundamental issues remain unresolved. The people of the United Kingdom have a right to know who will be deciding such issues.

This also leads to an over-arching question as to our constitutional arrangements. To what extent can the relationship between two elected chambers be accommodated within the context of our present uncodified constitution? The Joint Committee on Conventions made it clear that in the event of the second chamber being elected, the conventions governing the relations between the two chambers would need to be revisited.

These are profound questions on which the White Paper and hence the draft Bill are silent. The White Paper starts from a position that is untenable, inviting us to proceed on the basis of assumptions that are largely unspoken and, in our view, are largely untenable.

The existing House

We have addressed the issue of what is wrong with the White Paper and the draft Bill. We have not begun by addressing what is right with the present House. The House of Lords as it presently operates adds value to the political process. It complements the work of the House of Commons rather than seeking to challenge it. It fulfils tasks that the Commons may not have the time or political will to fulfil, enabling the Commons to focus on fundamental issues of principle and to act as the political cockpit of the nation, ensuring that the views of electors are heard.

The House of Lords is able to add value by virtue of the fact that it is composed in a manner that complements rather than duplicates the composition of the elected House. More than 20 per cent of the members—the cross-benchers—sit independently of political parties. Many members, not necessarily confined to the cross-benches, are appointed because of their expertise or their extensive experience. The absence of election tempers the effect of party conflict.

Election would change fundamentally the terms of trade between the parties, and the members, in the House and add nothing in terms of the functions of the second chamber. It would undermine the direct and sole accountability held by the House of Commons as the body through which Government is chosen and is answerable for public policy. Lord Howe of Aberavon has repeatedly asked the question, 'what benefit would an elected House deliver that is superior to that delivered by the existing House?' The answer is consistently avoided, with the Government falling back on the claim that election is necessary as the 'democratic option'. But what of the non-elected judiciary and, above all, what of the monarchy? Is their legitimacy vitiated by their not being elected? Once the claim that it is the 'democratic option' is dispelled, it then behoves the Government to answer Lord Howe's question. The answer may render the Bill unnecessary.

Reform

We oppose the Bill because it would result not in reform of the existing House but its abolition. For the reasons detailed above, the case for such a radical step has not been made. We favour reform but reform that would enable the House to fulfil its existing functions more effectively. There is always scope for improvement. There are some provisions of the Bill that may be extracted and on which we believe a consensus may be mobilised. These mirror the provisions of Lord Steel's House of Lords Reform Bill. We recommend extracting those provisions and pursuing them independently of the contested provisions for election.

We recognise that some regard changes to the existing House as necessary but not sufficient. Others regard them as necessary and sufficient. What both agree on is that they are necessary. The Political and Constitutional Reform Committee of the House of Commons has recommended that the Government proceed with these provisions in the interim. We endorse the Committee's recommendations. This, at least, is one area where consensus may be found.

1 November 2011

MONDAY 23 JANUARY 2012

Members Present

Lord Richard (Chair)
Baroness Andrews
Lord Hennessy of Nympsfield
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Baroness Shephard of Northwold
Baroness Symons of Vernham Dean
Lord Trefgarne
Lord Trimble
Lord Tyler
Baroness Young of Hornsey
Gavin Barwell MP
Mr Tom Clarke MP
Ann Coffey MP
Tristram Hunt MP
Mrs Eleanor Laing MP
Dr Daniel Poulter MP
John Thurso MP

The Clerk of the Parliaments [David Beamish] (QQ 621–638)

Examination of Witness
David Beamish, Clerk of the Parliaments

Q621 The Chairman: Mr Beamish, thank you very much for coming. I am sorry to have kept you waiting. We had elected quorum problems, if I may tactfully put it that way. You know what this Committee is about, so I do not need to say any more. Would you care, please, to make a statement before we launch into questions? I think that that would be helpful.

David Beamish: Thank you, Lord Chairman, and thank you for inviting me. I am glad to have this opportunity. As the Clerk of the Parliaments, I am the head of the House of Lords administration, which will be expected to support any transition to a partly or wholly elected House. Obviously, it is not for me to express views on particular proposals for reforming the composition of the House, but there are several practical aspects of the proposals in the draft Bill on which I am glad to have the opportunity to comment. At this stage, perhaps I could flag up three main ones.

First, on the process of transition, I like to think that the House of Lords administration has a good record of responding to whatever challenges are thrown at it, but nevertheless I have to say that I very much hope that the Committee will not be tempted by option 2, under which all the present Members would stay until the third round of elections to the House. The practical problems of accommodating and supporting a House with such a large number of Members during the transition period should not be underestimated, and I have some facts and figures if the Committee is interested.

Secondly, the Bill contains some rather detailed provisions about how the reformed House should operate—for example, some of the provisions in Clause 56, about the expulsion and suspension of Members. At present, the courts and Parliament have a generally good relationship whereby each respects the other's position, and the Committee may want to consider whether there is a risk of the courts being drawn into passing judgment on whether the House has complied in particular cases with provisions in the Bill. That would undermine the principle laid down by Article 9 of the Bill of Rights that proceedings in Parliament "shall not be questioned in any place out of Parliament". On that

point, Clause 58 also concerns me—it lists two grounds on which "the proceedings of the House of Lords are not to be called into question". That rather implies that proceedings could be questioned on other grounds.
Thirdly, Clause 2 seeks to protect the primacy of the House of Commons and the conventions governing the relationship between the two Houses. While the Parliament Acts certainly ensure that the will of the Commons can usually prevail, I have reservations about how effective legislative provisions can be in circumscribing the behaviour of a reformed House of Lords. The White Paper specifically states that the reformed House "would complement" the House of Commons. I think that it would be a pity if attempts to entrench the primacy of the Commons were to detract from ensuring that the two Houses together provided effective scrutiny of the Government and its legislative programme.
Finally, I should perhaps say that, if time does not allow me to cover these or other issues fully this afternoon, I would be glad to provide the Committee with a paper to try to fill any gaps.

Q622 The Chairman: Thank you very much indeed. Perhaps I can start with Clauses 56 to 58. Could you spell out in relation to those two exactly where you see the greatest danger in the courts having the right to interfere?
David Beamish: Clause 56 is headed "Expulsion and Suspension" and goes into various provisions as to how it should work. I suppose that the bit I am most nervous about is subsection (4) onwards. Subsection (8) states: "This section does not apply in relation to Lords Spiritual." I am uneasy about that on grounds of not making things unnecessarily complicated, but that is a minor detail. Subsections (4) to (7) are in effect about retrospection. They raise the question of whether things that are a ground for suspension happen before or after a set date. That immediately sounds like the sort of thing that might be challenged. On practical grounds it may not be very sensible, because, as the Lords Members of the Committee will know, the House has used its power of suspension. It would probably like what is available to be clearer. This would leave a gap in relation to any conduct before the relevant date. Those are the bits that, by going into detail about what happens within the House, make it look as if an attempt to bring a case to court might well get a hearing. On Clause 58, there is perhaps little more that I need to say, except that by specifying that we cannot question proceedings because of "(a) a vacancy among the members, or (b) the participation of a person who should not be participating" on general legal principles, it hints that other things might give rise to questioning it. These are obviously things that could be tested only when they arose, but the Committee might want to guard against the risk of opening up a field day for lawyers.
Q623 The Chairman: I am not necessarily against that, if I may say so. Can I come back to the primacy point, which you also raised? Could you spell out the practicalities of these proposals that we have been trying to wrestle with—not their merits, but the actual practicalities? Supposing that there were a provision to reduce the suspensory veto under the Parliament Acts to, say, six months. How practical would that be?
David Beamish: It would certainly be practical, in the sense that I am sure that parliamentary counsel could draft something to achieve it. A veto of that length might be pretty meaningless. A key feature of the present Parliament Act provisions is that you have to have two goes at it and reintroduce the Bill in the following Session, which is quite a disincentive to a Government if the matter to be resolved is only one matter of detail within a big Bill. Presumably a six-month delay would work differently, rather along the lines of what has already happened with money Bills, where if the Bill has not been passed by the Lords within one month, it can proceed straight to Royal Assent. If you did that, first, it would be tempting for a Government who wanted to get a Bill through that they thought would not be popular in the House of Lords simply to send it up and then let it lie fallow for six months and get Royal Assent, which would not be playing the game. In real life, things often take longer than six months. There is an interesting current example. The Scotland Bill had its First Reading on 22 June. We are already seven months since then and we have not gone into Committee yet. I suspect that you will wish to break for a moment.

The Chairman: I fear that we have to.
The Committee was suspended for a Division in the House of Lords.
On resuming—
Q624 The Chairman: Mr Beamish, I was taking you through a number of possibilities and asking you about the practicability of those proposals. You dealt with the one on reducing the suspensory veto to six months, but what about a provision to extend the Parliament Acts to amendments made to Lords Bills in the Commons?

David Beamish: Certainly one could devise a procedure to do that. I suppose that it would look like a provision that if a Bill was sent to the Lords from the Commons in the same form as the same Bill had previously been sent back to the Lords by the Commons, then it could have Royal Assent against the agreement of the Lords. That would sort of work but I would be very dubious about it. Apart from anything else, this might be an invitation to the Lords, if they saw trouble coming, simply to fail to pass a government Bill at all because the type of provision that I have described would not be able to bite. I think that it might have unforeseen knock-on effects on the way in which business was done and it might be a case of being careful what you wish for.
The Chairman: But everything has unforeseen effects, doesn't it?
David Beamish: As I say, it is workable, but I would just be nervous about whether it might have a different impact from what was hoped for.

Q625 The Chairman: Let us try to make you a bit more nervous: what about a provision to prevent the Lords from rejecting a government Bill at Second Reading?
David Beamish: I have three problems with that one. The first is a practical one. Think how business is conducted. If the question is put, how do you stop it being rejected? If people shout, "Not Content", is the Lord Speaker or her Deputy supposed to say, "Hang on, you are not allowed to say that"? Life is not like that, but even if that could be overcome and you could come up with some satisfactory procedure, it would be easy to find ways round it. Indeed, there are two examples on the Order Paper at the moment. In relation to the Scotland Bill, there is Motion down to be taken at the beginning of Committee to prevent it continuing until this, that and the other have happened. In relation to the Health and Social Care Bill, there is another amendment down to be taken at the start of Report, again to say that it should not proceed until a certain thing has happened. Requiring a Bill to get past Second Reading would not stop people coming up with nuclear options and stopping it at a later stage. Finally, I mentioned the risk of too detailed provisions inviting the courts to meddle where they have not previously. On the whole, the way in which Bills go through the two Houses is not the subject of legislation. The fact that Bills have a First, Second and Third Reading is not laid down in a statute, and if you start to try to use statute to tinker with the internal processes of considering legislation, that might again have knock-on effects of encouraging the courts to take an interest, which might be undesirable.

Q626 The Chairman: I have one more for you: the provision to replace the power to reject statutory instruments with a power to delay them.
David Beamish: Again, that is perfectly practical. Indeed, it is something that the House could choose to do at the moment. Again, I would caution the Committee that it might have unexpected effects. The House has long been very wary of using the power to reject statutory instruments, although a while ago it agreed to a resolution asserting its right to do so. My worry is that, if you introduced instead a power to delay, because that would be new, there would be no built-in reticence to use it and it might become the norm to try it on, which might actually be less helpful than having a House that tends to bark rather than bite in relation to these things. But in terms of practicality, yes, indeed, it was a recommendation of the royal commission that reported in 2000.

Q627 Ann Coffey: You mentioned in passing something about numbers and I was quite interested to hear your thoughts on that. The proposal is to have a House of 300, but we have also discussed having a larger House of about 450.
David Beamish: My reference to numbers was in relation to the transitional period. If we are looking at what happens after the end of the transitional period, certainly 450 was a number that has been used in the past—I mentioned the Wakeham royal commission and it was in there. In terms of practicality, yes, it could be done. We are coping with a House of 800 at the moment, but it is worth noting that very few Lords Members currently have staff, or at any rate staff based here with desks. If there were to be an expectation of all 450 Members having, let us say, two staff, that might be challenging for us to accommodate in the space we have, but it would certainly be practical in other respects and it would really be for the Committee to decide whether there were enough benefits to justify the extra cost of the larger number of Members. My concern would be if all the present Members stayed while the 450, or indeed 300, elected Members were coming in—we are bulging at the seams in the Chamber as it is. Some calculations have been done concerning provision for Members outside, in particular desk space for them and their staff, with the estate that we have, and even with our present rather modest space

standards of 5 square metres per Member—I am told that the Commons have a standard of 12.5 square metres, and that is only for the Member and not their staff—even with 40 per cent of that we have not got the space.
Ann Coffey: Following on from that and looking at the transitional options, simply in terms of numbers and practicality, which is the best option?
David Beamish: We have calculated that we could manage option 1. Option 3, in terms of numbers, would be better still but politically might be less attractive. Options 1 or 3 would both be manageable.

Q628 Lord Trefgarne: Mr Beamish, neither the Bill nor the White Paper makes any claim to change the powers of the new House, particularly as they relate to the House of Commons. Is it therefore not inevitable with an elected or largely elected House of Lords that primacy will be challenged in a way that it is not at present?
David Beamish: It depends what you mean by "primacy". "Primacy" is a term that has recently arrived. When I was Clerk of the Joint Committee chaired by Jack Cunningham nearly 10 years ago, and I think Lord Tyler is the one person who has been a member of both—
Baroness Shephard of Northwold: And Lady Symons.
David Beamish: I am sorry, Lady Symons, too. "Pre-eminence" was the term favoured at that time and this has moved on to "primacy". You can guarantee primacy in the sense that the will of the Commons prevails, both through the Parliament Acts and, more recently, through a couple of other provisions that have given the Commons greater powers: the Constitutional Reform and Governance Act, which has given the Commons a role in relation to treaties, where the Lords only have an advisory role, and the Localism Act, which has given the Commons a role in relation to national policy statements. So you can ensure that the Commons are pre-eminent. If what Lord Trefgarne means is that the—let us say—reticence in continuing to fight its corner that the House of Lords often shows when the Commons take a different view would not last, that must be a possibility, but I think that Members of the Committee are at least as well able to judge as I am what would happen in practice.

Q629 Mr Clarke: Lord Chairman, I was intrigued when Mr Beamish said that he had some facts and figures. Could you give us a flavour of them, Mr Beamish, if not the whole lot?
David Beamish: Do you mean on the accommodation?
Mr Clarke: No, on your earlier point about facts and figures, which you made at the beginning of your statement.
David Beamish: I thought that that was in relation to the numbers that we could accommodate in the transitional House. At the moment we have 634 desks for Members. In 2015 we would need 735 under option 1, which is more than we have. But, if we go by our space standards, we could squeeze 743 into the space that we have. We have done that sort of detail. Were there any other areas where you thought facts and figures would be useful?
Mr Clarke: No. As I say, I was absolutely intrigued to hear that you had brought them with you.
David Beamish: It was only on the practicality of different transition options that I meant to refer to them.
The Chairman: Is that the total of the facts and figures?
David Beamish: If there are things that people want to ask me about, I might have facts and figures to support them, but there were not other facts and figures that I wanted to bore the Committee with, if I can put it like that.

Q630 Baroness Scott of Needham Market: On the subject of numbers, I was a member of Lord Hunt's Committee when we looked at retirement. We took opinions from across the House as to how one might reduce numbers. Some people favoured some sort of age limit and others favoured looking at how active people were. I wondered whether, from your point of view, you want to comment on ways one might consider reducing numbers, or do you think that that is an entirely political decision rather than a procedural one?
David Beamish: I would much rather not comment on what would be the better option, because, yes, it is very much a political decision. I could perhaps observe that there is a tension between trying to make the numbers fit and keeping on the more active Members. If those who went were purely the less active Members, you would not have achieved so much in terms of the gradual transition, which perhaps demonstrates the difficulty of finding an acceptable formula for doing it. I would say good luck to anybody trying to devise an acceptable formula. For those who were not around in 1999, it is perhaps worth saying that there was an arrangement whereby basically 10 per cent of the hereditary Peers could stay on and there were various complicated voting systems for enabling

the Peers to select from among their number. That is perhaps the most practical way of doing it, but it was a somewhat invidious experience, I felt.

Baroness Scott of Needham Market: Can I just press you on that? Looking back at that time and thinking about it with the benefit of hindsight, what conclusions would you draw from the approach that was taken? Might any lessons be learnt for the future?

David Beamish: I certainly did not feel that they could have done it better, but in any cull like that it is awkward that some people have to go. There is no method that will not be painful. One might observe, although this is fairly trite, that the more clubbable Members tended to do better in the elections. They were better known and there were perhaps some who beavered away behind the scenes whose contribution was less appreciated. I do not have any easy way of ensuring that anything different would happen.

Q631 Baroness Andrews: David, you said specifically that it is important to guard against the risks of these changes. That is what I understood you to say. Can we draw you on the scope of those risks? Specifically, you also said that we should not entrench the powers of the Commons. Can you comment in that context on the appropriateness of the Parliament Act once there is a new House in place? Will that Act, which was created to regulate relationships between an elected and a non-elected House, still have appropriate legitimacy and force?

David Beamish: On the first question, I am a bit reluctant to go further than I have because I think that it is for the Committee to decide what the benefits are and what risks are worth taking. One could probably amend the Bill to make it a bit less susceptible to court intervention. That is probably about as far as I would want to go. On the second part, I do not think that I said that you should not try to entrench the position of the Commons. I was just questioning whether the danger was that you might try to deal with a House competing with the Commons whereas you ought to ensure that the two Houses are indeed complementary, as the White Paper proposes, so that, between them, they make an effective Parliament and, if you like, make life difficult for the Government in particular in its legislation. On the Parliament Act, the danger is that at the moment that is very much a nuclear option and has been rarely used. It was created for particular purposes but was for many years not used at all. If patterns of behaviour changed so that it became the normal way of getting things through, then that would be a very different Parliament. It would almost certainly not tick my box of being an effective scrutiniser of the Government.

Baroness Andrews: Do you have any other ideas about how that equilibrium could be maintained in this new situation, so as to be as effective as, if not more effective than, the House of Lords at the moment, without running into all these difficulties?

David Beamish: Basically, you set up the two Houses and give them certain powers. What happens after that depends on how they behave. It is probably a question of getting the powers right to get the right balance. My nervousness was at the attempt in Clause 2 to state a principle as if that might somehow affect how Members behave. The way they behave will depend on other things. The Committee has taken evidence on some of that.

Q632 Lord Tyler: To follow on from Lady Andrews's questioning, it seemed from your first statement that you had some misgivings about the extent to which the draft Bill goes into detail in a way that could raise new questions. Am I right in thinking that your approach is that minimalism has its advantages if it is clear?

David Beamish: My concern about detail was not that it would raise new questions but that it might make things justiciable and invite court challenges. That would upset the delicate relationship between Parliament and the courts, which, as I see it, is working pretty well at the moment. It is not so much that it would create more questions as that, if you try to tie down what happens within either House of Parliament in statute, that relationship may be affected. That was my particular concern.

Lord Tyler: I am very interested because that precisely reiterates the expert evidence that we had from your predecessor and the then Clerk to the Commons, back in the Committee to which you have referred, and their very strongly held views against codifying conventions, which we were under pressure to do from the then Government. I was just looking again at that. Lord Hunt of Kings Heath recommended codifying conventions, yet we absolutely unanimously came to the view, and both Houses accepted it, that this was a very unfortunate way to proceed because it set in stone things that would move, change and evolve—and it raised justiciability. Is that a fair summary?

David Beamish: Yes. All I can say is that I certainly support what was said to that Committee and its conclusion.

Q633 Baroness Young of Hornsey: Do you foresee any specific practical or administrative problems arising from having elected full-time Members and part-time appointed Members? Also, referring back to a comment that you made earlier about the Bishops being excluded from a certain provision, again, might there be consequences arising out of having in effect different terms and conditions for different Members of a reformed House?

David Beamish: On the second question first, that was my concern, although I am not suggesting that in practice they would ever want to throw out a Bishop. However, it seems a bit odd to think that you need to make special provision, which might raise more general questions. Please remind me of your first question.

Baroness Young of Hornsey: My first question was whether you see any practical or administrative issues about full-time and part-time Members.

David Beamish: I do not think that there needs to be, because if you look at the composition of the House over recent years it is a mixture of Members who are here every day and others who come when there are subjects on which they want to contribute. If you go back to pre-1999, there was a mixture of hereditary Peers who had not chosen to be Members but who were here by accident of birth and others who chose to be in the House, and it worked. I suppose that there might be tensions if some Members were salaried and others were not, but that is about merely having some who spend most of their time here. I am a bit suspicious of the term "full-time Members". Members of the House of Commons are salaried, but does that mean that they are full-time? Ministers plainly have other things to do. Indeed, earlier I think that the Chairman was seeking to protect the legal profession by saying that there used to be quite a lot of Members who had a legal practice as well. I am not quite sure what "full-time" is supposed to mean.

Q634 Baroness Symons of Vernham Dean: Mr Beamish, you said that of course it was possible to have statutory provision for Commons primacy, and that is self-evidently there with the Parliament Acts, but they were introduced because it was felt, rightly, that the unelected Lords should not be able to block the elected Commons. If both Houses are elected, does that not take away the raison d'être for the Parliament Acts in the first place?

David Beamish: I would say that that is rather a philosophical question, which is not really for me to answer. Our political system has evolved over the centuries and is not necessarily what one would set up if one were starting again, but it seems to have adapted and to work, so there is no reason why leaving the Lords with the same set of powers as it has now but with a reformed composition should not be workable, regardless of what was in the mind of those who laid down the powers at the time. You may be right, but that does not stop it being workable.

Baroness Symons of Vernham Dean: Do you think, therefore, that there would not be room for something like a reconciliation procedure if there was disagreement between the two Houses? For the sake of argument, in my time we have seen ping-pong for a maximum of, I think, five times returning legislation to the Commons. Would you not see that there might be an argument for introducing a formalised reconciliation procedure between the two Houses?

David Beamish: There certainly could be a reconciliation procedure. I understand that in the 18th and 19th centuries there was a system whereby conferences between the two Houses could be held. It is interesting that, latterly, in practice they became rather formal occasions when people said what they had to say but there was no real discussion. I find it quite hard to think how such a reconciliation procedure might work in practice. Let us assume that delegations from each House are given either a mandate or the freedom to negotiate and they come up with something. What would happen after that? If it were automatically binding, that would be quite novel in terms of the way the two Houses work. If it had to go back to the two Houses to be ratified, it might or might not work. But as a way of changing the tone, so that we looked at reconciliation rather than one House withdrawing its decision, it might be worth a try. As I say, it has happened before, so it could be practical.

Q635 Baroness Symons of Vernham Dean: Let us leave that one and come back to Lord Tyler's point about the Cunningham Committee report. You said that you agreed with the report where it stated that the conventions should not be codified. Do you also agree with paragraph 61, which says that when any firm proposals are brought forward for the House of Lords to be mainly or mostly elected, the conventions between the two Houses should be revisited? Again, that is something that was agreed by both Houses of Parliament.

David Beamish: It says that they would have to be "examined again". Whether or not they were examined again, it is plain that you cannot be sure that they would stick in a reformed House. Conventions are adhered to, in effect, because everyone wants to make them work. Doubtless, the present understandings—things like the Salisbury convention—would continue to apply while people felt that they were right, but if in particular circumstances the reformed House felt that it wanted to break out, just by doing so the convention would end.
Baroness Symons of Vernham Dean: Excuse me, but that is not what it says. It says, "should any firm proposals come forward". It does not say when the House has been elected; it says when "any firm proposals come forward". My simple question is this. Do you agree with that proposition or do you not? I am not clear whether you do or you do not.
David Beamish: I think that what it is implying is that the application of the conventions to a reformed House would have to be looked at rather than that the conventions would have to be reconsidered pre-reform.
Baroness Symons of Vernham Dean: It says when they are brought forward, Mr Beamish. It does not say anything about when they are in place. It refers to "firm proposals". Those are what we have in front of us and, after all, both Houses have agreed to them. You were very ready to accept Lord Tyler's point. I am asking if you are as ready to accept paragraph 61.
David Beamish: I suppose that I disagree with it on a point of detail. It states that, "the conventions between the Houses would have to be examined again". Plainly they do not have to be examined again but, on the other hand, if you do not revisit this, the conventions may well come unstuck once you get there.
The Chairman: Three Members of the Committee want to ask questions. That will take us to the end of Mr Beamish's evidence.

Q636 Tristram Hunt: On the question of full-time as against part-time Members, could you see a successful, reformed House of Lords continuing to operate with its membership on a de facto part-time basis, as it has done previously?
David Beamish: Certainly, yes. As I have said, we already have Members who devote different portions of their time to their membership. That seems to work. If you take the continuation of Bishops, by definition they have other jobs to do, so recent history suggests that that system could work perfectly well.
Tristram Hunt: With your great experience of their Lordships' House, do you in all frankness regard it as a full-time job?
David Beamish: It can be for those who want it to be, but it does not need to be. I think that you will find plenty of other second Chambers around the world where most Members are not full-time, so I certainly would not accept that it has to be full-time.

Q637 Tristram Hunt: The tenor of your evidence so far suggests a helpful malleability about change. Obviously, some potential options for change are more manageable than others. On the broader shift between the Chambers, would you generally align yourself, to the extent that you can, with the Minister's view that the British tradition on constitutional change of adaptation generally succeeds?
David Beamish: That has certainly worked historically with the House of Lords. I am trying to think what the consequences would be of simply agreeing with your remark, and where you are leading me. However, generally the answer is yes.
Tristram Hunt: Past experience suggests that?
David Beamish: Yes.
The Chairman: Baroness Shephard?
Baroness Shephard of Northwold: Baroness Symons explored all the questions that I wished to ask.

Q638 Lord Hennessy of Nympsfield: David, you covered a range of possible consequences. Finally, could you rank them on a numerical basis in your hierarchy of anxieties? Also, I am sure that there lurks in your distinguished breast an anxiety that you have not yet come out with. Perhaps you could finish off with that.
David Beamish: That is very kind of you. I tried to mention those things in my opening statement. I suppose that, as head of administration, top of my list of anxieties has to be my first point: the handling of the transition. If we went for option 2, the practicalities of supporting it would be a challenge for the administration.

Looking to the longer term, probably my concerns are in the order that I spoke about them at the beginning. The inclusion in the Bill of elements that would invite legal challenge might make life difficult in future. My third point, which was about entrenching primacy, was really more a philosophical point that the provisions in Clause 2 might not achieve very much rather than that they were dangerous in themselves. That would be my order of listing, but I was simply trying to flag up some things that the Committee might want to think about rather than to tell Members what the answers to the questions should be.

Lord Hennessy of Nympsfield: What is the lurking anxiety, if there is one?

David Beamish: I do not think that I have a lurking anxiety. I suppose that I have always prided myself on being able to deal with whatever is thrown at me. There is nothing about which I think, "If this happened, we would be in trouble". Perhaps this relates to my answer to Mr Hunt: one can normally adapt.

The Chairman: Thank you very much indeed, Mr Beamish, for coming. That was a terribly useful session. I am sorry that it was so delayed by the vote and all the rest of it.

David Beamish: Do not worry—and if anyone thinks of further questions or specific facts that they need from me, they should feel free to let me know and I will provide a paper.

Mr Graham Allen MP (QQ 639–650)

Examination of Witness

Mr Graham Allen MP, Chair, Political and Constitutional Reform Committee

Q639 The Chairman: Mr Allen, thank you very much indeed for coming. I welcome you to this Committee. You know what we are we are about and what the issues are. I wonder whether you would care to make a statement, please, before we actually get down to the questioning.

Graham Allen: If I may, Lord Chairman, I would like to talk a little more about opportunities, rather than anxieties and risks, around two key things—principle and practice—and trying to wed the two together. From my point of view, my principle—and I speak as an individual rather than on behalf of my Select Committee—is that any political power can be exercised only by those who are legitimately elected. That is my ultimate principle. It is one that applies to Commons' Members and to local government councillors and I think ultimately we must aim to make it apply throughout our constitution.

However, there is the little question of practice: how we get from where we are at the moment to where many people who regard themselves as democrats, of all political parties, would like to be. In terms of the practice, you have one set of proposals in front of you from Government, which is a way of making progress to that, and I would support those. The timing, I think, should be a matter for both Houses together to work through, as indeed should many of the questions of detail.

I hope, Lord Chairman, that whatever you come up with you do not rely on square footage as one of the main arguments not to press forward and progress. That would probably not be particularly well received out there among members of the public. Given that we had at least one of the Chambers bombed during the war, I think that we can all find ways of carrying on our business despite the upheaval of the interference of the ballot box.

To be helpful, Lord Chairman, I have come up with a slightly different option, which may appeal to some colleagues, particularly colleagues in the second Chamber, and it is what I call the vegetarian option. I call it that because it means that turkeys can vote for Christmas. I do not mean that disrespectfully. I mean that those people who are currently in the second Chamber perform a great service—even, indeed, in the debates that I understand you have just voted on moments ago. A very important public service, regardless of the way in which the votes go, was performed today and on many, many other days. There is great expertise there and many would feel that we would not want to lose that and certainly would not want to lose that in one fell swoop for the sake of changing the composition of the second Chamber.

I think that there is a way forward, which is to have an elected element of some size that reaches towards the principle that I outlined initially—the principle of having a fully elected second Chamber at some point, so that the political power is exercised by those who are elected. But it is an effort to say that there is more than one way of skinning this cat or turkey, whatever you care to say.

Then there is the question of primacy. I have been a Member of Parliament for 25 years and it has never been my experience that the first Chamber has primacy. It may have primacy of some description over the second Chamber, but what we have in our system, since we do not have a pluralist system or an effective separation of powers, is the primacy of Government. We have Executive sovereignty. I think that there is an opportunity again here for those of us in the first and second Chambers to work together more effectively to do what Gladstone said of the role of the House of Commons, which is not to run the country but to hold to account those who do. I think that in a sense the institution that we need in order to work together to progress our mutual interests—the institution that we need to worry about and have continuing anxieties about—is Government and making sure that we are effective in carrying out our role.

Then there is the issue that occasionally gets raised in the context of primacy, which is that somebody has got to win. Virtually no western democracy thinks like that. You can have independence within your institutional settlement, and it works, provided that you have reconciliation. An effective process of reconciliation can be found in almost every other democracy. The second and first Chambers working together could quite easily come to have common custom and practice on reconciling their views and I think that that would make us stronger in holding Government to account.

Finally, Lord Chairman, Baroness Andrews talked about risks. I think that many risks are facing us now—perhaps some risks that have not faced us in previous times. I am not necessarily talking about the Union but

certainly I think that the first and second Chambers need to look at that particular issue together. Also we must now take much more seriously our role as a legislature, independent from the Executive, so that we can be much more effective economically and globally. A fully functioning, modern democracy will play that part as part of a pluralist democracy with a proper separation of powers.
I end with the word that I began with: "opportunity". There is a great opportunity for us all to move together on this, to argue, to reconcile and to come up with a package that, for the first time, has some part of that principle that the second Chamber, like the first, should contain an elected element.

Q640 The Chairman: Thank you very much indeed. I start by saying that on the square footage argument I was very pleased to hear you say that this was something that both Houses could deal with. It was not an argument that would appeal very much outside, but inside the Palace of Westminster it could be dealt with by both Houses. Might that mean that the House of Commons would think of releasing part of its accommodation for the enlarged House of Lords in the interim?
Graham Allen: I would very much hope that we would work together and find space, whether it is the rifle range or wherever. We knew that we could never have a nursery in the old days because people needed space for this, that and the other. Also, if anyone cares to walk around Westminster, they will see that there are lots of boards outside offering space. If we cannot create effective office space for Members, it will be beyond us to create an effective democracy in this country.

Q641 The Chairman: Thank you. Coming back to the main issues as opposed to those on the sidelines, you state quite forcefully—and I quote you here—"that those drafting these reforms may have unwittingly created a constitutional time-bomb, which will eventually detonate and explode traditional understandings of the relationship between the two Houses of Parliament". Could you expand a bit on that?
Graham Allen: Yes. I think that if progress is to be made and the second Chamber seeks the chance of being part of a modern, pluralist settlement at the legislative level, then, just as we have seen in the case of devolution, there could be, in my opinion welcome, pressure to democratise other levels of our society—for example, in local government. Local government is the creature of central government. Looking at how we could resolve our difficulties and seize the opportunities at this level, I should have thought that, as is commonplace in virtually every western democracy, local government should not be the creature of statute but that it, too, could have its own clear, agreed rights. A broader settlement, perhaps on a federal basis with the nations and regions of the United Kingdom, could be something that people might consider a little more seriously than has happened in the past. If there is a view towards developing a pluralist democracy—not on one day but over a period—then I think that other tensions could be released and other institutional forms which are perhaps based on that word "subsidiarity" could be brought forward.

Q642 Mrs Laing: I am not sure whether I have to declare an interest as a member of the House of Commons Political and Constitutional Reform Committee, of which Mr Allen is the Chairman. I should like to refer our witness to the seventh report of that Committee, on the outcomes of a seminar on the House of Lords that we held in March 2011. In particular, paragraph 5 of the conclusions and recommendations refers to paragraph 11, which says, "On a similar note, much of the relationship between the two Houses is regulated by conventions, which rely for their effectiveness on the fact that the House of Lords lacks any democratic mandate. The existing conventions governing relations between the two Houses will not survive in their current form if the upper House is given democratic legitimacy, and the Government's proposals need to be examined with this in mind". I wonder, Lord Chairman, whether our witness might like to expand on that issue, particularly looking at primacy. If the House of Lords, or second Chamber, is changed so substantially, is there really any point in having two Chambers that are constituted in the same way and are therefore likely to become mirror images of each other? Would it not be better, cheaper, just as democratic and more efficient to have just one?
Graham Allen: I am a parliamentarian first and my interest is to defend and extend the capabilities of the legislature. That may sometimes be painful for the Executive and the Government. However, two things arise from that seminar, which we both attended. The first is a number of detailed points, such as the questions around retirement and moving things forward, and trying to write down some of the relationships rather than

having them as a sort of moveable feast when that is convenient for people. Those sorts of things have been widely discussed and, I understand, widely welcomed.
The second is the question of legitimacy, which is very important. There is almost a sub-question about the legitimacy of parts of Parliament when we compare Parliament with Government or legislature with Executive, and I think that frankly that is the bigger question. To deal with that directly, Mrs Laing, I think that both Houses can be legitimate but, until an evolution takes place—and I think that I shall be long gone from this place when it happens—it is perfectly acceptable for the second Chamber to have a legitimacy but not one that makes anybody anxious, to use the word that I have heard in the Committee today. I am talking about a degree of legitimacy. If the Members were elected for a 15-year term or elected in thirds or through STV, I believe that the second Chamber would be less legitimate and the pre-eminence of the first Chamber over the second would be maintained. I finish with the point that our dual interest is to be more effective in the face of the most over-concentrated Executive power in the western world.

Q643 Baroness Scott of Needham Market: I want to ask you to say a bit more about the conciliation mechanisms. It seems to me that they exist but in a rather subterranean way that is a combination of furtive discussions and threats about how many people you can get through the Lobby. How would you envisage such a mechanism being framed and how might it work?
Graham Allen: I must tell the noble Lady that I am a recovering Whip and I take each day as it comes. My experience is that the reconciliation that has taken place—certainly in my time in government—has been between government and opposition. It has not been reconciliation between the Houses. I am not flattering anyone in this room or anyone in the first or second Chambers but there is undoubtedly great talent, which is often not put to use, in both Houses. Between us, as a legislative interest, we could certainly figure out—perhaps, let us say, with the good offices of a former United Nations ambassador—ways of devising means of moving forward and sorting out problems. Currently we say, "Well, nanny knows best. Somebody up there has to tell me the way to do it. Let me know which way I have to vote, then we can come to a conclusion on this". I do not believe that that is the way a democracy should work. When it works differently, it is abused with terms such as "gridlock", "delay", "ping-pong" or whatever. I do not think that it is beyond our wit to find ways of forming institutional arrangements that allow us to come to an agreed compromise. It is an insult to the intelligence of both Houses for people to say, "We must do it in a particular way that suits Government on every occasion". Again, I would look abroad to other democracies, which have no difficulty with this. Of course they have strongly held views but invariably those views are reconciled. If there is respect for the concept of independence and reconciliation, it is perfectly possible to move forward.
Baroness Scott of Needham Market: Allowing for and setting aside the dangers of trying to apply inappropriate models, which countries in particular with effective arrangements would you suggest we look at?
Graham Allen: I would not look at any; I would make or grow our own. We have some fantastic parliamentary talent in both Houses. It is absolutely open to us to create an effective mechanism inside both Houses which can produce better law and receive much greater respect externally than is the case at the moment.

Q644 The Chairman: Can I interrupt there? We talk about conciliation procedures. If you think about ping-pong between the two Houses at the moment, it is not between the Houses. I think you made the point that it is basically between the Government, as represented by the majority in the House of Commons, and the Opposition, as represented by not necessarily one party in the House of Lords but sometimes a combination of two parties and, indeed, sometimes the Cross Benches. It is a conciliation procedure which is not legislative but is, frankly, much more with the Executive. Does that strike you as a sensible way to proceed?
Graham Allen: It is very important. It is never, if done effectively, a zero-sum game. It is not the lowest common denominator. I think that those with experience of the law will recognise the frisson when you take things to a higher level by your agreement. You explore other people's view and come to a mutually acceptable view that not just solves an argument but makes better law for people in our country. Equally, as well as having the capability to do this, I think that the electorate are right to expect those very high standards of us.

Q645 Baroness Symons of Vernham Dean: In your paper, which you were kind enough to circulate before giving evidence today, you say that you support the coalition proposals and that even 80 per cent is a big

improvement on 0 per cent. You make the point about Members of the second Chamber being put in that Chamber by the voters. What relationship do you see between the elected House of Lords and the electorate that put them there?

Graham Allen: I think that with the second Chamber the relationship would be less intimate and less legitimate. It would be a matter for both Houses to work out clearly how things could happen and who would be responsible for what. For example, Wales, with a devolved Assembly, very rapidly moved to having effective codification of who does what so that, for example, with a particular piece of casework you do not have people asking someone in the Senedd to do something that a Member of Parliament is doing. I refer to the sort of basic convention in which MPs do not go into each other's territory. Even the question of who should do casework can be worked out very easily by people of good will. Therefore, I think that the relationship would be less strong.

Baroness Symons of Vernham Dean: Why do you say that it is a less legitimate relationship? The whole point of electing the House of Lords is to make it more legitimate in the legislative functioning. Why is it automatically less legitimate? What is the reason behind that?

Graham Allen: It is much more legitimate than currently but not as legitimate as the first Chamber. The reason for that is to put at ease those people who feel that there would immediately be open conflict and war between the two Chambers. A mythology is put about that there will immediately be difficulties between the two Chambers. I am talking about having a properly, or fully, elected first Chamber where the relationship continues—I am not proposing any change there—and a second Chamber where some of the people have an elected legitimacy but, because of the system to be used, that legitimacy is not as strong as in the first Chamber.

Baroness Symons of Vernham Dean: Did you not give the game away a bit there by saying that, in effect, this is less about democratic legitimacy and more about a comfort zone so that MPs do not feel compromised by somebody else on their patch?

Graham Allen: Yes. Many colleagues are deeply anxious. The Government come along, wave shrouds and make noises in the night, and many of my colleagues run to the nearest warm place that they can find. It is not a matter of giving the game away; I am very open about the fact that, if you are to make a small move towards what I regard as the ultimate position—maybe in many, many years' time—of a fully elected Second Chamber, we need to set everybody at ease and ensure that they are comfortable with that. It is a very significant prize. If we were to accept and move to the elective principle—I do not care whether it is 100 per cent, 85 per cent, 50 per cent or even 10 per cent—in this Parliament or the next, I think that would be a very significant step forward. It would probably be as significant a step as we have taken in over 100 years.

The Chairman: Lady Andrews.

Q646 Baroness Symons of Vernham Dean: Sorry, Lord Chairman, but I had one more point on Mr Allen's evidence to us. I refer to where he says that it will eventually prove necessary to codify the respective powers of the two Chambers to introduce the required clarity to the democratic process. We have been discussing codifying the conventions. Of course, the Cunningham Committee did not want to codify the conventions because of setting everything in concrete. You seem to be taking a different line here. I wonder at what point you would think it right to have that clarity which you say is so important.

Graham Allen: I am a great believer in writing things down. You do so when arranging your mortgage or joining your swimming club. It is done for everything apart from British democracy. If we are to make people citizens rather than subjects, they need to know who does what, where and when, according to the famous C Wright Mills dictum. If we are all sharing this information and we are working things out and matters are evolving, I do not think that it should be set in concrete. Anything to do with codification is about evolution, but it gives you a basis and a framework. It gives you the boxing ring, not the boxers, in which continual evolution can take place. I believe in writing things down so that everybody knows where they stand. If they do not like it, we can all negotiate and talk to each other as adults.

The Chairman: Do you want it done in statute or just written down as a concordat?

Graham Allen: I do not think that it is for Mr Clegg or me, as the Chair of the Political and Constitutional Reform Select Committee, to make those decisions. I think that we have the brain power to do this so that we can

all get along and work these things out. Not doing so will mean that someone else will make the decision on the basis of information that is not shared by everyone else.

Q647 Baroness Andrews: Graham, may I go back to the question of legitimacy, because I am genuinely puzzled by what you said? Are you saying that the value of the vote for someone in the second Chamber is of less worth than the value of the vote for someone in the first Chamber, albeit that it might well have been done on the basis of proportional representation, which some people argue very strongly is a more legitimate and fairer vote? Are you saying that the mandate is therefore weakened?
Graham Allen: Yes, the mandate is weakened because it is over a longer period; it is not done nationwide on a regular basis. As I understand the current proposal, it would be one-third every five years. Therefore, of course the mandate has less vigour than the mandate for the first Chamber. I am very happy for that to be the case, not least because, again, it reassures those parliamentary colleagues in the other Chamber who feel that somehow their role could be threatened. I think that they are wrong to feel that; none the less, that may be the reassurance that is required. We are talking about practical politics here in order to make some progress.

Q648 Baroness Andrews: I have a second question. You put great emphasis on the argument for a more effective Parliament and for a more independent House of Lords. First, how does this make for a more effective Parliament? Secondly, how does it make for a more independent House when elections will be driven by party-political considerations, no matter how you construct them?
Graham Allen: I believe in the ballot box as the ultimate mandate. It has served the Commons Members of this Committee very well. People have fought for it for many years, and the extension of the franchise must, and will, continue. I am trying to find a way in which it can happen in order that we can help to move forward the whole question of how we reform and modernise our Parliament. Voting is very important and I think that it would be an added element for the Second Chamber. It would make the Second Chamber more effective because there would be additional people—not people who are better but people who come from a different standpoint and who, at some point, have had a closer connection with the electorate than those who are appointed.
Baroness Andrews: Do you have no issues with a 15-year term in terms of accountability?
Graham Allen: In an ideal world, yes, but this is not an ideal world. It is not a clean sheet of paper. We are trying to make progress. We are trying to move from where we are now to a better place. The elective principle goes way back in terms of my history to when Tony Blair was the shadow home affairs Secretary of State and I worked with him on democratic agenda issues. Actually, the truth of the matter is that I worked with John Smith on those issues, and it was John Smith who drove a lot of this agenda. John's very strong view—and it is one that I did and do share—was that creating an elective element for the Second Chamber would be the most important thing that we could do because of what it would allow to grow and evolve in due course without worry or anxiety, and because the legislature could be strengthened over time.

Q649 Ann Coffey: Graham, if the proposals in this draft Bill were put into a Bill, they would likely meet some quite strong resistance. What do you think about the idea of having a referendum to settle the question as far as the public are concerned?
Graham Allen: From my point of view, that would be another diversion and another delay. It would be another attempt to stop serious reform. Political parties are perfectly capable of putting in their manifestos and putting in front of people what they would like to see on this question and I do not see a referendum as being helpful. However, that is my personal opinion and if, working together, the Lords and the Commons come up with a view that a referendum is important and necessary, I would get on with it and I would hopefully work to get the proposals through on that basis.
Ann Coffey: Do you not think that it is important that the public are given the opportunity to have a clear view on this, rather than to have an indirect view by voting for a particular party's manifesto?
Graham Allen: No. I believe in representative democracy and Members of Parliament taking responsibility. They should make their views known and they should vote accordingly in the House of Commons.
Ann Coffey: But do you not think that a referendum in which the public voted overwhelmingly for an elected or partially elected House would mean that you would stop the arguments that might go on for years between both Houses over these proposals?

Graham Allen: No, I do not. I think that referendums are notorious for being fought on issues other than the question on the ballot paper.

Q650 Lord Hennessy of Nympsfield: I have often seen you in my own mind as Parliament's Large Hadron Collider: you want to recreate the moment of a big bang, in which we will have the separation of powers between the Executive and the legislature. Today, you mentioned the "federal" word—you want that as well in your Large Hadron Collider big bang. Do you not think that, with Scotland being a first-order constitutional question, I think, compared to this one—not that this is not a big one—we should wait for the Scottish question to be settled before your Large Hadron Collider moment can be given to you?

Graham Allen: No. The "F" word that I think you should apply to me, Peter, is "Fabian"—slow, steady, incremental progress, being willing to compromise and offering a vegetarian option to all the meat eaters of the Committee. What Scotland does is to say, "If you do not take action at the appropriate time", which was 1997, "and if you do not solve the English question at the same time as you try to solve the Scottish question, it will come back and bite you." I think that we have an opportunity now. Lords reform is not a big political topic, whether we like to think that it is or not. This is a moment when there is relative tranquillity. The Lords have not inflicted 20 consecutive defeats on the Government and they are probably not likely to. We are certainly not at a moment of crisis. I think that we are now at a moment when wise counsel can say, "This is a useful moment to come forward with some sensible compromise proposals that get us just a little way forward. Perfection should not be the enemy of the good."

The Chairman: We have a problem. I am told that there is a Division in the House of Commons at 7 o'clock, which is fixed. There is another Division coming up in the Lords, by the look of it. I am also told that after the 7 o'clock vote in the Commons we will not have a quorum, so I fear that we will have to bring examining Mr Allen to a halt. I apologise to the people on the list who wanted to ask questions. I think that we should proceed with our final witness, the Clerk of the House of Commons.

Graham Allen: Thank you, Lord Chairman. I thank Members and colleagues for their time.

The Chairman: Thank you very much for coming. It was helpful, informative and revealing.

The Clerk of the House of Commons [Robert Rogers] and Clerk of Legislation [Jacqy Sharpe] (QQ 651–663)

Examination of Witnesses

Robert Rogers, Clerk of the House of Commons, and **Jacqy Sharpe**, Clerk of Legislation, House of Commons

Q651 The Chairman: Mr Rogers, thank you very much for coming. You know what the Committee is about. Would you care to make a short statement before we ask you questions? It would be helpful to the Committee to hear your views first.

Robert Rogers: Thank you very much, Lord Chairman. Perhaps I may introduce Jacqy Sharpe, Clerk of Legislation, who sits alongside me. I will begin by saying that the shape and membership of the future House of Lords is of course an intensely political question and not one on which I would venture an opinion. However, as Clerk of the House of Commons, I have views on the possible effects on the House that I serve, and I hope that we can explore these in a moment. Before we do, I will make two general points. I have never been a supporter of the "zero-sum game" analysis of the powers of the Commons and the Lords. If it is the job of Parliament to scrutinise the mighty Executive of the day and to call it to account, I suggest that the more effective the powers of Parliament as a whole are—I emphasise "as a whole"—the better. My second point is that the relationship between the two Houses is at the moment—and has been for many years—based on what I might call complementarity rather than competition. I think that that takes account of the different parliamentary cultures in each House, and I think that it has great strengths. The proposals in the Bill would change that and I foresee competition arising in particular in three areas: finance, the representation of constituents and the Select Committee system. No doubt we will be able to explore all three areas in the relatively limited time you have left, as well as perhaps the practical hazards of regulating some of these matters in statute.

Q652 The Chairman: Thank you very much indeed. Well, let us explore them, if we may. We will take the finance provisions first. At the moment, the House of Commons is clearly the initiator and, indeed, the ultimate arbiter of such matters as financial privilege. To what extent is there a shared understanding between the two Houses of matters such as financial privilege, and how would that understanding be affected if the House of Lords were to be elected?

Robert Rogers: I think that there are some misapprehensions about the way in which financial privilege operates. Clearly, a distinction between the powers and the roles of the two Houses is made in the Parliament Acts. So far as the traffic between the two Houses is concerned, I think that there is a misunderstanding between an amendment being made by the Lords to a Bill for which there is already coverage by way of a money resolution or a ways and means resolution in the Commons—when, if the Commons reject the amendment, the reason that they will give is financial privilege—and the more extreme circumstances of the House of Lords sending the Commons an amendment for which there is no authority, for the expenditure that it represents. Standing Order No. 78(3) in the Commons requires the Chair—who has no alternative—not to put such an amendment to the House. Those are two very different things. In the first instance, financial privilege is the reason given and it does not exclude a second try by the Lords. The second instance concerns something for which the House with financial responsibility has not given authorisation. There is a great gulf between the two.

The second part of your question concerned how that would change were the Members of the Lords to be elected. The answer covers a much broader canvas. Perhaps I may put myself—this is an eventuality that I can only marginally imagine—in the position of being an elected Member of the House of Lords. I cannot imagine representing constituents who are taxpayers without feeling that I should have a role in expressing views about the way in which money is being spent. Once you start to pull on that string, perhaps you will end up with the elected Lords feeling that the Parliament Act settlement is asymmetrical and should be changed.

Q653 The Chairman: I will ask you about another financial matter: money Bills. There is a slight mystery about them in the House of Lords. We are never certain what constitutes a money Bill or who can certify one. Can you give us a glimpse of the truth here?

Robert Rogers: Section 1(2) of the Parliament Act 1911, as amended, gives us a description of a money Bill. It is perhaps not irrelevant that my learned predecessor of the day, Sir Courtenay Ilbert, wrote a memorandum in

which he attempted to encompass the definition. He was very stroppy with the Lord Chancellor of the day who, he felt, in turning his memorandum into a draft Bill, had made it much more complicated than he had intended in the first place. Money Bills, in terms of practicality, are examined by the Clerk of Legislation. I will hand over to Jacqy to say something about what she does in that process.

Jacqy Sharpe: One would look at any Bill—it is hypothetical at that stage—to see whether it fulfilled the conditions in the Parliament Act. I have on my desk, and will continue to have, a copy of the relevant section of the Act. It would be for Mr Speaker to certify a Bill as a money Bill. He would not consider that until the Bill had been through the Commons, because what might on first appearance look like a money Bill could be altered if other provisions were added by amendment during its passage through the Commons.

Robert Rogers: Having been Clerk of Legislation myself for three years, I should add that Parliamentary Counsel, as representatives of the Government, address the Clerk of Legislation on these subjects—sometimes quite persuasively. However, something that I can knock firmly on the head is the idea that the Government of the day can decide what is or is not a money Bill. That is decided after due consideration. Advice is given to Mr Speaker and it is a rigorously impartial and detached process.

The Chairman: Presumably your comments about the effect of an elected House on the previous matters would apply also to a money Bill: namely, that elected Members would eventually turn round and say, "Look, this affects my constituents, so we should have power over it."

Robert Rogers: If you revisit the 1911 settlement, it is Liberty Hall.

Q654 Lord Trefgarne: We are asked to believe—the Minister said this in his evidence and it appears in the White Paper—that if the Bill becomes law, the primacy of the House of Commons will be maintained principally by the Parliament Acts. That could mean that the Parliament Act would have to be applied half a dozen times a week or 10 times a year, which has not been the custom so far. Would that be practical?

Robert Rogers: If the circumstances arose. Of course, however many times the circumstances arose that fitted the requirements of the Parliament Act, the action could be taken, but we would be talking about a situation of disagreement and disharmony between the Houses that would have reached a very advanced stage, so a lot of other things would have to be taken into account. By your leave, Lord Chairman, we might come back to the question of primacy as potentially a legislative and indeed justiciable concept. As far as I know, this is the first time that this has been attempted in statute. That brings in a whole range of other factors.

Lord Trefgarne: The Parliament Act would seem to be a very blunt instrument if its primary purpose is to secure the primacy of the House of Commons in a situation where the Lords suddenly became largely elected and much more legitimate.

Robert Rogers: On the scenario that you put forward, it would be a resented instrument if it were blunt.

Lord Trefgarne: But that is the scenario in the Bill.

Q655 Baroness Shephard of Northwold: Mr Rogers, please could you expand on your anxiety about the representation of constituents—perhaps not anxiety, but the fact that you mentioned this as one of the three issues of concern you have about the Bill. You may or may not have been here to hear Mr Allen say that there would be a less legitimate relationship between the electorate and Members elected to a second Chamber. He was pressed on this by Lady Andrews and by Lady Symons. Last week, we heard from Paul Murphy, who indeed has in his constituency Members of the Welsh Assembly—actually two sorts, elected by different methods. The impression that Mr Murphy gave us is that such elected people, and certainly electors, do not feel that there is a less legitimate relationship: a vote is a vote and if you have elected someone you expect them to do something for you. This seems to have been given the lie by Mr Allen for the reasons that he explained: he is so keen on getting at least part of the House of Lords elected that he is willing to put up with these inconveniences. Within the context of what I have set out, could we hear your reservations, or at least the points that you would like to make, about the representation of constituents?

Robert Rogers: I read Mr Murphy's evidence to the Committee. I was present for part of Mr Allen's evidence and I heard him say a "less intimate" relationship rather than a "less legitimate" relationship, but he may have said both.

Baroness Symons of Vernham Dean: I thought I heard "less legitimate".

Robert Rogers: Right. I certainly would not comment on legitimacy in this context. Less intimate, yes—the proposals somewhat dilute the relationship, perhaps. My concern is along the lines that, once one is elected to represent constituents, that is what one expects to do, in whatever revised circumstances might exist in a future House of Lords. So far as the House of Commons is concerned, and I must come back to the competition point that I made earlier, it seems inevitable that the House of Lords would not want, for example, to have opportunities to raise constituency issues. It has been said that it is expected that those issues would be of a bigger, broader character—regional, economic issues and things of that sort. I doubt that, because hard cases come to individuals, and individual representatives then decide how they are going to raise them. I think that there would be proceedings which were related to constituency problems—perhaps the equivalent of the half-hour Adjournment Debate that we have at our end of the building. It might affect the sorts of Questions that Members wish to ask of Ministers. I am quite certain that Ministers would be signing a great many more letters than they do now on similar matters.

There is also an issue about people of different parties representing the same area. You can of course say that that can be the case with the devolved arrangements or indeed with Members of the European Parliament. But if one is talking about—if I can call it this—constituency case tourism, where one goes to the Member who one thinks is the most likely to give one a satisfactory outcome to a problem, I think there is scope for some confusion there. Certainly, the convention in the House of Commons—as I do not need to tell anybody round this table—is that Members are punctilious about not straying on to the territory of a neighbour whose first duty is to represent a constituent in that constituency. There might be issues there.

Q656 Mrs Laing: Mr Rogers, it is often said that the House of Lords, or a second Chamber, is a revising Chamber and that its main role is revision. Given what you said, particularly in answer to the last question, do you consider it possible that there might be danger of duplication of the work of the two Chambers, first, as you have just put it very well, in constituency and representative work, and, secondly, in the work of dealing with and examining legislation, the actual day-to-day Committees and sittings? Is there a danger that the revising role currently held by the House of Lords would become a duplicated role, so that the two Chambers become more like each other?

Robert Rogers: Perhaps I can take the legislative point first. In any bicameral system where there is an Executive within Parliament, there is a tendency to use either House as a vehicle for government amendment. For example, in the 2007-08 Session, there were nearly 5,000 amendments tabled by the Government to their own Bills, but almost exactly half and half between the Lords and the Commons. Certainly, as we have seen with the handling of Bills in this unusually long legislative session, the Lords has taken a lot of time in Committee of the Whole House, on the Floor. I would not leave aside the concept that either House can be used as a vehicle for governmental second thoughts, however they emerge, whether as a result of criticism or undertaking or drafting on the hoof, of which the last from our point of view, is something that we would prefer not to see.

I take as the implication of your question the issue about Select Committees, which is at the moment a perfect example of complementarity. In the House of Commons, we have what one might call a vertical system of Select Committees: it drills down into each government department. In the House of Lords, there is a horizontal system of Select Committees: it looks across issues such as the constitution, economic affairs or communications. Again, with the financial element that we spoke about earlier, I would be not in the slightest bit surprised—indeed, I would expect it—if a House of Lords reformed or changed along the lines proposed wanted to have a direct handle on the doings of individual departments. If that were to occur, we would have a lot of competition between the Lords Committee on X and the Commons Committee on X. I see a potential disadvantage for Parliament as a whole if that were to occur because, although it is fine when Committees agree on something, the Government of the day which was offered a menu of a Commons Committee supporting something and a Lords Committee criticising it—or the reverse—would have a very good excuse for dismissing the recommendations of both.

The Chairman: Lord Rooker, I have got you on my list but I am not sure whether you actually put your hand up.

Lord Rooker: Yes, I have had my hand up since 5 o'clock.

The Chairman: Everything comes to he who waits.

Q657 Lord Rooker: Robert, going back to your earlier comments, it is quite clear to me that you reckon that the status quo which this Bill envisages—in the relations between the two Houses and the way we work together—is unacceptable. You have a sense of foreboding in terms of clashes and having to write down the rules and revisit them. Let us look at the advantages and disadvantages. A resolution for the conventions is unenforceable. If you put the conventions into statute, that means that in effect that the Commons controls everything, because the Parliament Acts would have control over legislating the conventions into law. It would be making the conventions so we all know what they are and we all know what the rules are. The Commons is effectively setting up an elected second Chamber but would have total power. There is a dilemma in the status quo of doing nothing. It is very comfortable at the moment, because Ministers can say, "Everything will be okay, we'll evolve". That is more or less what Graham Allen said. You foresee some difficulties in this respect. Which way would you jump in terms of getting the codification or legislation—those words are used interchangeably—with the conventions, so that we do not have these clashes between the two Houses, which will not serve anybody well.

Robert Rogers: I am not sure that I go all the way with your description of what I said earlier on. I think it takes me into a broader political arena in which I am not comfortable, but if we are now turning to the hazards of legislating, I think that there is a whole hierarchy of questions that you need to address. I think at least two of your Members were Members of the Joint Committee on Conventions—Lord Tyler and Baroness Symons. The Committee's very wise report drew away from codification of conventions because the argument was that these are changing and the practice changes with them. I think that you can codify in some sort of exchange between the Houses. There was the very good example from not long ago of the concordat—if I can put it that way—on packaging of amendments to Bills between the two Houses. That in a sense was a codification. There was a Written Ministerial Statement—or a planted Question, as they were in those days—and it was quite clear what the two Houses had agreed as a matter of practice.

I think that, if you are talking about legislation, a great many undesirable consequences follow from that. If you start to regulate the internal processes of Parliament by legislation, there is only one way of deciding any difference and that is through the courts. It may take a fairly long time to decide something or resolve an issue that the two Houses might well decide in parliamentary business overnight or in the course of a sitting day. Also, because the courts are going to have to look at parliamentary materials to come to a decision, that will drive a coach and horses through Article 9 of the Bill of Rights. That is an outcome about which I would be extremely concerned.

Q658 Lord Rooker: We are talking in the context of two elected Chambers—that is what we have to envisage. We have a second elected Chamber in a unitary state where effectively all the power stays in the first Chamber under the Parliaments Acts. We have our own internal debating rules and the Commons have theirs, but under this procedure the Commons could actually write, effectively, the Lords debating rules—what you can consider and how far you can consider it under the new arrangements. In that case, why should elected Members of the Lords, in a dispute with the Commons, not go to the courts? The courts are the arbiter. You could be an elected Member of the Lords and feel that the Commons keep bossing you about. You would think, "I am elected, the rules are like this, we want to do this, say that, or vote on this, but we cannot. I would rather let the courts decide." That is the minefield we are going into, is it not?

Robert Rogers: You very vividly put the idea of unelected judges deciding what it is that elected representatives may or may not do. That has clear hazards. I would be very concerned because that process means that you are regulating the proceedings of what should be a sovereign Parliament by reference to the operation of the law. Let us take, for example, the issue of primacy, which we mentioned a few moments ago. That is stated in Clause 2 of the Bill, because it says that nothing is to affect the primacy of the House of Commons. Of course this is the first time that the idea of primacy is proposed to be put in a statute, and so a whole series of questions are begged immediately. What does "primacy" mean? Let me just give you a cheeky example. Would it mean, for example, that on a Joint Committee such as this the will of the Commons Members should prevail, even if they were in a minority? You would say immediately, "No, of course not", but who is to determine that? You could argue that, if nothing in the Bill affects the primacy of the House of Commons, there must be a primacy there to be worked through. What is the extent of that primacy? As long as you put that concept in legislation, the only people who can tell you are the judges.

Q659 Lord Rooker: I have one more short question. Earlier on, Robert, you gave us a very good example about the certification of a money Bill. In the circumstances of doing nothing—that is, the status quo on conventions—who would certify to Mr Speaker that a Bill is a manifesto Bill? Who would give that advice to the Speaker, bearing in mind the precision by which manifestos are drafted by the political parties?
Robert Rogers: I think that you have just about answered your own question. It is not a job that I would eagerly undertake to give advice to the Speaker. Of course you can look at the manifesto and say, "What sort of congruence is there between this Bill and a fairly outline indication in the manifesto?" because of course you can follow through a principle but, in the detail in which you propose to implement it, you may subvert, change or substitute the effective elements of that principle. You could have some difficulty.
Lord Rooker: But that is the problem. One of the conventions deals with manifesto Bills. How do we get over this dilemma? Is there a special way that they are dealt with here? An elected Chamber may say no.
Robert Rogers: As long as you are non-codifying, it is like a camel—it may be quite hard to describe but, when you see it, you know what it is.

Q660 Gavin Barwell: At the start of your evidence, you gave us a very succinct phrase to describe the choice before us, saying that the current relationship is complementary and not competitive. In many areas of public policy, there is a view that competition actually improves the service that people get. I would be interested in your views on why that might not be the case in this situation. Let me take one specific example—you gave us three—in relation to Select Committees. You are quite right that the House of Commons Select Committees are mostly departmental ones, but until recently I sat on the Science and Technology Committee, for which there is an almost exact parallel in the House of Lords, and in my experience those two Select Committees certainly worked very well together. I am not sure, from the practical evidence we have, that that kind of competition would necessarily cause a problem.
Robert Rogers: My concern is not only competition; it is also duplication. I could give you a very good example of European financial instruments where there was quite a tussle between the Treasury Committee in the Commons and the Economic Affairs Committee in the Lords. I think that this is something where case law, despite your giving one example and my giving another, is at this stage not going to be that helpful. One has got to stand back from a scenario and say, "Look, if it is like this, what are the likely outcomes?"

Q661 Lord Hennessy of Nympsfield: Robert, would I be right in thinking that when you state that—as I am sure is the case—this is the first time that the concept of primacy will have appeared on the face of a Bill, that already means that the crust is broken so that the judges' hands can go straight into the relationships between the two Houses, if the Bill proceeds as drafted?
Robert Rogers: There are several provisions in the Bill that would lead to a result like that, if its operation were challenged. Of course, that is the key proviso. Clause 58, for example, seems to be a good instance of specifying exclusions. If the proceedings of the House of Lords are not to be called into question for the reasons there stated, how, where and why may they be called into question? If we have a statutory provision that says that those provisions, with those savers, are not to be called into question, where does that leave the Commons, where we do not have a similar statutory protection? Of course, we say that the statutory protection is that of a sovereign Parliament protected by Article 9 of the Bill of the Rights, but the moment you start opening doors in, into and through Article 9, you have a problem.
Lord Hennessy of Nympsfield: If we wanted to make this Bill judge-proof—if we saw that as our function as a Joint Committee—what must we do? It is a big job to make this judge-proof as drafted.
Robert Rogers: I do not think that the courts like all-purpose ousters. I think that you will need to look for greater legal learning than I possess as to how one might do that. My essay at an answer is that it would not be easy while preserving the effect of what is intended here.

Q662 Baroness Symons of Vernham Dean: Let me go back to one of the questions raised by Lady Shephard, on the relationship of the individual Member elected into the House of Lords being less intimate than the one in the House of Commons. I absolutely see that, if you have an electorate of 60,000, there will be a more intimate relationship with your MP than there would be if you have an electorate of 570,000, as I think the White Paper says for individual Members of the House of Lords. On the other hand, if you have been elected with the

opportunity for 60,000 people to vote for you and someone else has been elected with the opportunity for over half a million to elect them, which would you say was the stronger mandate?
Robert Rogers: I can very happily and immediately tell you that you are taking me way out of my comfort zone. I am not going to try to answer that one.

Q663 Lord Trimble: You mention Select Committees being complementary and that that complementarity is vertical rather than horizontal. I have just come from spending over two hours in the Lords European Union Select Committee, which is horizontal. It covers exactly the same ground as that in the Commons but we do not clash because we do things differently. In other words, in the Lords, provided that we have people who have just come up from the Commons properly acculturated, we avoid political issues. I remember when we did a report on 10 years of the euro. We did that report and got complete unanimity in the Committee because we never asked the question that they would start within the Commons and never get past: whether the United Kingdom should join the euro. But that would change if you had elected Members. The political issues would come straight in. That is more of an observation than a question.
I will make my other observation quickly. You talked about people in the Commons being punctilious in abiding by the convention of not interfering in the constituencies of other Members. That might be the convention that exists in England, but it did not exist in Northern Ireland. In my time in the Commons in Northern Ireland, I would go every other week to hold meetings in other people's constituencies and do so in a very public way. I did that so that my party could be in competition with the party of the man who was then the Member of that area. That was just something he had to put up with.
Robert Rogers: I think that the European Union Committee and the European Scrutiny Committee are an example of complementarity because the House of Lords Committee does many fewer documents but in much greater depth and the House of Commons Committee reports on about 1,200 a year, finding that about 600 or 700 merit a substantive report. It is a perfect example of complementarity.
Lord Trimble: But it is unlikely to survive the arrival of elected Members.
The Chairman: I do not understand that. I do not want to intervene in the argument, but as a Member of the same Committee as Lord Trimble I just question the point that he made. Why does he say that?
Lord Trimble: We avoid what are called the political issues—the issues that would catch the imagination and attention of the public presently. That would not be the case were there elected Members.
The Chairman: Well, there we are. Thank you very much for coming. By the time we have finished this vote, the House of Commons will be into their vote, in which case we will be non-quorate and not here. Thank you very much for coming. I thought that it was revealing and helpful.
Robert Rogers: I would be very happy, should the occasion arise, to assist you on matters of conciliation and the suggestion that it might be illegal to vote against the Second Reading of a government Bill in a reformed House of Lords. That may be for another occasion.
The Chairman: Thank you very much indeed.

MONDAY 30 JANUARY 2012

Members Present

Lord Richard (Chair)
Baroness Andrews
Lord Hennessy of Nympsfield
Bishop of Leicester
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Baroness Shephard of Northwold
Baroness Symons of Vernham Dean
Lord Trimble
Lord Tyler
Baroness Young of Hornsey
Gavin Barwell MP
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Mrs Eleanor Laing MP
Dr William McCrea MP
Laura Sandys MP
John Stevenson MP
John Thurso MP
Malcolm Wicks MP

Lord Pannick (QQ 664–679)

Q664 The Chairman: Lord Pannick, thank you very much for coming. We are very grateful to you for coming to help the Committee. You know what the Committee is about. We have had the opportunity of seeing an opinion from you, but would you like to open it up for us, after which we can ask you some questions?

Lord Pannick: Thank you, Lord Chairman. May I declare two matters of interest? First, I represented the League Against Cruel Sports in the Jackson case, which ended up in the Appellate Committee, on whether the Hunting Act was valid—that is, whether the Parliament Act 1949 was valid. Secondly, as we may touch on issues of parliamentary privilege, I ought to declare that I acted for the Crown in the recent case that went to the Supreme Court on whether MPs and Peers could be prosecuted in the Crown Court in relation to alleged dishonest claiming of parliamentary expenses.

In relation to the main issue that you asked me to address in the opinion, many difficult issues are raised by this Bill, as you have been deliberating on. I do not think that this is one of them. My view is that it is very plain indeed that the House of Commons has power under the Parliament Acts to insist on having its way in relation to a Bill of this sort if the House of Lords refuses to agree. Would you like me to explain briefly why I take that view?

The Chairman: Briefly, please, yes.

Lord Pannick: There are four essential reasons. The first is that the 1911 Act makes very clear the circumstances in which it does not apply. It lists exceptions; constitutional reform—reform of the upper House—is not one of them. As Lord Bingham said in the Hunting Act case, the word used in Section 2 of the 1911 Act is "any", and any Bill means any Bill, subject to the defined exceptions. The second reason is that the whole point of the 1911 Act was to provide a mechanism by which disputes between the two Houses could be resolved without the appointment of a large number of new Peers. It would be very surprising if the courts were to interpret the 1911 Act so that it could not resolve a dispute between the two Houses. The third reason is that it is absolutely clear

that the reason why the 1911 Act was passed in the first place was to enable the House of Commons to have its way, if there were a dispute, on issues of major constitutional reform. The historical context was, of course, the desire of the Liberal Government to secure home rule, knowing that it would not be able to do so against the opposition of the upper House. The first two Bills that were enacted using the 1911 Act were indeed on issues of constitutional reform: home rule and Welsh disestablishment. The fourth reason, if one needs to go this far, is that there are ample statements in *Hansard* indicating that it was very much the intention of the Government to have the ability to use the 1911 Act to secure fundamental constitutional reform, in particular reform of the House of Lords. Specific amendments were put forward to exclude from the 1911 Act major constitutional reform, in particular reform of the upper House. Those amendments were either defeated or, in some cases, not pursued. Looking at *Hansard*, as the court would in the event of real doubt, the position is absolutely clear, in my opinion.

Q665 The Chairman: Thank you very much. I do not know whether you have had the opportunity of seeing the letter put in by Lord Goldsmith.
Lord Pannick: I have. I have seen that today. As I understand him, he comes to a very similar conclusion for a very similar reason.
The Chairman: He does on that part, but he asks himself two questions. One is whether or not the Parliament Acts could be used to enact the draft House of Lords Bill without the assent of the House of Lords. On that, he comes to the same conclusion as you do. Secondly, he asks whether there is any reason why the Parliament Acts could not be used by the House of Commons to enact legislation without the assent of the House of Lords if the House of Lords were to be elected. He says—this is a broad summary—that if there is an elected Chamber, by which I assume he means a wholly elected Chamber with the same powers, with the House of Commons as an elected Chamber with the same powers, and with the two Houses facing each other in those circumstances, it may be that the Parliament Acts do not apply. Do you share any of that view?
Lord Pannick: I think that that is a much more difficult question. My opinion is that the better view is that the 1911 Act would not apply in the event that the upper Chamber were wholly or mainly elected. I say that for these reasons. First, the Preamble to the 1911 Act makes it very clear indeed that Parliament's intention was to move in the future to a second Chamber that was popularly elected. Secondly, it is clear to my mind that the purpose of the Parliament Acts was to regulate the relations between the two Houses at a time when one House was elected and one was not. Thirdly, there is no material that I can see in the *Hansard* debates that suggests that the 1911 Act was intended to apply even when we moved at some time in the future to a position where both Houses would be elected. The conclusion that I draw from this is that it is absolutely vital, in my opinion, for the reform Bill to specify with clarity whether or not it is the intention that the Parliament Acts should continue to apply in the event of there being a substantially or wholly elected upper Chamber. It would be extremely undesirable to leave that fundamental question unclear for the future; the inevitable consequence is that the matter would end up in court rather than being decided by Parliament. I think that this is a more difficult question than the earlier one. I think that the better view is that the 1911 Act would not continue to apply, but it seems to me wholly desirable for the matter expressly to be addressed in the Bill. I do not think that the current Clause 2 of the Bill adequately addresses that question, not least because it does not specifically refer to the 1911 Act; it refers to provisions affecting the primacy of the House of Commons, which is ambiguous.
The Chairman: The amendment that you want to make to the proposed Bill is really quite simple. That is right, isn't it?
Lord Pannick: It is a very simple one. It would either say that the Parliament Acts 1911 and 1949 continue to apply or that they do not continue to apply. I express no view on which policy option is appropriate. My view is that this fundamental issue needs to be addressed in the Bill.

Q666 Mrs Laing: Lord Pannick, your paper has been really illuminating, so thank you very much for it. May I take you to your opening sentence? It says: "The Parliament Act 1911 strengthened the powers of the House of Commons by restricting the powers of the House of Lords." Would you consider that it logically follows that, if the powers of the House of Lords were to be strengthened, the powers of the House of Commons would thereby be restricted?

Lord Pannick: Yes, because it would mean that the House of Commons would not be able to get its way so easily, subject to whether the Parliament Acts continue to apply.

Mrs Laing: Thank you. You have explained your opinion to us very well this afternoon, and we all have it before us. Although I well understand why you have come to the conclusions in your opinion—it is very well set out—do you accept that there are nevertheless dissenting, contrary opinions to yours?

Lord Pannick: I certainly recognise that one can find—and I attempt to identify them—statements by very eminent judges who have suggested that the Parliament Acts do not apply in relation to issues of major constitutional reform. I have attempted to address them and, with enormous and genuine respect for those judges, I do not myself see how those arguments could be sustained. I have not seen any evidence that has been presented to this Committee that adopts a contrary view to that which I have expressed.

Mrs Laing: Indeed, thank you. In your opinion, you have taken us very well through the arguments in the Jackson case, which I certainly found very helpful. Even though you now tell us that you do not think that those contrary opinions would be likely to be upheld, would you say that the fact of there being contrary opinions would mean that the matter could be taken before the courts and that there could be a challenge to the use of the Parliament Acts? I seek not to anticipate the judgment of any court in such a respect; I merely want to know whether the matter would be justiciable.

Lord Pannick: Yes, of course. In the light of the Jackson case, it is now well established that the scope and application of the Parliament Acts are a justiciable issue. Were this reform Bill to be enacted through the use of the Parliament Acts, it would be open, of course, to an interested person, which is a very wide concept, to seek to obtain a judicial determination.

Mrs Laing: Assuming that there would be at least one interested person—I think that there could be several hundred—or one legal persona who could bring such a case before the courts, would you consider that the whole process of reforming the House of Lords could thus be held up for a very long time?

Lord Pannick: I would doubt that, because I do not think that the argument would be taken very far. The court would deal with it and the courts are very used to dealing speedily with matters that are urgent. I would hope and expect that if, unhappily, a challenge were brought, the court would act expeditiously in a vital matter of this sort.

Q667 Mrs Laing: Excellent. Thank you very much. Let me take you to a slightly different matter. In paragraph 25 of your paper, you rightly say: "The House of Commons could not use section 2(1) of the 1911 Act to abolish the House of Lords without its consent." That is well argued in your paper and, indeed, in the other learned opinions that we have before us. But is it not arguable that if the House of Lords was being replaced by something called a Senate, which is a wholly different creature from the House of Lords that we have, that would be tantamount to abolition?

Lord Pannick: I understand the argument but I find it very difficult, because the Parliament Act itself recognised and indeed intended that the second Chamber would, at some time in the future, be constituted on a popular basis, and that, whatever the merits or demerits of the proposal, is what the Government is proposing. As I have said, the 1911 Act was intended to allow the House of Commons to have its way in relation to constitutional reform, including reform of the House of Lords. I have suggested, and others agree, that there is a distinction between reform of the House of Lords of this sort and abolition. The reason for that is that the 1911 Act itself contemplates the continuation of a second Chamber. Therefore, to use the 1911 Act to abolish that which that very Act contemplates will remain in existence is not permissible. So there is a distinction between abolition and fundamental reform.

Mrs Laing: Absolutely, but once again I think that you have possibly just proved to us that there are arguments on both sides. Do you consider that that aspect of the matter would be justiciable too?

Lord Pannick: Yes. I am not disputing at all that these matters are justiciable. It is always open to others who take a different view to seek to persuade the court of it. I can simply give you, as best I can, my opinion.

Q668 The Chairman: Do you think that abolition could be anything other than the creation of a unicameral legislature?

Lord Pannick: No. I think that that is what abolition means. It means that there would be a unicameral legislature and that there would be no upper House, but fundamental reform is a different question.

The Chairman: Lady Young?

Baroness Young of Hornsey: My question has already been answered. That is exactly what I was going to ask.

Q669 Baroness Andrews: May I ask you to repeat what you said, Lord Pannick, about your suggestion for how Clause 2 could be, shall we say, clarified? You suggested that an amendment could be made stating whether the Parliament Acts would continue to apply. In fact, if the Parliament Acts continued to apply, they would bring with them all the restraining powers on delay and so forth, which in effect would diminish the new Senate or whatever. How do you think that that sits with the democratic mandate that would be given to that new Senate?
Lord Pannick: I am expressing no view on the wisdom or otherwise of the Parliament Acts continuing to apply. The only point that I am making is that this general issue needs to be addressed. A view may be taken by Parliament that it is highly desirable that, notwithstanding that the upper House is now elected, wholly or mainly, the substance of the Parliament Acts should continue—that is, that the House of Commons should be able to have its way. If so, Clause 2 or another clause should say so. On the other hand, a view may be taken, essentially for the reasons that you put to me, that it is no longer appropriate that the House of Commons should have its way, because the upper House, like the lower House, will be elected—differently but none the less elected, wholly or mainly. I am suggesting that, in that case, it is absolutely essential that Clause 2 or another clause says that the Parliament Acts no longer apply. But I am expressing no view on the merits of those arguments.

Q670 Baroness Andrews: I accept that. My second question is this. In your very useful opinion, you rehearse in paragraphs 9 and 10 the arguments of the Court of Appeal. I raise this really as a point of information. You say: "The Court of Appeal added that 'the greater the scale of the constitutional change proposed by any amendment, the more likely it is that it will fall outside the powers contained in the 1911 Act'". That was in the context of the debate that you were having on Jackson, but I would argue that that would apply even more so if we were talking about the greater degree of constitutional change that is implied by an elected House of Lords. Some of the other comments that are made by the Law Lords would appear to have more relevance and more force in that new context. Would you agree with that?
Lord Pannick: I would simply respond in this way. The Jackson case was not concerned at all with the distinct issue of whether, after the upper House became elected, the Parliament Acts would or would not continue to apply. The only issue that the Jackson case was concerned with was whether or not the Parliament Acts applied to major constitutional reforms such as the 1949 Act or to something, even if it were not major constitutional reform, at a time when the upper House was not elected. The other question was simply not addressed in Jackson.
The Chairman: Did the House of Lords agree with the Court of Appeal?
Lord Pannick: The House of Lords agreed with the Court of Appeal that the Hunting Act was valid and that the Hunting Act was valid because the 1949 Act was valid, but the House of Lords did not agree with the Court of Appeal that the 1911 Act cannot be used for major constitutional reform. The House of Lords was very clear that that was the wrong test.

Q671 Baroness Symons of Vernham Dean: Lord Pannick, you said when you were making your introductory remarks, and you reiterated it just now, that on the second issue—the application of the Parliament Acts to an elected House of Lords sitting alongside an elected House of Commons—you did not want to have a view; you said that you took no view on whether the Parliament Acts should continue to apply. But you also said that the Preamble of the 1911 Act makes it clear that the regulation relates to one elected House and one non-elected House. The Preamble establishes the rationale to have the Parliament Acts—that one House is elected and one is not. If both Houses are elected, does not that rationale fall? I do not know what rationale you would then advance for saying that the Parliament Acts could still in some circumstances apply. It seemed to me that what you were essentially doing was having two statements sitting alongside each other that did not add up logically. I would be very interested to know why you are so reluctant to say something about the future, given that the rationale for why the Parliament Acts exist in the first place simply drops away.
Lord Pannick: I am a mere lawyer. There are two distinct issues. The first issue is what view was taken in 1911, which informs the question of the continuing scope of the 1911 Act. You are absolutely right, of course, that the view taken at the time was that these restrictions on the powers of the upper House should be the consequence of its not being a popularly elected House. That is issue number one. Issue number two, which is very different, is

what view should be taken now, in 2012, when, we are assuming, Parliament decides that it is appropriate that the upper House should be popularly elected, wholly or substantially. That is a very different issue. The argument that could be advanced as to why the House of Commons should remain more powerful than the upper House is that the upper House's method of election would be very different—every 15 years—and there would be other distinctions set out in the Bill as to the method of popular election. It may be, of course, that the upper House would only be substantially elected—80 per cent elected. I can see an argument that it would be appropriate in those circumstances for the House of Commons to remain the predominant House, but I am expressing no view on that. I hope that you do not think that I am pusillanimous but I have come here today as a lawyer to try to assist in relation to legal questions. I have no particular expertise in relation to the difficult questions as to how one balances the respective powers of the two Houses after reform. That is an issue that I want to think about. I will listen to the debates, but I am not putting myself forward as any sort of expert on that political question—it is not a legal question.

Baroness Symons of Vernham Dean: I do not know that there are any experts on that particular question, Lord Pannick. That is what we are having to grapple with at the moment. Would you say that the argument for the Parliament Act is less strong if the House of Lords is 100 per cent elected, which seems to be the purport of your last set of remarks?

Lord Pannick: Yes, of course, but in so far as I want to express a view it would be this. It seems to me absolutely essential, if a reform of this nature is to be enacted, that the legislation clearly identifies how the inevitable disputes between the two Houses are going to be resolved. One sensible way of dealing with it, which has worked pretty well over the last 100 years or so, is to maintain the Parliament Act procedure, which provides that the House of Commons will have its way and that, although the upper House has considerable powers of delay, it cannot insist on its view. That seems to me to be a sensible and practical way of solving the inevitable practical problems of conflict that will arise if this Bill is enacted.

Baroness Symons of Vernham Dean: Do you not then have the problem that one set of electors will have given their vote to Members of the upper House—indeed, under the terms of the Bill, it would take over 500,000 electors to elect a Member of the House of Lords, whereas it would take only 60,000 to elect a Member of the House of Commons—which would inevitably draw the two Houses into conflict as to the relevant strength of the mandates and the relative position of two sets of voters? Why should one lot have so much more weight than another?

Lord Pannick: I understand that, but it seems to me that conflict is inevitably going to arise in the event of a Bill of this sort being enacted. It is inevitably going to encourage the upper House to be more assertive. Therefore, either you have a provision in the legislation that provides a mechanism by which conflict can be resolved, or you leave the Bill without such a method of resolution, which means that the matter will be determined by practical politics, but it may mean that you have a lowest common denominator approach, so that, unless you can persuade both Houses, no legislation gets through. That seems to me to be undesirable.

The Chairman: Can we be absolutely clear about this, Lord Pannick? You are saying that you have to have some means of reconciling the two. Your view is that the continuation of the Parliament Acts, which has to be made clear in the Bill, will be one way of doing that.

Lord Pannick: That is what I am suggesting. There may be other ways of dealing with it, such as conventions, but whether people will comply with conventions is another matter.

Q672 Lord Rooker: That is the very point that I want to raise. On your point about the Parliament Act, the Parliament Act alone, with an elected second Chamber, is not of itself sufficient for there to be good relations between the two Chambers, because everything is left the same. The conventions are there. An elected House would probably test the boundaries. Therefore, there would be a logjam of legislation. In other words, the Lords says to the Commons, "You have to give way a bit on the Parliament Act, otherwise we will block everything." We would have no Government and the whole thing would be crazy. I entirely take your point about keeping the Parliament Act working with an elected second Chamber, but would your view be that the conventions themselves need, before the second House is elected, to be set out in a clearer fashion than they are now, either in statute, in which case they would be subject to the Parliament Act, because the Commons could do that at the end of the day, or in a codified way that everybody understands? That would be rather than waiting for an elected House to arrive, with its Members knowing before they are elected that the Parliament Acts apply, but only that.

We know now, today, that the conventions actually constrain the powers of the Lords. You can vote against Second Readings of Bills and all kinds of things, but that is not done, because we are not elected. Would your view be, without taking a position on one side or the other, that for clarity and good governance you have to do more than simply leave the conventions there and wait for them to, in the Minister's word, evolve?
Lord Pannick: I entirely agree with that because, as we all know, the Parliament Acts are rarely used in order to secure the passage of legislation. The system operates and can only operate through an agreed set of conventions and understandings. I think that it is highly desirable that there should be some further means by which the respective powers of the two Houses are understood. Whether it is sufficient to have conventions without a statutory underpinning is a matter on which one can take different points of view. I simply add that, if you codify these understandings in statute, in addition to the Parliament Act, you are going to make those provisions justiciable. I would have thought that that would have considerable disadvantages of encouraging people to go off to court if they were dissatisfied with matters. At the moment, of course, although the Parliament Act is justiciable, the way in which the conventions operate is not, because these are matters of the internal workings of Parliament, which no court would interfere with.

Q673 Lord Rooker: David, can I just ask about your argument about a bicameral system and a unicameral system? If you a have legislative House with sovereign power in a unitary state—it can do anything that it wants, as the Commons can today—and it has an advisory super-committee, which has no power to initiate or push legislation but only has the power to advise or delay, what is the difference between that and a unicameral system? That is not a bicameral system, is it? One House is not at all equal to the other and its functions to delay or advise are incredibly limited, whether they are used or not. Surely that is a unicameral system with a super-advisory Chamber rather than a legislative Chamber. Does that describe to you the status quo or not?
Lord Pannick: That is essentially the position now, isn't it? The upper House, the House of Lords, cannot insist on having its way except on a very narrow category of subject matters that are outside the scope of the Parliament Acts—the extension of the duration of Parliament. As we all know, in 1949, there was a substantial reduction in the delaying power and it would be open, it seems to me, to a Government, using the 1911 Act, to reduce that delaying power all the more. But it is a matter of degree and I do not think that anything in the reform Bill comes close to being outside the scope of the powers conferred by the 1911 Act. One can cite more extreme examples, which may come closer to the line and closer to abolition, although I take the view put to me by the Lord Chairman that a unicameral legislature is essentially what is meant by abolition of the House of Lords.

Q674 Lord Trimble: To come back to that question of abolition, you take the view that the Parliament Acts could not be used to abolish the House of Lords or whatever the second Chamber happens to be.
Lord Pannick: Yes.
Lord Trimble: What do you think the position would be with regard to legislation that completely emasculated the body? There is a suggestion that, if the delaying period was to be reduced from one year to one month, that would be tantamount to abolition and the Acts could not be used for that purpose. Do you have a view on that?
Lord Pannick: There will come a point at which emasculation means that the House of Lords, or the upper House, has no sensible or practical role. One would then accept, in my view, that that was tantamount to abolition. I mention in paragraph 27 of my opinion that in the debates on the Parliament Bill in 1947 a Labour Back-Bencher unsuccessfully proposed reducing the delaying powers of the House of Lords to one month. I suggest in that paragraph that, in my view, the 1911 Act could be used so to reduce the delaying powers, but there obviously comes a point where you are so emasculating the powers of the upper House that it ceases to be an upper House in all but name. A court would then act, but it would take something very extreme, in my view, to say that the 1911 Act could not be used to further reduce the powers of the upper House.

Q675 Oliver Heald: At one stage in our thoughts, we were looking at what might be included in Clause 2. One thought was to refer to particular statutes where primacy was involved, such as the Parliament Acts, and to say that they would continue to have effect, but there were more than just the Parliament Acts. The Ministerial and other Salaries Act apparently defines who the Leader of the Opposition is; the Fixed-term Parliaments Act deals with dissolution and has some aspects in it about primacy; the Constitutional Reform and Governance Act is

about how treaties are dealt with; and the Localism Act deals with planning matters. If one of those Acts was not mentioned, what would the significance of that be? Given that the Preamble to the 1911 Act seems to suggest that this is the moment when the limitations and restrictions would be set, if a restriction is not set at this point, what happens in terms of justiciability and legal effect?

Lord Pannick: Justiciability will not be affected by the contents of this Bill, if and when it is enacted, because the issue arises as to the effect of the Parliament Acts and that will remain a justiciable issue. It seems to me that the Parliament Act is so fundamental a question that it is vital that it is expressly addressed in Clause 2 or another clause. It may be that there are other fundamental provisions the continuing application of which would be doubtful in the event of the enactment of the Bill along these lines. I am doubtful that that is true in relation to the other legislation that you mention, but it may be. If it is, that should be dealt with.

Oliver Heald: So you do not think that it is vital that all the Acts that touch on primacy are mentioned.

Lord Pannick: No, because it does not seem to me that anyone could doubt that the consequence of this Bill would be in any way to affect the continuation of, say, the Fixed-term Parliaments Act, which would remain valid and effective. But we are dealing in the Parliament Acts with a provision that obviously is vitally concerned with the relationship between the two Houses and a piece of legislation that was enacted, as we all know, at a time when the future nature of the upper House was being considered as a matter that would need to be addressed at a later stage.

Oliver Heald: If we were to say that the Parliament Acts will continue to have legal effect in the way that you suggest, and given that the Preamble to the 1911 Parliament Act suggests that it is at the moment of substitution that the limiting and defining of powers would take place, is there an implication that Parliament has therefore decided that the power that is limited and defined is that in respect of the Parliament Act and that otherwise matters are to continue unchanged? In other words, is it making the continuation of the current conventions something that has legal effect or is justiciable in any way?

Lord Pannick: I do not think that legislation along these lines, including legislation that addressed the Parliament Act, would have any effect on the justiciability of the conventions, because the conventions remain conventions, whatever they were before and whatever they are after the enactment of a Bill along these lines. More difficult is the impact of legislation of this sort on the continuation of other legislation but, as I say, I cannot think of any other legislation that has the characteristics of the Parliament Act such that there would be doubt as to its continuing applicability in the event of Parliament now addressing the composition of the upper House.

Oliver Heald: My idea is that it is worthwhile to try to agree a concordat between the Houses that deals with the conventions and perhaps one or two issues about how Members of the Senate will perform their duties vis-à-vis the Commons. There is no reason, then, for me to worry about continuing the effect of the Parliament Act; it will be possible to have the concordat and to agree the conventions despite the fact that the Parliament Act's Preamble refers to this being the moment in which a measure would include the limiting and defining of powers to effect the substitution.

Lord Pannick: I would seek to give you reassurance that, in my view, there are two distinct issues. The first is the continuing applicability of the Parliament Acts, which needs to be addressed in the legislation. The second is the question of concordats, agreements or conventions between the two Houses, the terms of which would remain a matter for Parliament, if they were not in the legislation. They would not be affected by what the Bill said about the Parliament Acts, provided that they were consistent with what the Bill said about the Parliament Acts.

Oliver Heald: So where the Preamble says, "in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber", you do not think that that means that all the limiting and defining has to go on in the measure.

Lord Pannick: No, for this reason. What you are rightly referring to is a Preamble. Parliament in 2012-13 or whenever will define, because I hope that it will address in Clause 2 the continuing applicability or otherwise of the Parliament Act, what the legal relationship is between the two Houses of Parliament, and nothing contained in the 1911 Preamble looking forward to the position when reform occurs will be of any continuing legal relevance. Parliament will have addressed that very question.

Oliver Heald: So we are not in some sense giving it a novation.

Lord Pannick: No.

Q676 Lord Hennessy of Nympsfield: Last week, the two Clerks, Mr Beamish and Mr Rogers, were very concerned and flagged up real anxiety about judges being able to get their hands on conventions, thanks to some

aspects of this Bill as drafted, and driving a coach and horses, as one of them put it, through Article 9 of the Bill of Rights. Do you share the concern that they expressed last week and do you sense the dangers in the Bill as drafted of that happening?

Lord Pannick: The principle will remain that there are aspects of the relationship between the two Houses that will be justiciable. As Jackson indicates, legislation will be interpreted by the courts, but the courts will, I am sure, continue to apply the general principle that the internal workings of Parliament, such as on matters of conventions, will remain a matter for the Houses themselves and will not be for the courts. Aspects of the Bill invite the courts to intervene. For example, Clause 51(6) provides for a determination by the Judicial Committee of the Privy Council on whether a person is disqualified from being elected to the upper House. In Clause 59, new Section 7E(6) of the Parliamentary Standards Act confers a right of appeal to the First-tier Tribunal in relation to expenses claims. But in general I would expect the courts to be very reluctant, as they always have been, to interfere in the relationship between the two Houses.

Lord Hennessy of Nympsfield: Would you be happy if this Committee saw part of its function as being to make this as judge-proof as possible? If so, how should we do it?

Lord Pannick: I think that it is highly desirable that these matters of the relationship between the two Houses are decided by politicians—by Parliament—and not by the courts. I am doubtful that it is necessary expressly to address such a matter in this legislation, but if others have considerable doubts about this, one could put in a clause that made it expressly clear, as I think was done in relation to the expenses legislation, that parliamentary privilege remains and is not affected by any of this.

Q677 Lord Hennessy of Nympsfield: We have Lord Goldsmith's evidence, which is fascinating. Presumably it is much the same as he gave to the Government of which he was Attorney-General on the Parliament Acts and so on. We have the 1981 material, when Michael Havers was Attorney-General, which was released to the National Archives three weeks ago, but do you not think that we should have the current Attorney-General's opinion? We asked for it but were told to push off. It seems to me that if we can have the legal opinion on going to war over Libya, which we got, to the Government's credit, the two Houses of Parliament should, before they discuss the report, have in front of them the Attorney-General's opinion. I remember Tom Bingham arguing, in relation to the Attorney's opinion on the legality of the Iraq war, that the client was the public and Parliament and not just Ministers. My own view is that that applies to this as well. Are you with me on that?

Lord Pannick: I am certainly with you. On an issue of this sort, which is a question of fundamental public importance, it seems to me that no serious argument can be advanced from the perspective of confidentiality for non-disclosure of the views of the Attorney-General. You mention the Iraq war, where the opinion, or large parts of it, was eventually published.

Lord Hennessy of Nympsfield: It had to be leaked first, though.

Lord Pannick: It had to be leaked first, that is true. There are many other examples of opinions from Law Officers being made public by the Attorney-General when it was thought appropriate to do so. Professor Edwards's book, *The Law Officers of the Crown*, describes the many such occasions. I entirely agree that, on an issue of this sort, in order to assist Parliament and the public it is highly desirable that any opinion by the Attorney-General—there may or may not be one; I do not know—should be published.

The Chairman: You know that we asked for one, do you?

Lord Pannick: I did not know that you had asked, no.

The Chairman: We did. I wrote to the Attorney-General saying, "This is the issue. Could you give us your opinion on it?" I got back what I hesitate to call a slightly snooty letter—it was certainly a remote letter—which merely said that it is not the function of the Attorney-General to advise Parliament; it is the function of the Attorney-General to advise Governments. We have not taken it any further because we have the advantage of people like you.

Lord Pannick: It would be nice to know the view, I suggest, of the Attorney-General. It is also perfectly obvious that this issue will come up when the Bill comes before Parliament. The Minister will stand up and will be asked to express a view. If the Minister says, "I am not prepared to disclose the view of the Attorney-General on this legal issue", there will be some concern, I think it is fair to say, to put it mildly.

The Chairman: He would have disclosed it by saying that. Mrs Coffey?

Ann Coffey: My question has been answered quite thoroughly, thank you, Lord Chairman.

Q678 Baroness Scott of Needham Market: I have a basic concern, which I hope you will be able to help me with, Lord Pannick. We have spent a lot of time today and previously in the Committee discussing this question of primacy, the relationship between the two Houses and the extent to which you need legislation or conventions and so on to manage them, but we have not talked much about voters. This is bothering me, because it seems to me that what someone thinks they are voting for when they go to the ballot box is fundamental. If they are voting for a Government, is there an extent to which, regardless of the splendid job done by colleagues in the Commons, they should be entitled to think that they are electing a Government that can govern? When they vote for a new House of Lords, what are they voting for? Are they voting for something that can stop the Government for which they have previously voted, or are they voting for someone who will scrutinise? I am just very concerned that the discussion that we are having is not relating to what voters think they are going to get and how the law can be used to make it clear to voters exactly what it is they are voting for.

Lord Pannick: I do not think that there is any conflict, though, between the issues that we have been discussing and the views of voters. I would hope that these matters will be clarified before the first election to the upper House, whenever it is, so that the electors will know—as you rightly point out, it is vital for them to know—whether they are electing someone who is going to and can insist on having his or her way or whether they are voting for someone who is going to, as we do now by and large, express what we hope is an informed view on matters that can be considered by the Commons and very often accepted by the Commons in order to assist the scrutiny of legislation in particular. I agree that it is vital that these matters are clarified for any number of reasons.

Q679 Mr Clarke: Lord Chairman, may I be allowed to say to Lord Pannick that I read his paper only when I arrived for the meeting this afternoon? I hope that I might also be allowed to say that I think that it is beautifully written.

Lord Pannick: That is very kind of you. Thank you.

Mr Clarke: I refer to paragraphs 15, 16 and 17, where we have this remarkable historical debate involving Winston Churchill, Asquith and various Back-Benchers. It gave me the impression that some ambiguity was still left. Then we jump to 1949 and we see that Herbert Morrison had a row with Emrys Hughes—he told him that he was a Bolshevik, or words to that effect. Hughes was proposing that the Lords should be allowed to delay a Commons decision only for a month, which Herbert saw as wholly unacceptable and not of this world. There again, I suggest—if there is to be a correction, I would welcome it—that there is still ambiguity about where ascendancy rests. Would it not therefore be a missed opportunity of gigantic standing if this Committee were not able to come up with something of absolute clarity about the role of both Houses, about where ascendancy exists, if it should, and about whether somewhere on the face of the Bill there should be a measure that says, "If there is a dispute or hiatus, this is the body or person who will, in that event, sort it out"?

Lord Pannick: I agree very much with the second part of the question: it is absolutely vital that this Committee—if you can—comes up with a proposal as to how the inevitable conflicts are going to be resolved. I do not, with respect, agree with the first half of the question that there is ambiguity. These issues were raised prominently in 1911. The Government explained what they were seeking to do by the Bill. Amendments were proposed to limit the power of the Commons but they were either defeated or not pursued. I do not think that there is any ambiguity about the historical record in 1911, but, as I say, it is absolutely vital that we clarify what the position is going forward when we have new legislation.

The Chairman: Thank you very much, Lord Pannick. I thank you greatly for coming. You have guided us through a legal minefield and we have emerged unscathed, so thank you very much.

Lord Pannick: Thank you. I have enjoyed it.

Rt Hon Lord Cunningham of Felling (QQ 679–694)

Q680 The Chairman: Lord Cunningham, thank you very much for coming this afternoon. I think that you know well what this Committee is about. Would you care to make a brief introduction? Then perhaps we can ask you our questions.

Lord Cunningham of Felling: Thank you, I shall do that. I was invited to give oral evidence; I assume that the report on the conventions of the United Kingdom Parliament is taken as my written evidence to the Committee.

I have been in Parliament since 18 June 1970—for 35 years in the House of Commons and, since the end of the 2005 Parliament, as a Member of the House of Lords. Earlier than that, I was in local government. I am in the happy position of having won every election that I contested. The point of contesting elections is to get a mandate. Mandates bring empowerment. People want to be empowered because they want to change and do things. I shall return to that in a little while.

I have always been in favour of the reform of Parliament, consistently in the House of Commons and ever since I became a Member of the House of Lords. I am still very much in favour of reform of the House of Lords. There is no good reason why evolutionary, organic reform should not be taking place as we speak right now. Regrettably, the previous Labour Government, of which I had been a member and was a supporter, turned their face against Lord Steel of Aikwood's Bill and the current Administration have done the same. I do not see why we need to wait for another five, 10 or 15 years to take reform forward. The primacy of the House of Commons is a key issue in all this. I have always been and remain in favour of maintaining the primacy of the House of Commons.

Let me turn briefly to the draft Bill. Some people say that it is about the abolition of the House of Lords. I do not particularly want to get into an argument about the words, but it certainly proposes profound changes and substantially, if not wholly, replacing the existing make-up of the House of Lords with election. When this issue came before the House of Lords, I voted for a 100 per cent elected House of Lords. I also voted for 100 per cent appointed House of Lords, and I voted against everything in the middle. People may want to come back to that; I am happy for them to do so.

Of the many problems with the current draft Bill, it is above all based on wishful thinking and is not underpinned by any clear principles or definitive proposals on, for example, primacy, powers, conventions, rights or the value of a mandate. There are numerous other things of a legal nature, on which we have just heard from Lord Pannick. In the draft Bill, the Government say on page 11: "The Government believes that the change in composition of the second chamber ought not to change the status of that chamber as a House of Parliament or the existing constitutional relationship between the two Houses". After that, I am tempted to say, "Why bother?" The reality is that this profound change of moving to people with a mandate is bound to change the relationship between the two Houses sooner or later.

When I chaired the Joint Committee on Conventions, we made it clear in paragraph 61 and in other places that, based on the evidence, we were making our recommendations to Parliament on the situation as it was then and is now. We also made it clear that, if the circumstances changed, the conventions—the relationship between the two Houses—would have to be revisited. That report was unanimously approved by the Committee. Not a single vote took place during the whole period of the Committee and every recommendation was unanimous. It was unanimously approved by both Houses of Parliament and the then Labour Government. In Command Paper 6997 on page 3, the Government said: "We accept the Joint Committee's analysis of the effect of all the conventions, and the Committee's recommendations and conclusions". The Government accepted them all. It went on to say: "Its report accurately defines the current relationship between the Lords and the Commons".

In Clause 2 of the Bill, which, trying to be kind, I can describe only as disingenuous, there are a number of naive propositions. It is almost like someone walking off a cliff-edge in the dark. It suggests that all these things can happen—that profound changes can take place—but nothing else will be changed. I said earlier that I stood for election because a mandate brings with it empowerment. The purpose of this draft Bill and any legislation that follows it is to empower the second Chamber. It is to make it an entirely different place. In the eyes of the public and those elected, it is to have a mandate of at least equal authority to that of the people in the House of Commons. That is, by any test, a profound change. That empowerment cannot be denied by custom and practice, convention or any other of the arrangements that currently obtain between the two Chambers. If it does not change those things, it is a denial of the mandate and the power of election. Without coherently addressing the wide range of issues raised by but ignored by the draft Bill—not just the effect on relationships, which I have

been talking about—but the effect on coherent governance of the UK, it is difficult to know what the people who drafted the Bill had in mind.

Look at evidence from Japan, Australia and the United States of America, where having different parties controlling the upper and lower Houses causes constitutional gridlock and blocks government. They feel they have a right to do so because they have a mandate—because they have been elected. I do not think it would be any different in the United Kingdom if the upper House—whatever it may be called in the future—was elected. I warn those who think it should be called a Senate that, when the founding fathers created their constitution in the United States of America, they envisaged that the House of Representatives would be the empowered House and the Senate would be a House of rather superior people with a wide range of knowledge but one that was not empowered. Look at the Senate and the House of Representatives now. I have read some of the evidence. People say that Members elected to the upper House in the United Kingdom will not have constituency duties or correspondence. They will not act as though they were elected Members. That beggars belief. Senators in America have the most powerful committees in Congress. They take a view on international relations, defence, energy policy, the environment and global warming. Of course they do that; they feel, as elected Members, that they have every right to do so. I share their view.

The reality is that we are being asked to make if not a leap in the dark then what are profound, long-standing and no doubt long-lasting changes without a clear view of the implications or how the change will be properly managed. Given our recent constitutional practice in the United Kingdom, on devolution, the electoral system and, even earlier, on EU membership, it is surely essential to put proposals for fundamental reform of the United Kingdom Parliament to the people. Why can we not ask the people in a referendum whether this is what they want to see take place? It cannot be acceptable to make such a change in the name of democratic reform without consulting the electorate.

Q681 The Chairman: Thank you. I cannot help observing, on the history of the United States, that the Senate was originally and for a long time an unelected House. It became an elected House, if I remember rightly, towards the end of the 19th century. The original basis of the American constitution was quite different. Frankly, it shows that constitutions can indeed evolve.

Lord Cunningham of Felling: I agree with you. That is historically correct but my point was that the founding fathers intended that the Senate would play an entirely different role. However, once it was elected, it changed.

The Chairman: No, it changed long before it was elected, but we can argue about American history another time. Can I come back to the conventions? I regard you as something of an expert on them and should like to ask you one or two questions on them. In paragraph 61 of your report, to which you referred earlier, you say: "Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again". You do not say that they would have to be changed; you say that they would have to be examined again. The report goes on: "What could or should be done about this is outside our remit". You must have heaved a great sigh of relief as you penned those words.

You came to a conclusion in paragraph 114, which is what I really wanted to talk to you about. You say: "In order to ensure that the convention now reflects an agreement between both Houses, and to give all parties and non-aligned Members in both Houses the opportunity to express their views, each House should have a chance to debate it". I think that most people would accept that. The report goes on: "However, although both Houses have an interest in the convention, it concerns primarily the behaviour of the House of Lords". Again, that is probably right. It continues: "We therefore propose"—this was your main proposal—"that the Lords be given the opportunity to debate and agree a resolution setting out the terms of the convention, and that the resolution be then communicated by message to the Commons. The Commons could then hold a debate on a motion to take note of the message". This paragraph is in relation to Salisbury-Addison but I do not want to concentrate on that. I want to concentrate on your main point, which is that each House should almost simultaneously agree that this convention—however you describe it—should apply. Do you think that that is a principle that could be used today?

Lord Cunningham of Felling: As you know, it was not used at the time. Both Houses unanimously approved the totality of the report. The Government approved it, as I have just put on record. Could that be approved today? In the present circumstances, maybe, but we were really saying that if the composition of the House of Lords

changed, the whole relationship between the two Houses would have to be looked at again. Conventions are conventions. They can be ignored now. They are just conventions; they are not written in tablets of stone. They are not statutes and they have no legal force.
The Chairman: That has a great advantage, does it not? It keeps the judges out of it. Logically, it is non-justiciable.
Lord Cunningham of Felling: I agree with you about that. Under its terms of reference, the Committee looked at the possibility or advisability of codifying the conventions.
The Chairman: In statute?
Lord Cunningham of Felling: Codification is another word for writing conventions into either Standing Orders or statute. Codifying conventions is a contradiction in terms. They cease to be conventions if they are codified. Therefore, the Committee concluded not that it could not be done but that it was not a good idea.

Q682 The Chairman: You and I have been grappling with this problem for years. Let me be quite frank: I have never understood this distinction. You say that because something ceases to be a convention, however you define it, it ceases to be important.
Lord Cunningham of Felling: I did not say that at all. I am saying that these issues are very important—quite the reverse of what you are saying.
The Chairman: However, if they cease to be conventions and become part of a concordat or joint resolutions of both Houses, in practicality they would have the same effect. In other words, they would be rules for the guidance of both Houses. What is wrong with that?
Lord Cunningham of Felling: I did not say that there was anything wrong with it. As a distinguished Member of your Committee, Lord Norton of Louth, has pointed out, it is a contradiction to refer to conventions, codes and legally enforced Standing Orders as being the same. They are not the same.
The Chairman: All right, I accept that they are not the same.
Lord Cunningham of Felling: In that case, I am not sure what the argument is about.
The Chairman: The argument is about whether those rules, which at present are expressed as conventions that govern the relationship between the Houses, could be expressed as separate resolutions—in the same terms—of both Houses, together with a concordat between each House to govern the relations between them. That is my point.
Lord Cunningham of Felling: Before any firm proposals come from this woeful bit of drafting—this draft Bill—these issues need to be examined again in full by either your Committee or another Joint Committee. There is no point in going forward without clarity on what the reality of the relationship between the two Houses is, or whether it would be sustainable. The Committee's unanimous view was that we could not rely on the conventions as they are now. We turned our face and advised against trying to codify them because we did not want more judicial involvement in the role of Parliament. However, we said that if the circumstances of the Lords were to change, they would all have to be re-examined. That is an urgent and important bit of work.

Q683 Lord Tyler: I remember the Committee that you chaired very well, Lord Cunningham.
Lord Cunningham of Felling: Two Committees—you were a member of them both.
Lord Tyler: That is true. I learnt a lot from the experience. If you recall, we were extraordinarily anxious, as has been apparent even from this afternoon's discussions, that, in the words of Lord Hennessy, we should make this judge-proof as far as we possibly could. That was one of the most important conclusions of your Conventions Committee. We said that "We do not recommend legislation or any other form of codification which would turn conventions into rules, remove flexibility, exclude exceptions and inhibit evolution in response to political circumstances." That was a very important conclusion. Do you accept that, if you attempted now to codify in any form the conventions that one might expect to be needed once the House of Lords had, in your words, obtained some sort of electoral mandate, it would fly in the face not only of that report and the Committee's evidence but of all the evidence that this Committee has received?
Lord Cunningham of Felling: I cannot comment on the latter point because I have not seen all the evidence that this Committee has seen. I have seen some of it when it has been available. I do not agree with that. I have just said that the conventions need to be looked at again. That was unanimous in the Committee and both Houses of Parliament and it was endorsed by the then Government. We need to know what the powers, duties and

responsibilities of an elected second Chamber will be. One has to come to a conclusion on that at the same time as looking at conventions and Standing Orders. We do not have Standing Orders in any form in the House of Lords. Well, there may be one or two but it is not like the House of Commons. It is run on conventions. It seems inevitable that elected Members—people who have stood for election and have a mandate—will want to exert their judgment, views and authority. Until their ability or otherwise to do that is defined in some way, the existing conventions would not be sustainable in my judgment.

Q684 Lord Tyler: That is a different view from the one that was expressed in your Committee's report, which was that "if the Lords acquired an electoral mandate, then in our view their role as a revising chamber, and their relationship to the Commons, would inevitably be called into question, codified or not." On your timescale, how could you prejudge that? How could you set up, and presumably delay, the Bill itself to establish that when you have no idea how, in the best of British traditions, that relationship and constitutional connection will evolve?

Lord Cunningham of Felling: I do not have a timetable. The Government set a timetable on these matters and they will decide whether there is to be a Bill on these matters in the next Session of Parliament. In the timescale involved—from now until May—I do not see how these matters can be resolved before such a Bill is drafted. That leads me inescapably to the conclusion that the Bill will be drafted in the absence of any decision on these matters, which will hardly be much of step forward from the draft Bill in front of us. It will leave huge questions about legalities, powers and duties totally unanswered. That cannot be a sensible and coherent way to change a House of Parliament. Can I just reinforce what I am saying with a quotation? I was not sure which paragraph of the report you were referring to; forgive me. I will just read for the record what the Clerks said on this point when they gave evidence to the Joint Committee on Conventions.

The Chairman: Could we have details of who it was and when?

Lord Cunningham of Felling: Yes, it is all in the report. I assume that every Member of the Committee has a copy. It is on page 20, in paragraph 46, headed "Clerks". This is the Clerk of the Parliaments speaking: "All in all it is likely to be difficult to ensure that any definition of the convention now would survive a significant change in the composition of the Lords". The Clerk of the House Commons said that he "saw the primacy of the Commons as being 'founded' on three things: the rules of Supply, the Parliament Acts, and, 'underpinning both those, the superior authority properly accorded to a chamber whose Members are elected by and represent the will of the nation's people over a chamber whose Members are not so elected' … In his view, therefore, the introduction of elected Lords would be bound to make a difference. It would call into question the conventions, even if codified in the form of resolutions; indeed it might even require reconsideration of the Parliament Acts". He went on to say that "to embark on a major reconstruction of the composition of the Second House without at the same time attempting to pin down what you are reconstructing it to do would be a dangerous course". Those are the views—the opinions and the evidence—of the Clerk of the Parliaments and the Clerk of the House of Commons, on the record.

Q685 Lord Tyler: Lord Cunningham, I do not in any way dispute any of that. Indeed, I stand by the recommendation of the Committee; I signed up to it. I am saying that I cannot understand how you could do that in advance of legislating and the process of change. Therefore, in that context, when you voted for a 100 per cent elected second Chamber, did you anticipate that all this would have to be codified in advance, before your preferred solution could be legislated for?

Lord Cunningham of Felling: I voted for a 100 per cent elected second Chamber because I believe—perhaps this is not an appropriate metaphor—that women cannot be half pregnant. If this is about democracy and a democratic mandate, you cannot be half democratic. You have to be either democratic or not. The idea of the muddle in the middle—to go back to an old political catchphrase—whereby you somehow, either to assuage the Bishops or to keep a fig leaf of people from the arts, the City, business, commerce, medicine and the groves of academe on board, does not recommend itself to me at all. One could end up in a situation in which those people tipped a vote against the elected Members supporting the Government in the lower House. I do not think that that is acceptable, so I voted to establish my opinion that, if the principle that we must have an elected second Chamber is so important, it should apply to the whole of that second Chamber. I do not believe that the people who argue this old dogma of "It must be elected" have bitten the bullet. They have backed off and shied away from the consequences of that and tried to insert a little soft wedge of other people. I do not go for that. If the overriding principle is so important, it should apply universally to the second Chamber or not at all.

Q686 John Stevenson: The Bill as drafted deals in many respects with the composition, rather than the powers, of the House of Lords. Effectively, it could be argued that the Government are just saying that the existing powers will, in theory, continue.

Lord Cunningham of Felling: Indeed. That is what they are saying.

John Stevenson: To continue your theory about the 1911 Act and the 1949 Act, if the House of Lords is elected, it is quite clear to everybody that it will become more assertive. On that basis, do you not necessarily think that it is a good thing and that it might enhance Parliament generally? Also, undoubtedly, if it was fully elected and became more assertive, it is very likely that the conventions would change. However, in many respects, the conventions have changed over time anyway. That is just another part of Parliament adapting, growing and changing as time passes. At the end of the day, even though you have a House of Lords that is far more assertive—and maybe more questioning of the House of Commons—because we have the 1911 and 1949 Acts the House of Commons can always get its own way. Therefore, are your concerns perhaps overstated? Is what we need to do to allow the House of Lords to become elected and see how things work out? Undoubtedly conventions will change as time passes.

Lord Cunningham of Felling: That is the "shot in the dark" option, if you do not mind my saying so. Let us elect them and wait and see what the consequences are. I am not in favour of that, as I have said. Assertiveness comes and goes in the House of Lords. The record of this is in one of the annexes of the report on the conventions. Assertiveness is always greater in the House of Lords when there is a Labour Government in office. The figures are all there. Let us not assume that assertiveness is on some steadily upward trend. It has gone up and down in a wave motion over the years, with peaks and troughs. However, I am not talking about assertiveness. I agree with you to this extent. I am talking about empowerment. Elections do not make people more assertive; they give them power and a democratic right to influence power. That is why people stand for election.

John Stevenson: Do you see that as bad thing? Do you not think that the House of Lords having more power could be a good thing?

Lord Cunningham of Felling: I see it, of necessity, involving, first, very careful thought. Secondly, I see it changing the whole face of how Parliament operates, including the conventions and the relationship between the two Chambers. As I have said, I see it in some circumstances leading to gridlock if one Chamber is controlled by a majority from a different party from the one that sustains the Government in the House of Commons. As a famous Welsh colleague of the Lord Chairman's once said at a Labour Party meeting, "There are pros and cons for and pros and cons against." I would not mind betting that every person in this Committee Room would take the same view. If I was an elected Member of a second Chamber, I would not have stood for election to be told by people with a mandate in the lower House what I could or could not do. That is the point: they will have exactly the same legitimacy in the eyes of the electorate as the Members of the lower House. I have cited examples from the United States of America, Japan and Australia—there are others—where this is what happens. To pretend that it is not what happens or that it can somehow be wished away on the basis of the status quo is putting one's head in the sand.

Q687 Oliver Heald: Let me start by saying that I agree with you. The power of the people at the moment, and in 1911 when the Parliament Act was passed, resides in the House of Commons. That is where the sovereignty lay. That is the reason why the Parliament Act was what it was. It was the people with the power saying that, when it comes down to it, the power of the people will prevail. However, it was always recognised in the 1911 Act that if there was to be a measure that substituted an elected second Chamber, provision would have to be made to deal with limiting and defining the powers of the second Chamber. I think you agreed with that in your report. Lord Pannick has just told us that the only thing that would need to be in the Act of Parliament that was passed is something to say that the Parliament Acts of 1911 and 1949 are to continue in force. However, that was not really what they were looking at in 1911. In 1911 they were talking about a statutory provision that did all the limiting and defining. What is your view of the possibility of having a concordat and trying to deal with all the other issues, apart from the Parliament Act, in a convention or a concordat of conventions, with resolutions of each House?

Lord Cunningham of Felling: These potential conflicts arise because we do not have a written constitution. They are part of that circumstance, whereas the other countries that I have mentioned do have written constitutions, so they at least have some defined relationship between the powers and duties of the two Houses. Nevertheless,

they still get into conflict and difficulty. I am not against, if people want it to work, having good, practical working relationships between two Houses of Parliament. It makes sense; it is common sense. However, one of the problems that we have in the United Kingdom—this has been the custom and practice—is this. If there is a dispute in the House of Lords about legislation or what the Government are doing, the House of Lords is not too bothered about discussing it with the House of Commons. The House of Lords, by and large, discusses it with the Government. That is the practical reality of what happens. If you have a concordat, what is its status? Is it written into legislation? Does it become a written addendum to the constitutional process? How does it work?

Oliver Heald: The plan would be that you would pass an Act of Parliament that would have this statement that the Parliament Acts 1911 and 1949 continue in force. That would be all that you did on the statute. You do not want to get the judges involved in the nitty-gritty of the conventions. Then the Houses get together to negotiate and come up with a concordat. When the new second Chamber is elected, it has to buy into that.

Lord Cunningham of Felling: Would they?

Oliver Heald: This is the gamble.

Lord Cunningham of Felling: Who says?

Oliver Heald: I am interested in your view as to whether it is a way forward.

Lord Cunningham of Felling: It is not my view. As I keep repeating—I do not want to bore the Committee—if people are empowered, elected and have a mandate, they will not be bound by some set of rules or conventions that went before. They will want to use their elbows. They will want to have a real go at legislation and issues.

Oliver Heald: So in your view, there needs to be a statute.

Lord Cunningham of Felling: In my view—repeating myself again—we need to define the powers and duties of an elected second Chamber.

Oliver Heald: In statute.

Lord Cunningham of Felling: Probably in statute.

Oliver Heald: But then the judges get involved.

Lord Cunningham of Felling: As I said, there are all sorts of political and legal unanswered questions in this draft Bill. You have just put your finger on another one.

Q688 Mrs Laing: Earlier this afternoon, when Lord Pannick gave his helpful evidence, I asked him about the opening sentence of his opinion, which says, "The Parliament Act 1911 strengthened the powers of the House of Commons by restricting the powers of the House of Lords." Would you agree with Lord Pannick that the contrary must logically be true? If the powers of the House of Lords are strengthened by its electoral capacity, the powers of the House of Commons must necessarily, by definition, be restricted.

Lord Cunningham of Felling: Yes, Mrs Laing, I was here; I heard your questions and Lord Pannick's reply. The issue of primacy is bound to be called into question. Why should two elected Chambers in a Parliament be expected to exist in a situation where, regardless of the issues or the votes, one can always say, "Whatever you say, we have the last word. Whatever the issue, the last word rests with us"? I go back to what I said earlier. In that case, what is the argument about electing the second Chamber all about? How can you elect people and say, "You have a mandate and you have been empowered but you are not as empowered as the people at the other end of the Corridor"? Where does that sit with the electors?

Mrs Laing: You made the point very well that the electors are not to be consulted on this matter.

Lord Cunningham of Felling: Indeed.

Mrs Laing: Taking it a stage further, Clause 2 of the draft Bill states: "Nothing in … this Act … affects the primacy of the House of Commons". In the two Committees that you have been talking about, and through many years of experience in both Houses and in government, have you noticed that sometimes what is written down and what happens in practice can differ from each other?

Lord Cunningham of Felling: Very often. I have read some of the submissions on Clause 2 of the draft Bill. I do not think that I have read anything complimentary about it. I am not saying that no one has been complimentary—although I have not seen it—but everything that I have seen describes it largely as "motherhood and apple pie" or something less kind.

Mrs Laing: Yet we do not know where it is going. Your description of approaching a cliff-edge in the dark is about the best that we have had as yet. If the mandate of the second Chamber, and therefore the relationship

between the two Houses of Parliament, is changed, do you consider that it would make it meaningless simply to say in an Act of Parliament, "Nothing in this Act shall affect the primacy of the House of Commons"?
Lord Cunningham of Felling: Yes I do. It would be a denial of the whole process of democratic argument. It would be to say to people, "We want you to elect a second Chamber but it will be handcuffed. It will be enchained and restricted from acting in the same way as the other House with the same mandate."
Q689 Malcolm Wicks: At the beginning of your remarks, you reminded us that you were a Member of the House of Commons for 35 years and that you have always been a supporter of House of Lords reform.
Lord Cunningham of Felling: Reform of both Houses—yes, that is right.
Malcolm Wicks: Since joining the House of Lords, have your views changed in any fundamental way and, if so, why?
Lord Cunningham of Felling: I once said, when I was being interviewed for a job in the City of London, that I grew up in a pit village in County Durham where we thought nothing of the House of Lords and even less of the City of London. Now I find myself a Member of one and working for the other so, yes, my views have changed, not least in that I have learnt a lot more about the House of Lords, as people generally do on entering it. I cannot say that I am satisfied with the House of Lords as it is, as I have made clear. I want to see it reformed. I am a supporter of Lord Steel of Aikwood's Bill, among other things. I think that the Lord Speaker should have more powers to control what goes on in the Chamber. However, I have respect for the House of Lords. My great mentor, the late Lord Callaghan, once said to me just before I took my seat, "Remember, if you stand up to make a speech, three, four or five of the world's experts on the subject will be sitting listening to you, so you had better be careful what you say." That was, as ever, sound advice from him. So, yes, I have respect and affection for the House of Lords but I am not a supporter of the status quo.
Malcolm Wicks: You presented the idea that perhaps a fundamental reform of this kind to our constitution should be subject to a referendum. Was that your view when you were in the House of Commons?
Lord Cunningham of Felling: To be absolutely honest, I did not really have a view when I was in the House of Commons. I never thought that reform of the House of Lords was a key issue for my constituents. In nine consecutive general elections over 35 years, no one ever pushed their way through the crowd to the bar in the Labour Club in Whitehaven and said, "Come on, Jack, what are you going to do about the House of Lords? Tell me or I won't vote for you." It never happened. It was not an issue for most ordinary people. It has been described by others as a Westminster-village issue and sometimes as a party-political issue at senior level. In all those years, I never saw any strong movement at the grass-roots level for House of Lords reform. If people are asked, of course they say, "Probably, yes." However, if you asked them to write down their first 50 priorities, it would not feature. That is why I never felt obliged to pay much attention to it when I was in the House of Commons. Since coming to the Lords and seeing how it works, I have changed my mind. Although it might not seem important to people, it is important to reform the House of Lords and to improve the way it works.

Q690 Baroness Symons of Vernham Dean: Can we go back to the points that Lord Tyler raised with you about keeping the conventions fluid so that they can adjust as relationships change? That was something that was reflected in your report. Both Lord Tyler and I were members of that Committee. You quoted from paragraph 61; I should like you to look at it again. Look at the preamble, the bit before we get to the part in bold, which says, "We have interpreted our remit as being to define the present reality"—that is what we were doing—"and to consider the practicality of codifying it. We do so in the chapters which follow". It goes on to say: "Our conclusions apply only to present circumstances". I just ask you to reflect on what we were looking at at the time. Lord Tyler seemed to say that the business about the conventions staying fluid had to apply for all time, whereas the report makes it clear that they apply only in present circumstances. It goes on to say, as we have all quoted, "If the Lords acquired an electoral mandate, then in our view", there would be a change.
Lord Cunningham of Felling: There would have to be a change.
Baroness Symons of Vernham Dean: It then goes on to say that "should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again". Do you not consider a draft Bill to be "firm proposals"? Lord Tyler is saying that we need not do this now; we can do it at the end of the process. However, these are firm proposals that have come forward. The report did not say "when these have been legislated on" or "after the elections take place". As I recall, we had a long argument about when re-examination should take place, which is why I am so keen to emphasise this point.

Among ourselves we asked when the re-examination should take place, and it was to be when the firm proposals came forward, not when the legislation had been enacted or at the time of an election.

Lord Cunningham of Felling: That is correct. I agree with that. That is why I said in my opening remarks that these matters needed to be resolved as the next urgent bit of business, not left until after a House has been elected or after a Bill has been passed, if one ever is. When you asked whether the proposals in the draft Bill are firm proposals, I can only answer, "I hope not". As I have said more than once, they do not add up to a hill of beans. However, if a Bill is published in the Queen's Speech it will be too late to do what this recommendation, which was unanimously approved by Parliament, the then Government and the Committee, says should have been done.

Baroness Symons of Vernham Dean: When Lord Pannick was giving evidence earlier this afternoon, he said—I wrote this down—that it is vital that electors know the powers of those they are electing. He also said that it is vital that these matters are clarified. Do you agree with those statements?

Lord Cunningham of Felling: I do. Although Lord Pannick and I sat in the Corridor, exchanging pleasantries about coming to the inquisition, I assure the Committee that there was no collusion between us in both saying, effectively, the same thing on that point.

Baroness Symons of Vernham Dean: At the beginning of your evidence you emphasised very strongly that you were a Member of the House of Commons for 35 years before you came to the House of Lords. In the draft Bill before us, it is proposed that Members of the new House of Lords should have a constituency and therefore an electorate of some 570,000. As we have seen, recent legislation means that Members of the House of Commons will have an electorate of 60,000—

Ann Coffey: It is 76,000.

Baroness Symons of Vernham Dean: I thank Mrs Coffey for that. It will be 76,000 for the Commons versus 570,000 for the House of Lords. Which would you say was the stronger mandate on the basis of the size of the electorates?

Lord Cunningham of Felling: A mandate is a mandate, regardless of the size of the electorate. It is true to say that if someone is elected by an electorate of between 500,000 and 600,000 voters, that is a much broader sweep of the electorate. Therefore, it could be argued that that is a stronger, more representative mandate, but I would not get carried away about that. I do not think that anyone says that the two Senators who represent a state in the USA where there are millions voting for them have a better mandate than members of the House of Representatives. As Lord Richard and I discussed earlier, it is just that, on the basis of how the constitutional and other arrangements in Congress have evolved, the Senate has become more powerful. However, that is not related to the number of voters.

The Chairman: I have five speakers on the list and we are already 15 minutes over our time, so could people please be rather brief?

Q691 Lord Rooker: I have only one question, which goes back to your pros and cons quote. You could make a list of pros and cons on the conventions—the pros and cons of putting them on the statute book and the pros and cons of codifying them. Let us look at the pros and cons of the status quo and doing nothing, and of what this Bill does. I put it to you that one of the disadvantages, which we have not really drawn out to see whether you agree with it, is that the Lords' powers will expand because the existing powers are more likely to be used. The reality is that we do not use existing powers. Therefore, it is a disadvantage of the status quo that Lords' powers will expand. It is likely, is it not, that votes on Second Reading will take place? It is likely, is it not, that votes on statutory instruments will take place? Therefore, the status quo would lead—one of the disadvantages—to Lords' powers expanding.

The second con, or disadvantage, on which I ask you to agree, is that there is no stability in the conventions as the House membership changes. That has to be a big disadvantage of the status quo. I know what your answer will be from what you have already said, but do these two things not run a very high risk of continual disputes between the two Houses? This idea that powers would change only if the Commons allowed the laws to pass is not true. The existing powers are not used, but they would be used. Lord Pannick says that if we put a reference to the 1911 Act in the Bill, the conventions will stay as they are. I told him that you would have to do something for them. However, the reality is that the status quo would lead to an expansion of powers in the Lords, simply

because the existing powers would be likely to be used, causing other consequences. Is that a fair summary of the status quo?

Lord Cunningham of Felling: Yes, and it is my judgment, too. On page 9 of the report on the conventions, we said: "The House of Lords could depart from any of these conventions at any time and without legislation, and might well be more inclined to do so if it had been largely (and recently) elected". That was the unanimous view of the Committee at the time. I supported it then; I agree with it now. I am not sure that I can find the reference but, at the insistence of Lord McNally and Lord Tyler, who were both Members of the Committee, the report had to say that the House of Lords must retain the right to say no. It is written into the report. I am sorry; I cannot find the reference but I know that it is there. I put it in to pacify Lord McNally and Lord Tyler and to make sure that we got a unanimous report. In the report is the statement that the House of Lords, at present, under the status quo, has the right to say no. As the Salisbury-Addison convention—or, as we named it, the government Bill convention—has evolved, it has become the case in the House of Lords that not just manifesto Bills but, normally, all government Bills get an undisputed Second Reading. Some Bills—not many—have been refused a Second Reading or heavily challenged, but they were usually Bills based on free votes, not Bills based on whipped votes. In other words, they were usually about conscience issues and the like. However, the right of the House of Lords to say no exists now. It was enshrined in our report, as I have just said, and the conventions could be set aside at any time.

Q692 Bishop of Leicester: This might help to clarify a summary of your position. Could you see any circumstances in which the benefits of empowerment of the House of Lords through electoral legitimacy, which you spelt out very clearly at the beginning of your evidence, could outweigh the risks of dysfunctionality in the relationship between the two Houses? In other words, could you see any circumstances in which you could find yourself voting for a fully elected House of Lords in the future?

Lord Cunningham of Felling: Are people prepared to put at risk—not to put it any more strongly than that—the primacy of the House of Commons and, therefore, the position of the Government, made up largely of Members of the elected House of Commons? Are they willing to risk gridlock between the two Houses? Are they willing to accept that as a strong possibility and live with the consequences not just for Parliament but for the governance of the United Kingdom? If people think that those risks are worth taking, they should elect the second Chamber wholly—100 per cent. However, I came to the conclusion—speaking personally, not for the Committee—that it is a leap in the dark that I would not endorse. I would much rather see a reformed second Chamber, a statutory Appointments Commission and a smaller second Chamber. The proposal in the Bill, which I understand the Committee has accepted, for 300 Members is ridiculous. If one looks at the Committee structure in the House of Lords now—at the Select Committees and other Committees—it just would not be possible to run an effective second Chamber scrutiny process with that small a number of people. That apart, I would go for a reformed, appointed House of Lords.

Q693 Lord Hennessy of Nympsfield: Would there be any merit in our recommending that, when we have finished, a Cunningham II should very swiftly be put in place to produce a kind of Green Paper for this new Chamber, which could not bind it, in the hope that some of the distilled wisdom of the ancients from the old House might infiltrate? We will have to talk about this osmosis when we look at transitions. We must hope that their elbows will not be quite as sharp and vulgar as you suggest they might be.

Lord Cunningham of Felling: If I might make a small correction, it would be Cunningham III. I have already chaired two Committees. However, I think the chances of that are zero, frankly. The leadership of the Labour Party was not in the least tempted to make me a member of this Committee, Chair or otherwise. I do not think it is at all likely. I repeat what I said in answer to your question: there is work that is beyond the remit of this Joint Committee. I am very much in favour of Joint Committees looking at these issues. That is the proper way forward. There is certainly urgent and important work for another Joint Committee in trying to reach agreement and produce a report that both Houses could endorse before we get anywhere near legislation on these proposals.

Q694 Gavin Barwell: I do not think that any Member of this Committee would dispute your assertion that if people are elected they acquire some form of mandate. However, it seems that what you are arguing in answer to the questions is that, whatever the form of electoral system or purpose of the election, mandate is a digital quality—you either have it or you do not. Could I put it to you that someone who is elected in a general election

on a turnout of 70 per cent, when the election is specifically to form the Government of the country, has a greater mandate than someone who is elected in a multi-Member constituency on a lower turnout for the explicit purpose of membership of a second Chamber? Would you not accept that the level of mandate in those two situations is different, or do you see them as equal mandates?

Lord Cunningham of Felling: You can put it to me, but I do not agree. It is like saying that Members of the European Parliament or Members of the devolved Administrations do not have a mandate.

Gavin Barwell: I did not say that anyone did not have a mandate. It is about the level of mandate.

Lord Cunningham of Felling: A mandate is a mandate.

Gavin Barwell: No, it is not. For example, I put it to you that the Mayor of London, elected by millions of Londoners, has proven to have a much stronger mandate than the old leader of the GLC had. There is a difference. Mandates come in different degrees.

Lord Cunningham of Felling: You are comparing apples with pears, are you not? There was no elected mayor under the GLC, so you are not comparing like with like.

Q695 Mr Clarke: I have two brief questions for my friend, Lord Cunningham. Fifteen years is the suggested term for people serving in the upper House or whatever we come to call it—the Senate or whatever. Does that seem reasonable? Secondly, could or should the elections for both Chambers be held on the same day?

Lord Cunningham of Felling: The answer to the second part of the question is yes, they should be held on the same day. We are electing people to the United Kingdom Parliament—why differentiate? I see no problem at all with that. That is why I do not agree with the previous question. They should take place on the same day. As for electing someone for a 15-year term, I think that it is preposterous. I see no relationship between that and democratic accountability. Whom would these people be accountable to? They would be elected for 15 years; they certainly would not be accountable to the people who elected them. Some people do not want them to be accountable. What power would the Whips have over them? None at all. One of the many differences between the House of Commons and the House of Lords at the moment is that the rule of the day in the House of Lords is "No show, no dough". If you are not here you do not get any allowances. Members of the House of Commons rightly get an annual salary. If someone is elected for 15 years with a salary, no one has any control over them—not the electorate, not the Whips and not the Government. It is just not at all a sensible proposal. I do not see the need for it. Let me put it this way: some people have said that one of the reasons for all this is to change the age profile of the House of Lords—something I support. However, what young person is going to give up a career for 15 years—a doctor, a teacher, a lawyer? They are out for 15 years, they cannot stand again and they cannot stand for the other House, either. It is not an enticing prospect. I do not support it at all.

Mr Clarke: I am glad that I asked the question.

The Chairman: Lord Cunningham, thank you very much for coming. It has been an exhilarating session and we are obliged to you.

Rt Hon David Blunkett MP and Rt Hon Lord Grocott (QQ 696–708)

Q696 The Chairman: Lord Grocott and Mr Blunkett, thank you very much indeed for coming. You know what the Committee is here to do—or to try to do, anyway. Would you like to make an opening statement for us, please? If so, we would be obliged to hear it, after which we can ask you some questions.

David Blunkett: Lord Chairman, Lord Grocott has kindly offered me this opportunity to start first, so let me thank the Committee for hearing us. Like Lord Grocott, I very much appreciate that you are coming to the end of your deliberations and that you have probably heard it all before—I have read some of the papers that have been submitted to try to avoid reiteration.

The first thing that I wanted to say was to go back to the question, "Why? Why the proposal for change?" I know that it is fashionable at the moment to be in favour of constitutional change—it has been for some time—but that makes it neither popular nor right if you blunder into constitutional change at a time of enormous change around us without having got the formula correct in the first place. With the debate about Scotland, with changes to our relationship with Europe, with changes in local government and mayoral elections and with the creation of police and crime commissioners, a lot of change is taking place within our overall democratic political system at the moment. I am going to concentrate immediately on the presumption that the proposals that have been laid down in the Bill and on which you are deliberating are about accountability and legitimacy. I want to challenge the view that they achieve either of those things.

The obvious questions that we have to ask ourselves, whether we are talking about 300 Members or whether the total comes up to 450 Members, are these. Do we want diversity? Do we want experience? Do we want Members who reflect society in the round and who can continue to have regular contact with and reflect wider society? If we do, and that is a role for a second Chamber, are we achieving it in the way described in the Bill? I put it to you that we are not, because a list system, based on multi-Member constituencies with proportional voting on party lines, changes the nature of what we have described as accountability to being accountability to a political party and not to the electorate. If you are not to be recalled, if you cannot be re-elected at the end of the term and if therefore you have no reason to respond to or answer to, and therefore be accountable to, a particular multi-Member constituency, by the very nature of a list system you are entirely dependent on the patronage of your party to put you in in the first place. Therefore, you remove the legitimacy that would be the second arm of the objective. Legitimacy comes from the connection that you have to, and your ability to be held to account by, the electorate. In the House of Commons, not only do we have to respond to and return to our constituencies and account for ourselves, but we often seek re-election.

In the circumstances of the Bill before us, none of those things occurs. The parties put up their chosen preferred candidates. We know roughly who is going to be elected from the list, as we do with the European Parliament, depending on the popularity of the parties at the time. I come from Yorkshire, which has a population of around 5 million, just slightly larger than Scotland's. We have one Labour representative in the European assembly. We also have one BNP Member and one UKIP Member. Because they presumably will seek re-election, they claim some accountability, but without returning to the electorate and without resources and local offices, I cannot see how they have either answerability or legitimacy.

What is worse, if there is no power of recall and you do not have the power to stand again, and if you have been selected by your party, you end up simply asking the electorate to ratify a decision, which leads to even greater cynicism. People will rightly ask the question of what we are for. Are we here to provide some cover for the argument that you are deliberating on about having an election for a second Chamber rather than reform of the second Chamber so that it reflects the diversity of our communities and our professional bodies and a greater geographic spread than we have at the moment, which is roughly what David Steel's Bill is proposing?

I think that we have to be very careful with multi-Member proportional systems. To refer to a question that was put to Lord Cunningham, it is important that we do not misunderstand where people are coming from. The people who are most vehemently in favour of either 80 per cent or 100 per cent election of a second Chamber are, on the whole, the same people who believe vehemently that proportionality gives greater legitimacy and provides for a better system of election. I do not happen to hold that view, but they do. Therefore, when it comes to the primacy of the House of Commons, those who have been most vehemently in favour of election to the second Chamber will presumably revert to their argument, as we saw in the referendum last year, that the multi-Member proportional system will give greater legitimacy and therefore clout to those who are elected on a 15-year term.

I put it to you that, if you can come up with a system that has somewhere between 300 and 500 Members, who are not expected to be here permanently, who continue to have some connection with the world outside politics, who are not paid a substantial stipend and so are expected to continue earning at least something outside, who find themselves in a position where they do not expect to be re-elected and so have a more independent voice—that is the argument that we have heard—you will have got very much down to the House of Lords reformed but without an election. If the parties are the ones that are responsible for the main nominations under the proposals, the only difference that I can see is that, although the House of Lords may well have a refreshment of its membership and therefore may better reflect a geographical spread, all other elements of the House of Lords as we have it today will have been put back in place, with the exception of the party list to determine who is there. On that, I hand over to my good friend Lord Grocott.

Lord Grocott: Lord Chairman, I will be very brief, because my focus, which I hope might be helpful to the Committee, is a specific aspect of reform that encapsulates, as I hope I can persuade people, the huge problem that is presented by Clause 2. I do not want to go over the dreaded Clause 2; I hope that it has been rehearsed enough times to show that at its best it is wishful thinking and at its worst it is sloppy draftsmanship or bad direction or whatever. It simply does not wash as it stands. I cannot believe it when I read it: "Nothing in the provisions of this Act about the membership of the House of Lords … affects the primacy of the House of Commons, or … the conventions governing the relationship between the two Houses". You might as well have a clause that says, "Nothing in the provisions of this Act affects anything—the future happiness of mankind or whatever you like". It simply is not anything that can be carried out in practice.

The perspective that I bring to that is from, if you like, the engine room of politics, which is where I have spent a huge part of my time in both the Commons and the Lords—in the Commons as deputy to Jack Cunningham, whom we have just heard from, when he was shadow Leader of the Commons, and in the Lords as the Government Chief Whip. It is the part of politics that I thoroughly enjoy and it is in the engine room where you see how things actually happen.

What I have found very frustrating about the debate on Lords reform is the mantra repeated endlessly by Ministers of all parties that we need not worry about the primacy of the Commons because we have (a) the rules on finance and (b) the Parliament Act. All I can say to the Committee is this: those two nuclear options, if you like, are completely irrelevant in the daily practices of the managers of the two Houses, who daily take as their unspoken mantra, "The House of Commons has primacy". It happens at all levels. The example that I have offered to the Committee, in a very short exchange of letters, is in respect of war powers. I could mention many others but war powers encapsulate it for this reason. For the last two major wars in which this country has been involved, the House of Commons has voted on the deployment of troops whereas the House of Lords has debated the issue but has decided not to vote on it. That decision has been quite deliberate. There is no doubt that the House of Lords has the powers to vote on the issue—nothing prevents the House of Lords from making a decision on that matter—but it decides not to. That, of course, is an issue that has been followed up by both Governments. The Labour Government tried to encapsulate some form of words that would ensure that the Commons could vote but that the Lords could not, for the obvious reason that if the two Houses were to reach different conclusions on whether we should send troops to war—well, I leave it to individual Members of the Committee to work out what a nightmare scenario that would be, not least for our troops.

The best that the Labour Government came up with was in their *Governance of Britain* White Paper, which said that the Government believed that "the House of Lords should hold a debate to inform the deliberations of the House of Commons but they should not hold a vote. Whilst the Government recognises the expertise that resides in the House of Lords, the responsibility to make the final decision is for the House of Commons as the representative of the people." Of course, what happens when you have two Houses that are the representatives of the people? Predictably and, from my point of view, very satisfactorily, the coalition Government seems to me to be having equal difficulty in trying to resolve this dilemma. On 21 July, Mark Harper, in response to the report of the Political and Constitutional Reform Committee of the Commons on this very issue of what resolution you need to decide to commit troops to war said: "The Government agrees that greater clarity is desirable in this important area ... we hope to make progress on the matter in a timely and appropriate way." I do not know whether this Committee has been given a response to that, but I suggest that the fact that the previous Government could not work it out and, as far as I know, the present Government have not given an answer to it,

despite a promise given by the Constitutional Affairs Minister in July, is not due to laziness on the part of Ministers; it is due to the fact that it is a phenomenally difficult question.
I mention many other examples. I heard Jeff Rooker's questions earlier when he mentioned one or two examples. There is a whole list of areas in which the Lords at present decides not to exercise the powers that it has. I have mentioned war powers. There is also the Second Reading of Bills; irrespective of whether they were manifesto commitments, the Lords does not vote against Second Reading, except in very exceptional circumstances. It does not vote against Third Reading, except in very exceptional circumstances. This is all known and understood by the business managers—the primacy of the Commons is recognised. In ping-pong, which is the most obvious example, clauses are shuttled between the two Houses in the absolute certainty and acknowledgement that in the end the Commons will get its way. Usually it is resolved relatively quickly, after a couple of exchanges, although sometimes it goes to seven or eight. But everyone who is playing the game knows who is going to win. That is because of the democratic legitimacy of the Commons. Statutory instruments are very rarely voted down. There is one that I would love to vote down—it is coming quite soon—which is about having directly elected mayors all over the place, but it will not be voted down in a fatal amendment. There may be an amendment of some sort, but it will not be a fatal one. There are many other examples, including major Bills. Everyone accepts that, of the 30-odd Bills presented in the Queen's Speech in any given year, 20 of them—the most important, controversial, difficult and longest—will start in the Commons, while the minor Bills will start in the Lords. That reflects the ministerial structure as well. No one complains that, of the 100-odd Ministers, 80-odd will come from the Commons, including nearly all the Secretaries of State—18, 19 or 20 out of 22 or 23, or whatever it is. No one complains about that; no one argues about it. I could give a long list, but the basic problem is this. It is not a question of what powers you could give to an elected second Chamber. The second Chamber has those powers now; it simply chooses not to exercise them. Most elected bodies argue for more powers, not fewer; I do not think that any Member of this Committee or any academic anywhere on the planet can show me an elected body that says, "Please, we don't want to have all these things to do. Give us less. We don't want to exercise the authority that the electorate expect us to have." That is a case study from the engine room and I hope that the Committee will give even more pause for thought to Clause 2 of the Bill.

Q697 The Chairman: Thank you very much. Let me ask a general question about Parliament as a whole, as opposed to the two Houses. We have been told very frequently that, if you have an elected or partly elected House of Lords, it would be more assertive. Do you think that it is a good thing that the House of Lords should be more assertive in the interests of Parliament as a whole?
David Blunkett: Assertive of opinion and assertive of expertise, yes, but assertive in striking down, no. There is a difference. The strength of the current House of Lords—this would be even more the case if its processes were reformed and its purpose clarified—is to be able to speak with the voice of people with a life's experience, not purely because they are on a party list.
The Chairman: But, David, that is not quite how it works, is it? We are whipped in the House of Lords just as you are whipped in the House of Commons. I know that we have Cross-Benchers, but basically Labour Peers are expected to vote for the Labour line and Tory Peers are expected to vote for the Tory line. If 10 or so Peers go against the Whips, that is quite a big event in the House of Lords. I am trying to suggest that it is not a body of independent, thoughtful Solons, if you like—wise men sitting up there looking at the thing. It is a parliamentary assembly; it is a House of Parliament and it legislates. What I am really asking is whether you think that it is a good idea that that House of Parliament should become more assertive in relation to the legislation that is passing through the House.
David Blunkett: No, I do not, because I believe that the manifesto that Members of the Commons stand on has primacy. If the House of Lords were to be elected at the same time as the Commons, it would presume that they were elected on the same manifesto, so it is trumped in that way. If they were elected halfway through a Parliament, they would be claiming a legitimacy that would override the manifesto of the previous election to the House of Commons.

Q698 Mrs Laing: That is an excellent point that Mr Blunkett has just made. Am I allowed to say that?
The Chairman: Of course you are.

Mrs Laing: Thank you, Lord Chairman. A little while ago, Mr Blunkett asked the question "Why?" The answer that is usually given by the Deputy Prime Minister and the Government is that there is a democratic deficit. Do you both believe that in Parliament at present there is a democratic deficit and, if there is, does it matter?

Lord Grocott: The short answer is no, I do not think that there is a democratic deficit. We are often, totally unnecessarily, self-critical of our democracy in comparison with many others in the world. There is no end of opportunities for people to vote in local elections. We know the rest of the list, right up to European elections. There would be a very serious democratic deficit if people voted for a Government at a general election and then found that there was another body, elected under proportional representation, which—entirely consistent with the individual mandates of the people in that other body—was able to prevent a democratically elected Government from carrying out their democratic mandate. To me, that would be a democratic deficit.

David Blunkett: That is the problem for us. In the 25 years that I have been in the Commons, and the more than 40 years since I was elected to a local authority, I have never found anyone yet, outside the Commons—because we argue about things in a different way—who wanted less action, responsiveness and ability to deliver from government. Where most of the people I have ever come across were aggrieved with our political system was its inability to respond quickly and effectively to their needs. That is why we get into these arguments with the judiciary. I do not believe that the United States has a better, more legitimate and more democratic system because they elect judges. In almost half the states of the United States, they elect their state Supreme Court judges. You have to see the havoc that that causes to their system to believe it. The legitimacy and accountability that I was talking about and the deficit are two different things. The deficit often comes from a lack of involvement, participation and connection between the political system and the people we rely on to put us here.

Q699 Baroness Andrews: Bruce, I know that you do not want to be drawn on Clause 2, on which we have had a lot of evidence, but is it possible—I am sure you have seen many badly drafted Bills in your time—to put anything in this Bill that would secure the primacy of the House of Commons? We heard evidence from Lord Pannick and other witnesses that we should clarify as best we can what might be meant by Clause 2. Lord Pannick offered us options whereby we could say that the Parliament Acts would continue to apply or would not continue to apply. That is just one example of how we have wrestled with how to regulate.

Lord Grocott: There is only one answer that I can think of to that question, which goes to the heart of this, and that is to have a fully written constitution, which, sadly, tragically and inevitably therefore, would have to be interpreted by the courts. That is the only way that I can think of; if someone can suggest another, I would love to hear it. The conventions palpably could not work with an elected House. I pose one question to the Committee. If that is in any way a view that Members of the Committee might hold—that sooner or later we will need a fully written constitution—I would love to see someone write the rules on ping-pong. I would just love to see it. On what basis would you shift something from one House to the other? How would you decide when one House had won on ping-pong? Plus, of course, there is a horrendously difficult—if it does not sound too pompous—intellectual proposition. At the same time that you propose to make the House of Lords more legitimate and accountable, you will write into law restrictions on its powers. That seems a pretty fundamental contradiction in terms.

Q700 Lord Tyler: I am sure that the Committee will take very seriously the comments that Mr Blunkett has made about the party list system. However, the party list system is the preference of the Labour Party. In the Bill, it is suggested that we have the single transferable vote, which gives the choice to the elector. It is not a party list system. My question is for both our witnesses. Mr Blunkett referred to the importance of manifestos. Mr Tony Blair, in the run-up to the 1997 election, wrote that "the party I lead will carry out in government, the programme we provide in our manifesto beforehand—nothing more, nothing less. That is my word". Then he promised "an end to hereditary peers sitting in the House of Lords as the first step to a proper directly elected second chamber". Since you both stood in that election and many subsequent elections, when did you explain to the voters in your constituencies that that was not your manifesto promise?

David Blunkett: I liked the first step but not the second. In the 2010 election, I put in my local manifesto that I was not in favour of the proposals that were being made by all three parties for dramatic change to the House of Lords on the grounds that it was a complete waste of time and a diversion from what we should be doing, which was sorting out the major political challenges of the moment.

Lord Grocott: Were you talking about the 1997 election?

Lord Tyler: And every subsequent election
Lord Grocott: We would have a pretty long seminar if we examined the commitments on Lords reform of the various parties over several generations of election manifesto commitments. My party has been in favour of reform and has ignored it in various elections that I have fought. It has made recommendations, as it did in the election before last, for a more representative House. On one occasion, it proposed a unicameral system. I dare say, although I am not sure, that once upon a time Liberal Democrat manifestos were in favour of first past the post. These things change over the years, do they not? That is inevitable if we start trading commitments in manifestos that go back a good way.

Q701 Gavin Barwell: My question is for Lord Grocott and picks up the question that I put to Lord Cunningham. You described your role as a back-room boy and said that at the moment there is a presumption that the House of Commons has primacy. Is primacy a digital quality or an analogue one? In other words, if you moved to the world envisaged in this draft Bill, what would the presumption be of someone doing the kind of roles in which you have been involved?
Lord Grocott: Inevitably, if I was the Chief Whip of an elected Labour group in the House of Lords, my position would be pretty much the same as being Chief Whip of a Labour group in the House of Commons. That is to say, my Members would have been elected on the most recent manifesto and the job would be to deal with that. Frankly, on many of the Bills coming from the coalition now, there would be a whipped vote to vote it down, preferably at Second Reading, and to harass it at every stage, if not at Third Reading. That is how it would operate.
Gavin Barwell: Let me pick up on two of those points. Assuming that the draft Bill went through, you would be a Labour Chief Whip in a House that was 80 per cent elected, not 100 per cent elected, and two-thirds of your Members would have been elected prior to the most recent general election for the House of Commons. Would you still feel that you had a mandate equal to that of the House of Commons under those circumstances?
Lord Grocott: It is not so much what I would feel as what the individual Members would feel. Presumably they would all go back to their constituency parties—we all have different mechanisms—but it would be difficult to do so and say, "I really dislike this Health Bill. In fact, you told me not to vote for things like this when you selected me as a candidate, but I've got to recognise the primacy of the House of Commons so I'll go along with it." The answer is that it would be impossible to sustain your position in relation to your own party unless you operated in pretty much the same way as Members of the House of Commons operate.

Q702 The Chairman: Sorry, but could I interrupt very briefly? I do not quite understand the concept that you were using to illustrate the primacy of the Commons. As I understood it, if the House of Lords took a different view from the House of Commons, the House of Commons should prevail. I did not think it meant that individual Peers on one side or another had to vote for what the House of Commons wanted.
Lord Grocott: It is about a whole range of things, some of which I have listed.
The Chairman: It is not that, though, is it?
Lord Grocott: It is on a whole range of issues, such as, for example, not voting on Second Reading most of the time, not voting on war powers and not voting against ultimately accepting ping-pong. It is a series of conventions about how we operate, which could not possibly work in the same way with an elected second Chamber. I have spent time in both Houses but much longer in the House of Commons. I emphasise that my concern over this Bill is not about its effect on the House of Lords, although I care about aspects of it; it is about its effect on the House of Commons, not least because for most of my political life I had the experience of operating in very marginal constituencies. To arrive in a marginal constituency, having been elected, and find that there is someone who is claiming a greater legitimacy than yours, and who has a higher profile because there are fewer of them and they are described as Senators, does not appeal to me.
The Chairman: He is not standing against you, though, is he?
Lord Grocott: Who is not standing against me?
The Chairman: The Senator. He is not saying, "I'm going to oppose Mr Grocott MP". Of course he is not.

Q703 Baroness Young of Hornsey: First, can I clarify whether Lord Grocott and Mr Blunkett object to election on principle, or is this particular Bill the problem?

David Blunkett: I am fully in favour of election for the House of Commons, which then determines the Government. To underpin this—I think Lord Hennessy might appreciate this—we are not a legislative assembly, as there is in France or the United States. When we elect the Commons, we elect a Government. The relationship between the Executive and the Commons, and the Executive and the House of Lords, has been put together over centuries but is based on the belief that we are holding to account but also able to put in and remove the Government. That is where the election is crucial. I was the first senior politician to say that the Labour Party had lost the election in 2010, when people were struggling to find a way of saying that we had not. I did so on one ground and one ground only: democracy is about the ability to remove and not merely to put in. That is the essence of a democracy.

Baroness Young of Hornsey: I should have clarified. I meant: are you against election on principle in the House of Lords, for the second Chamber, not overall?

David Blunkett: I am against it both on the grounds of the practicality of the constitutional model and of the consequences that would arise from making it an elected second Chamber in the British context. That is what I was referring to.

Baroness Young of Hornsey: Could you then say something about what you would like as an alternative system, or whether you feel that the status quo is acceptable?

David Blunkett: I should like to see a slimmed-down House of Lords of about 450 to 500 Members who were drawn from experience throughout their lives, including people who had spent their lives in the political arena and were able to contribute something, not least because of this relationship between the two Chambers and the Government. You need people who can steer Bills through and can speak for the Government. I should like it done in a way that reflects a greater geographic spread and an element of diversity in all its guises. A better means of selection and monitoring would be able to achieve that.

Baroness Young of Hornsey: What I am not clear about is how that selection would be carried out on a party-political basis. Presumably party-political choices would still be made about who was sitting.

David Blunkett: Parties would be able to nominate people. They would be judged, in part, in the way that we do it at the moment. We do it better now. Historically, we have not done it very well.

Baroness Young of Hornsey: Part of what I am trying to get at is how you feel that that would be more accountable, legitimate and diverse than the current set-up.

David Blunkett: It certainly could be more diverse, because that would be one of the factors that the vetting committee would take into account, as it would the geographic spread across the United Kingdom, pressing the button on United Kingdom and pulling people together in that way. I have already described why I believe that what is being put in place and suggested is more accountable than what we have at the moment. I just do not see how something that cannot be removed by, does not report back to and has no relationship with the electorate can be described as accountable.

Baroness Young of Hornsey: Under an elected system, it would be possible to put pressure on parties or work it so that you had a more diverse set of people standing for election. I do not see that diversity is necessarily ensured by the kind of system that you have suggested.

David Blunkett: You could put pressure on. I have served on the Speaker's Committee for more than a year, trying to increase diversity in the Commons. We had a debate about it two weeks ago, in which I took part. We have not made much difference so far, it has to be said. After the next election, with 50 fewer Members and massive constituency changes—another reason why we should not be meddling at the moment—we fear that there might be less diversity, rather than more. Some of us just have to keep working on that but I cannot see how pressing STV or whatever system is adopted to put more people up will help.

Baroness Young of Hornsey: That is up to the parties.

David Blunkett: We could theoretically lay down rules to do that in our parties in an STV or a list system, but with STV we would be doing so with considerable risk. If you look at the outcomes where elections have taken place and there has been diversity in the widest sense, people do not tend to go for it.

Baroness Symons of Vernham Dean: On that last point, as I recall, when the Labour Party tried to use quotas for women, it got struck down.

Ann Coffey: No it did not. It went to court.

Baroness Symons of Vernham Dean: It went to court. Is it not the case that the three ethnic minority women who have been in the Cabinet have all come from the House of Lords because of the ability to appoint?

David Blunkett: That is a very good point.

Q704 Baroness Symons of Vernham Dean: Let us go back to Lord Grocott's point. If I understand it, it was that you do not formally have to do anything about primacy because the House of Lords simply uses the powers that it already has and chooses not to exercise some of them because we are not elected. That was the fundamental point that I think Lord Grocott was raising.
Lord Grocott: Exactly.
Baroness Symons of Vernham Dean: Can I take you on a stage further from that? Under the last couple of years of the Labour Government, two Secretaries of State were brought into the Cabinet by the then Prime Minister—the Secretary of State for Transport and the Secretary of State for Business. Were there to be no further changes, other than electing the House of Lords, Lord Grocott, do you think that the Prime Minister would be justified in bringing maybe half his Cabinet from the House of Lords? The power is already there and nothing else has to change. For example, a Foreign Secretary, Chancellor of the Exchequer or Home Secretary could come from the House of Lords. No change in powers would be necessary but they would be elected and would, therefore, have a degree of legitimacy.
Lord Grocott: There would certainly be no good reason for a Prime Minister not to have a much more equitable distribution of senior Cabinet positions between the two Houses. However, there would also be tremendous pressure on him or her to do just that. Why on earth should the Secretary of State for Health, let us say, be in the Commons rather than the elected second Chamber? Even in the hereditary House of Lords, plenty of Prime Ministers came from the second Chamber. The only post that would pose great difficulty would be the Chancellor of the Exchequer, for obvious reasons to do with powers. No, I agree absolutely with that. It would be much resented by elected Members of the second Chamber if they were accorded only the normal ration, which is about 20 of the 100 Ministers, most of whom would be Parliamentary Secretaries. One of the consequences of that would be on major Bills. Secretaries of State always want to introduce their major legislation at Second Reading. They would start in the revised second Chamber, where major Statements would also be made. If a major Statement about a rail crash was made in the Lords—perhaps that is a bad example, as we had a Secretary of State for Transport in the Lords, albeit for a year—the balance in the newsworthiness of the two Chambers would inexorably change.
Baroness Symons of Vernham Dean: Would it be arguable that a Prime Minister could see that, because an elected Member of the upper Chamber was there for 15 years and did not have to go before an electorate again, that might enhance his or her inclination to make appointments? They would therefore be entirely reliant on the good will of the Prime Minister and in no way recallable by the electorate over that period of 15 years.
Lord Grocott: Yes. I think that that is another angle on the bizarre 15-year rule. Even if you have an elected House, which I have made plain I would be strongly opposed to, it is worth considering.
Baroness Symons of Vernham Dean: Is there anything in the Bill as currently drafted that you can see mitigates the power of a Prime Minister to do that if he or she wished?
Lord Grocott: No, there is absolutely nothing in the Bill.

Q705 Lord Rooker: Would you confirm what you just said? If Secretaries of State ended up in the Lords and wanted to introduce their Bills, under this Bill they could not be subject to the Parliament Act because those Bills would have started in the Lords. Can you confirm that as ex-Chief Whip?
Lord Grocott: Yes.
Lord Rooker: The Parliament Act would not apply to any of the discussions that we have had. I have one question. You introduced this subject with your letter to us about a war powers Act. In our briefing for your questions, we were given a 40-digit website address to take a look at. I chose to do so. I came across a document in the Geneva Convention about the democratic control of armed forces. I make this point: in 2003, when there were only 25 members of the EU, the UK was the only country to have a Parliament that did not have any formal authority to approve or veto supplementary budget requests on military action. In a classification of Parliaments by war powers, we were in the worst five, along with Greece, France and Cyprus. I think the Minister is coming back, so we might get an answer to the question. Would this not be the case when we are discussing the conventions, given that we do not yet have a convention on war powers for the Commons?

You have given us an example of something that is not yet a convention but may become one because of the policy issue and how we would apply it to a second Chamber—namely, the powers to go to war. You have not really answered the questions. Do you think that the two Houses should have the same powers in respect of war powers or that the elected second Chamber should not have a power? New Members would come in and see that we did not have the powers but that the Commons had been given them, although it does not have them at the moment. The conventions say why not. What is your view on that?

Lord Grocott: My view is that in all circumstances we should avoid a situation in which the two Houses reach different decisions on something as incredibly serious as the commitment of troops overseas. The only way of avoiding it that I can see is to allow only one House to do it. That is easy enough to do now, because one House is elected and the other one is not. In answer to your question, no, I do not want two Houses to deliberate and decide on that. The evidence that was given by the Constitutional Affairs Minister to this Committee was not the strongest point that anyone could make. In referring to my letter, Mark Harper seemed to say that it was an extraordinary proposition that both Houses could vote on something and that there would be dreadful confusion if they made different decisions. Under the Constitutional Reform and Governance Act, in respect of treaties that is exactly what happens. Both Houses can vote on treaties and, if they vote in different ways, it is the view of the House of Commons that prevails. That seems a perfectly good solution. How on earth can you compare decisions about ratifying treaties, which can take six months, a year or longer—or might never be ratified—with a decision on whether to commit your troops to war, which needs to be taken within hours or days? If that is the only explanation that can be offered by the department at the moment, it is not good enough.

The Chairman: I have three people on the list and we are a quarter of an hour over our time already.

Q706 Mr Clarke: Lord Chairman, I wonder whether I could ask both David and Lord Grocott to comment on my question. A very interesting paper was discussed earlier, having been presented by Lord Pannick. In that paper, he dealt with history and the period when Churchill was Home Secretary, working with Asquith and others to cope with the problem that we are essentially dealing with. That took us up to Herbert Morrison putting Emrys Hughes in his place and telling him that he was a bolshie because he wanted to limit the power of the Lords to delay Commons legislation to a month. Much more recently, although it was not dealt with in Lord Pannick's paper, we had Enoch Powell and Michael Foot, from different positions, putting an end to the whole thing. Even if we as a Committee—and we do not know what we will decide—came up with what appeared to be the answers to all these problems, what would the chances be of getting them through both Houses?

David Blunkett: I think that you could eventually get the proposals through the House of Commons using the Parliament Act if you wanted to lay aside all the major issues that this country and Parliament are addressing at the moment. If people believe that that is the priority of the British people, they are living in a different world.

Lord Grocott: My short answer to that would be that, if the House of Commons is determined and single-minded, it can and undoubtedly would override the House of Lords. The experience of constitutional reform is very much that there needs to be a very strong and clearly held view on a specific issue in the Commons before you can see it through both Houses. I do not see any real sign of that existing at the moment. I would therefore expect it to be a very difficult piece of legislation to enact. I will say no more than that.

Q707 Ann Coffey: I have a couple of questions but I just want to put on the record that we in the Labour Party operate women's lists for certain seats, with the aspiration of getting a certain quota. It is possible for parties, within a party list system, to make sure that they get that kind of diversity in drawing up a party list. One of the arguments for having a party list, rather than another system, is that you have control over the candidates, but they are not independent. This issue about independence is very interesting. Most of the stick that I get from my constituents is not about obeying my party's manifesto but about refusing to vote against it. Over the years, I have come to the conclusion that the public very much value independence. The whipping system is not held in great repute by the public.

Interestingly enough, this 15-year term of office would be a way of giving Members independence. If you were elected for a term of 15 years, you would not much care what the Whips thought about what you did. It would maybe give that independence, which seems to be valued by the public. On that, interestingly enough, when we were talking about a referendum, it was about which question you should ask. There was some doubt over whether, if you asked the public "Would you like an independent House of Lords?" rather than "Would you like

an elected House of Lords?" people would sign up for independence in exactly the same numbers as they would for elections. Do you think that there might be an argument for this 15-year term of office, building in that appointment and perhaps building some sort of confidence in what is happening in the electorate?

David Blunkett: Only if you believe that any political party that aspired to being in and staying in government for long enough to do something would seriously select people, either for a list or for their preferences in STV, who they knew were going to act independently and override the Government.

Ann Coffey: That is not what I was saying, David. I was pointing out that the party list system ensures diversity. That is what I was talking about. Of course they would not put people on a list as being independent. However, people would eventually, having recognised that they were here for 15 years and the Whips could not do much to them, move to a position of independence, as people sometimes do in their last years in the Commons, when they are not interested in having jobs and do not aspire to things.

David Blunkett: They might, but at least in the House of Lords there is, as Lord Grocott has spelt out clearly, an understanding of the relationship between the two Houses. If you move to that with an elected Chamber that claimed some spurious legitimacy, you would not be able to govern. How would you get anything through?

Ann Coffey: Things are changing anyway. The House of Commons is changing. We have a coalition Government. That was completely unimaginable five years ago. Things are changing.

David Blunkett: Let us be real about it: the whipping within the coalition is more effective than it was under us.

Ann Coffey: But it was the concept—

The Chairman: Finally, Lady Shephard.

Q708 Baroness Shephard of Northwold: I want to take up a point made by Mr Blunkett. He mentioned the present political turmoil at constituency level, following the reorganisation of the boundaries and the reduction in the number of Members of Parliament. I do not know what he found on the doorstep at the previous election, but I certainly found that the proposal that there should be fewer elected politicians was rather popular as I knocked on doors. However, if the present proposals became reality, Mr Blunkett would have to go around at the next election justifying the fact that, having got rid of 50 elected politicians, we now have 450 new ones. Does he think that this would go down well in Sheffield?

David Blunkett: Not very well. They are not in favour of this mayor who is being thrust upon them, never mind the police and crime commissioner. We can elect dog catchers if we want to, but it does not change our democracy.

The Chairman: Thank you both very much for coming. It has been a thoroughly enjoyable session. I am grateful to you for the wisdom and experience that you have brought to us.

Lord Pannick—written evidence

Lord Pannick QC[78]

1. The Parliament Act 1911 strengthened the powers of the House of Commons by restricting the powers of the House of Lords. The Upper House no longer had any responsibility for Money Bills (section 1) and only a delaying power in relation to other Bills (section 2), subject to defined exceptions.[79]

2. In 1911, Conservative peers feared, or at least asserted, that the Bill they were opposing would neuter the House of Lords as an effective chamber of Parliament. The Earl of Ancaster spoke for many when he complained that if the legislation were to be enacted, peers "might just as well join the Upper Tooting Debating Society as come down here and speak in this House".[80]

3. But Peers continue to come to Westminster from Tooting, as from all other parts of the United Kingdom, to contribute to the consideration of Bills, and sometimes to improve them. Indeed, the proposals brought forward by the Government for reform of the House of Lords[81] proceed from the premise that the Upper House continues to play so important a role in the government of this country that its membership should be determined by popular election, rather than by appointment by the Executive.

4. A draft Bill to that effect has been referred to a Joint Committee of both Houses of Parliament for pre-legislative scrutiny.[82] That Committee has been asked to report by 29 February 2012. If, after the Joint Committee completes its work, the Government were to introduce a Bill to make the House of Lords wholly or mainly elected, and if the House of Commons supports such a proposal (which is by no means certain), the Bill would almost inevitably be rejected by the House of Lords, the overwhelming majority of whose members take the view that an elected Upper House would be less well-qualified to perform the expert revising role and are concerned that difficult questions would arise about the respective functions of the two Houses.[83]

5. An important legal issue would then arise. Would the Parliament Act 1911 apply, restricting the House of Lords to a delaying power? Such a question was described in one textbook in 2003[84] as "more appropriate for the classroom than the courtroom". But since the Jackson case in 2005 on whether the Hunting Act is valid law, there can be no doubt that the judiciary would claim jurisdiction over such an issue.

6. For the reasons set out below, my opinion is that the House of Commons could use the powers conferred by section 2(1) of the Parliament Act 1911 to insist on the Government's proposals for reform of the House of Lords.

7. Observations made by the Court of Appeal[85] and by some members of the Appellate Committee of the House of Lords[86] in Jackson suggest that the Parliament Act may not apply in this context.

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78 Blackstone Chambers, London; Fellow of All Souls College, Oxford; Crossbench Peer in the House of Lords. This is an edited version of the Birkenhead Lecture delivered in Gray's Inn on 17 October 2011.I am very grateful to Professor Vernon Bogdanor for helpful comments. He is not responsible for my errors or views.

79 Subject to stated exceptions, considered below, the House of Lords could only hold up a Bill for three Parliamentary sessions spread over at least two years, if the House of Commons was determined that it should become law. The Parliament Act 1949 reduced these delaying powers from three to two sessions with only one year needing to elapse.

80 Hansard, HL, 29 June 1911, Series 5, Volume 8, column 1186.

81 *House of Lords Reform Draft Bill* (Cm 8077, May 2011).

82 Hansard, HL, 7 June 2011, Volume 728, columns 137-147.

83 See the two day debate on the Government's proposals for reform of the House of Lords: Hansard, HL, Volume 728, 21 June 2011 at column 1155ff and 22 June 2011 at column 1314ff.

84 A.W. Bradley and K.D. Ewing *Constitutional and Administrative Law* (13th edition, 2003), p.198. The current 15th edition (2011) does not include the phrase.

85 R (Jackson) v Attorney General [2005] QB 579.

8. The Countryside Alliance brought legal proceedings to challenge the legal validity of the ban on hunting of foxes with dogs. The Hunting Act had been enacted under the Parliament Act 1949, which had amended the 1911 Act so as to reduce the delaying powers of the House of Lords. The Claimants argued that the Parliament Act 1949 was invalid because it was enacted under the 1911 Act procedures, that is without the consent of the Lords. The Claimants said that if the conditions set out in the 1911 Act for legislation to be validly enacted without the consent of the Lords were to be altered, it could only be done with the consent of the Commons and the Lords. The claim failed. The High Court, the Court of Appeal and the Appellate Committee of the House of Lords each held that the Parliament Act 1949 was valid legislation and so the Hunting Act was valid law.[87]

9. For the Court of Appeal, Lord Woolf, the Lord Chief Justice[88], stated that the purpose of the 1911 Act was "to establish a new constitutional settlement". So it could not be used "to enable more fundamental constitutional changes to be achieved than had been achieved already". If Parliament had intended to confer such a power, it "would be unambiguously stated in the legislation". The Court of Appeal added that "the greater the scale of the constitutional change proposed by any amendment, the more likely it is that it will fall outside the powers contained in the 1911 Act". However, the Court of Appeal concluded that the amendments to the 1911 Act procedures made by the 1949 Act were not fundamental and so the 1949 Act was valid.[89]

10. The Appellate Committee of the House of Lords rejected the approach taken by the Court of Appeal. But there were further comments by some of the Law Lords suggesting limits to the use of the 1911 Act to secure constitutional change without the consent of the House of Lords. Lord Steyn said he was "deeply troubled" about the suggestion that the 1911 Act could be used to abolish the House of Lords. That would be, he suggested, "an exorbitant assertion of government power in our bicameral system".[90] Lord Carswell noted that if attempts were made to use the 1911 Act to abolish the House of Lords or to make a "radical change in its composition which would effect a fundamental change in its nature", then he would "incline very tentatively to the view" that "there may be a limit somewhere" to the powers contained in the 1911 Act, though "the boundaries appear extremely difficult to define".[91] Lord Brown of Eaton-under-Heywood said that he was not prepared to give a ruling which would sanction the use of the 1911 Act for purposes such as the abolition of the House of Lords, though he contrasted as less controversial an alteration in its composition or the method of selection of Peers.[92]

11. Contrary to the views of the Court of Appeal in the Hunting Act case, the 1911 Act confers ample legal power on the House of Commons to use section 2(1) of the 1911 Act to enact fundamental constitutional reform, if the House of Lords refuses to give its approval to such proposals. There are four arguments which support this conclusion.

12. First, the 1911 Act states when section 2(1) cannot be used to force through a Bill without the consent of the House of Lords.[93] Section 2(1) expressly does not apply to a Money Bill (which under section 1 is a matter for the House of Commons) or to a Bill containing any provision to extend the maximum duration of Parliament beyond 5 years. Section 5 states that section 2 does not include any Bill for confirming a provisional order (a form of legislation

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86 R (Jackson) v Attorney General [2006] AC 262.

87 I declare an interest: I represented the League Against Cruel Sports, and made submissions supporting the Attorney-General in opposing the arguments presented by the Countryside Alliance.

88 The other members of the Court of Appeal were Lord Phillips of Worth Matravers, the Master of the Rolls, and Lord Justice May.

89 Paragraphs 42, 45 and 99-100.

90 Paragraph 101.

91 Paragraphs 176 and 178.

92 Paragraph 194.

93 Section 2 only applies to a public Bill, not a private Bill. It only applies to a Bill which begins in the Commons, not one which begins in the Lords: Erskine May: Parliamentary Practice (24th edition, 2011), p.648. Because section 2(1) only applies to a Bill, it does not apply to secondary legislation.

which is no longer used).[94] Given these specific exceptions, it would be difficult to imply other exceptions. As Lord Bingham pointed out in the Hunting Act case with his customary force and precision, subject to the stated exceptions section 2(1) applies to "any" public Bill and there is no broader expression than "any".[95]

13. Second, to imply limitations on the use of the section 2(1) power would defeat the manifest purpose of the 1911 Act. The legislation was deliberately designed to ensure that, in the event of a dispute, the elected House of Commons could prevail over the unelected House of Lords. The controversy over the Liberal Government's proposals for limiting the powers of the House of Lords caused the second general election of December 1910 and was one of the main topics of debate in that general election campaign[96]. Courts should be very reluctant to undermine the political victory of the House of Commons by restricting its ability to decide when it is appropriate to use the powers conferred by the 1911 Act, subject only to the express limitations contained in the 1911 Act itself. Any use of the section 2(1) powers would occur only in the circumstances of a highly contentious political dispute. The courts should stay well away from implying limits on the ability of the Government, through its majority in the House of Commons, to resolve a political stalemate. The central purpose of the 1911 Act was to provide a means of resolving such a conflict other than by the Government asking the monarch to appoint sufficient new Peers to force the legislation through the House of Lords.

14. Third, the suggestion by the Court of Appeal that the 1911 Act does not confer power on the House of Commons to force through, without the consent of the Lords, a Bill which involves fundamental constitutional reform would conflict with the immediate purpose of the 1911 Act. It was designed to enable the Liberal Government, supported by the Irish nationalists, to secure the fundamental constitutional reform of Home Rule for Ireland, which was strongly opposed by the Conservative Party.[97] Indeed, the first two measures for which the 1911 Act was used were important constitutional reforms: the Government of Ireland Act 1914 on Home Rule, and the Welsh Church Act 1914 on the disestablishment of the Anglican Church in Wales. Moreover, the suggestion that section 2(1) of the 1911 Act cannot be used for fundamental constitutional reform is very difficult to reconcile with the acceptance by the Court of Appeal and by all members of the Appellate Committee that section 2(1) allowed the House of Commons to force through the Parliament Act 1949 amending section 2(1) itself, so permitting a reduction in the delaying powers of the House of Lords. The Court of Appeal's conclusion[98] that the 1949 Act was not a fundamental constitutional reform is surely wrong.

15. Fourth, it is plain from the Parliamentary debates that the 1911 Act was intended to allow the House of Commons to enact legislation without the consent of the House of Lords on fundamental constitutional issues, including reform of the House of Lords. Winston Churchill, the Home Secretary, made the point very clearly during the Committee Stage of the Parliament Bill. The passage of the Bill was, he said, "an indispensable preliminary to the discussion of any grave questions in regard to the constitution of the Second Chamber". This was, he insisted, for a very good reason: "It is obvious that we could not embark upon discussion on equal terms while the last word rests with the House of Lords, and while we should be forced after all our suggestions and resolutions have been put forward to accept the decision of the House of Lords on all the points which have been under discussion".[99]

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94 See Erskine May Parliamentary Practice (24th edition, 2011) at pp.932-933 and Companion to the Standing Orders and Guide to the Proceedings of the House of Lords (2010 edition), paragraph 9.65.

95 Paragraph 29.

96 See Roy Jenkins Mr Balfour's Poodle (1989 edition), chapter X.

97 The Home Secretary, Winston Churchill, told the House of Commons on 8 August 1911 that it was "absurd" to suggest that the Government had made "any secret of our intention, our consistent and original intention, to use the machinery of the Parliament Bill for the passage of Home Rule ...": Hansard, HC, 8 August 1911, Series 5, Volume 29, columns 989-990. See also the comments of the Prime Minister, H.H. Asquith: Hansard, HC, 20 April 1911, Series 5, Volume 24, column 1112; and Hansard, HC, 24 April 1911, Series 5, Volume 24, columns 1387-1394. The Liberal government, and the Irish Nationalists, were understandably concerned that they needed the 1911 Act to prevent such a measure from being blocked by the House of Lords.

98 See R (Jackson) v Attorney General [2005] QB 579 (Court of Appeal) at paragraph 99.

99 Hansard, HC, 3 April 1911, Series 5, Volume 23, columns 1894-1895. F.E. Smith had complained that the Bill, if enacted, would enable the Government to alter "the very instruments of Government which we are told is to be the only security left in the Bill": column 1929. Winston Churchill, the Home Secretary, responded that the 1911 Bill was not "the final settlement". The Government would, in due course, "submit to the delaying powers of the Lords" a measure for reform of the composition of the Second Chamber: Hansard, HC, 22 February 1911, Series 5, Volume 21, columns 2035-2036.

16. The Prime Minister, Asquith, responded generally to the many amendments tabled at Committee Stage to exclude a variety of constitutional issues—including the composition of the House of Lords—from the scope of clause 2(1).[100] Asquith told the House of Commons that he was seeking "over the whole sphere of legislation, power, after adequate deliberation and delay, to carry into law with the consent of the Crown the will of the people".[101]

17. A Conservative MP moved an amendment at the Committee Stage in the House of Commons to exclude from section 2 any Bill "which contains any provision which affects the Constitution of the House of Lords".[102] The Home Secretary, Winston Churchill, opposed the amendment on behalf of the Government on the ground that "the present hereditary and unreformed House of Lords" should not "exercise a final and absolute veto upon all proposals for the reconstitution of the Second Chamber".[103] The amendment was defeated.[104] At the Report Stage, the House of Commons rejected an amendment moved by George Cave (a future Lord Chancellor) which would have required a referendum before the Bill applied to a number of constitutional subjects, including any legislation which "affects the constitution or powers of either House of Parliament or the relations of the two Houses one to the other".[105]

18. There can be no doubt that the 1911 Bill was presented to Parliament, and the relevant amendments were rejected, on the basis that clause 2(1) would apply even to fundamental constitutional issues, including reform of the House of Lords.[106] It is, then, very surprising that in the Hunting Act case the Court of Appeal stated that the extracts from Hansard which it had seen displayed "no consensus for a view that the 1911 Act was intended to give the Commons directly or indirectly power to change fundamentally this country's constitutional arrangements".[107]

19. The strongest argument advanced by those who wish to restrict the ability of the House of Commons to use section 2(1) of the Parliament Act to abolish or reform the House of Lords without the consent of the Upper House is that the Appellate Committee of the House of Lords accepted in the Hunting Act case that there is at least one implied limitation to the scope of section 2(1). So, it is argued, there can be others.

20. Section 2(1) of the 1911 Act expressly states that it does not apply to a Bill to extend the life of a Parliament beyond five years. Any such Bill requires the consent of the House of Lords as well as the House of Commons. In the Hunting Act case, a majority of the Appellate Committee said that there is an implied limitation which prevents the House of Commons from acting in two stages without the consent of the Lords, first by using section 2(1) to amend the Parliament Act to remove the prohibition on the House of Commons using its powers to extend the life of Parliament and then using the amended section 2(1) to extend the life of Parliament beyond five years. Five of the nine Law Lords took the view that this could not validly be done, Three others reserved their position, and only Lord Bingham of Cornhill took the contrary view that section 2(1) could be used to remove the restriction in section 2(1) concerning the duration of Parliament.[108]

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100 They included, the 1689 Bill of Rights, the Habeas Corpus Act, the Acts of Union with Scotland and Ireland, the Civil List, the administration of justice, and any amendment to the 1911 legislation,

101 Hansard, HC 20 April 1911, Series 5, Volume 24, columns 1103-1112.

102 Hansard, HC, 24 April 1911, Series 5, Volume 24, column 1507.

103 Hansard, HC, 24 April 1911, Series 5, Volume 24, column 1510.

104 Hansard, HC, 24 April 1911, Series 5, Volume 24, column 1518.

105 Hansard, HC, 8 May 1911, Series 5, Volume 25, columns 915-978.

106 Lord Cooke of Thorndon suggested in "A Constitutional Retreat" (2006) 122 LQR 224, 228—a comment on the Jackson case—that it is necessary to be especially careful about the use of Hansard as an aid to interpretation under the principle in Pepper v Hart [1993] AC 593 when the relevant references come from debates in the House of Commons, which was in conflict with the House of Lords on the matters in dispute. But nothing was said in the House of Lords' debates to suggest that clause 2(1) was understood as not applying to reform of the House of Lords.

107 Paragraph 48.

108 See Lord Nicholls of Birkenhead at paragraphs 58-59; Lord Steyn at paragraph 79; Lord Hope of Craighead at paragraphs 118 and 122-124; Baroness Hale of Richmond at paragraph 164; and Lord Carswell at paragraph 175. Lord Rodger of Earlsferry reserved his position at paragraph 139, as did Lord Brown of Eaton-under-Heywood at paragraph 194. Lord Walker of Gestingthorpe said this was an issue which did not need to be resolved: paragraph 141. See also the judgment of the Court of Appeal at paragraphs 40-41. Lord Bingham of Cornhill was in a minority on this issue at paragraph 32.

21. The views of the majority of the Law Lords are supported by the Parliamentary debates on the 1911 Bill. The House of Lords amended clause 2(1) during the Committee Stage to add the restriction which prevents the House of Commons from extending the life of the Parliament beyond five years without the consent of the House of Lords.[109] When the Bill returned to the House of Commons, the Government conceded the point and accepted the amendment. Winston Churchill, the Home Secretary, spoke for the Government and said that it was "an essential and indispensable part of our proposals for constitutional change that the life of Parliament should be shortened". He added that the Government were "bound to make every effort in our power to give reasonable reassurance where we can, without prejudice to any essential principles of the Bill, to persons to whom we are opposed".[110] If Mr Churchill had said that the Government could, after the passage of the Bill, use section 2(1) to remove this provision, without the consent of the House of Lords, the "reassurance" to the Conservative Opposition would have been nullified.

22. So the majority of the Appellate Committee in the Hunting Act case was correct to say that section 2(1) impliedly prevents the House of Commons from using that provision to remove the limitation on the use of the powers of the House of Commons to extend the life of Parliament without the consent of the House of Lords.

23. Lord Hope of Craighead posed this question in the Hunting Act case: if there is such an implied limitation on the use of section 2(1), "how much more room is there for other prohibitions to be implied?".[111] The difficulty with this suggestion is that the implied limitation in section 2(1) accepted by the majority of the Law Lords in the Hunting Act case was based on an *express* provision in the 1911 Act which precludes the use of section 2(1) to extend the duration of Parliament. So this cannot be used as an argument to create further implied limitations on the use of section 2(1) which are not based on anything expressly stated in section 2(1), especially when the manifest purpose of the 1911 Act was to confer a broad power on the House of Commons to enact fundamental constitutional change without the consent of the House of Lords.

24. There is nothing expressly stated in section 2(1) which prohibits the use of that provision to alter the composition of the House of Lords without its consent. But there is one other implied limitation in section 2(1), and indeed in the 1911 Act as a whole.

25. The House of Commons could not use section 2(1) of the 1911 Act to abolish the House of Lords without its consent. The continuing existence of an Upper House is assumed by the Preambles to the 1911 Act, which stated that it was "intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis" but that such substitution "cannot be immediately brought into operation". The continuing existence of the House of Lords is also assumed by section 2(1) in its recognition that the consent of the House of Lords will be required for legislation on matters excluded from the scope of that provision. Indeed, if it is implicit in section 2(1) that the 1911 Act cannot be used to extend the life of Parliament, it must equally be implicit in section 2(1) that the 1911 Act cannot be used to abolish the Upper Chamber whose consent is needed for any Bill to extend the life of Parliament.[112] If Parliament wants to redefine itself by legislation which abolishes the House of Lords, and introduces a unicameral legislature, any such legislation could not be valid without the consent of both Houses of Parliament.

26. The same reasoning would prevent section 2(1) of the 1911 Act being used to enact (without the consent of the House of Lords) a referendum on the abolition of the House of Lords, since that would (if approved by the electorate) result in a unicameral legislature. The powers in the 1911 Act cannot validly be used to promote that result.

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109 Hansard, HL, 3 July 1911, Series 5, Volume 9, columns 6-12.

110 Hansard, HC, 8 August 1911, Series 5, Volume 29, columns 1094-1095.

111 Jackson at paragraphs 122-124. Lord Hope of Craighead found the argument "not unattractive", but did not consider it further because, he said, it could not be used to undermine the amendments made by the 1949 Act because of what he described as the "political reality" of their acceptance.

112 See Peter Mirfield (1979) 95 Law Quarterly Review 36, 53-56. In Jackson at paragraph 42, the Court of Appeal stated that because the purpose of the 1911 Act was "to establish a new constitutional settlement" which restricted the powers of the House of Lords but preserved its role in the legislative process, "it would be in conflict with the 1911 Act for it to be used as an instrument for abolishing the House of Lords".

27. Much more difficult is whether the House of Commons could use section 2(1) further to reduce the delaying powers of the Lords. During the debates on the Parliament Bill in 1947, Emrys Hughes, a Labour backbencher, unsuccessfully proposed reducing the delaying powers of the House of Lords to one month. The (Labour) leader of the House of Commons, Herbert Morrison, responded that this was "Bolshevism gone mad".[113] Perhaps, but as a matter of law, if, as the House of Lords held in the Hunting Act case, section 2(1) was validly used in 1949 to reduce the delaying powers to 1 year, why should the delaying powers not be further limited? And since section 1 allowed for Money Bills to be the exclusive preserve of the Commons, surely section 2(1) could be used to add further topics to section 1. Of course, at some point, a House of Lords without power is an abolished House of Lords. But if the House of Commons were to insist on using section 2(1) to restrict the powers of the House of Lords so it has no delaying powers, and its consent is needed only for a Bill to extend the life of Parliament, that would be a valid use of section 2(1). There would remain a House of Lords with *some* powers, and the 1911 Act allows the House of Commons to insist on its opinion as to what those powers should be.

28. So abolition of an Upper House would be inconsistent with the purposes and terms of the 1911 Act. But a substantial reform of the House of Lords, as the Government now proposes, is precisely what the second Preamble to the 1911 Bill contemplated: replacing it with "a Second Chamber constituted on a popular instead of hereditary basis". One of the central purposes of section 2(1) of the 1911 Act was to enable the House of Commons to insist on reform of the House of Lords.

29. F.E. Smith (from the benches of the Conservative Opposition) may well have been correct during the Parliamentary debates to mock section 2(1) as rewarding the House of Commons for "adding obstinacy to error".[114] But the House of Commons is entitled to be obstinate, even if it is in error, and it may use the Parliament Act to force through its proposals for reform of the House of Lords.

27 October 2011

113 Hansard, HC, 4 December 1947, Series 5, Volume 445, columns 629 and 634: cited in Vernon Bogdanor The New British Constitution (2009), p.148.

114 Hansard, HC, 30 March 1910, Series 5, Volume 15, column 1309.

MONDAY 27 FEBRUARY 2012

Members Present

Lord Richard (Chair)
Baroness Andrews
Bishop of Leicester
Lord Norton of Louth
Lord Rooker
Baroness Scott of Needham Market
Baroness Shephard of Northwold
Baroness Symons of Vernham Dean
Lord Trefgarne
Lord Trimble
Lord Tyler
Mr Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Tristram Hunt MP
Dr William McCrea MP
Dr Daniel Poulter MP
Laura Sandys MP
John Stevenson MP
Malcolm Wicks MP

Rt Hon Mr Nick Clegg MP and Mr Mark Harper MP (QQ 709–768)

Examination of witnesses

Rt Hon Mr Nick Clegg MP, Deputy Prime Minister, and **Mr Mark Harper MP**, Minister for Political and Constitutional Reform

Q709 The Chairman: Thank you very much for coming. We are very grateful to you. Mr Harper, we have seen you before, three times, I think. Mr Clegg, this is your first intrusion into the Committee. We welcome you to it. You know what we are about, so I do not have to explain. Do you wish to make an opening statement, or would you like to launch straight into the questions?

Mr Clegg: If I could just spend a minute or two, I would be very grateful. First, thank you very much for inviting me and the Minister to come before you today. I am also very grateful for the rigour with which the Joint Committee is examining the draft House of Lords Reform Bill. I am very much looking forward to seeing the final report, which will have a very significant bearing on the Government's thinking on the final shape of the Bill. I hope we have ample time to enter into quite a lot of the detail, but before we do so, I want to step back for a minute and reflect on why we are discussing another reform proposal relevant to the composition of the House of Lords.

My view is that at the end of the day it comes back down to a pretty simple dilemma, a simple question, if you like. Do we think that in a democracy the people who make the laws of the land should be elected by the people who obey the laws of the land? Ultimately, when you strip away all the detail, it is as simple as that, and I think the vast majority of people intuitively would accept that it should be people, not party-political patronage, who determine who sits in the House of Lords. That question has hung over this issue for generations. It has been debated for a hundred years or so and there have been 15 blueprints for reform of the House of Lords, but I hope that with the new constellation, if you like, in which all three major parties at the last general election had clear

manifesto commitments of one shape or other for reform of the House of Lords, we can finally bring this debate about reform of the composition of the House of Lords to a close.

Yes, these are important proposals, but they are not new. In fact, they have been knocking around for a long time. They are not particularly revolutionary. My view is that the only institution or body of people that has anything to fear about these proposals in British politics is the Executive. We will, no doubt, debate this shortly. I know there has been a lot of focus on the possible change in the relationship between the House of Lords and the House of Commons, but my view is that a more legitimate House of Lords will strengthen the role of Parliament as a whole in holding people in power, in Government, to account. That, in my view, is one of the many merits of this kind of reform.

Yes, of course we should proceed with care in a thoughtful and pragmatic manner, but even as we debate a lot of the complexities, I hope we will be able to keep the end goal in sight, which is that, in a modern democracy, the House of Lords should not be stuffed full of friends and colleagues of party-political leaders, but should be filled with the elected representatives of the people. Mark, I do not know whether you want to add anything.

Mr Harper: Having been here three times, as the Lord Chairman said, and having observed the work the Committee is doing, I think it has engaged with this in the way we hoped it would. I think it has set a very good example for both Houses as a whole when we eventually present a Bill. I am confident that both Houses, including the House of Lords, will adopt the same sort of constructive approach that the Committee has adopted and we will end up with a Bill that is in good shape to end with a very successful elected upper House.

Q710 The Chairman: Thank you. I wonder if I can start by raising one major issue, not a fundamental one such as Clause 2 or what you have just been talking about but one that is of great importance to this Committee and, indeed, to the House of Lords itself. At the outset, we were told that, as far as the transition was concerned, there was going to be no money that we could consider in relation to it. Now Lord Steel did his Bill about two weeks ago in the Chamber of the Lords. If you will forgive me, I am going to quote two paragraphs. They are not too long, but they are necessary, I think, for us to get the flavour. He said:

"The most important part of the Bill that we are now considering is, I would submit, the retirement section … The House will recall that the all-party committee under the noble Lord, Lord Hunt of Wirral, recommended that the House should take statutory powers to introduce a retirement scheme. While I shall not quote the report in detail, the committee also said that that should be done without expense to the public purse and within the budget of your Lordships' House. Since then, I have had discussions with four Members of the Cabinet. I am not going to name them, but I will say that one was a Liberal Democrat and the other three were Conservatives. We talked about what sort of scheme might be introduced if we give the House the necessary statutory authority.

At present, those Peers who attend regularly, by which I mean almost every day, can take home in allowances over the course of a year something over £40,000. … The Government are keen on capping payments and I suspect that capping any kind of terminal allowance would be quite popular. These details are not in the Bill, but I shall give noble Lords an indication of the kind of discussions that have been going on. If a cap were set at £30,000, that would be the same as the tax-free allowance on redundancy payments made in the outside world and so would be quite acceptable and in line with other occupations.

We suggested that the other cap would be that the maximum amount any Member could claim would be no more than they claimed in the last Session of Parliament. That would prevent Members who come only occasionally suddenly deciding to claim a large lump sum. With that in place, I think that the scheme would be financially neutral. The taxpayer would benefit after one year because no more payments would be made to those who leave. I also suggest that there should be a minimum payment of something like £5,000 to deal with those Members who no longer attend for reasons of frailty, but who have given great service to the House and may wish to take advantage of this proposal".

I listened to that with some surprise when I was sitting there that Friday afternoon. Is this true?

Mr Clegg: I have had no discussions on that matter with Lord Steel, so I am as interested as you are.

The Chairman: With respect, that was not the question I asked you. I did not ask whether you talked to Lord Steel about it. I asked whether it is true.

Mr Clegg: Clearly, it is not the case if it has not been discussed. It is certainly not something we have decided upon within the Government because those issues of transition and the costs of transition depend in very large measure on what the design of that transition would be, over what period, how one would move from one status-

—the current status quo—to another and in what kind of instalments. As the Committee will know, we have proposed a particular model in the White Paper, in thirds, but there are other versions of that transition. It is quite difficult for us to be precise about transition costs and whether you would cap one or other feature of it without deciding first what the basic transitional route would be.

Mr Harper: I had the benefit of listening to the whole of that debate in the House of Lords. I think I am right in saying that Lord Steel made it clear that he had individual conversations and that each of the people he had spoken to made it clear that they were not speaking on behalf of the Government and that the Government had not agreed that position.

The Chairman: "Four members of the Cabinet" is what he said.

Mr Harper: The decisions that the Government take are collective decisions, and the Government have not taken a collective decision effectively to provide some sort of redundancy pay, which is effectively what Lord Steel was arguing for.

Q711 The Chairman: Is that on the table? That is what I really want to know because it may have quite an effect on our proposals in relation to the transition. Is that something that the Government would be prepared to consider?

Mr Harper: We set out our proposals in the White Paper. Clearly, if this Committee recommends such a thing, we will consider what it says. At the moment, in much the same way as we have set out the position for party funding, I do not think the public would take kindly to effectively giving Members of the House a pay-off for going away.

Q712 The Chairman: I am not asking you about the public. I am asking about the Government. What I really want to know is a simple question. I hope it will get a simple answer. Is the issue of payment for Members who are going to leave one that the Government are prepared to consider?

Mr Clegg: We are prepared to consider it, but we simply cannot be asked to decide on it now without hearing this Committee's final views on what the transition should be and allowing for collective discussion within Government about what the transitional arrangements should be. It is inextricably linked with the pace and manner of transition from the current House to a reformed one, but of course we will consider it, and we will particularly consider it if the Committee were to recommend it.

Malcolm Wicks: This is a rather different question. Can I put it to the two Ministers that if—and there is no reason why we should be—we were being asked by people in Tunisia, Egypt, Libya and, hopefully one day, Syria to advise on what a modern parliamentary democracy looks like in the 21st century, we probably would not say that one of the Chambers should consist of representatives of the military, big business and theocracy and former Ministers and other close friends of the political class? Probably, going back to basic principles, we would say that it has to be democratic. I am rather repeating what the Deputy Prime Minister said. It should be made up of people who, if they are passing laws that affect the society and the people, should be elected by the people. There are a lot of details here—we just heard a bit of detail—but, basically, should we not be going back to basics about what the 21st century demands in terms of a democratic Parliament?

Mr Clegg: I suspect—I cannot be scientific about this—that if you spoke to protestors in Tahrir Square and other activists in the Arab spring who look to our country as a model of democracy and of a stable, democratic political system, they would probably be surprised when they found out that over 70 per cent of the current Members of the House of Lords are there as political appointees and have been appointed by party-political leaders. They would be surprised.

The issue about legitimacy is important not just for the overall design but for the quality of our democracy. I genuinely think that a more legitimate House of Lords would be a more effective one as well. In other words, I think that efficacy and legitimacy go hand and hand in a democratic system. I think a revising Chamber, which does a magnificent job with its current composition, would do it even more authoritatively and credibly both at home and, as your question asks, abroad, if it had greater explicit legitimacy.

Q713 Tristram Hunt: Am I right in thinking that the coalition agreement suggested that a draft House of Lords Bill would come forward, so in terms of the coalition agreement just a draft Bill was all that was required?

Mr Clegg: Yes.

Tristram Hunt: So you have fulfilled that. For those critics who fear that this is going further, in terms of the agreement, that has been ticked off.
Mr Clegg: Any Government puts forward a draft Bill for a purpose, not for the sake of it. That draft Bill is there to be examined, revised and finally adopted.
Mr Harper: Mr Wicks talked about the view of members of the public. Interestingly, even today one of the party grass-roots websites, Conservative Home, did a poll of its members. Just over half of its members who took part in that poll supported the principle of an elected Lords, so you can see that the simple principle that people who make laws ought to be elected is supported on both sides of the coalition.

Q714 Tristram Hunt: Talking of grass roots and parties, in the *Guardian* today, Lord Rennard, the former chief executive of the Liberal Democrats, explicitly links support for reform of the House of Lords to Liberal Democrat support for the boundary review. Is there any basis to that suggestion?
Mr Clegg: Of course there is no formal link between those different elements of the constitutional and political reform agenda that this Government are pursuing. There are various different facets of it. I recently got the ball rolling on what I hope will be new, fruitful discussions on party funding reform. Mark Harper is piloting legislation through Parliament on individual electoral registration to bear down on electoral fraud. We had a referendum last year. We have legislated for a fixed-term Parliament. There are various bits that make up the mosaic of this Government's political and constitutional reform agenda. I think they all hang together in a coherent way, but there is not a quid pro quo about one aspect as opposed to another.

Q715 Tristram Hunt: Finally, in a private seminar last week, a senior House of Commons official suggested that if the timetabling vote on this Bill, if it is in the Queen's Speech, went against the Government, Parliament would be into what he called Maastricht territory. Do the Government have the will and the appetite for Maastricht territory on House of Lords reform?
Mr Clegg: I understand that this provokes passions, particularly for people who are very adamant that the status quo should be retained. Many people out in the country do not care about it nearly as much, but that does not mean it is not important. Of course, the quality of our democracy is important. It would be pretty incomprehensible to the vast majority of people in the United Kingdom if those who oppose what would strike most people in the country as reasonable reform, just asking law makers to be elected by people who have to obey the law, had a slightly odd set of priorities and hijacked the rest of parliamentary business just to insulate the House of Lords from reform which has been discussed in one shape or form. In preparation for this, I was looking at the extraordinary, in fact almost accidental, similarity between our proposals and the proposals—I have forgotten what they are called—back in 1918. This has been debated for a long period. I think everyone would find it quite curious if, in defence of the status quo, a whole range of other laudable measures were somehow disrupted. I think people would find that a curious, to put it mildly, selection of priorities.

Q716 Dr Poulter: One of the biggest issues we have picked up in this Committee is the primacy of the House of Commons. Earlier on, Deputy Prime Minister, you said that the second Chamber would do its job even more authoritatively—I think those were your words—if it were democratically elected. Would you agree that there is a clear distinction in terms of the primacy of the House of Commons between having a second Chamber that is 80 per cent elected and 20 per cent appointed and one that is 100 per cent elected?
Mr Clegg: I suspect that may well be right. I find it difficult to be scientific about the consequences—predictable or unintended—of one model or another. It may well have a bearing on the perception of the relative roles of the two Chambers, but my view is that whether it is 80 per cent elected or 100 per cent elected is probably less important in making that distinction than the other quite big differentiators that we have built into the plans. The most important, I think, is the non-renewable single term, because that removes any incentive for Members of the reformed House of Lords to mimic what I call the conventional electoral politics of the House of Commons. You would not have constituencies at all in a reformed House of Lords under our blueprint. You would have districts, the smallest of which would have 2.5 million voters, and I do not think you can do meaningful constituency work for 2.5 million voters, so there would be a clear distinction there. This very long, non-renewable term would be much shorter than the life membership you have now, so in one sense, it is a big cut, but it is still none the less a long non-renewable term. I think those are probably more important

mechanisms by which the clear division of labour can be maintained between the House of Commons and a reformed House of Lords in future, but I accept that 80 per cent or 100 per cent might have some additional bearing on it.

Mr Harper: In terms of the framework—and I am sure we will get questions on this later—the underpinning of the primacy is the existence of the Parliament Acts. We have been very clear that we want those to continue as now. Ultimately, they guarantee that the Commons is able to retain its supremacy over the upper House. However much the upper House might want to change that position, it cannot do so without the permission of the Commons. For Members of the House of Commons who are nervous about that, that is the underpinning that should give them confidence that they retain that supremacy because of the nature of their relationship with the voter.

Q717 Dr Poulter: It follows, Deputy Prime Minister, from what you have said that, with those 15-year non-renewable terms, the implicit terms under which the senator or the Lord accepts election would be that it is a revising Chamber. Inherently, they accept the primacy of the House of Commons as part of their mandate for election to the second Chamber.

Mr Clegg: Absolutely. By the way, there are countless bicameral systems that manage this trick in a very straightforward manner in which the two Chambers are either wholly or largely elected but none the less a clear division of labour exists and there is clear primacy—

The Chairman: Since the Division in the House is on the health service, I fear we will have to adjourn.

Meeting suspended for a Division in the House of Lords.

The Chairman: I think that we can probably start again.

Q718 Laura Sandys: In the Tea Room, there is a lot of discussion about the primacy of the Commons and the Lords. In many ways, the issue for most people and parliamentarians is the relationship between Parliament and Government. While we have had a lot of evidence given to us about the primacy in the relationship between the House of Lords and the House of Commons, it is strange that we have had no real discussion, projection or analysis of how an elected House of Lords would change the relationship between Parliament and Government. I would be very interested in your perspective on that and on whether issues such as long-term strategy could be more effectively scrutinised by Parliament. My personal view, which may not be shared by others, is that both the House of Lords and the House of Commons will become stronger and more activist and use more of the powers that they currently have which they tacitly deny themselves.

Mr Harper: One of the interesting things is that some people say that if the House of Lords becomes more legitimate and powerful that must mean that power is taken away from the House of Commons. I simply do not follow that argument. Your position about scrutinising long-term strategy is something that Lord Adonis also set out in some of his observations from when he was Transport Secretary. A House elected for long single terms could scrutinise significant infrastructure projects, which have a gestation period of longer than one Parliament. I think an elected or mainly elected House of Lords could carve a role out for itself to hold the Government to account very effectively on things that the Commons does not. Collectively the two Houses of Parliament working together would hold the Executive to account more effectively and we would have a stronger Parliament, which would be a good thing for the people and for Government because if Government has to be more concerned about Parliament and about being held to account we would get better decisions and better drafted laws. Both coalition parties agree that well drafted laws and the Government being held to account are better for the country as a whole. I think your argument has a lot of merit.

Q719 Laura Sandys: You are saying that the Government are turkeys voting for Christmas. On that basis, when you start to look at the engagement the Government have with trade bodies, the media and think tanks, do you feel that Parliament does not currently have the capacity to put forward ideas in the most effective way to influence Government strategy? Do you believe that a greater capacity across both Houses would enable Parliament to take powers away not just from Government but from third parties and people who are now engaged in the political process with no legitimacy at all?

Mr Clegg: One thing that I would add is that the great virtues of the current House of Lords, which would be retained under the new arrangements, are the freedom to think long term, emancipation from the tyranny of

day-to-day, up-and-down politics, an ability to see the wood for the trees and not worrying about the gyrations of political fortunes but looking at the long term. I think Members of the House of Lords elected on long, non-renewable terms would, as the earlier question suggested, explicitly be putting themselves forward to fulfil a very different function—not just political, but intellectual—from that of Members of the House of Commons. They would be genuinely free to look at things with greater independence and a longer view. I think that must be good for a House of Lords whose legitimacy has been strengthened. As Mark Harper has quite rightly implied, it would also be good for Government because it would test Government on some of the long-term propositions which, as we know, often get lost in politics in the wash of day-to-day events.

Q720 Baroness Shephard of Northwold: Mr Clegg, I am starting with a slightly cheeky question. You said that the report that will eventually be produced by this Committee will have a significant effect on Government thinking. How about if it does not entirely come out in favour of the Government's Bill?
Mr Clegg: It will have a significant effect, but it may be a different from one that had a different conclusion. I know you would like to go on to another question, but this is an important point. We have tried to move at a very methodical, almost stately pace on this. We have drawn very heavily on all the previous cross-party reports and the views that have gathered over the years and the decades. For several months, I chaired a cross-party group looking at—reviewing, if you like—all the blueprints for reform. We then put forward a White Paper with a draft Bill and submitted it to you for your deliberations, and we will take it forward from them. We have tried in the time available to move in a very deliberate, collaborative and open fashion. That is very much the spirit in which the Government will respond to the report from this Committee.

Q721 Baroness Shephard of Northwold: You will know from studying the submissions made to this Committee and its minutes that no evidence whatever has been received supporting the claim that the primacy of the House of Commons will not be affected by having an elected House of Lords. I wonder whether you would like to comment on that. The only evidence we have had supporting that argument has been, most loyally, from the Minister.
Mr Clegg: Equally, although I stand to be corrected, there has been no evidence to this Joint Committee that a change in the composition of the House of Lords will in and of itself create an unstable or undesirable relationship between the House of Lords and the House of Commons. The composition of the House of Lords has changed radically over the years. If one compares the composition of the House of Lords today with that before the 1958 Act, which introduced life peerages, it has changed out of all recognition. It has become a much more partisan place, and it has become dominated by those who have arrived in the House of Lords through political appointment. That simply did not exist 50-odd years ago. Even though the composition of the House of Lords changed radically, we never sought to try to capture the changed relationship between the House of Lords and the House of Commons. In a way, we allowed it to evolve organically, if you like. That is very much like drawing on the wisdom of history and very much the approach we take to the future. As the composition of the House of Lords changes, we want to do exactly what previous Administrations of all persuasions have done and allow that relationship to evolve on its own merits and not to try to predict it with any scientific precision. I think it is not susceptible to scientific prediction.

Q722 Baroness Shephard of Northwold: It is precisely that point on whether one can predict a change in behaviour that has worried those who have given evidence to this Committee, not least the Clerk to the House of Commons, who has said that if you replicate the politicians in the House of Commons in elected politicians in an upper Chamber or a senate, unless there are very elaborate means of deciding disputes between them, the disputes will become entirely justiciable. I have a supplementary to that, although you might like to answer that first.
Mr Clegg: First, a key point is: what kind of politicians do people prefer? Do they prefer politicians who are placed in the House of Lords through patronage or politicians who are in the House of Lords through election? That is an issue of principle. We should not contrive to portray the current House of Lords as an apolitical body when over 70 per cent of its composition is there through decisions by people like me, at the whim of individual party leaders. My view is that, when confronted with that choice between politicians who are there because of

them, because they cast a vote in a ballot, and politicians who are there because some party leader decided that they would like to have them there, most people in Britain would chose the former.
Secondly, we are explicitly seeking not to replicate Members of Parliament. I do not want to repeat the answer I gave earlier to Dr Poulter, but with a different electoral system, a different length of term, a non-renewable term and no constituencies but larger districts, we are doing something that is very familiarly done in bicameral systems around the democratic world, which is giving the two Chambers different forms of mandate that allow people to have a say through the ballot box.
A final point I would make is that I could not agree more that we should ensure that these issues about the relationship between the two Chambers should not be determined or decided by judges. We are very confident that our Bill, and finally the Act, would make that absolutely crystal clear. Of course, we are open to any suggestions to put that beyond any reasonable doubt.
Mr Harper: Baroness Shephard, the question that you asked was about primacy, and then you referred to the evidence from people who said that the relationship would change. I think we have been very clear that the relationship between the two Houses would change and evolve, but underpinning the primacy of—

Q723 Baroness Shephard of Northwold: No, the point that I made, which was about the evidence that the Committee has been given, is that the assertion in the Bill that the primacy of the House of Commons would be unaltered by the existence of an elected second Chamber does not hold. That is the evidence we have received from everyone except yourselves.
Mr Harper: I have looked at the evidence. Lots of people have said the relationship would change and lots of people have said that the conventions would be tested and would evolve. I do not think that anyone has said that the legislative underpinning of primacy, the Parliament Acts, would be affected.
Baroness Shephard of Northwold: I think that you will find that the Clerk of the House of Commons said exactly that.
Mr Harper: In his evidence, the Clerk of the House of Commons said that if you had elected Members of the upper House, they would want more powers, but the fact is that under the framework we have set out with the Parliament Acts, they could not take those powers without the agreement of the House of Commons. They might desire them—I am sure they would—but without the Common's assent that could not happen.

Q724 Baroness Shephard of Northwold: What he said is that it would end up in the courts. I have one more question at this stage. We have heard from Mr Clegg a lot about the quality of democracy, legitimacy and so on. I do not know that we have heard very much about the accountability of those who would be elected to the second House with a 15-year, non-renewable term. To many of us who have been elected, it would seem that there is not much accountability in that. Would you like to say how this would enhance the accountability of the Government to the British people, the people who are so important in all these electoral arrangements, as you have constantly stressed, and as I agree?
Mr Clegg: I very deliberately talked about legitimacy rather than accountability to draw the distinction because of course I accept that, technically speaking, if you are not standing for re-election that affects accountability. Clearly, accountability can be expressed by voters deciding whether someone deserves to carry on. I have chosen my words very carefully. I have talked about legitimacy rather than accountability. Some people may say that 15 years is a long time. It is a whole lot shorter than life membership.
Baroness Shephard of Northwold: That is not the issue. The issue is that you are electing someone with the desire, as you put it, to improve things.
Mr Clegg: To improve legitimacy, correct.

Q725 Baroness Shephard of Northwold: If you are actually electing people who are in effect here for life because they have a 15-years non-renewable term, what is the difference, apart from telling the people, who you say are so important—and indeed they are—that they are being given an electoral chance that they do not currently have and that this is a reward? I would submit that, in terms of accountability, you are giving the public absolutely nothing.
Mr Clegg: As I said, I placed the emphasis quite precisely on legitimacy. Do I think that one could come up with a range of different options? Yes. I think it was the Wakeham commission that first proposed a 12 to 15-year

period. Again, we are not new. We drew very heavily on the Wakeham commission proposals. Why did he and his colleagues arrive at that decision, which was no doubt as controversial to you then as it is now? It is because it tries to strike the right balance by giving voters a say in who sits in the House of Lords in a way that is constructed in a manner that makes it abundantly clear that it is separate and distinct from the House of Commons.

While I totally accept that one can argue almost indefinitely on whether a shorter term, a slightly longer term or a different electoral system might be appropriate, I come back to the principle of whether it is better in a revising legislative Chamber to give people at least some say in who is there or simply to allow the whole thing to remain in the clammy hands of a very small number of individuals who happen to be the leaders of political parties. That seems to me to be the issue of principle that we have to come back to again and again. Fifteen years elected seems to me to be eminently better than an arbitrary list of nominees appointed from time to time by party-political leaders.

Q726 The Chairman: Can I put in a slight defence as one who had a clammy hand put on his shoulder and was compelled into the House of Lords? It seems to me that it is an infinitely better situation than it was earlier on, when you had 1,200 Members of the House of Lords, 850 of whom were Conservative or took the Conservative Whip. Although they all sat independently, they all voted Conservative independently. It seems to me that the Life Peerages Act transforming that into a situation in which you had party representation at the core of the House of Lords was a huge step forward, not a step backwards.

Mr Clegg: I do not want to cast aspersions retrospectively on the 1958 Act, which was a huge advance in the composition of the House of Lords, as was the 1999 Act. In a sense, that underlines my point that what we are doing is a natural extrapolation. It is the natural next step in a process that has evolved over decades.

Q727 Baroness Andrews: Can I take up that point? I confess to being slightly confused because you have always been a very powerful advocate of the extraordinary power of election. You have mentioned that many times this afternoon, yet in your evidence to the Constitution Committee you suggested, as you have just now, that this is just another step in a sequence of changes in the House of Lords. You have said that that is one reason why we can be content to address composition and need not bother our heads about function. You cannot have it both ways. Either election is a manifestly radical, transformational step for this Chamber, or it is an evolutionary step which poses no threat or issue—in which case, why bother?

Mr Clegg: While I accept, of course as in all major political debates, that there is a mixture of poetry and prose and one needs to lift people's sights but also keep their feet firmly on the ground. I do not think there is anything incompatible in saying that of course it would be significant—after all, this has been debated for over a century—finally to fulfil the promise debated in 1911 to have law-makers in the House of Lords subject to election by the people. I think it is none the less reasonable to point out that there has already been a great change in the composition of the House of Lords. We talked about it just now, 1958 and 1999 being the two most important steps. I suspect that historians could possibly construct an argument that the introduction of life Peers in 1958 was almost as significant—not least given the very particular composition of the pre-1958 House of Lords, as Lord Richard reminded us—as would be a partially or mainly elected House of Lords in future. I do not think the one is as incompatible with the other as you suggest.

Q728 Baroness Andrews: I think that you are ploughing a rather lonely furrow. If you read the evidence to the Committee, people have taken the challenge of election to this House extremely seriously, which is why we are struggling with Clause 2. You said that you have been very careful to look at the history of the way we have tried to address this very complex constitutional problem in the past. Yet Clause 2 does not wrestle with it at all. That is the absolute judgment of every person who has come before us, irrespective of where they stand on election. In evidence to the Constitution Committee you said that you do not see an automatic link between composition and function. You said: "the functions of the House of Lords are not the problem that one is trying to fix … We have a sensible, balanced, pragmatic set of proposals to deal with that. If we try at the same time to resolve a whole range of other issues, which are not in critical need of reform or amendment … nothing will change". I put it to you that the consensus of evidence to this Committee, common sense and experience suggest that you have no choice but to address the issue of functions because with an elected House, everything will change.

Mr Clegg: We are in danger of just repeating assertions at each other. I would like once again to refer to perhaps the best empirical data of all, which is the past and what has actually happened. The composition of the House of Lords has changed out of all recognition. Someone who was a Member of the House of Lords in 1957 would simply not recognise the House of Lords today. I suspect, parenthetically, they would be appalled by the much more party-political nature of the House of Lords because of its changed composition. Like Lord Richards, I think that the 1958 Act was a massive step forward, as was the 1999 Act. At no time in all those years have any Government of whatever political persuasion suggested that a radical change in composition of the House of Lords should automatically lead to a change in function. If that has not happened in the past, I think the onus is on critics of our proposals now to suggest why that would be so very significantly different in the future, not least because what we are proposing is hardly a big-bang approach to change. Our White Paper talks about a 15-year process of elections in thirds, incrementally, with roles that are clearly distinct from those of the House of Commons. Forgive me, I know I am slightly repeating what I said before, but for all those reasons, I am persuaded that the assertions—which is what they are; it is not a mathematical formula—that an elected component will suddenly be transformative in a way that the 1958 and 1999 Acts were not are not right.

Mr Harper: I do not think that anyone is arguing that the relationship will not change; the question is whether we say now that we will try to forecast or set out what we expect the relationship to be between the House of Commons and the House of Lords at the end of the transition period, codify that and set it down in statute, or whether we say that we will allow that relationship to evolve over time, accepting that the primacy of the Commons is guaranteed by the Parliament Acts. When this was looked at by the Cunningham commission, the conclusion it came to was that you did not want to try to codify everything and set it all down in statute. That is not how we have ever gone about things in the past. The relationship between the Lords and the Commons has evolved and changed. It has changed quite a lot since the start of this coalition Government, with the move of the Liberal Democrats into Government and the role that the Cross-Benches play. I think that is, if I may say so, a very British way of allowing the constitution to evolve and a perfectly sensible way to go about things.

Baroness Andrews: All that I can conclude, gentlemen, from your evidence is that either you do not think that election is that important, as we certainly do around this table, or that you think election to the House of Lords carries a lower value in terms of a mandate than election to the House of Commons.

Mr Harper: I do not think that it is a case of hierarchy. It is the case that we think that the two Chambers have a different role. The House of Commons at the moment has primacy and will continue to do so with the Parliament Acts. It is the House in which the Government have to have a majority to be the Government. It is the body that predominantly holds the Government to account. That is the body that you are accepting has that role. The House of Lords has a scrutiny and revision role. It is a different, complementary role. Together, the two Houses make Parliament stronger. I do not think there is anything contradictory about it at all.

Baroness Andrews: That is the difference between the two Houses at the moment: an elected House and a supplementary, complementary House, not elected, that obeys the will of the Commons.

Mr Clegg: May I ask a question? I am genuinely keen to engage with this. As Mark Harper says, of course we accept that changing the composition of the House of Lords would, just as in the past, change the tenor, the temper, the character of the Lords. I hope that a more legitimate House of Lords would feel more credible and self-confident. It is a good thing. The more Parliament as a whole is self-confident and assertive vis-à-vis the Executive, the better. What I genuinely do not understand, and I have tried to grapple with this constantly, is why anyone thinks that that patchwork of changes and evolution in the two Chambers should be the reason that we do not do any reform or change at all when it is Parliament as a whole that stands to benefit and the Executive that would be put on their toes. In my view, the House of Commons might welcome a more legitimate House of Lords with which it can work together on either side of the Palace of Westminster in order to do the work that we are collectively doing in Parliament, which is holding the Executive to account. Of course roles will evolve. They must do. It would be very odd for them not to, but to suggest that that is always going to be a threat to the House of Commons and therefore that that is somehow an alibi to say that there should be no reform at all is the bit of the argument that I genuinely do not follow conceptually.

Lord Trimble: In passing, I will make some supplementary comments on things that have been said so far before I come to my main point. First, I noticed that Mr Clegg referred to people coming into this House on the whim of a party leader. I do not know what happens in the Liberal Democrat Party, but I want to place on record that my party did not allow me to act on my own whim when I was doing something similar. Secondly, Malcolm

Wicks said—this was echoed in Mr Clegg's comments—that the laws should be made by people who are elected. Of course, that sounds eminently reasonable, but surely in assessing that we should be looking at substance rather than form. The substance of the matter is that the laws are made by the House of Commons, and the House of Lords merely asks the House of Commons to think again on certain issues. Sometimes the Commons takes that opportunity to think again and sometimes it does not, but the laws are not made by the House of Lords in any meaningful sense. That is the substance of the matter.

However, the main point that I want to focus on is the question of accountability. In commenting on democratic legitimacy, Mr Clegg, you said that that legitimacy came purely from being elected rather than from being accountable. I would ask you to think again about that. Persons who are elected and are subject to re-election consider what the electorate might think of their actions, because they want to be re-elected. Similarly, parties that want to win the next election think about what the electorate want when they are making their decisions. Accountability and democratic legitimacy are totally intertwined. If someone who is elected never has to face re-election, he does not need to pay any attention at all to public opinion during that period of time; he is, literally, irresponsible. We will have someone who is not accountable and could do what he likes—subject to whatever influence his party might have on him, which may be greater or lesser. I see that as a real danger, particularly when linked to the electoral system that is proposed.

Every electoral system has its advantages and disadvantages or its pluses and minuses. You may like a proportional system, but there are different types of proportional system. You have chosen the STV proportional system, which achieves a fairly high level of proportionality, but it is also a proportional system that is biased against political parties—persons get elected not so much on their party label as on whether they attract a personal vote. In a multimember constituency, parties put forward several candidates who then compete with each other, so it is a matter not just of the party's selection but of that interaction among them. Where STV exists, party discipline tends to be weakened and independents come forward—or people create parties quickly for the purpose—and persons who get their names well known tend to benefit from that. We are going to have an electoral system in which a personality or celebrity or someone who manages to attract publicity has an advantage, and in the course of the campaign he can say anything that he likes to the electorate knowing that he will never be called to account for those comments or for what he does subsequently.

Given that this 15-year term is being put together with STV, I am very concerned about what this will do to our electoral political system. You are creating a machine for irresponsibility in the second House. If the second House does become more assertive, this is creating a very dangerous situation from the point of view of the health of our parliamentary democracy. I urge you not just to reply off the cuff but to take this point very seriously indeed.

Mr Clegg: Of course I will take it very seriously and certainly I will not seek to provide an off-the-cuff answer. Believe you me that, while we may not agree, a very considerable amount of thought has gone into our proposals. Crucially, we have drawn very heavily on previous conclusions arrived at by previous committees and those who have advocated reform. For instance, the idea of having a lengthy, non-renewable term was a key conclusion of the Wakeham commission. The all-party group that I chaired looked at the Wakeham commission and we all agreed—we did not agree on other aspects of the reforms—that that was the right model. Of course I accept that, if one wanted to improve the accountability of elected Members of the House of Lords, one would suggest that they have renewable terms. This is where we have to strike a balance. If we came before your Committee and said, "We are going to suggest that there should be Members of the House of Lords who are elected and who can get re-elected", I think that you would, quite rightly, throw your hands up in horror and say that that really will pose a challenge to the House of Commons, because there would then be a whole bunch of elected politicians traipsing round the country trying to curry favour with the electorate. We arrived at the conclusion, just as the Wakeham commission did, that to maintain the distinction between the two Houses—which Baroness Andrews quite rightly highlighted is so important—it was best to advocate, as others have done before, a non-renewable term.

On STV—dare I say it—it is precisely because STV weakens the hand of the parties that I believe that it has some virtue. As you rightly pointed out, STV encourages people to develop a personal profile and make a personal pitch as individuals, not just as partisan politicians, to the electorate. In our internal deliberations, we were anxious to retain in a reformed House of Lords a House that could be populated by people with independence of mind, who are not placemen and placewomen of the parties. I would suggest that an electoral system that gives

elected Members of a reformed House of Lords a personal mandate, so that they are not just plonked on a list by party bosses but have actually won that mandate in and of their own right, is a better way of securing that kind of independence of spirit and mind that I think everyone values in the House of Lords. Whereas you believe that this concatenation of mechanisms would create irresponsibility, I would suggest that a system such as what we have now, where legislators in the House of Lords do not need to seek any mandate at all from the electorate and where—of course I accept that different parties have different methods—at the end of the day much of the composition of the House of Lords is determined by political patronage, creates a greater risk of irresponsibility than the proposals that we have put forward.

Lord Trimble: The thing that concentrates the minds of Governments dependent on a majority in the House of Commons is the danger of losing an election, and the great significance of the power of the electorate is that they can turn people out of Government. With this new elected House of Lords—or upper House or whatever it is—the electorate will never be able to turn it out. It is literally irresponsible, and something that is literally irresponsible is liable to behave in an irresponsible way. This worries me enormously, actually. If we are to have an elected House that thinks that it has greater legitimacy because it is elected and it is free to do whatever it likes because it does not have to stand for re-election, you are creating a very dangerous machine—a much more powerful body than our existing House—at the heart of Government. I worry very much about the damage that that will do to our political system.

Mr Harper: Listening to your description of the characteristics that STV would inculcate in those who are elected through it, I thought that many of those sounded like remarkably welcome characteristics that we would want to see in Parliament.

I think that the difference is this: the House of Commons is what determines the Government. For those people running round saying, "Here is what the Government is going to do if you elect me and we get into power", that position is not going to change. Members of the House of Lords who campaign for election will not be campaigning on that basis, because a majority held in the House of Lords will not determine who is in Government; that will be determined by the House of Commons. You are electing people on a different basis. I recognise that it is a novel basis, because we have not had elected Members of the House of Lords before, but all of the risks that you have pointed to, such as a lack of accountability, are risks that we have today. The difference is that, today, party leaders decide who gets to sit in the House of Lords and no Member of the House of Lords is accountable at all because they can stay there for life, whereas in the system that we are proposing Members will have a term of 15 years. You may not be any more accountable, but you are certainly no less accountable.

A final point is that Members of the House of Commons go through this process once in their career if they decide to stand down voluntarily. From the moment that a Member of Parliament says, "I am not standing for election again"—whether he actually says it or whether he thinks it in his mind—he is in exactly this position. Other countries have the same position with term limits. In my experience, Members of Parliament who decide not to stand for office again do not suddenly go mad and run around being irresponsible. That may be a theoretical risk, but it is simply not one that I have seen in practice. I may be corrected by other Members, but I have certainly not seen that sort of behaviour myself.

The Chairman: The next question is from the Bishop of Leicester.

Lord Trimble: Sorry, Mr Harper's comments did not relate to anything that I said.

The Chairman: The Bishop of Leicester, please. You have had a good go.

Q729 Bishop of Leicester: You began your remarks by reminding us of what you regard as the simple question: do we think that people who make the laws should be accountable to the electorate? I wanted to explore with you what price you would be prepared to pay for that principle. Supposing this was regarded as a political good of such magnitude that it was worth creating a parliamentary system in which there was a dysfunctional relationship between the two Houses and in which there was substantial loss of expertise in the upper House, and possibly that the process of getting there consumed a large amount of parliamentary time in the middle of a financial crisis—if all those things came about, would you still regard that as a price worth paying for the fundamental principle about which you care so passionately?

Mr Clegg: The only circumstances in which it would be as destructive of the parliamentary timetable and gobble up a huge amount of political capital, energy and time would of course be if, when they received the Bill from the House of Commons, Members of the House of Lords chose to die in a ditch about it. If the House of Lords were

to be sent a Bill on the back of a vote in the House of Commons in support of reform, the onus would not be on the Government; it would be up to the critics to explain to the public at large why, even though all three major parties in British politics are explicitly in favour of Lords reform, that issue was significant enough to disrupt other Government and legislative business. I think that case would be almost impossible to make, and I would not recommend anyone doing that.
You mentioned expertise. It may be that I have misunderstood this, but I just do not understand the underlying assumption that election is incompatible with expertise, that somehow a legislative Chamber would be dumbed down by the act of election, as if a reformed House of Lords could not seek out the expertise of experts in its work. I am quite unsettled by this idea that there is this image of pristine, uncluttered, unsullied expertise in the present House—even though over 70 per cent of the present House is there through political appointment—and that somehow elected Members would not have expertise. Dr Poulter is elected and he is a great expert in certain medical fields, and that would not change. A reformed House of Lords would be able to seek out experts just as the House of Commons can today.

Q730 Bishop of Leicester: Perhaps you could tell us whether you have had the opportunity to listen to debates in the House of Lords regularly and whether you have been able to form a view as to the comparative quality of some of the debates and levels of expertise for yourself.
Mr Clegg: Of course I have. Candidly, some debates are distinguished by insightful, wise, relevant and up-to-date expertise; other debates are distinguished by less relevant and more out-of-date opinions. In the same way as we should not on our side over-romanticise the sanitising effect of election, I urge colleagues on all sides of this debate not to over-romanticise the House of Lords as it is today. Closer scrutiny of the way the House of Lords works suggests there might be a bit of a gap between claims about what it is and what people believe it to be.

Q731 Bishop of Leicester: I have one last question. You talk about closer scrutiny, and of course the House of Lords has been under scrutiny, as you have mentioned, on many occasions, not least the Wakeham commission. It was the Wakeham commission that expressed its strong opposition to "a situation in which the two Houses of Parliament had equivalent electoral legitimacy. It would represent a substantial change in the present constitutional settlement in the United Kingdom and would almost certainly be a recipe for damaging conflict". You clearly think that Wakeham got it wrong. Can you tell us why?
Mr Harper: I do not think they would have equal legitimacy. Clearly, an elected House on the basis that we set out would be more legitimate, but there are a number of things that the Deputy Prime Minister set out at the beginning, in answer to a previous question, about why ultimately the Commons' position as the primary House would be defendable. For a start, our proposals are for an 80:20 elected House, so the House of Lords would still have 20 per cent of Peers appointed. Our proposals allow it to retain Bishops. Members would be elected in three tranches so they would never have a more up-to-date mandate than the House of Commons. I do not think the Houses would have an equal level of legitimacy, and picking up Baroness Shepherd's very sensible point, the House of Commons would consist of people who are not just legitimate but accountable. That makes the House of Commons' position stronger, which is why I think it would both retain the primacy legally and be entitled to do so. I just do not accept the premise of your question.

Q732 Bishop of Leicester: Just so we understand you, you do not accept the premise of the Wakeham commission's finding on that issue?
Mr Harper: You quoted what Wakeham said about two Houses which had equal legitimacy. I am saying that that would be a problem if you had that, but our proposals have a different relationship between the Houses.
Mr Clegg: My recollection is that that was a prelude to explaining why the Wakeham commission arrived at the conclusion that 12-year to 15-year non-renewable terms would be the best way to proceed, which we are pretty well carbon-copying.

Q733 Mr Clarke: Perhaps I can ask the Deputy Prime Minister whether he feels that the Government actually has the will to see the changes through.
Mr Clegg: I think the same questions have been asked about the Welfare Reform Bill and the legal aid reforms; indeed, the NHS reform Bill is very much the subject of the moment. Notwithstanding endless predictions,

which I have now witnessed almost on a daily basis since the coalition was formed, that this coalition Government would not be able to muster sufficient political will to do controversial things, I suggest the evidence shows that we have confounded our critics and that if we set our mind to try to do something, particularly on the back of deliberate, open and internal debate within a coalition, we see things through. This is a clear ambition for this Government, which draws on a long history of attempts by various Governments of different persuasions, and because all three main parties had their manifesto commitments to see House of Lords reform happen, we hope that this time the stars will be aligned in a favourable manner.

Q734 Mr Clarke: That leads me to ask: does he think that the Government has the might to see such changes through? For example, Mr Clegg is the Deputy Prime Minister but he is also Leader of the Liberal Democrats, and we seem to be hearing conflicting messages there. Yesterday I saw Lord Oakeshott on Andrew Neil's programme saying that he would not support the boundary changes if the changes in the Lords do not go through, and then I read elsewhere—if Lord Lee is correctly reported—that he would resign from the Lib Dems if this went through. If I am wrong on that, I apologise, but certainly Lord Lee did give the impression that he was not agreeing with the Government in what they are planning to do. Does that not present a problem for you, both as Deputy Prime Minister and as Leader of the Lib Dems?
Mr Clegg: I think it is rather refreshing. It shows that even in the Liberal Democrats, the party of zealous political reform, there are different shades of opinion—of course there are. If this had been straightforward, and the subject of straightforward political consensus, it would have happened in 1911. The reason we have been debating this for 100 years is precisely because it divides opinion, and clearly it has divided opinion in this Committee as well. I am not for one moment suggesting that we will achieve North Korean-style political consensus where everyone applauds what the Government do on this. What we are trying to do, including this whole process of engagement with the Committee and the cross-party meetings that I have chaired, through argument, discussion, debate, evidence and balancing the pros and cons, is to advance reform of the composition of the House of Lords, which is—I cannot stress enough—in line with proposals for reform which are as old as the hills, or certainly several decades old. There is a very strong body of opinion in all parties in favour of reform, but clearly not a universal body of opinion in favour of reform. I would never expect something like this to be universally applauded, but I think we live in a political culture that has changed very dramatically in recent years. People are less diffident; they are more demanding of people in power. They do not just want to be told to like it or lump it in terms of their political arrangements; they want people to be held to account. People have been empowered through information technology and as consumers. We do not live in that deferential, tribal class-based political environment that supported a House of Lords which lived by its own rules. People increasingly find it anachronistic that they, the people, have no say in who sits in the House of Lords to determine or shape the laws of the land. I just think it is very much in keeping with a more demanding political culture that we should make this reform now.

Q735 Lord Trefgarne: I am afraid that I want to develop the same point. Mr Clegg, in your speech to Demos some months ago, you quoted Lloyd George as describing the House of Lords as "a body of five hundred men chosen at random from amongst the unemployed". You then said, "To be honest, it might be better if it was". Do you really think that?
Mr Clegg: No. These are the dangers, which I learn and relearn all the time, of humour in politics.

Q736 Lord Trefgarne: The plain fact is that, despite your best endeavours, the work of the all-party group to which you referred and the work of this Joint Select Committee, there is no consensus for this proposal. A number of MPs from all parties have said they are going to oppose it. Even more Members of the House of Lords have said they are going to oppose it. It looks as if it is going to have a pretty rocky and certainly very long passage through Parliament. Will you be imposing a three-line Whip in the House of Commons?
Mr Clegg: The first point that I would make is that there is a consensus—in the formal, stated policies of all three parties, as set out in their manifestos. Yes, they were of different shades but all three parties were committed to reform of the House of Lords. That was stated explicitly by all three parties in their manifestos. It would be not quite right to suggest that parties, formally speaking, were not devoted to House of Lords reform. I have now seen, certainly over the last 18 months, enough predictions of disaster and apocalypse every time any change is

proposed in any major area of public policy to learn that if one were to stop at the first sound of opposition and criticism, Government would do nothing. People do not like change. I understand that, and the onus is on those who propose change to explain why they think change would be an improvement on the status quo and that the plan has been carefully thought through. I believe that we have thought things through carefully. I would suggest, in reverse, that those who want to defend the status quo and inoculate the House of Lords as it is from any basic democratic impulse also need to explain more fully why, uniquely, the House of Lords should stand aside from a democratic impulse when compared to so many parliamentary and bicameral systems across the democratic world. I hope those arguments—and I accept they are arguments—can be made in a considered and considerate fashion in the coming months.

Q737 Lord Trefgarne: So there will be a three-line Whip in the House of Commons and you will use the Parliament Act to get it through if it fails in the House of Lords?
Mr Clegg: As the Prime Minister has confirmed, this is Government business and will be treated as any other part of Government business.

Q738 Lord Trefgarne: Including the Parliament Act?
Mr Clegg: Absolutely. He confirmed that in the House of Commons himself.

Q739 Lord Norton of Louth: I want to ask about one or two points. Mr Harper, regarding your response to Lord Trimble, of course part of the problem was identified by Enoch Powell back in 1969: namely, that voters would be voting for the second Chamber on exactly the same basis as for the first, and that would inject an element of redundancy into the system. In your opening comments, you quoted a survey carried out by Conservative Home, a copy of which I have in front of me—it is headed, "Tory members vote overwhelmingly against a House of Lords elected by PR". In that survey, 72 per cent agreed that, "the Lords often does a better job at scrutinising legislation than MPs and it should be left as it is".
Deputy Prime Minister, in response to the point made by Malcolm Wicks, you seemed to think that people were surprised that the second Chamber is not elected. I am not quite sure why you gave that response. In your opening statement, you said that the claim that you were making is self-evidently true, but that is challenged in the written evidence that we have received, including from at least one specialist in democratic theory. If you look at it empirically, wholly elected second Chambers are not to the majority taste. For example, Meg Russell's latest article in *Political Quarterly* shows that, of the 76 national second Chambers that exist, 21 are wholly directly elected, which is not much more than the 17 that contain no elected Members at all.
However, I really want to pick up other points that Meg Russell makes in that article. She makes the point that, if you look at elected and mainly elected Chambers, just under half have an absolute veto over normal legislation. She concludes: "it is generally the party balance of the second chamber with respect to the first which determines the level of conflict, rather than concerns about legitimacy". Once you turn to an elected second Chamber—once the clammy of hand of this electorate is at work and its Members have to campaign—election fundamentally changes the terms of trade between the parties. Indeed, that is implicit from what you were saying earlier about the nature of the conflict between the two Chambers. That invites the question: what dispute resolution procedure should be adopted? There has been talk of the Parliament Act, but that is a last resort. One would be looking prior to that in thinking about how the two Chambers relate to one another when there is a conflict. What are the dispute resolution procedures that should be adopted? The procedures that we have at the moment are geared to asymmetry; if you have a more symmetrical relationship, how are you going to resolve disputes between the two Chambers?
Mr Harper: Before the Deputy Prime Minister answers, I want to say that it is interesting that even in the Conservative Home poll that Lord Norton quoted, which I do not think meets any of the normal criteria for a scientifically conducted poll, the majority of the people voting said that they supported an elected—admittedly, not elected by PR—second Chamber. Even in that poll—
Lord Norton of Louth: Well, 49.7 per cent of those polled said that the second Chamber should not be elected, and the rest supported varying degrees of election. Under first past the post, that is an overwhelming victory.
Mr Harper: If you want to read it like that, you can, but I do not think that that is how a reasonable person would read it.

Lord Norton of Louth: I do not know how you can lump the 8.1 per cent of those polled who said that only 20 per cent of the second Chamber should be elected with the 17.9 per cent who said that it should be 100 per cent elected. The poll does not exactly produce a consensus.
Mr Harper: If you look at the Social Attitudes Survey, which asked what the public think, the issue is very clear: 22 per cent say that they want to abolish the House of Lords; 6 per cent say that it should remain as it is; and 60 per cent say it should have a significant proportion that is elected—
Lord Norton of Louth: If you drill down, as the MORI poll did in 2006—
Malcolm Wicks: Lord Chairman, we cannot hear the Minister if he is interrupted all the time. I think that those data were quite interesting. Could we hear the Minister uninterrupted for a while?
Mr Harper: The British Social Attitudes Survey showed—this has been an increasing trend over time in a number of surveys—that 22 per cent want to abolish the second Chamber, 6 per cent say that it should remain wholly or mainly appointed and 60 per cent say that it should have a significant elected element, with at least half of its Members being elected. It seems to me that it is very clear what the public view is. Yes, they do not care about it very much, and we have never suggested that they do, but if you ask them what their view is, the proposition that people should be elected is not a controversial one.

Q740 Lord Norton of Louth: When you start to drill down, as was done in the Ipsos MORI poll, which is the only poll that asked people about priorities, you find out what people would prefer: a House that engages in detailed scrutiny over an elected second Chamber or one where they had trust in the method of appointment. Given those priorities, an elected second Chamber came fifth on the list.
Mr Harper: I do not accept the premise that people who are elected cannot do detailed scrutiny and cannot do a serious job in a scrutiny and revising Chamber. If you say to people that elected Members cannot do that job, they may not want elected Members, but I do not accept that as a premise and I do not think that it is borne out by legislatures around the world.
Lord Norton of Louth: I refer you to what the article that I quoted from says about conflict.
Mr Clegg: I do not want to intervene on this psephological debate, but the Ipsos MORI poll was produced back in 2006, so it is quite old data—it is about six years out of date—and it took place before the MPs' expenses scandals and before what has clearly been a very sharp increase in public demand for transparency and legitimacy in the way in which politics is conducted. The Social Attitudes Survey results are really quite remarkable. When, as part of that very large survey last year, people were given a choice of various options, only 6 per cent in effect opted for the status quo. By the way—I have just been looking it up here—of the 76 second Chambers in the world, 56 are largely or wholly elected. Of course there are lots of differences, because some are directly elected and some are indirectly elected, but that is quite a striking reflection of what happens around the democratic world.
On the observation that the party-political composition of a second Chamber must have a bearing on the relationship between the second Chamber and the first Chamber—and, indeed, on the relationship with the Executive—that has to be true. However, in a sense, we are deliberately designing the system, notably by proposing that elections happen in three steps using a single transferable vote system or other proportional system, such that it is highly unlikely that you will get any overall party control in a reformed House of Lords. We accept that in a revising Chamber it is arguably more healthy if there is a spread of opinion that is not dominated by one party or another. Of course, having the elections take place at different points in the electoral cycle—coinciding with elections to the House of Commons—will almost certainly guarantee, given the ebb and flow of party-political fortunes, that that will remain the case. That was very much one of our anxieties, which we have sought to address, so that you do not have single-party domination of a reformed House of Lords.
The Chairman: The next question is from Lady Symons.

Q741 Lord Norton of Louth: Sorry, would either of the Ministers like to answer my question?
Mr Harper: On dispute resolution mechanisms, I come back to what I said in answer to a previous question. First, we are not proposing a big-bang reform. If we were suggesting that we went from the position today to having a 100 per cent elected House of Lords tomorrow with no transition, your argument might have a significant amount of force. However, we are going to be starting from the status quo and move over a period. I said that the relationship will change and evolve and the conventions will change and evolve. Ultimately, the back-stop is that the Commons has primacy through the Parliament Acts. Because of that, our tradition suggests

that you would get that dispute resolution mechanism, as happens now, evolving through convention. I think that that is much more sensible than saying that we have got to decide today what the relationship will be between the two Chambers in 15 years' time, decide now how you would deal with those disputes and set that down in statute so that it would be decided by the courts. I do not think that that is how we have traditionally done things in this country, and I do not think that it is necessary in this case.

Q742 Baroness Symons of Vernham Dean: Deputy Prime Minister, in your manifesto in 2010 you put forward the proposition that the House of Lords would be 100 per cent elected. In the Commons vote in 2007, there was a majority of 113 for a fully elected House and a majority of only 38 for an 80 per cent elected House. How will you vote when inevitable amendments come before the House of Commons to have a 100 per cent elected House of Lords? How will you advise members of your party to vote?
Mr Clegg: I am a supporter, of course, of a fully elected House of Lords, but I do not want to make the best the enemy of the good. If the centre of opinion across parties is such that the 80 per cent option, which we very deliberately proposed in the White Paper alongside the 100 per cent model, gains more favour and support, in the cause of consensus and cross-party work, I would support that because, bluntly, 80 per cent is a lot better than 0 per cent.

Q743 Baroness Symons of Vernham Dean: May I then ask Mr Harper? We have been bandying backwards and forwards on the poll that has been published. Of all the options, among Tory Members there is least support for the 80 per cent option—5.9 per cent of Conservative Members. Are you going to find that difficult in the House of Commons when it comes to voting for an 80 per cent elected House, or will you simply not worry about that?
Mr Harper: No, first of all, I simply used this argument because it happened to be current today. I think that opinions among MPs and the views of the public are important. The public are very clear that they want at least half the Members of the House of Lords to be elected. I think our 80 per cent option balances legitimacy with the concerns that people have about the relationship between the two Houses. I think it is a very good balance, and I hope it will command support, but the whole point of going through this scrutiny process is to say that this Committee, consisting of Members of both Houses, having taken a lot of evidence, can offer the Government its views. We have not heard what your views are yet. We will use your views to help shape what the final Bill looks like when we bring it before the House.

Q744 Baroness Symons of Vernham Dean: I am sure that we are all very reassured on that point, but it seems as if you and the Deputy Prime Minister want legitimacy, but not too much legitimacy, and you want democracy, but not too much democracy, in the House of Lords. You have rested a lot of your argument on the Parliament Acts. I think the Deputy Prime Minister said earlier that the House of Lords was not political in earlier times. Actually, the Parliament Act was introduced precisely because the House of Lords was so political. If you look at the preamble to the 1911 Act, the reason it was introduced was because the House of Lords was not elected, the House of Commons was and therefore the elected House should have its way. Are you going to be able to rest on the Parliament Act when the House of Lords is elected, too? The whole raison d'être in the preamble will be knocked away. How can you say that you can go on using the Parliament Act?
Mr Clegg: I am keenly aware of the preamble. The preamble is just a small point. It does not have legal force. Lord Pannick made some very interesting observations on this point to this Joint Committee. He made a slight variant of your argument. In order to clarify the status of the Parliament Act, he advocates incorporating it into the final Act. It is a novel idea. He also confirmed in his evidence to you that this Government are entirely entitled to use the Parliament Act to see their business through. I am very keen to examine what Lord Pannick said on this point in order to pick up from where the 1911 preamble left off. Of course, I accept that there might be tying up of loose ends as we move towards direct election, but we need to look at it quite carefully. Is it possible, does it work legally and so on?
Can I take one slight issue about us wanting legitimacy, but not too much or whatever it was? How can I put this? A bit of legitimacy and a bit of democracy—just a smidgen—might be better than none in a House which makes the laws. It is not an alien concept in mature democracies that legislative revising Chambers in one shape or form have some form of democratic mandate. It is not unfamiliar at all if you look at democratic bicameral systems around the world that that mandate is not always complete—in other words, not 100 per cent of the

membership—and there are plenty of instances where there are non-renewable terms. So it is not perhaps quite as half-cocked a concept as the question suggests.

Q745 Baroness Symons of Vernham Dean: Deputy Prime Minister, no one is arguing that it is a half-cocked concept. What we are arguing is that a democratic mandate also generates greater authority. You say so yourself in the foreword to the White Paper when you say that the Lords does its work well but lacks efficient democratic authority. "Authority" is the word you use. You have used "legitimacy" throughout this discussion. "Authority" is a very different word because it implies, and we would all understand—
Mr Clegg: What is wrong with it?
Baroness Symons of Vernham Dean: There is nothing wrong with it, but authority means that you have a mandate and can exercise it on behalf of your electors. You seem to want to separate the electors from the elected. That is fine for the House of Commons but is not fine for the House of Lords. I put it to you that when the House of Lords is elected, and I think that many of us do not have any problem with the House of Lords being elected, we need to have the mandate of the people that can be exercised by those who are elected. You seem to want to separate the two.
Mr Clegg: I do not quite follow. I have no problem at all in repeating that I think that greater legitimacy will confer greater authority on the work of the House of Lords. That is precisely why I think it is a good thing for the House of Lords. I think that with a strong revising Chamber, in which I passionately believe, good governance, which is improved by a strong Parliament as a whole, will be facilitated.

Q746 Baroness Symons of Vernham Dean: Then why do you not support a 100 per cent elected House of Lords?
Mr Clegg: Of course I support a 100 per cent elected House of Lords. I have believed in that all my political life, but I also believe that politics is the art of the possible as well as the ideal, and I would rather have 80 per cent than no reform at all. All I am doing is giving the reason we deliberately set that out in our White Paper and our Bill. By the way, it is quite unusual for Governments to do this instead of slapping down a White Paper and a Bill saying, "This is what we believe must happen and we are not going to consider any other alternatives". On a number of issues—for instance, the electoral system or 80 per cent versus 100 per cent—we said there is a legitimate debate and we are very keen to hear people's views. I would be delighted if you could become a major advocate of a 100 per cent elected House of Lords. I suspect that many other people feel that 100 per cent is a leap too far and they would prefer the hybrid model of 80 per cent. In pure conceptual terms, I would prefer a fully elected House of Lords, but I would be delighted to see a reform that enjoyed greater cross-party consensus with 80 per cent.

Q747 The Chairman: You said that you are in favour of 100 per cent elected. Do you see this Bill therefore as an interim stage, a point between what we have now and the 100 per cent elected that you want?
Mr Clegg: No, I do not believe in perpetual Maoist revolution when it comes to reform of composition.
The Chairman: Perpetual motion, perhaps?
Mr Clegg: For all I know, there may be future generations of politicians who might want to pick up the cudgel again, but my view is that this is the conclusion of a debate that has been brewing since 1911 and we need to settle it one way or another to provide constitutional and institutional stability.

Q748 The Chairman: This is a settlement, not a staging post to something else?
Mr Clegg: That is my view. I cannot speak for other Governments in future.

Q749 John Stevenson: I have two very different questions. First, the Prime Minister of the day appoints Ministers from the House of Commons and the House of Lords and, if he wishes to appoint additional Ministers, he creates new Peers. Given that we want to strengthen Parliament, should we restrict the ability of the Prime Minister of the day to appoint new Ministers by creating Peers?
Secondly, we have talked a lot about legitimacy today. Once the Bill has been passed, should it be put to a referendum of the people?

Mr Harper: On the first point, we specifically set out in the White Paper provision for the Prime Minister to create a limited number of appointments. We did not set out an exact number, but we made it clear that the number would be limited and that such people would be appointed only for the purposes of being Ministers and would serve in the House only for the period that they were a Minister—so when they ceased being a Minister, they would no longer be a Member. We did that for the very reason that you gave: there may be people whom the Prime Minister wishes to appoint to Government who should therefore be accountable to one or other of the Houses of Parliament. We think that that is a sensible thing. One of the criticisms that we had is that, because we did not limit the number, people were very suspicious and thought that that might be a mechanism for large amounts of patronage, but we made it very clear that the number would be limited.
On the second question, regarding a referendum—

Q750 John Stevenson: I have a quick question before you answer that. Do you think that those appointed by the Prime Minister should also be entitled to vote?
Mr Harper: That was the basis on which we set out the proposal in the Bill. As you know, we have proposed that 80 per cent should be elected and 20 per cent would still be appointed. We have also said that the Church of England Bishops should still be there. Those people would have the same role in the House in terms of being able to vote. That is the basis on which we set out our views in the draft Bill.
On the referendum point, our view was that, because all three parties were in favour of this, we did not think that a referendum was justified. When the House of Lords Constitution Committee looked at referendums, it said that it thought that abolition of the House of Lords would be a subject on which you would automatically want to have a referendum, but it did not say that changing the composition of the House of Lords would be such a proposition. So, no, we do not think that a referendum is necessary, and that is why we did not propose it in our draft Bill or White Paper.

Q751 Dr McCrea: There is certainly no doubt that the reform of the House of Lords is a live issue for parliamentarians, but how exercised do you feel that the general public is about this issue?
The Bill suggests that we should introduce a little legitimacy or democracy but not accountability, but whether those issues can be so easily separated from one another is another question. Should there be a baseline of electoral support to give legitimacy to these persons, who will be there for 15 long years?
Mr Clegg: I will take the first point and Mark Harper will deal with the second. In terms of the public, if you are worried about your job or your child's education or paying the bills every week, reform of the composition of the House of Lords is hardly going to be at the top of your shopping list of concerns. The same applies to many other things that we debate, such as reform of local government finance or the World Trade Organisation. I think that the quality of our democracy is immensely important, but that does not mean that it comes up on the doorstep when I go out canvassing. Of course there is a distinction between significance and popular resonance. However, all the evidence suggests that, when you ask people whether they—rather than just party bosses—should have a say on who is in the House of Lords, they generally say, "Now that you have asked me, I think that it would be better if I did have a say".
I have heard and read of a lot of people saying that we should not be wasting our time on this, as if Government can do only one thing at once. Looking at the history of this, we see that in 1911, when this issue convulsed the Government, they were legislating to introduce the modern pensions system. I think that Governments—and, dare I say it, parliamentarians—can do more than one thing at once. I very much hope that the opponents of this reform, particularly when it arrives in the House of Lords after the Commons, will not choose to give this a disproportionate degree of priority over all other matters by holding everything else hostage. I agree with the implication that has been made that that would be very much out of line with public expectations on an issue like this. They would expect us to deal with it, particularly because it has been debated for about 100 years, with slightly greater velocity than that would imply.
Mr Harper: On your point about legitimacy and accountability, I think that you my have been asking about how much support you would need to get elected in the first place. One of the things that we looked at in setting out the electoral system was balancing getting a proportionate result with other areas that make some sort of sense to people. For elections to the House of Lords, my sense would be that it depends on what you measure progress against. Clearly, you can measure progress against some perfect system that would tick every box, but if you

measure against where we are starting from, we are going from a system where people are put in the House of Lords for life with no interaction with the public at all to a system where they are put in for a limited—although, admittedly, lengthy—term which is an awful lot less than the term that we have at the moment. I think that that is a very good balance.
Clearly, we are just about to be interrupted by a Division in the House of Lords.

Q752 The Chairman: I do not know how much time the Ministers have, but I have five Members who still want to ask a question. If they would be kind enough to let us go and vote and then take those five questions, I would be obliged.
Meeting suspended for a Division in the House of Lords.
The Chairman: Let us go on. I call Lord Rooker.

Q753 Lord Rooker: I apologise if I leave before the end, but I have only a couple of points. I do not want to repeat things, but there is a central issue. You asked a question of Baroness Andrews, Mr Clegg, and I want to give you the answer. On Wednesday this week in this place, we will deal with ping-pong for the final bit of the Welfare Reform Bill. I can personally guarantee that the Minister will at some point say, because I have done it myself and have been there, "This is the third time. We don't normally go past the third time in the Lords, because"—and there is only one reason—"we are unelected". That is the reason. The Parliament Act has been used only, perhaps, seven times since 1911. That indicates that we give way, because the Commons makes the laws. That is the answer. The only difference between us is that we are not elected, so we don't push it. That gives you an example, from this week, of where the system works because we are not elected and don't push it.
Can I ask you about bicameral Parliaments, because you have used the term several times today and in your evidence to the Constitution Committee? As I understand it, there are some three countries that have no form of written constitution—I might query the quality of some of them, but there are only three—which are: the United Kingdom, New Zealand and Israel. New Zealand and Israel have unicameral Parliaments. Therefore, we in the UK are in the position of having a bicameral Parliament with an unwritten constitution. Would it not be a good idea, before the change, to write down some rules on the relationship between the two Houses? That is what we are asking for. I am with you that the second Chamber should be 100 per cent elected—that is the only thing that I have ever voted for, although I have moved Bills to abolish the place—but I am more concerned about the relationship between the two places than I am even about the relationship between Parliament and Government. Before it happens, to avoid chaos in the governance of the country from a parliamentary perspective, should we not write down some of the rules, because we will be the only modern democracy—you can count all the others as well—with no written rules for governance and a second Chamber? If it is an elected second Chamber, that is a recipe for disaster. Would it not be a good idea to write down the rules of the relationship before we do it?
Mr Clegg: I think that my answer to both points, really, comes down to the same thing, which is that I do not believe that election in the way that we are proposing it will upset the applecart in quite the way that you fear. First, on your phrase "don't push it"—which is a good phrase—I think that a reformed House of Lords would be under no illusions that it could push things beyond a certain limit, because it had an asymmetrical, uneven, unequal relationship with the House of Commons. That position would be retained for all the reasons that I explained earlier: the non-renewable long term; the different electoral system; its not being elected in one go but in thirds; and its not being dominated by one party as is the case with many revising Chambers. I do not think that maintaining an unequal relationship between the two Chambers, even though both are wholly or partly elected, is quite as complicated as you suggest.
On codification, I was looking earlier at the 2006 report on the conventions by the Cunningham committee. The report concluded: "We do not recommend legislation, or any other form of codification which would turn conventions into rules, remove flexibility, exclude exceptions and inhibit evolution in response to political circumstances". That was absolutely spot on because, as the Minister was saying earlier, trying to codify an evolutionary process, which will take many years to develop—after all, our proposal is hardly top-speed, so it is a 15-year transition before we have a fully reformed House of Lords—would be unwise. The process will develop its own tempo and character. We never chose to do that when the composition of House of Lords has changed radically in the past and that has served us well. We were tolerant of a position whereby the composition

changed, but we did not try to trap that or put it in a straitjacket in anticipation of events that we simply cannot anticipate at this moment.

Q754 The Chairman: As I recall, the Cunningham report said that there should be resolutions of each House in virtually the same terms which in effect encapsulated the understandings—if I can use a non-Cunningham, fairly neutral phrase—as to what the conventions between the two Houses were. I totally accept that it is not legislation, but there was going to be some actual expression of what the conventions should be. Do you feel that that is a good thing or a bad thing?
Mr Clegg: Mark Harper will want to comment on this. Of course, both Houses should be entirely free to adopt resolutions. It is not a matter for the Government to say at this stage what resolutions a reformed House of Lords or a future House of Commons should pass; they are entirely free to do what they like. The Cunningham report was quite clear about the dangers of fossilising things through codification when you are dealing, by definition, with quite a dynamic relationship.
Mr Harper: At the risk of repeating myself, we have not said that the relationship will not change. The question comes down to whether you try to predict the destination and say what you think that relationship either will or should be at the end and then codify it today, or whether you accept that it will change over time but you have the Parliament Acts in place, which ultimately mean that the Commons can get its own way. In other words, if the House of Lords, for example, chose to "push it"—to use Lord Rooker's phrase—by using some of its existing powers where it currently does not, the Commons could act to stop that happening. Because the Lords knows that that is the case, the two Chambers will end up with a dialogue and those conventions will evolve, as they have even since the election, where there has been a lot of debate over some of the existing conventions that may or many not operate with the coalition Government. Given the way that we have done things in the past, allowing that evolution, but with that legislative back-stop of the Parliament Act, seems to me the best way of proceeding. But you have taken a lot of evidence on it and I know that it will be one of the issues that will be debated. We will listen to what the Committee says.

Q755 Lord Rooker: Can I just put finally the worst-case scenario? Let us say that an elected second Chamber, whether it is elected in thirds or whatever—I am in favour of it being 100 per cent elected—decides, because it has got a mandate and all the reasons that it will use because it has been elected, that it does not agree with the Commons having the last word through the Parliament Acts and blocks every Bill to force the Commons to negotiate a rewrite of the Parliament Act. That may be irresponsible and not constructive, as Lord Trimble pointed out, but why risk that? Mr Clegg, we have never met and I was not in the Commons when you were there, I do not know whether you think that you are a House of Commons man or a man from the House of Commons. I know the difference. The fact is that there are more House of Commons men—and, I might say, women—in the Lords than there are in the Commons. Those of us who served in the other place actually feel deeply and strongly that it should not be put at risk. Frankly, you are playing fast and loose with a refusal to write some basic rules for the relationship between the two Houses. That is what we are concerned about, not about self-preservation or redundancy pay and all that sort of flim-flam. The relationship between the two Houses of Parliament is absolutely fundamental as far as we are concerned.
Mr Clegg: First, of course, you are right, Lord Rooker, that an increasing number of people have been recycled—that is not quite the right word—but have moved from the House of Commons into the House of Lords. In the long run, it is more healthy for Members of the House of Lords to have their own mandate through the ballot box rather than be part of this washing-machine arrangement whereby people go from one end of the Corridor to the other.
Secondly, I think that we have done better than codification and than any number of rules anticipating the future; we have made sure that the rules of the game are such that there can be absolutely no doubt whatever that the House of Commons has primacy, because we are not providing Members of the House of Lords with the ability to be re-elected, because we are giving them non-renewable terms and because they are being elected in tranches rather than at once. That is more reassurance than anyone needs to show that there is a clear distinction between one and the other, and that those Members of the House of Lords, once elected, would not be able to "push it".

Q756 Oliver Heald: Can I take you on to one change that concerns me, although, broadly, I would accept what you are saying? You are turning the House of Lords into a forum for regional and national concerns to be aired because 80 per cent of the people in it will be elected by regions and nations to go to Parliament and speak up for their people. If that happens, that will mean that, in your constituency, there will be a senator for your region who, on a regional issue such as subsidies for the steel industry, will be able to come into your constituency as somebody who has been elected for your region and make a great deal of it. He will be able to come to Parliament and raise those issues. In my area, it may be the A14 road in East Anglia. Are you happy with that?

Mr Clegg: At present I have no problem when Members of the European Parliament pile into regional issues from different parties. I am a generous spirited man. I think if people from different parties and with different mandates want to get involved in an issue that is of great concern in a region, why not? The big difference between MEPs—I should know this from personal experience—and Members of a reformed House of Lords is that MEPs can then compete for attention and all the rest of it and subsequently pursue their ambition to get elected to the House of Commons. We would, by statute, make that impossible. That is another very important fire-break. Baroness Symons, did you want to say something on that?

Baroness Symons of Vernham Dean: I was wondering where democracy was in that. You made the analogy with MEPs, then you said—

Mr Clegg: Let me clarify. I am trying to highlight the difference with MEPs, who at the moment, quite rightly, have the right to get stuck into local or regional issues and some of them may, dare I whisper it, have ulterior motives if they have ambitions to transfer from the European Parliament to the Westminster Parliament. We looked at this on a cross-party basis in the committee that I chair and, for that very reason, everybody across all parties felt this was a good idea. We felt that we should not mimic that but should make sure that there is a fire-break between one and the other and should legislate to ensure that one cannot leap from a reformed House of Lords into the House of Commons. You have to wait for one full term before doing so.

Q757 Oliver Heald: My other point is about the great and good. You are going to have 20 per cent for the great and good, as long as they are independent. If you look at your party, you have very eminent lawyers in the Lords who are national figures in the legal world. So do the Conservatives, and so do Labour. Writers, such as PD James and Ruth Rendell are national figures. There are Melvyn Bragg and Lord Lloyd-Webber. On the medical side, there are Lord Winston, Lord McColl and so on. Is it going to be possible to keep people of that quality in this new Chamber? How are we going to have people like that putting themselves forward for the senate if they have to have this regional job as well?

Mr Clegg: I very much hope that they will put themselves forward—not all them, of course. It would be very interesting to see what the Committee concludes on whether the assumption is that elected Members of a reformed House of Lords would attend on a completely full-time basis or whether they would be expected to maintain other vocations at the same time. It is quite a finely balanced argument.

Q758 Oliver Heald: What do you think about that?

Mr Clegg: I am genuinely undecided about that. On the one hand, if one is going to confer a democratic mandate on elected Members of the House of Lords, in order to reciprocate the confidence the people have invested in you, you should be applying yourself full time to the job of scrutinising and revising Government legislation. There is a very powerful argument that says that, precisely in order to retain that independence of spirit and objectivity of mind and thought, not only is it worth having people elected, particularly under the STV system where they are freer of party strictures, but there might be a case for allowing them to continue to do other things so they have one leg in politics, if you like, and one leg in the real world. I do not know whether the Committee has deliberated on this, but it is one of the many things we need to decide.

Mr Harper: I agree with that. One of the things I know from reading press reports, which may not be accurate, is that the Committee has been looking at the number of Members and their full-timeness or otherwise. That may be something that goes into its report. I have one observation, which is that a lot of the people you read about, people with a reputation, in the best sense of that word, absolutely fit the description of the sort of people that Lord Trimble mentioned as people who would be particularly able to get elected under STV as they are people with a reputation whom the public would look at and think, "Yes, this is the sort of person who brings something to Parliament, who brings experience, and is the sort of person I want to elect". I do not know whether they

would want to be elected, but they sound like the sort of people who would be perfectly capable of getting elected in the system that we have set out.
The Chairman: I think that they would like to be elected but they would not want to go through an election. That is the real point. There is a big difference between those two things.
Mr Harper: All Members of the House of Commons want to get elected, but I am not sure how many of them actually enjoy the process of election.

Q759 The Chairman: If you are a very distinguished doctor, you have the choice. You do not have to get elected.
I am told there is one question that I have to ask you so the clerks can go on beavering away. It is on disqualification. Clause 36(4) envisages that the House of Lords may, by resolution, modify the disqualification regime for elected Members. This resolution will be given effect by an Order in Council. Clause 38(3) states that an Order in Council can list offices that will not disqualify appointed Members. What is the effect of this different approach? Is it appropriate for the reformed House to decide its own disqualification regime in respect of elected Members but not in respect of appointed ones?
Mr Harper: Let me say what I think it says, but I will reserve a fuller answer and write to the Committee.
The Chairman: Fairly briskly please.
Mr Harper: I think the distinction between the two in what we have set out is to reflect partly the conversation we have just had. If you are going to have appointed Members who have other interests and may do other things, you may want to have a less restrictive regime for disqualification than for elected Members. I think that is the purpose of the difference, but I think it is probably safer if I write and set it out in full for the benefit of members of the Committee.
The Chairman: Thank you very much. We have four questions left. I ask Ms Coffey to be brief.

Q760 Ann Coffey: I will be as brief as everyone else. In this Committee, we have talked a lot about House of Lords reform and how it impacts on the House of Commons has been seen through the prism of primacy. As a Member of the House of Commons, I have noticed over the years that the way that the Government manage business through the House of Commons and the House of Lords has undermined the House of Commons for a very long time. What tends to happen is that Governments of all colours have refused to accept amendments in Committee then have subsequently made those amendments in the House of Lords or have brought forward Government amendments. Everybody says, "Isn't it wonderful that the House of Lords has managed to overcome the deficiencies of this wretched Government and useless Opposition?". That has caused undermining. Do you think that, if we have an elected Lords in which there will be no overall majority and in which the Government are going to have to manage quite a lot of very difficult negotiations, it might encourage the Government of the day to make sure that when Bills go through the House of Commons sufficient time is given to scrutiny and that proper amendments are accepted by Ministers in the House of Commons so we do not have this situation where Members of the House of Lords can then stand up and say that the House of Commons did not scrutinise enough—or whatever it is—and therefore they are completing the job? I think that is more of an issue than elections. I am very much in favour of an elected House of Lords because I think that, in terms of public perception, that is where we should be. Let us not pretend that the reality is something other than it is.
Mr Clegg: I certainly recognise your characterisation of what a succession of Governments do, when they give way on amendments and in which House. I think that is more a function of the fact that the House of Commons usually has a Government majority—usually a thumping majority—and the House of Lords does not. I hope things will improve with more elected Members of the House of Lords, not least because I think you would get greater engagement up-stream, so Governments would think carefully when they propose legislation and engage at a very early stage. However, I do not think the basic difference between one House where a Government has a socking great majority and another which does not will necessarily be changed by the fact of election itself.
Mr Harper: My answer to your question is that I would hope so. Also, I think it is worth remembering briefly what reforms are taking place in the House of Commons to try to strengthen it. The things that have happened already include electing Select Committees and the Backbench Business Committee and, by the end of the third year of the Parliament, there will be the move to a House business committee, which will be quite significant

because it will start looking at the extent to which the Government get their way and how you then manage time in Parliament.

Speaking for myself and for Conservative colleagues, I think that having well drafted pieces of legislation, perhaps even fewer pieces of legislation, is probably a good thing. After all, if we solved all the problems of the world by passing vast quantities of legislation through Parliament, over the past 13 years the country would have been a very happy place, and it was not. This goes back to the point that Ms Sandys made that, if you strengthen one House, you should not see that as a diminution of the powers of the other House. The two Houses together would be a more effective Parliament in holding the Executive to account, which I think is a good thing. It makes life more difficult for Ministers, and I expect any Ministers watching me say that will probably stick pins in me, but it raises the bar, makes us work harder and ultimately delivers better legislation, which is, after all, what the public want us to do. I think your point is very well made.

Ann Coffey: I have another point, Chairman.

The Chairman: A short one. I am concerned about the fact that there have been two and a half hours so far.

Ann Coffey: Those of us who are asking questions at the end of the Committee have waited patiently.

Mr Harper: We have steeled ourselves.

Q761 Ann Coffey: My second question is about the term of election. On the day that you are elected, that is your moment of legitimacy, whether you are elected for five years or 15 years. One of the things that concerns people is standards in public life. I know the House of Commons is considering a recall mechanism for Members of Parliament. Do you think it might deal with the issue of getting elected and then not giving a toss about what people think if you had a tougher recall mechanism in the House of Lords? You cannot do it based on the number of votes cast because they are going to be so vast. That might be a way of reassuring people that people cannot get elected to this place, offend the public by their behaviour and then expect to stay elected Members.

Mr Clegg: Conceptually, I have a lot of sympathy for that view. If you take the step of not standing for re-election for reasons that we have said, it is a debatable point but our view has been that that is a failsafe way of providing a distinction between one House and the other. You are quite right. You need some kind of insurance mechanism so that, if people go off the rails or do not give a toss, they can be held to account. What kind of recall mechanism you use is quite an important matter to consider in some detail because the proposal we are putting forward for the House of Commons is that it can be triggered by 10 per cent of the electorate in your constituency signing a petition calling for a by-election, in effect. I think that 10 per cent of a district of 2.5 million or more just would not work. I think the principle is right, but I would not recommend just carbon-copying the recall mechanism in the House of Commons in a reformed House of Lords. I think we need to have a different one, and that is where you would have an opportunity to, arguably, set that threshold lower, if you wanted to, precisely to provide reassurance that your vote would not be wasted once you elected someone to serve for 15 years.

Q762 Baroness Scott of Needham Market: This evening has reflected months of deliberations, in that the key question is the extent to which individuals' behaviour will be changed by having a mandate and how that will alter things collectively. I wonder whether you might like to reflect on the nature of the mandate. It seems to me that it is very important to think about what people have voted for when they have gone to the ballot box. For example, if they are being asked to vote for people to carry out a scrutiny and revision exercise, it would be very odd indeed if they behaved in a Rookeresque way and drove the programme of the House of Commons, which is elected to form a Government, into the sands. I wonder whether you want to reflect on the importance of the clarity of the mandate as a scrutinising and revising Chamber.

On that topic, I remain concerned about the notion of holding elections to both Chambers on the same day, not because people cannot understand the difference, but it is difficult to get any oxygen for the secondary election. I speak as someone who has fought three county council elections on general election day. It is very difficult to get any oxygen at all for those sorts of issues. If you want clarity that the second Chamber is about revision and scrutiny, it makes that job more difficult if you are holding the election on the same day that you elect the Government.

Mr Harper: On the last point, clearly there is a trade-off, which we reflected. We think people are capable of dealing with two separate questions on the same day. The evidence from the AV referendum last year, which in many places was combined with a devolved election or a local election, demonstrated that voters are very capable

of doing that, so I am not sure that I necessarily accept the premise. Clearly, one of the things we have never tested is having two national elections at the same time where, effectively, people are submitting themselves to voters on different bases. However, I think your starting point is the right one. If you are clear about the role of the second Chamber and the basis on which you are campaigning to get elected—picking up the point that Lord Trimble made—it is not the same as somebody who is getting elected to the House of Commons because you are not saying to someone, "If you vote for me, and my party gets a majority, we will form the Government". Whatever you are doing, that is definitely not what you are doing. You are standing for election on a different basis. As well as your party label, there is more of a role for your personal characteristics and what you bring to the role in doing that scrutiny and revision, which is exactly why we chose the STV system which maximises the ability for candidates to set out those qualities. As long as you are clear with people about what the role is and is not, voters can make that judgment quite well.

Mr Clegg: Clearly, if you were a candidate in those elections, you would not be presenting yourself as someone who was going to provide a constituency service. You would, I guess, be seeking to portray yourself as an individual who would be effective at holding Governments to account and who has the expertise, wisdom, insight and background that people generally want in Parliament. I think it would be refreshing to try to bring the concept of scrutiny and revision to life in political terms. So far, we have never had to explain that to people in direct accessible language, and I think it would be a good thing because—dare I say it—it would help dramatise the excellent work of the House of Lords in a way that has never happened before.

Baroness Scott of Needham Market: I agree absolutely, but that is the reason that I am nervous about the dual election because I think it is very difficult to get anybody to listen when they are choosing their Government. That is what people are focused on, but I will leave it at that.

Q763 Lord Tyler: My question follows the answer that has just been given. We have had some insidious suggestions—not from either of you but from some witnesses and some evidence and possibly in one of the questions today—that, somehow, somebody who is elected cannot have the independence of mind and expertise to do the job with the scrutiny that it demands and so on. I would hope that you would be able to reinforce the view that the people you see being elected, quite apart from the ones who are appointed, could have all those qualities in spades. There is nothing to prevent that; indeed, it would put the parties on the spot and, to some extent, if the STV option is selected, the voter on the spot, to identify just such people.

Mr Harper: That is a very good point. This is something that I said when we had our full day's debate in the House of Commons. I know it did not necessarily make me popular in the House of Lords. In the debate on House of Lords reform, Lord Howe of Aberavon gave an example of a debate on health—very topical for today—and said that in the House of Lords you have a number of people with a lot of experience. If you look at the House of Commons, quite a lot of people have done other things first. I thought of some colleagues. We have people who are hospital doctors, such as Dr Poulter, or who have been journalists, opticians, lawyers, accountants or bankers. They do not suddenly lose all that knowledge and expertise just because they have been elected, so I do not accept the premise that everybody in the House of Commons comes with no skills, ability or expertise.

However, your point is quite right. If your role in the upper House is one of scrutiny and revision, where you are bringing your qualities and expertise, they will be one of the things that you will want voters to make a choice about. The party you support will be less important because you are not going to be putting the Government in position. I think people rate more highly your personal qualities and what you bring. Some of what Lord Trimble said of his experience of STV suggested that some of those qualities are exactly the sort of things that people will rate in an STV system.

The Chairman: Finally, Mr Hunt.

Q764 Tristram Hunt: I will be very brief, Lord Chairman. Deputy Prime Minister, do you accept the evidence we had from the Clerk of the House of Commons, Robert Rogers, that he would find it very difficult to foresee a reformed second Chamber with democratic legitimacy not being able to take on finance Bills? Why would a second Chamber limit itself in relation to finance Bills if it represents taxpayers?

Mr Clegg: The curtailment of the financial decision-making powers of the House of Lords goes way back to the 17th century, a time when the concept of democratic legitimacy was not around. I see no reason why a partially or wholly elected Chamber would not still maintain its division of labour.

Q765 Tristram Hunt: What would be the rationale? Why?
Mr Clegg: Partly for all the reasons that we have set out. Without a renewable term and with explicit revising and scrutiny tasks to fulfil, the basic division of labour on financial matters between the House of Commons and the House of Lords does not need to be usurped.
Mr Harper: The Clerk of the House of Commons said that he could imagine an elected House wanting to do that, but as I said before, it can want all its likes, but the Parliament Acts set out very clearly who is responsible for money Bills, and that position is not going to change unless the House of Commons agrees. At some point in the future, if the House of Commons wants to agree that the upper House can have responsibility for money Bills, fine, but the point is that the upper House cannot unilaterally decide it is going to because the framework that is in place has made it very clear who controls supply. The logic is that supply—control of money, taxation and spending—should go with the House that determines who is in Government. Ultimately, being in Government is about being able to raise taxes and spend money, so it is very logical to say that the House to which the Government are responsible is the House that is ultimately responsible for taxation and spending. That is the logic that is underpinned by the Parliament Acts, and we are not proposing to change that.

Q766 Lord Trimble: Have you seen the legal advice that we have received that the Parliament Acts properly construed will not apply to an elected House?
Mr Harper: I have seen the argument that Lord Pannick set out, for example, which is that it would be better to refer in the reform Act to the Parliament Acts to reassert that they apply.
Lord Trimble: I think Lord Goldsmith was of the same opinion.
Mr Harper: That was not the view that we took when we drafted our Bill, but I think I have already said that we will look at the evidence that you have received and what you say, and we will come to a view about whether we think that backs it up.
Lord Trimble: This is an argument about the interpretation of the Parliament Acts.
The Chairman: It is a legal point. We have had evidence from Lord Pannick and Lord Goldsmith, but we are not the Court of Appeal—thank God—and no doubt the Government will have their evidence. In this context, I must say that we asked the Attorney-General whether he would express a view on this, and were turned down very flatly. He said it was his job to advise Governments, not Select Committees of Parliament, which I am bound to say I thought was a bit brusque. As a result of that, we turned to Lord Pannick and Lord Goldsmith.
Mr Clegg: Notwithstanding that brusque response from the Attorney-General, I think Mark and I have been very clear that the argument that Lord Pannick and Lord Goldsmith made is a powerful one. It is about the status of the Parliament Acts in a reformed House of Lords rather than rewriting the provisions of those two Acts. It is a legal issue, but we are very willing to look at the specific recommendation that we write the Acts into the Bill or refer to them in the Bill.
Lord Trimble: That is departing from the intention of Parliament when it enacted the Parliament Acts. Its intention was clearly demonstrated.

Q767 The Chairman: I have two other matters before we close the meeting. First, Mr Harper, you were kind enough to write to me today offering to produce a paper for the Committee on your thinking about Clause 2. We would be grateful if you could produce that paper, but as you know, we are committed to producing our report by the end of March. Therefore, to feed it into the processes of producing that report, please can you do it fairly early?
Mr Harper: Of course.

Q768 The Chairman: Finally, I just want to mention a monumental issue, which we have not referred to, but I have been asked to mention it, so I will. It is Scottish devolution and the referendum. As I understand it, the proposal is that there will be a referendum in Scotland in 2014, before the first tranche into the House of Lords in

2015. If that referendum in Scotland is for independence, presumably you will not have any elected Scottish Peers coming in in 2015.

Mr Clegg: If Scotland departs from the United Kingdom, what happens to the House of Lords joins a long, long, long, long list including taxation, defence and all the other things that we share at the moment in the United Kingdom. A whole lot of unravelling would then have to be done which would, of course, affect the way the House of Lords functions but, like in so many other areas of public policy, we have decided not to arrest life until that decision is made. We think we just need to proceed on the basis that the United Kingdom remains strong and whole.

The Chairman: I thank you both for coming. It was a fascinating session and we are very grateful to you. I think you have exposed the Government's thinking, and it has been very helpful to us.

Mr Mark Harper MP—supplementary written evidence (4)

During the evidence session on Monday 27 February, I agreed to write to the Committee to explain why the draft House of Lords Reform Bill provides different mechanisms for modifying the list of disqualifying offices for appointed and elected members.

The draft Bill makes it possible for there to be different lists of disqualifying offices for appointed and elected members due to the need to allow greater flexibility when making recommendations for individuals to be appointed. The appointed element in the reformed House would be chosen for its experience and expertise and we believe it to be acceptable for appointed members to hold some of the offices which elected members could not hold.

The list of disqualifying offices for elected members will at the time of the first election be any office described in Part 2 or 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other than a member of the House of Lords Appointments Commission). Thereafter the reformed House of Lords could resolve to modify the list.

For appointed members, we needed to provide for a list of disqualifying offices to be drawn up in advance of the first elections and first round of appointments. To permit this we included a provision for the list of disqualifying offices to be modified for appointed members by an Order in Council.

However, we agree that after the first round of appointments it should be open to the reformed House to make a resolution to amend the list of disqualifying offices for both elected and appointed members.

We will examine the drafting of the Bill and make any necessary amendments, before introduction to ensure that it reflects this, subject to any further views from the Joint Committee.

I am copying this letter to all members of the Joint Committee and the Clerks.

8 March 2012