

The House of Lords: Reform





The House of Lords: Reform

Presented to Parliament by
the Leader of the House of Commons and Lord Privy Seal
by Command of Her Majesty

February 2007

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Foreword

by The Rt Hon Jack Straw MP,
Leader of the House of Commons
and Lord Privy Seal



Reform of the House of Lords has provoked intense debate and policy initiatives for over 100 years. The Lords is not a static institution. Like other key British institutions, it has changed and evolved through its history, and will continue to do so. This has never been more evident than in the last century, which saw major changes to the Lords – from the Parliament Acts to life peers and the introduction of the first women members of the House.

In 1999, the Government enacted a significant, and overdue, reform by removing the right of the majority of the hereditary peers to sit and vote. As a result of this reform, a more assertive and effective House of Lords has emerged. The reform has improved the scrutiny of Government and in so doing, has improved British democracy overall.

However, reform of the House of Lords remains unfinished business. There are still 92 hereditary peers sitting in the Lords. But ending this anomaly, in the Government's view, does not go far enough to ensure that Britain's second chamber is fit to meet the demands and expectations of this century. The legitimacy and authority of the second chamber continue to be called into question.

Significantly, the 2005 manifestos of the three main parties commit them to further reform of the Lords.

If changes of the magnitude involved are to take place, broad agreement on some of the key issues and agreement that the changes should be introduced over a long period of time is, to say the least, highly desirable. The alternative is likely to be deadlock. Time and time again – in 1909, 1949, 1968 and 2003 – fundamental reform of the House of Lords has failed because, for some, the best became the enemy of the good. Deadlock would be easy to achieve; the prize of progress means moving forward gradually and by consensus.

To reach next stage of reform, our 2005 General election manifesto committed us to holding a free vote in Parliament on the composition of a reformed House of Lords.

This reflects the fact that, despite parties' official positions on reform, there are strongly held and conflicting views on the future of the Lords. These will no doubt be reflected in the way in which the free votes are cast – including by Ministers. The paper therefore offers no prediction on the outcome of the votes: the future composition of the House is a matter for Parliament to decide.

However, to assist debate, and help progress, it is both practical and useful to offer an indication of a model around which consensus on the issue might be achieved. My own view is that a House where 50% of members are elected and 50% appointed is that point. This is also the model that the White Paper uses to illustrate how a hybrid House might work. The final outcome might well be different from this. Free votes are exactly that – free. But even then, the tangible proposals in this paper on transitional arrangements, on electoral systems and on a range of other matters should have focussed debate and, hopefully, enabled Parliament to come to a clear view – something which was absent when a free vote on this issue was held in 2003.

I believe that the approach outlined in this White Paper represents the best opportunity to make progress. It is, in my view, a unique opportunity to move forward with reform to make the House of Lords a more effective, legitimate and representative chamber, fully playing its part in a 21st century democracy.

A handwritten signature in dark ink, appearing to read 'Jack Straw'.

1. Executive Summary

1.1 The White Paper aims to set the stage for the free votes on the composition of a future House of Lords, promised in the Government's 2005 manifesto. The paper has therefore been drafted to reflect the arguments for and against on the various questions associated with reform of the House of Lords in a balanced way. It takes account of the invaluable discussions in the Cross-Party Working Group on Lords Reform, which has been meeting over the last year.

1.2 The Government believes the principle of House of Commons' primacy in our Parliamentary arrangements must remain in any reform of the Lords. The Lords should be neither a rival nor a replica of the Commons, but nor should it simply provide a rubber stamp for the Government's proposals. It should be a complement to the Commons, having a different kind of membership and providing a distinct voice in scrutinising and revising legislation.

1.3 To help ensure this, the Government's view is that no party in the Lords should have a majority of either the party-political members of the House or the House as a whole. At least 20% of the House should be non party-political appointments, which would help maintain a wide range of experience in the Lords. It is entirely possible, if the Lords is to be partly or fully elected, that independent candidates would also be elected to the House, increasing the proportion of non party-political members.

1.4 In the Government's view, it is difficult, in a modern democracy, to justify a second chamber where there is no elected element and in which the public has no direct input into who sits in it. The White Paper therefore proposes that a reformed House should be a hybrid House. This is the judgement of all recent enquiries into the future of the House of Lords, including the Royal Commission (2000), the report of the Public Administration Select Committee (2002) and the 'Breaking the Deadlock' group in 2005. Opinions as to the balance between the elected and appointed members have, however, varied.

1.5 To facilitate the forthcoming debate, the White Paper sets out an illustration of how a hybrid House might work. This model assumes that 50% of the House is elected through a partially open list system. The appointments system and the electoral system set out for

this model are applicable to the other models proposed in the free vote.

1.6 The Government suggests that the total size of the reformed House should be 540 members. Elections would be held at the same time as elections to the European Parliament, and would use the same constituencies – but the electoral system proposed however would be different – it is proposed to use a partially open list system.

1.7 When changes to composition have bedded down, it would, of course, be up to Parliament to decide whether to alter the proportion of elected members, if that was thought desirable (to give this effect, further legislation would be required).

1.8 Maintaining the relatively non-partisan style of the current chamber, and ensuring that members of a reformed House demonstrate independent thinking and long-term focus is important. The Government therefore believes that members of a reformed House should serve long terms which are not renewable. If a proportion of members are to be elected, then this should be staggered, with a third of the elected element being introduced at each election. Members of the Lords who finish serving in the House would be prevented from standing for a seat in the House of Commons for a number of years after they leave.

1.9 The Government believes that the work of the Lords will be enhanced if it is comprised of the widest range of views possible. To that end, the membership of a reformed House should reflect as far as possible the diversity of people and viewpoints in the United Kingdom. The Government is also of the view that the representation of the Church of England in the House of Lords should continue.

1.10 It will be much easier to secure the necessary diversity of the Lords if there continues to be an appointed element to the House. The model envisaged by the White Paper would mean that as well as the 20% non party-political members, a further 30% of the reformed House would be appointed party-political members.

1.11 Appointments to the reformed House would be made by a new Statutory Appointments Commission, which would be independent and report directly to Parliament. There would be no Prime Ministerial appointments.

1.12 The link between the peerage and a seat in Parliament would be broken altogether. There would be further changes to the term of membership for the House of Lords. Members (including current members) would be able to resign their seat in the Lords. All would be able to vote in General Elections. Disqualification provisions in the Lords for those convicted of an offence would be brought into line with those in the Commons. The minimum age limit for the Lords would be the same as for the Commons.

1.13 Again, as the earlier reports have recognised, there will have to be a long transition period for existing members. None of the current life peers will be forced to leave the House. The Government will look at whether a financial package can be provided for members who wish to retire.

1.14 The Government will consider whether new remuneration arrangements should be put in place for a reformed House, linked to attendance in the House. If so, the Government will invite the Review Body on Senior Salaries (SSRB) to report and make recommendations on the future level of remuneration of members of the House of Lords once the final shape of the House has been decided.

1.15 As part of the reform process, the right of hereditary peers to sit and vote in the House of Lords on the basis of their ancestry will finally be brought to an end.

2. Introduction

2.1 The Government's 2005 General Election manifesto committed to a free vote in Parliament on the composition of a reformed House of Lords. This paper is intended to inform that vote.

2.2 This paper examines the history of the House of Lords and its reform (including attempts at reform) over the last hundred years. It sets out the Government's major proposals for change and the form the Government suggests the free vote should take.

2.3 The paper should be read in the context of the other steps that the Government has taken since 2005 towards completing reform of the House of Lords. A Joint Committee on Conventions was established in May 2006 to examine the conventions governing the relationship between the two Houses. It reported in November 2006. Significantly, this cross-party report was unanimously approved by each House without division.

2.4 The cross-party nature of the Joint Committee's report is important, and it will be advantageous if cross-party working can be maintained throughout the process of reform. As high a degree of consensus as possible is necessary to ensure the success of such major constitutional reform.

2.5 Therefore, alongside the Joint Committee's investigations, the Leader of the House of Commons has chaired a cross-party group to discuss proposals for reform. The group consisted of Lord Falconer of Thoroton, representatives of the other two main parties, the Convenor of the Cross Bench Peers, and a representative of the Lords Spiritual. A full list of the group's membership can be found at Annex A.

2.6 The group has met eight times since June 2006, and has worked with a high level of co-operation. A significant degree of consensus has been found on several important aspects although – unsurprisingly given the long history of Lords reform – there has not been unanimous agreement on all the issues. Where agreement could not be reached, this paper is intended to reflect the different arguments for and against particular options on reform in a balanced way.

2.7 All members of the cross-party group were agreed on the fundamental principle of the primacy of the Commons, and that the House of Lords should be a complement to the Commons, and not a rival to it.

2.8 There was agreement that a reformed House should consist of at least 20% non party-political members, and that it was essential that no political party should be able to hold a majority of the whole House or the party-political members of it. There was agreement that effort should be made to ensure that the membership of the reformed House reflects the gender and racial diversity of the United Kingdom, and that the range of religious opinion in the country should also be reflected in the membership of the Lords. All agreed that the special arrangements for membership of the House by a limited number of hereditary peers should come to an end.

2.9 The group identified that essential to the success of any reform would be a long transition period, with new members phased in over a period of time. The group agreed that members of a reformed House should serve for a long, single term of office, with no prospect of re-election or re-appointment.

2.10 There was also agreement on many of the issues discussed in this paper in the section titled 'Membership of the Lords', issues such as breaking the link between the peerage and a seat in Parliament, disqualification provisions, allowing members of the Lords to vote, and restrictions on former Lords standing as MPs.

2.11 Although all three political parties agreed that a reformed House should be a hybrid House, agreement was not reached on the future proportion of elected and appointed members. It is the Government's intention that the free vote should provide a clear answer to this question.

2.12 All parties agreed that the elected element of the House should be elected through a form of direct election, but there was no further agreement on the form of direct election, or timing, to be used.

2.13 The debate on these issues will continue as the process moves forward, and it is likely that some issues will not be resolved until debate takes place in Parliament on any Bill necessary to complete reform of the Lords. However, the progress that has been made is, in the Government's view, encouraging, and demonstrates that there is now a serious opportunity to move forward with this vital stage of reform of the House of Lords.

3. Background

3.1 The origins of Parliament, including the House of Lords, can be found in the Witenagemot, where Saxon kings summoned religious leaders and other counsellors to advise on the administration of the Kingdom.

3.2 By the 14th century a bicameral Parliament had evolved. Its two Houses were distinct. The religious leaders (Lords Spiritual), magnates (Lords Temporal), officials, counsellors and judges sat in the first House. Borough and shire representatives sat in the second.

3.3 The term 'peer' emerged by the 15th century to refer to the Lords Temporal, who had by this time formed five ranks – Baron, Viscount, Earl, Marquess and Duke.

3.4 By the 18th century, the House of Commons was already responsible for determining the Government's resources and, as the industrial revolution began, the authority of the Commons was enhanced as land lost its dominant position as a source of wealth. The widening differences between the agendas of the political parties, the development of party machines and the extension of the electoral franchise reinforced the growing dominance of the Commons, as did the Reform Acts of the 19th century.

3.5 For many years the House of Lords consisted primarily of peers from one party and members of the Lords still held many of the key offices of state. These factors contributed to a number of significant clashes between the two chambers, which in turn advanced the case for reform of the House of Lords and saw reform included on the mainstream political agenda.

The Parliament Act 1911

3.6 The crisis over the Lords' rejection of the 1909 budget led to the Parliament Act 1911¹, which was passed only under the threat of the creation of a large number of Liberal peers. The Act ensured that a Money Bill could receive Royal Assent without the approval of the House of Lords, if not passed by the Lords without amendment within one month. The Act also provided that any other Public Bill (except one extending the life of a Parliament) would receive Royal Assent without the consent of the House of Lords, if it had been passed by the Commons in three successive sessions, as long as two years had elapsed between its second reading in the first session and its final passage in the Commons. The Act also shortened the maximum length of a Parliament from seven to five years.

The Salisbury-Addison Convention

3.7 The General Election of 1945 produced a Labour Government with a majority of 156 in the House of Commons. In the House of Lords, however, only a small number of peers took the Labour whip. Indeed, there were only 16 Labour peers out of a total of 831 voting peers. This imbalance posed a considerable strain on the relationship between the two Houses. During the Government of 1945-1951, the then Viscount Cranborne, Leader of the Opposition in the House of Lords (and fifth Marquess of Salisbury from 1947) and Viscount Addison², the Labour Leader of the House of Lords, came to an agreement on the passage of major pieces of Government legislation through the House of Lords. Viscount Cranborne described his perspective on the agreement in the House of Lords debate on the King's Speech of 1945, in which the Government's legislative agenda was being considered:

¹ *The Parliament Act, 1911 (1&2) George V, Ch.13*

² *The Salisbury Doctrine, House of Lords Library Note LLN 2006/006*

“Whatever our personal views, we should frankly recognise that these proposals were put before the country at the recent General Election and that the people of this country, with full knowledge of these proposals, returned the Labour Party to power. The Government may, therefore, I think, fairly claim that they have a mandate to introduce these proposals. I believe 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.”³

3.8 Since that time, the doctrine known as the “Salisbury-Addison Convention” has come to imply that the House of Lords should not reject at second or third reading an intention to legislate mentioned in the Government’s election manifesto.

3.9 The recent report of the Joint Committee on Conventions⁴ considered that the main principles of the Salisbury-Addison convention remain in place, although it concluded that the convention has changed over time, and that it should be renamed. The Government has accepted the Joint Committee’s conclusion and its recommendation.

The Parliament Act 1949

3.10 Despite the Salisbury-Addison Convention, the 1945 Labour Government became concerned that the three session delay in the 1911 Act would mean that its proposals for nationalising the iron and steel industry would not get through before the next General Election was due. In 1947, the Labour Government introduced the second Parliament Bill, which amended the 1911 Act by decreasing the number of sessions in which the Commons must pass a Bill from three to two. It also reduced the period between the first second reading and final passage in the Commons to one year.

3.11 Following the second reading debates on the Bill in the Lords in January-February 1948, talks between the Government and opposition party leaders took place on reform of the House of Lords. Tentative agreement was, that the House of Lords “should be complementary to and not a rival to”⁵ the Commons, that women should be admitted, that no one political party should have a permanent majority and that heredity should not, in itself, determine appointment to the Lords.

3.12 The talks broke down over the question of the Lords’ power to delay legislation. The Bill itself was eventually passed into law in 1949⁶ but only by use of the Parliament Act 1911.

3.13 In 1951, the Conservative Party election manifesto made a commitment to reconvene all-party discussions on reform of the House of Lords. Viscount Simon introduced a Life Peers Bill in 1953 and the Conservative Government attempted to convene talks with the Liberal and Labour Party leaders. However, Clement Attlee, the then Leader of the Opposition, declined the invitation and the talks did not take place. The Bill fell.

The Life Peerages Act 1958

3.14 In 1958, the Conservative Government passed the Life Peerages Act⁷. This allowed, for the first time, holders of life peerages other than those appointed as Law Lords to sit in the House of Lords. It also allowed women awarded life peerages to sit in the House. Previously, although the House of Lords had accepted that the Crown had the right to create life peerages, it had insisted that the House had the right to determine who could sit as a member. It had refused to accept that membership extended to holders of peerages with no right of succession. One of the original intentions behind the legislation was to improve the party-political balance in the House, because it was felt that Labour Party supporters might be more likely to accept a life peerage than a hereditary one. The Labour Party opposed the reform because they felt that it would create a barrier to more radical reform of the Lords.

³ House of Lords Hansard, 16 August 1945, Vol. 137, Col. 47

⁴ Conventions of the UK Parliament, Report of Session 2005-06, Vol. 1, House of Lords Paper 265-I, House of Commons Paper 1212-I, November 2006

⁵ Parliament Bill 1947: Agreed Statement on the Conclusion of the Conference of Party Leaders, Cm. 7380 May 1948, page 3

⁶ Parliament Act, 1949: 12, 13 & 14 George VI, Ch. 103

⁷ The Life Peerages Act, 1958: 6 & 7 Elizabeth II. Ch. 21

3.15 The introduction of life peerages transformed the House of Lords. In the 1950s, it was a moribund institution, with only a tiny proportion of its nominal membership attending regularly except when the ‘backwoodsmen’ (the name given to peers who seldom attended the House) were called in. For example, in 1959-60, there were 859 members of the House of Lords (excluding the Lords of Appeal in Ordinary and the Church of England Bishops) and the average daily attendance was 136 (15%). By 1981-2, membership (excluding the Lords of Appeal in Ordinary and the Church of England Bishops) had increased to 1134 and the average daily attendance to 284 (24%).

3.16 For the first few years, there were equal numbers of life and hereditary peers created. However, since 1965, there have only been three non-Royal hereditary creations⁸, and it rapidly became accepted that in only the most exceptional circumstances would new hereditary peerages be awarded. Since 1958, a total of 1108 life peerages have been created, of whom 189 were women. There are currently 615 life peer members of the House of Lords, of whom 139 are women.

Leave of Absence, 1958

3.17 ‘Leave of absence’ rules were created in 1958 to quell concern that peers who seldom attended the House were only encouraged to do so in order to sway a particular vote. The Standing Orders of the House of Lords⁹ were amended to require peers to apply for leave of absence if they could not attend the House.

The Peerage Act 1963

3.18 Following the recommendations of the Joint Committee on House of Lords Reform of 1962¹⁰, the Peerage Act 1963¹¹ made three significant changes to the peerage. It allowed female hereditary peers as well as all members of the Scottish peerage to sit in the House of Lords. Hitherto, Scottish peers had elected 16 ‘representative peers’ from their number. Most

importantly, it enabled hereditary peerages to be disclaimed for life. This was primarily a consequence of the Stansgate case of 1960-61¹² in which Tony Benn was disqualified from sitting in the House of Commons as member for Bristol South East, upon his succession to the Viscountcy of Stansgate, a hereditary peerage awarded to his father.

3.19 The Act provided for a peerage to be relinquished during a set period of time after its inheritance and ‘remain dormant’ until the time of death, at which point the peerage would pass to the heir as normal (unless he or she also chose to relinquish it). Disclaiming a peerage allowed the individual to stand for election to the House of Commons and also entitled them to vote. On the passing of the Act, Mr Benn relinquished his peerage and was re-elected at a by-election on 20 August 1963.

1968 Proposals

3.20 In 1966, the Labour Government proposed reform of the House of Lords, and entered into discussions with the opposition parties on the form this should take. A substantial measure of agreement had been reached when the House of Lords decided in June 1968 to reject a statutory instrument imposing UN sanctions on Southern Rhodesia¹³. This breach of the convention that the Lords should not vote down secondary legislation led to the breakdown of the talks. Despite this, the Government brought forward a White Paper¹⁴ setting out a detailed package of reform based on those inter-party discussions.

3.21 The White Paper, *House of Lords Reform* (Cmnd. 3799), proposed a two-tier House consisting of both voting and non-voting members. Voting members consisted of ‘created peers’, which in 1968 still included about 100 hereditary peers of first creation. Proposed conditions for retaining voting rights included a minimum level of attendance and a retirement age. Non-voting peers included all existing hereditary peers by succession in the

⁸ *Viscount Whitelaw, Viscount Tonypandy (Mr Speaker Thomas) and the Earl of Stockton (Harold Macmillan). Life peerages can be awarded only as baronies, so any higher honour must be hereditary. Viscounts Whitelaw and Tonypandy in fact had no male heirs and so both titles are already extinct.*

⁹ *The Standing Orders of the House of Lords: Leave of Absence, 16 June 1958. House of Lords, No. 23, (1)*

¹⁰ *Report of the Joint Committee on House of Lords Reform House of Lords Paper 125, House of Commons 262, Session 1961-62*

¹¹ *Peerage Act, 1963 Elizabeth II. Ch. 48*

¹² *Stansgate Case, House of Commons 142, Session 1960-61*

¹³ *House of Lords Hansard, 18th June 1968, Vol. 293, Col. 594*

¹⁴ *House of Lords Reform 1968, Cmnd. 3799*

House and 'created peers' who could not meet the conditions for voting rights. This was intended to be a transitional measure, and hereditary peers newly succeeding were not entitled to any form of membership of the House. The paper also proposed that the Government of the day should maintain a small majority of party-political seats in the House.

3.22 Additional measures would have allowed the House of Lords to require the Commons to reconsider subordinate legislation, but not reject it outright. It would have imposed a time limit of 60 days on Lords' consideration of a Bill, and changed the period of delay from the year in the Parliament Act 1949, to one of 6 months after **either** the date of disagreement between the two Houses, **or** the 60th day of consideration, whichever came first. After this delay a Bill could be submitted for Royal Assent by resolution of the House of Commons.

3.23 The House of Lords approved the White Paper. Despite difficulties in gaining support for the White Paper in the Commons, the Government persevered and introduced a Bill. However, backbench opposition on both sides delayed the Bill to such an extent that the Government decided not to proceed with the legislation.

1970s and 1980s

3.24 During the 1970s and 1980s all parties made proposals for reform, but none were pursued. It was not until the election of the Labour Government in 1997 that reform again became a serious proposition.

1997 and Onwards

3.25 The 1997 Labour Party manifesto¹⁵ said:

"The House of Lords must be reformed. As an initial, self-contained reform, not dependent on further reform in the future, the right of hereditary peers to sit and vote in the House of Lords will be ended by statute. This will be the first stage in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House of Lords will remain unaltered. The

system of appointment of life peers to the House of Lords will be reviewed. Our objective will be to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous General Election. We are committed to maintaining an independent cross-bench presence of life peers. No one political party should seek a majority in the House of Lords. A committee of both Houses of Parliament will be appointed to undertake a wide-ranging review of possible further change and then to bring forward proposals for reform."

3.26 In 1999, the Government introduced the House of Lords Bill¹⁶ to remove the hereditary peers, as the first stage of Lords reform. It also appointed the Royal Commission on the Reform of the House of Lords, chaired by Lord Wakeham.

The House of Lords Act 1999

3.27 Before the House of Lords Bill was introduced in the Commons, the Government and Viscount Cranborne (then Leader of the Opposition in the Lords) negotiated an arrangement whereby 92 hereditary peers would retain their seats in the House of Lords. The Government undertook that the arrangements to retain a certain number of hereditary peers in the House would remain in place until the completion of the second stage of reform. The Lord Chancellor, Lord Irvine, said in the House that the amendment would provide for retention of some of the hereditary peers, *"until the second stage of House of Lords reform has taken place. The amendment reflects a compromise negotiated between Privy Councillors on Privy Council terms and binding in honour on all those who have come to give it their assent."* He added that *"the 10 per cent. will go only when stage two has taken place. So it is a guarantee that it will take place."*¹⁷

3.28 The Government made no comment on what constituted stage two; in particular, it did not commit itself to any element of election. Whichever package of proposals is endorsed by the free vote would constitute a fulfilment of the pledge to complete the second stage of the reform of the House of Lords.

¹⁵ Labour Party General Election Manifestos, 1900-1997, General Election Manifestos Vol. 2

¹⁶ The House of Lords Bill, Bill 34 of 1998-99

¹⁷ House of Lords Hansard 30 March 1999 Col. 207

3.29 At committee stage in the House of Lords, the Government agreed an amendment, tabled by Lord Weatherill, the Convenor of the Crossbench peers and former Commons Speaker, to exempt 92 hereditary peers, to give effect to the arrangement. Therefore, under the House of Lords Act 1999¹⁸, 92 hereditary peers were excepted from the general removal of the right to sit and vote in the Lords by virtue of a hereditary peerage. These 92 peers were identified in three groups. 75 peers were elected by the hereditary peers in the existing party groups in the Lords (including the crossbenchers as a party group for these purposes) in proportion to the share of each party within the total sitting membership of hereditary peers. This meant that there were 2 Labour, 3 Liberal Democrat, 42 Conservative and 28 crossbench peers selected by this method. 15 were elected by the whole House (including life peers) to be available to serve as office holders (deputy speakers, chairmen of committees). At the time of the reform, there were 15 hereditary peers holding such offices. The remaining two excepted peers were the hereditary office holders, the Earl Marshal of England and the Lord Great Chamberlain.

3.30 Until the end of the first session of the following Parliament (November 2002), hereditary peers who died were replaced by the next candidate on the relevant election list. Since November 2002, a by-election mechanism has been in place. Candidates can be any qualifying hereditary peer. The electors are either the remaining hereditary peers in the party group in which the vacancy occurred (including the elected hereditary office holders) or, for the 15 office holders, the whole House. The detailed arrangements for the by-elections are set out in the Standing Orders of the House.

The Royal Commission on the Reform of the House of Lords

3.31 The Royal Commission on the Reform of the House of Lords, with a distinguished and balanced membership and chaired by Lord Wakeham, was established in 1999 to “consider and make recommendations on the role and function of the second chamber, and to recommend the method or combination of methods of composition required to constitute a second chamber fit for that role and those functions”¹⁹.

3.32 The Royal Commission published its report in January 2000²⁰. It stressed that the reformed House should not challenge the primacy of the House of Commons. It made a number of recommendations, including that the House should have around 550 peers serving a fixed term. It suggested that a significant minority should be regional members, elected to reflect directly political opinion within their region. It proposed that the Prime Minister should lose the power to appoint peers and that an independent appointments commission should be established, with a statutory duty to ensure that at least 30 per cent of new members were women and that members of the reformed House were broadly representative of British society. It further recommended that the appointments commission should regularly adjust the overall balance within the House of Lords of those members affiliated to political parties to match closely the distribution of votes at the most recent General Election. However, the Royal Commission did not agree on the method for electing members and suggested three options for the elected component of the House of Lords:

- **Model A** 65 peers elected using a complementary voting system, according to the General Election results in the regions (approximately 12% of the total House).
- **Model B** 87 regional members elected by thirds at the time of the European Parliament elections (approximately 16% of the total House).
- **Model C** 195 regional members directly elected by thirds at the same time as each European Parliament election, to serve for three terms (approximately 35% of the total).

House of Lords Appointments Commission

3.33 Following the recommendations of the Government’s 1999 White Paper²¹, the House of Lords Appointments Commission was established on a non statutory basis in May 2000 to assist with the transitional phase in reforming the House of Lords. The Appointments Commission is an independent non-departmental public body, sponsored by the Cabinet Office. It recommends to Her Majesty The Queen people to be appointed on merit to the House of Lords as non party-political life peers. The

¹⁸ House of Lords Act 1999

¹⁹ Royal Commission on Reform of the House of Lords, *A House for the Future*, Cm. 4534

²⁰ Royal Commission on Reform of the House of Lords, *A House for the Future*, Cm. 4534

²¹ *Modernising Parliament - Reforming the House of Lords* Cm. 4183

Appointments Commission also vets all nominations for membership of the House to ensure that standards of propriety are upheld.

2001 and Onwards

The House of Lords – Completing the Reform, White Paper²² – November 2001

3.34 The 2001 Labour Party manifesto said:

“We are committed to completing House of Lords reform, including removal of the remaining hereditary peers, to make it more representative and democratic, while maintaining the House of Commons’ traditional primacy. We have given our support to the report and conclusions of the Wakeham Commission, and we will seek to implement them in the most effective way possible. Labour supports modernisation of the House of Lords procedures to improve its effectiveness. We will put the independent Appointments Commission on a statutory footing.”

3.35 The Government’s White Paper of 2001, *The House of Lords Completing the Reform* (Cm. 5291), therefore set out its detailed response to the report of the Royal Commission. It strongly endorsed the Royal Commission’s vision of the role and importance of the House of Lords and accepted the Royal Commission’s broad framework for the composition of the House.

3.36 The White Paper proposed that the remaining 92 hereditary peers should be removed from the House and that the link between the peerage and a seat in Parliament should be broken. It supported the Royal Commission’s recommendation that an independent Statutory Appointments Commission should be created and that Government control over membership of the House of Lords should cease.

3.37 It proposed that the House of Lords should consist of no more than 600 members, a majority of whom should be nominated by the political parties and one fifth should be independent of party affiliation. Elections

would take place for 120 seats to represent the nations and the regions (around 20% of the whole House) and seats would remain for the Lords Spiritual and the Law Lords.

It further recommended an increase in the membership of women and members of ethnic minority communities in the Lords.

3.38 However, the White Paper failed to command widespread support. In terms of public response, 89% of the 906 respondents who commented on composition wanted a House which was 50% or more elected (with 45% calling for an all-elected House). The House of Commons Public Administration Select Committee (PASC), in their fifth report of the 2001-2002 session, entitled *“The Second Chamber – Continuing the Reform”*²³, recommended that a consensus could be built around a ‘centre of gravity’ of about 60% elected. Debates in Parliament focussed also on those areas where the Government proposed to depart from the recommendations of the Royal Commission. There was particular concern about the powers of the Appointments Commission over political appointments, where the Government was proposing to reserve the final say over the identity of these appointments to the parties, rather than the Appointments Commission. 75% of the 260 public responses which commented on the method of appointment also said that all appointments should be made via the Appointments Commission. Generally, there was concern at the level of political patronage implied by the proposals for both the electoral system (closed lists, and with re-election allowed) and the appointments process.

3.39 In July 2002²⁴, following the reaction to the White Paper proposals, the Government secured the establishment of a Joint Committee on House of Lords Reform under the Chairmanship of Jack Cunningham MP (now Lord Cunningham of Felling), to consider and report on options for the composition and powers of the House.

²² *House of Lords, Completing the Reform, A Government White Paper, 7 November 2001, Cm. 5291*

²³ *Public Administration Select Committee, Fifth Report, The Second Chamber: Continuing the Reform, Session 2001-2002, 14 February 2002, HC 494-I*

²⁴ *Joint Committee on House of Lords Reform, House of Lords Reform: First Steps, Session 2002-2003, HL Paper 151, HC 1109*

Free Vote 2003

3.40 The Joint Committee reported²⁵ in December 2002, recommending seven options for the composition of a reformed House. These ranged from a fully appointed to a fully elected House as listed in *table 1, 2 and 3* below. Both Houses put the options to a free vote in February 2003.

Table 1: Options Recommended By The Joint Committee	
Option 1	Fully appointed
Option 2	Fully elected
Option 3	80% appointed, 20% elected
Option 4	80% elected, 20% appointed
Option 5	60% appointed, 40% elected
Option 6	60% elected, 40% appointed
Option 7	50% appointed, 50% elected

3.41 In addition, an option of abolition was moved as an amendment in the Commons.

3.42 Members were asked to vote successively on each option. Contrary to the usual practice, even if one option secured a majority, the intention was that voting should continue on the remaining options, as the objective was to test the level of support for each. In practice, the Commons divided on five options (including abolition), and did not divide on 80% appointed; 60% appointed or 50/50, all of which they rejected without a vote. The House of Lords voted on every option.

3.43 As the tables below indicate, no clear consensus could be found. There was no endorsement of any of the options in the House of Commons. The House of Lords voted for a wholly appointed House.

²⁵ *Joint Committee on House of Lords Reform, House of Lords Reform: First Report, Session 2002-03, HL Paper 17, HC 171*

Table 3: Breakdown Of Commons Vote By Party From The Free Vote On The Composition Of The House Of Lords, 4 February 2003

		Labour	Majority	Conservative	Majority	Lib Dem	Majority	Other	Majority
Amendment	Abolition	For	158	2		3		9	
		Against	184	26	144	48	45	12	3
Option 1	100% Appointed	For	173	59		3		10	
		Against	179	6	28	47	44	10	
Option 2	100% Elected	For	157	59		41	34	15	9
		Against	197	40	20	7	6		
Option 4	80% Elected	For	151	73		47	44	10	
		Against	195	44	2	3	11		1
Option 6	60% Elected	For	152	50		42	36	7	
		Against	199	47	47	6	14		7

Table 2: Voting Figures From The Free Vote In The House Of Commons And House Of Lords On The Composition Of The House Of Lords, 4 February 2003

	Amendment (Abolition)	Option 1 (100% Appointed)	Option 2 (100% Elected)	Option 3 (80% Appointed)	Option 4 (80% Elected)	Option 5 (60% Appointed)	Option 6 (60% Elected)	Option 7 (50:50)
COMMONS								
For	172	245	272		281		253	
Against	390	323	289		284		316	
Majority for or against	- 218	- 78	- 17		- 3		- 63	
LORDS								
For		335	106	39	93	60	91	84
Against		110	329	375	338	358	317	322
Majority for or against		225	- 223	- 336	- 245	- 298	- 226	- 238

Consultation Paper – September 2003

3.44 Following the free vote, the Government published a Consultation Paper, *Constitutional Reform: Next Steps for the House of Lords*²⁶, setting out proposals to press forward with reform and responding to the reports of the Joint Committee on House of Lords Reform.

3.45 The Government proposed again to remove the remaining hereditary peers and create a Statutory Appointments Commission. It also recommended that peers should be given the right to renounce their peerage and that the rules for disqualification of peers should be brought into line with those of MPs.

3.46 However, following a consultation exercise, the Government decided that the political and public appetite for a limited package of reform was not sufficient, and in March 2004 the Government announced that it would not proceed with legislation in that Parliament to enact the proposals put forward in the consultation paper.

²⁶ *Government's Consultation Paper, Constitutional Reform: Next Steps for the House of Lords, (CP 14/03)*

4. Current Steps Towards Reform of the House of Lords

4.1 In its 2005 General Election manifesto²⁷, the Labour Party committed itself to proceeding with reform of the Lords:

“In our first term, we ended the absurdity of a House of Lords dominated by hereditary peers. Labour believes that a reformed Upper Chamber must be effective, legitimate and more representative without challenging the primacy of the House of Commons.

Following a review conducted by a committee of both Houses, we will seek agreement on codifying the key conventions of the Lords, and developing alternative forms of scrutiny that complement rather than replicate those of the Commons; the review should also explore how the upper chamber might offer a better route for public engagement in scrutiny and policy-making. We will legislate to place reasonable limits on the time Bills spend in the second chamber – no longer than 60 sitting days for most Bills.

As part of the process of modernisation, we will remove the remaining hereditary peers and allow a free vote on the composition of the House.”

4.2 On 5 May 2006 the Prime Minister asked the Leader of the House of Commons, the Rt Hon Jack Straw MP, supported by the Department for Constitutional Affairs, to take charge of the issue.

The Joint Committee on Conventions

4.3 The Joint Committee on Conventions was established on 22 May 2006, under the Chairmanship of Lord Cunningham of Felling (who had also chaired the previous Joint Committee) with the following Terms of Reference:

“accepting the primacy of the House of Commons, ... to consider the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation, in particular:

- *the Salisbury-Addison convention that the Lords does not vote against measures included in the governing party’s Manifesto;*
- *conventions on secondary legislation;*
- *the convention that Government business in the Lords should be considered in reasonable time;*
- *conventions governing the exchange of amendments to legislation between the two Houses”*

4.4 The Joint Committee published its First Special Report²⁸ on 25 May and received evidence from all three political parties and others.

4.5 The Joint Committee’s final report²⁹ was published on 3 November 2006. The Government believes that the evidence the committee collected, both oral and written, provides a valuable source of information on the origins, development and meaning of the various conventions which give life to the relationship between the two Houses of Parliament. The Committee’s work will not only inform the current debate, it will also be an important source for future reference. Both Houses have now debated the Joint Committee’s report, and passed resolutions in identical terms approving it. The debate in the House of Lords was held on 16 January 2007, and the debate in the House of Commons on 17 January 2007.

²⁷ Labour Party Manifesto 2005, *Britain Forward Not Back*

²⁸ Joint Committee on Conventions, *First Special Report, 2005-06*, HL Paper 189, HC 1151

²⁹ Joint Committee on Conventions, *Conventions of the UK Parliament, Report of Session 2005-06, Volume I*, HL Paper 265-I, II, HC Paper 1212-I, II

The Government Response to the Joint Committee on Conventions

4.6 The full Government response³⁰ to the Joint Committee can be found in *Conventions of the UK Parliament*, Cm. 6997. The Government agreed with all the recommendations of the Joint Committee, and accepts its view that if the House is reformed, the current relationship between the two Houses, and the conventions governing that relationship, will inevitably be called into question.

4.7 The Government believes that the Joint Committee's report is a most important piece of work, and that it will serve as a guide to both Houses on how the current conventions between the two Houses should operate. Parliament's approval of the Joint Committee's report is significant, setting out as it does agreement by both Houses on how the conventions currently operate. It is an invaluable baseline for the debate on the future of the House of Lords.

4.8 Much of the focus of the debates in the two Houses was on the question of the relative powers of the two Chambers, and whether the conventions could survive a significant change in composition. There was widespread acceptance that it would be undesirable for the powers of a reformed House to undermine the primacy of the House of Commons. Concern was expressed that changes to the composition of the second chamber might lead to this happening, and there was much discussion in both Houses about the Government's view that the current conventions should be robust enough to define the powers of a reformed House.

4.9 The Government accepts that changes to the composition of the Lords will call the current conventions into question, and that, having brought forward these proposals for reform there will inevitably be debate about how the conventions might evolve.

4.10 The current conventions have helped deliver a House of Lords which is effective, and plays an important and valuable role in our legislative procedures. The Government believes that reform of the House is necessary to ensure that it continues to be effective and to make it a more legitimate chamber. The Government is

not alone in this belief – the two other main political parties committed to reform of the Lords in their 2005 election manifestos.

4.11 The Government's view is that the current conventions are the right ones for a reformed House to work with, certainly early in its life. There are those who suggest that reform of the Lords, and in particular the introduction of an elected element, will lead to the House of Lords seeking power over issues such as taxation, and a challenge to the primacy of the Commons. The Government believes that if this were to happen it would undermine the role and purpose of the House of Lords, and lead to the loss of much of what is valuable and successful about the current House. Crucially, it would start to erode a vital facet of the successful operation of the House of Lords – that it can invite a Government to reconsider its specific proposals without calling into question its authority to govern.

4.12 Although the primacy of the Commons is historically derived from its elected mandate, primacy no longer rests solely on this fact. Primacy is made real by the different functions exercised by the two Houses, and their different roles. The Government cannot govern without the support of the Commons, the Commons controls supply, and the Commons has the final say on legislation – this is how the primacy of the Commons is now expressed.

4.13 It is for Parliament to decide how it wants the House of Lords to operate, and work to ensure that this happens. Parliament can decide to maintain the primacy of the Commons, and decide, at the same time, to have an elected element in a reformed House of Lords. The Government hopes that a consensus can be found on what the role of the Lords should be, whatever form of composition is decided upon.

4.14 It is significant that all the recent major reports on possible reform of the House of Lords (the Wakeham Commission, the Public Administration Select Committee report of 2002, the previous Joint Committee on House of Lords Reform, and the 2005 cross-party report "Breaking the Deadlock"³¹) all advocated changes to the composition of the Lords, but argued that the role and powers of the House of Lords should remain broadly as they are now.

³⁰ *Government Response to the Joint Committee On Conventions' Report of Session 2005-06: Conventions of the UK Parliament* Cm. 6997

³¹ *Reforming the House of Lords: Breaking the Deadlock*, The Constitution Unit, 2005

4.15 Whether the conventions will survive compositional change is essentially a matter of judgement. That judgement will obviously be affected by the stance of the three main political parties and the views of those who participate in the debates.

4.16 We make clear that we are proceeding on the basis that we would wish to see the current conventions survive into a new House.

4.17 Once the debates on this White Paper and the free votes have taken place, and in advance of any legislation on reform of the House of Lords, the Government will look in further detail at the issue of the adequacy of the current conventions to ensure the primacy of the Commons in practice, to which all parties are committed.

Free Vote on Composition of the House of Lords

4.18 The Government is committed to holding a free vote on composition of the House of Lords in both Houses. This should provide a clear decision on the way forward. Further details on the proposed voting arrangements and options can be found at Annex B.

4.19 To ensure that both Houses are able to produce a single winning option from the vote, it is proposed that both Houses be invited to consider voting on seven options using an alternative vote procedure.

4.20 It is important to make the distinction that the free vote is not an alternative vote on a legislative proposal. It will be an alternative vote designed to give the Government a clear view from Parliament on the form it wants legislative proposals to take.

5. International Comparisons

The Role of a Second Chamber

5.1 The primary function of a second chamber is the revision and scrutiny of proposed legislation, in essence, to provide a second opinion.

5.2 In order to secure the highest possible quality of legislation, any constitution must provide this second opinion somewhere in its legislative process. A second chamber is a suitable place to provide it, and it has additional advantages in terms of the other functions it can perform. For example, to examine the effectiveness of the executive through questions and committees, to provide a forum for debate, and to be representative of different views and interests from the primary chamber.

5.3 International examples have some relevance to discussions of reform in the United Kingdom. While it is necessary to bear in mind the unique circumstances of each country, international comparisons can for example show the different powers that second chambers have compared to first chambers, and also help demonstrate that there is in many cases no link between powers of a chamber and its composition.

5.4 Internationally, the functions of second chambers can be broadly divided into those which are relevant only to federal states, and those of more general relevance. In many federal states, the role of the second chamber is to provide a voice at the centre for the individual states or provinces. This is the case, for example, in the United States and Australia, whose systems give a strong voice to the states. It is also the case for example in Austria and Canada, though the voice of the provinces at the centre is weaker. However, even non-federal states can use the second chamber to represent local communities rather than individuals; this is the case, for example, with the French Sénat.

Bicameral and Unicameral Parliaments

5.5 There are two main reasons why countries tend to have one kind of Parliament rather than another. Larger countries tend to require a greater range of views to be expressed within their Parliaments, and tend to have bicameral Parliaments. As well as typically being smaller, unicameral countries also tend to use proportional voting systems more, ensuring a wider range of views in their legislative procedures (but with the associated drawbacks of more proportional electoral systems). They also ensure that the function of a second look at the first chamber's proposals is built into their procedures.

5.6 The Inter-Parliamentary Union's³² latest figures show that of the 189 member countries, 75 have bicameral Parliaments. On the whole, the larger countries have bicameral Parliaments and the smaller countries tend to have unicameral Parliaments. Of the 50 member countries with a population in excess of 20 million, 33 have bicameral Parliaments. These include India, the Russian Federation, the USA, Mexico, Pakistan, the Philippines, Colombia, Brazil, South Africa, Germany, France, Italy and Spain, all of whom have populations in excess of 40 million. Conversely, of the 76 countries with populations below 5 million, 55 have unicameral legislatures. Of the bicameral ones, 7 are Caribbean islands which have inherited their Parliamentary structures from the United Kingdom, and small bicameral nations are typically those which have been subject to influence by either the Westminster or US models. Of the countries of Europe, the largest to have a unicameral Parliament are Greece, with 11 million inhabitants, and Portugal, with 10.5 million. In population terms the United Kingdom is nearly six times the size of those two countries.

5.7 Larger countries tend to have bicameral Parliaments because they enable a diverse range of opinions to be voiced in the legislature. This is important in larger countries like the United Kingdom, and helps Parliaments maintain public confidence that the political process is representative of different interests and viewpoints.

³² *Parliaments Across Frontiers: A Short History of the Inter-Parliamentary Union, 1975*

5.8 With no second chamber to perform scrutiny and revision functions, well-designed unicameral Parliaments build in other procedures and mechanisms to ensure that proper scrutiny is provided somewhere in the legislative process, and often have voting systems which provide for a diversity of views to be represented in the sole chamber. For example, in New Zealand, which abolished its second chamber in 1950, a special select committee stage between first and second reading of a bill is specifically charged with detailed scrutiny of legislative proposals. There does however continue to be debate in New Zealand about whether to reintroduce a second chamber. Many former Communist countries in the 1990s, such as Poland and the Czech Republic, established or revived bicameral Parliaments.

Powers and Composition

5.9 Both the powers and composition of a second chamber should be determined by its function. However, this does not mean that there is an automatic and necessary correlation between particular forms of composition and particular powers, as can be seen from a number of international examples.

5.10 On the face of it, one of the most powerful second chambers in the world is the wholly appointed **Canadian** Senate. When the Canadian Parliament was established, the Senate's powers were based upon those of the **pre-1911** House of Lords. Even today, Canada has no equivalent of the Parliament Acts. There are only two restrictions on the Senate's nominal powers: financial legislation must be introduced in the first chamber; and, although the Senate may amend financial legislation, it cannot increase taxation.

5.11 The indirectly elected **Irish** Senate, by comparison, has very few powers. It has 90 days to consider ordinary legislation, but the first chamber can override any veto within 180 days. The Senate can make recommendations (but not amendments) to financial legislation and these must be made within 21 days.

5.12 The same is true of the indirectly elected **Austrian** Bundesrat. Although Austria is a federal system, and the Bundesrat represents the interests of the provinces in the federal legislative process, the Bundesrat has few powers. According to established practice,

Bills are usually introduced in the first chamber; and then the Bundesrat has 8 weeks to object. However, except when Bills affect the competencies of the provinces or the powers of the Bundesrat, the first chamber can override any Bundesrat veto. In Germany, by contrast, there is a broadly similar method of election, but many financial Bills and all Bills including details on administration (a state prerogative) can be finally vetoed by the Bundesrat (the German second chamber). Only for the other 40-50% of Bills can the veto be overridden by the first chamber.

5.13 The directly elected **Japanese** second chamber, the Sangiin, has only 60 days to review legislation, although Bills can be introduced directly into the Sangiin. A two-thirds majority in the first chamber can override the second chamber veto. The Sangiin only has 30 days to consider financial legislation, which must be introduced into the first chamber, which retains supremacy over legislation. The largely directly-elected **Spanish** Senate only has two months to consider legislation, which must be introduced into the first chamber. The Senate must have an absolute majority to introduce amendments, which can be overridden by the first chamber. The first chamber can also overturn a Senate veto, either immediately with an absolute majority, or after a two months' delay with a simple majority. Similarly, the wholly directly elected **Polish** Senate has only 30 days to consider legislation, which must be introduced in the first chamber. The first chamber can always override the Senate veto.

5.14 In the majority of cases, the second chamber has fewer powers than the first chamber, regardless of its composition. The **US** Senate is not typical. It enjoys equal legislative power with the House of Representatives including over tax and the budget. In addition, all senior civil service and judicial nominations, and all treaties, must be approved by the Senate but not by the House of Representatives. One of the few other second chambers in a Parliamentary democracy with equal powers to the first chamber is the Italian Senate (which is elected, bar a very small number of *ex officio* life members).

5.15 These examples demonstrate that many second chambers have special rules for dealing with financial legislation, which generally give greater authority to the first chamber than is the case for other kinds of legislation.

5.16 In most bicameral Parliaments, only the first chamber has the power to call a vote of confidence in the Government of the day. This has the effect of enhancing the scrutiny function of the second chamber, as they are able to disagree with a Government on particular issues without calling into question their overall authority to govern.

5.17 The one area where second chambers typically have equal, or even greater powers to first chambers, is in relation to constitutional amendments. This applies in a limited way to the United Kingdom as well. The provision of the Parliament Acts means that the Lords has a veto over proposals to extend the life of a Parliament.

The United Kingdom – a Bicameral Parliament

5.18 There is a widely, though not universally, held view that in a country of the United Kingdom's size and complexity, our Parliament should be bicameral. The case for a unicameral Parliament in the United Kingdom was put during the House of Commons debates which preceded the vote of February 2003, notably by George Howarth MP³³, who moved an amendment adding abolition to the options on which a vote was taken. The amendment was defeated by 390 votes to 172.

5.19 Mr Howarth argued that there were ample examples of western democracies which worked perfectly well with unicameral Parliaments. His main point, however, was that if the motive for reform of the House of Lords was concern about the effectiveness of Parliament generally, this would be much better addressed by looking at reform of the House of Commons. He argued that any reform of the House of Lords would pose significant problems, of continued doubtful legitimacy (in an appointed House) or as a rival to the Commons (in an elected House) or lead to confusion and inconsistency (in a hybrid House). Others who favoured the option argued that not having the 'backstop' of the Lords would itself encourage MPs to take their function of scrutiny more seriously. Others were concerned that there was no 'legitimate' option for reform of the Lords, by which they usually meant elected, that would not pose a

threat to both the primacy of the Commons and the special relationship between an MP and his or her constituents.

5.20 An effective House of Commons is plainly essential to an effective Parliament. But it is not enough to ensure that Parliament fulfils its proper role in the United Kingdom's system of government. Nor does the Government argue that the case for reform of the House of Lords is based upon perceived deficiencies in the performance of the House of Commons. Speakers in the debate in February 2003 referred to the example of unicameral countries like Sweden and New Zealand. Some referred to the example of the Scottish Parliament, which also works through an extensive network of committees as part of its legislative process. For countries of that size and character, a unicameral system may work very well. But it remains the case that the demands laid upon the Parliament of a country the size and diversity of the United Kingdom would be a significant burden for a single Parliamentary chamber to carry on its own.

5.21 The variety and rigour of detailed scrutiny that the United Kingdom's legislative proposals deserves is best delivered by the participation of those who are within Parliament but able to take a longer-term view on the issues brought before them. The relative authority and the different role of members of the House are matters to be addressed during the reform process, but not reasons for dispensing with the second chamber altogether.

³³ *House of Commons Hansard, 4 February 2003, Vol. 399, Col. 166*

6. A Reformed Chamber: Principles of Composition

6.1 The Government believes that there are certain principles that should underpin a reformed House of Lords, whatever its composition:

- Primacy of the House of Commons
- Complementarity of the House of Lords
- A More Legitimate House of Lords
- No Overall Majority for Any Party
- A Non Party-Political Element
- A More Representative House of Lords
- Continuity of Membership

Primacy of the House of Commons

6.2 The House of Commons has long been established as the pre-eminent authority in the United Kingdom Parliamentary system. The party which secures a majority through a General Election has the right to form a Government and, subject to sustaining the confidence of the Commons, to carry through the programme set out in its election manifesto. Ministers are accountable to the House of Commons through debates and votes. Even during formal coalition Governments, the House of Commons has continued to perform its functions relating to the formation of a Government, enacting legislation and holding Ministers to account.

6.3 The primacy of the Commons rests on three clear factors. First, election of its members as the direct representatives of the people has meant the House of Commons has always had greater democratic legitimacy than the Lords, a factor which has grown in importance with the gradual introduction of universal adult suffrage.

6.4 Second is the Commons' power to grant or withhold supply (i.e. public expenditure), which has been asserted for over 300 years. This is the root of the Commons' ability to uphold or dismiss the Government. Without the consent of the House of Commons the Government cannot function. Government expenditure must be approved by those who have the power not just to hold the Government to account, but to withdraw their support so that the Government cannot govern. There is no case for giving the House of Lords the same power to grant or withhold supply, because there must be a single route through which the Government secures its authority to govern. Therefore, the House of Lords should have less power over the Government. And as discussed elsewhere, it is a strength of our current constitutional arrangements that the Lords can ask the Government to reconsider a proposal without calling into question its authority to govern.

6.5 Third, the principle of the primacy of the Commons is enshrined in the Parliament Acts, which limit the power of the Lords to veto legislative proposals, and contain specific provisions relating to Bills which deal with national taxation, public money or loans or their management. It is a fact that in a dispute between the two Houses on primary legislation, the Commons has the final say, albeit at the cost of delay. All major British political parties continue to support the principles of the Parliament Acts.

6.6 It is a common feature of many other bicameral legislatures for one House to have primacy over the other, and there does not seem to be any serious proposal that the primacy of the Commons in the United Kingdom's system should be challenged.

6.7 A reformed House should therefore not threaten the principle of primacy. It must not be a rival to the House of Commons. As the Royal Commission chaired by Lord Wakeham emphasised, *"The House of Commons, as the principal political forum, should have the final say in respect of all major public policy issues"* and *"it would be wrong to restore the fully bicameral nature of the pre-1911 Parliament"*³⁴.

³⁴ Royal Commission on Reform of the House of Lords, *A House for the Future*, Cm. 4534, January 2000, paragraph 4.7, pg. 33

Complementarity of the House of Lords

6.8 If a reformed House should not be a rival to the House of Commons, neither should it be a replica. There is general agreement that the House of Lords' role in revising and scrutinising legislation is best met by a chamber that is a complement to the primary chamber. Although there are examples of second chambers which effectively duplicate the functions of their primary chamber (e.g. the Italian Senate), much more often second chambers around the world provide a complementary function. That complementarity is usually reflected in both powers and composition.

6.9 They may, in a federal state, provide for a voice for the constituent states in the central legislature (e.g. the US Senate). They may, in unitary states, provide for collective regional or local representation at the centre (e.g. the French Sénat).

6.10 The House of Lords has traditionally provided a complementary function to the House of Commons through its composition; in the presence of a large contingent of non party-political members, and the fact that its members sit as individuals rather than representing a constituency, and through its powers and procedures. The United Kingdom Parliamentary system is therefore built around the idea of a complementary second chamber.

6.11 The history of the development of our Parliamentary system shows that the United Kingdom has moved over time from a duplicatory system to the current complementary system. The Government believes that Parliament operates best with such a system. Therefore, a reformed House should continue to be different from the Commons and genuinely complementary.

A More Legitimate House of Lords

6.12 Although the House of Lords is less powerful than the House of Commons, it is a fundamental part of the United Kingdom Parliament, and has an integral part to play in the creation of the laws that govern our country – it is not powerless. However, the authority of the Lords has been called into question over the last century. Recent concern

over the allocation of seats in the House of Lords has once again brought this question to the forefront of debate. Despite a recognition that the House is working, its unelected basis means that, in many people's eyes, it still lacks the necessary legitimacy to carry out its current role.

6.13 The issue of legitimacy goes to the heart of the question of reform. In a modern democracy in the 21st century it is increasingly difficult to justify a second chamber where there is no elected element. There is a strong case that the electorate should have a say in who is able to contribute to making the laws that govern it. A reformed House should be more accountable to the people of the United Kingdom than the current House. This greater democratic legitimacy would not just increase confidence in the second chamber, but strengthen Parliament as a whole.

6.14 As ever, the United Kingdom's constitutional arrangements must be a careful balancing act. The 'extent' of the reformed House's legitimacy needs to be balanced against the principles of primacy of the Commons and the complementarity of the second chamber outlined above. It is on the combination of these three fundamental principles that discussions about further reform of the Lords should be built.

6.15 If this is accepted, the following other key principles of composition should help deliver that.

No Overall Majority for Any Party

6.16 As shown in table 4 below³⁵, the House of Lords currently includes approximately an equal number of Labour and Conservative members. The third group by number is the non party-political members, and the fourth the Liberal Democrats. At 4 January 1999, 66% of the Lords taking a party whip were members of the Conservative Party. Since the 1999 reforms, no single party has been able to command a majority of the party-political members of the House of Lords. The largest party, the Labour Party, holds 42% of the party-political seats in the Lords. Overall, it makes up approximately 29% of the House.

³⁵ Source: House of Lords Information Office, excludes 14 Peers on Leave of Absence

Table 4: Analysis Of Composition In The House Of Lords: As At February 2007

Party	Life Peers	Hereditary: Elected by Party	Hereditary: Elected Office Holder	Hereditary:* Royal Office Holder	Bishops	Total	Percentage of Whole House
Conservative	157	38	9	0	0	204	28
Labour	207	2	2	0	0	211	29
Liberal Democrat	72	3	2	0	0	77	10
Crossbench	169	29	2	2	0	202	27
Bishops	0	0	0	0	26	26	4
Other	10	2	0	0	0	12	2
TOTAL	615	74	15	2	26	732	100

6.17 This essential principle should remain in a reformed House. No single party should normally be able to command an overall majority of the political parties in the House of Lords. It may be that exceptional circumstances, such as a union of two parties, or very high public support over a long period of time for one party, could produce a House where a party has a majority over the other political parties. However, in the models discussed below, this is highly unlikely, and if at least 20% of the House is non party-political, public support for a party would have to be extraordinarily high for a long period of time to give a party a majority of the whole House. The principle that it should not normally be possible for a party to command a majority is crucial to maintaining the House of Lords' complementary role.

6.18 A balance between the parties would enable the House of Lords to continue to be relatively independent from the executive or any one political party, creating a clear distinction between the two Houses of Parliament. It would ensure that, within the House, the flow of work was generally negotiated, not imposed. The balance helps prevent any party, whether Government or opposition, from dominating the House of Lords either by blocking legislation or acting as a rubber stamp of the House of Commons.

Non Party-Political Element

6.19 As a result of the manner of their appointment, the powers of the Lords, and above all their life term, the membership of the Lords is able to encompass a very wide range of views. A good many serving members of great distinction and expertise take a party whip, and this should be welcomed. But one of the distinct strengths of the current House of Lords is the presence of non party-political members. Their presence helps to focus debates on the merits of the argument in question, and away from partisan politics. This distinct feature should be preserved in a reformed House.

6.20 As to the proportion of non party-political members to form part of the reformed House, the Wakeham Commission suggested this should be at least 20%, and the Government agrees. This would be a large enough proportion to ensure, along with the other proposals in this White Paper, that no single party could achieve an overall majority in the House, and encourage the political parties to ensure they try to attract the support of the future non party members in presenting their position in debate.

6.21 This is not to suggest that the only reason for having the non party-political members is to block an overall majority. The non party-political peers currently play a very important role in the House, both in committee work and debates. This contribution should continue in a reformed House.

A More Representative House of Lords

Religious Representation

6.22 It is important that faith communities are represented in the House of Lords. The Church of England, as the established Church, enjoys a special status in social and political life in England and more widely around the United Kingdom. This has long been recognised even by people who are not themselves Anglicans. Lords Spiritual have sat in the Lords since its inception. They are the only category of member whose term is limited to the holding of their office. There have in the past been arguments about the disestablishment of the Church of England. There is little steam behind such arguments today, and, in any event, any profound change in the status of the Church must be in the first instance for the Church itself. It is therefore right for there to continue to be special representation of the Church of England in the reformed Lords.

6.23 Whilst recognising the quality of work Lords Spiritual bring to the House, there remains a strong case for a more flexible approach which would allow the Church to determine, from among the Bishops, those who they consider would be able to make the best contribution, rather than appointment on seniority. Assuming the overall size of the House reduces, it would be difficult to justify retaining the current number of 26 Lords Spiritual.

6.24 It is equally important that a reformed House of Lords reflects the wider religious make-up of the United Kingdom, though the formal nominated representation of particular faith groups may not be possible. As the Wakeham Commission pointed out “*It is clearly not possible to find a way in which all other faith communities could be formally represented on any kind of ex-officio basis. None of them has a suitable representative body.*”³⁶ The Government will look carefully at how the views of those of faith and those of none can be represented in a reformed House of Lords. This will of course only be realistically possible if there is a significant appointed element in a reformed House.

Regional Representation

6.25 Before the 1999 reforms, as the Wakeham Commission indicated, membership of the House of Lords was heavily biased towards the south-east of England and Scotland in terms of the origin of its members.³⁷ Although more members have joined the House from outside these regions since then, the potential for this bias remains. A reformed House of Lords should be set up to ensure that representation of the nations and regions is inbuilt, serving the interests of the whole of the United Kingdom, no matter what method of composition is chosen. Whilst members would not represent the interests and views of an individual constituency or assist with the problems of individual constituents as MPs do, their membership would as a whole be representative of the views held right across the nations and regions of the United Kingdom.

A Diverse Membership

6.26 It is vital that the diversity of interests and people are represented in a reformed House of Lords. One of the criticisms of Parliament as a whole, and of the Lords in particular, has been that it is not as representative as it could be of contemporary British society. Recent reforms – in particular the work of the House of Lords Appointments Commission – have made some progress in this direction, but work still remains to be done. The Government will look at how, under any system for choosing members of the House of Lords, the method of selection can best take account of the diverse population of the United Kingdom.

Continuity of Membership

6.27 One of the strengths of the current House of Lords is the continuity of its membership. Members serve for a long time, and new members make up a small proportion of the House. The Lords does not see the major changes in composition of the kind that the Commons experiences when there is a change of Government.

³⁶ Royal Commission on Reform of the House of Lords, *A House for the Future*, Cm. 4534, paragraph 15.15

³⁷ Royal Commission on Reform of the House of Lords, *A House for the Future*, Cm. 4534, paragraph 13.30

6.28 This is valuable for two reasons. First, the length of service helps ensure that members are able to take a long-term view of the issues before them, looking beyond election cycles and other relative short-term considerations. Second, it ensures that there is a great deal of experience of both the legislative process and the work of the House which can readily be passed on to new members when they become members of the House.

6.29 It seems desirable that a reformed House should try, as far as is possible, to retain this element of continuity, even if the terms of membership are unlikely to be as long as they are for current members.

6.30 Furthermore, if the Lords is to be wholly or partly elected, the terms of membership should be designed to maintain the current independence of the Lords. Long terms of office will help deliver this, as should the prevention of re-election or re-appointment. This will ensure that members are free to take potentially unpopular positions on issues without having to consider whether their standpoint makes it more or less likely that they would be returned to the House either by their party or the electorate.

7. A Reformed Chamber: Elected, Appointed, or Hybrid?

7.1 The question of how individuals obtain a seat in the House of Lords is the most hotly debated point in all discussions on Lords reform. The method of composition decided on for a reformed House must be able to deliver on the key principles outlined in the previous chapter. Broadly speaking, there are three main options, an all-appointed House, an all-elected House, or a hybrid of the two.

All-Appointed

7.2 A House made up of an all-appointed membership has the advantage of being the simplest way to ensure that the majority of the principles of composition set out above are met.

7.3 Appointment would mean that the composition of the Lords did not replicate the Commons at all. It would provide the maximum opportunity for those with sufficient experience of the outside world to gain a seat, and it would help ensure that the House properly reflects the diverse population of the United Kingdom.

7.4 However, an all appointed House fails to meet a crucial principle in a reformed chamber – that of legitimacy. It does little to meet the expectation of many that in a modern Parliament, the second chamber should have a degree of democratic legitimacy. Indeed, previous proposals for a fully or majority appointed House of Lords have been strongly criticised on these grounds, claiming that such composition would diminish the credibility and authority of the House in Britain's Parliamentary system.

All-Elected

7.5 Those who support a fully elected House believe that this is the best option because it is the most democratic model for a reformed House of Lords. It is often suggested that the limited, but still significant, power of the Lords to scrutinise, amend, and in some circumstances, delay legislation, should be justified by electoral authority. A fully elected Lords could also ensure that members were more obviously representative of the nations and regions of the United Kingdom.

7.6 However, a fully elected House could challenge a number of the other principles of composition set out in this paper. It is likely that such a House would become more overtly party political than the current House, which could well be detrimental to both its effectiveness and to the respect in which it is held. It is possible that such a House would find it difficult to avoid challenging the primacy of the Commons, undermining the principle of complementarity.

7.7 It would be very difficult in a fully elected House to ensure the desired degree of representation of non party-political members, because the political parties would be very likely to dominate any election process. Depending on the election system chosen, there is an increased likelihood that a single party could come to dominate the House, risking turning it into either a permanent block or a rubber stamp for the policies of the Government of the day.

7.8 Unless strict rules were in place about the individuals who were allowed to stand for election, it would be very hard to ensure that the principles of representation of the racial and gender mix of the United Kingdom, and the representation of religious opinion, were met. It would also be impossible, in a fully elected House, to see how representation of the Church of England could continue.

7.9 Additionally, some models of a fully elected House could pose a risk to the principle of continuity. The obvious way to ensure that the House is genuinely reflective of the political views of the United Kingdom is to elect the entire membership at once. This risks exposing the House of Lords to the kind of dramatic changes in membership that can be experienced by the Commons, and would mean the loss of valuable experience, expertise and continuity. Depending on when elections take place, it also risks creating a duplicate of the Commons both in terms of political balance, and in the behaviour of members.

7.10 There are also strong arguments that members should not be able to seek re-election to help preserve independent judgement and to ensure that they are not focussed on seeking a second or third term. If this is accepted, then combining this with re-election of the whole House would mean the entire membership of the House changing at each election, which seems highly undesirable.

7.11 If members of a fully elected House entered through staggered elections, rather than all at once, this would safeguard a degree of continuity. However, staggered elections inevitably mean that the balance of the parties overall would not be the same as at the previous election, even if the relative votes for each party were similar.

7.12 This would undermine the legitimacy of a fully elected House (and the benefits to be expected from it), because two-thirds of the membership would not be reflective of current political opinion in the country. It would, however, go some way to mitigating concerns that a fully elected Lords would be a challenge to the Commons.

Hybrid

7.13 If a fully appointed House would lack the legitimacy necessary to make it effective, and a fully elected House might not deliver the necessary diversity of membership and sufficient presence of non-political members (as well as having other drawbacks), then the obvious alternative would seem to be a hybrid of the two.

7.14 All major cross-party proposals brought forward on Lords reform over the past 10 years have been for a hybrid House. Although they may have disagreed on the ratio of elected to appointed members, the Wakeham Commission, the Public Administration Select Committee (PASC) Report of 2002, and the more recent cross-party proposals, *“Reforming the House of Lords – Breaking the Deadlock”*, all proposed a hybrid House in one form or another.

7.15 The Wakeham Commission proposed a majority appointed House with a significant element of regional members. The Commission felt that a fully elected House would too readily be a potential source of challenge to the primacy of the Commons, and would not enable those with wider experience and expertise to enter the House easily; a fully appointed House would not allow the electorate any choice in the membership of the Lords and would not allow for adequate regional representation. The Commission offered three options for the elected element, ranging from approximately 12% to 35% of the House.

7.16 The report of the Wakeham Commission stated that each of the three options on an elected element *“has the support of different members of the Commission. Model B [87 regional members, elected at the same time as European Parliament elections] has the support of a substantial majority of the Commission.”*³⁸

7.17 The PASC report analysed all the main options and concluded that a fully or majority appointed House would lack legitimacy and therefore authority, and a fully elected House:

*“would leave little or no room for non-aligned people who are independent of party. And there is a fear that it could jeopardise some of the other principles set out above: that no party should have an outright majority (which cannot be precluded, even under proportional voting systems); that the House should be more diverse in a whole variety of ways (because this would be left to the hazards of party selection); and that the second chamber should include expertise and experience from people whose careers have lain outside politics.”*³⁹

7.18 The Committee also argued in favour of retaining an element of party-political appointments:

*“We expect the parties to continue to nominate members of two kinds. First, former Prime Ministers, Cabinet Ministers, party leaders and other senior MPs who want to continue to serve in Parliament, but to retire from the House of Commons. In future such figures would have no routine expectation of a seat in the second chamber, but would have to take their chance within their party’s quota. However, those who have served with distinction in Parliament and Government can and should be able to make a contribution in the second chamber. We do not subscribe to the denigration of party politicians and believe that they may have a valuable role to play in the reformed second chamber. Second, the parties will continue to nominate experts similar to those who sit on the cross benches, but who have a party affiliation. Not all experts are non-political: to take examples from three recent appointments, Lord Winston professor of gynaecology (Labour), Lord Wallace of Saltaire, professor of international relations (Liberal Democrat), and Lord Norton of Louth, professor of Government (Conservative) are all distinguished experts in their respective fields who take the party whip.”*⁴⁰

³⁸ Royal Commission on Reform of the House of Lords, *A House for the Future*, Cm. 4534, pg.127

³⁹ Public Administration Select Committee 5th Report Session 2001-2002, paragraph 84

⁴⁰ Public Administration Select Committee 5th Report Session 2001-2002, paragraph 131

7.19 The Committee came down in favour of a predominantly elected House, proposing a split of 60% to 40%.

7.20 “*Breaking the Deadlock*” argued, for very similar reasons, that the House should be predominantly elected:

*“A mixed chamber allows the strengths of both the elected and appointed models to be combined. It also helps ensure that whilst the chamber gains legitimacy, it can never challenge the primacy of the fully elected House of Commons. We believe that the diversity that a mixed chamber can bring should be celebrated.”*⁴¹ The report argued for a 70% elected chamber.

7.21 In any model for a hybrid House, the appointed element, both non party and party-political members (should there be any), would be appointed by the Appointments Commission (as discussed at Chapter 8).

7.22 One objection to a hybrid House is that the differences in method of entry to the House would cause difficulties. It is argued by some that two classes of member would develop, with elected members claiming a greater degree of legitimacy, and therefore authority, than appointed members. How far this is a likely risk is questionable. The current House of Lords is, in some senses, a hybrid House. The House has long contained different categories of members – life peers, Lords Spiritual (who leave on retirement as Bishops), and hereditary members. Indeed, this objection ignores one of the strengths of the House of Lords (and one the Government would want to maintain in a reformed chamber) – the focus of its membership on the work they are there to do as members of the House, irrespective of how they got there.

7.23 If elections and appointment rounds are staggered, and appointments take account of the balance of support for the parties at the most recent General Election, then it would be difficult for particular individuals to claim that they have greater legitimacy than others. They would be one part of an institution embodying a number of different principles, all designed to deliver an effective second chamber of Parliament.

7.24 As to the correct proportion of elected and appointed members, the final decision rests, of course, with Parliament. However, the model for a reformed House set out here follows the PASC report’s suggestion that there should be a rough balance between elected and appointed members. Rather than the 60/40 framework proposed by PASC however, it envisages a 50/50 split. As mentioned in the Wakeham Report, systems of direct election sometimes tend not to provide a gender-balanced representation, or adequate representation for ethnic, religious and other minorities. That being the case, the White Paper illustrates a model of a hybrid House which, as well as non party-political appointments, allows for some party appointment within a framework which encourages greater diversity, to help ensure that the membership of the political parties within Parliament as a whole is more diverse than it might be under a system where the only party members of Parliament were elected.

7.25 A hybrid House of 50% elected, 50% appointed (20% non party-political and 30% party-political appointments) would allow for legitimacy through direct election, greater diversity within the political parties in Parliament, and a significant element of non party-political membership within the House of Lords. Models composed of a greater proportion of elected members would obviously include fewer party politically nominated members. A House with an 80/20 split, for example, would not contain any party politically appointed members at all.

7.26 If Parliament agrees that a hybrid House is the way forward, whatever proportion of elected to appointed members is eventually decided on, then there are two questions which need to be addressed: how do people get elected, and how do people get appointed?

⁴¹ *Reforming the House of Lords: Breaking the Deadlock, The Constitution Unit 2005, pg. 19*

Electing Members – Indirect or Direct Election?

Indirect Election

7.27 An indirect election system has been suggested by some, on the grounds that this would give legitimacy to the Lords while retaining some of the valuable aspects of an appointed system. Indirect election could also – it is argued – avoid any claims that the Lords had a different, and possibly more legitimate, mandate than the Commons, and should therefore have increased powers.

7.28 There is a range of options to deliver the idea within the overall heading of an indirect system, from electoral colleges made up of the main locally elected politicians and/or devolved assemblies, to direct representation of vocational and interest groups in the second chamber, and the so-called secondary mandate.

7.29 These options might offer a greater degree of democratic legitimacy than a fully appointed House, but the complexity of the systems, and the inevitable arguments about who would comprise the electoral colleges, or which organisations would be represented in the House of Lords are often seen as disadvantages to the proposals.

7.30 The simplest form of indirect election, which has been particularly suggested in the context of House of Lords reform, is the so-called secondary mandate proposal, where seats are allocated to nominated individuals on the basis of the proportion of votes cast at the General Election. Were it to be followed, it would probably be most appropriate on a regional basis.

7.31 Although very simple to operate, the secondary mandate proposal has significant disadvantages. The degree to which both it, and other indirect options, is more legitimate than a fully appointed House is open to question. Some argue that an indirectly elected House, where the general electorate casts no specific vote for its membership and has no say over the individuals who subsequently enter the House, is an all-appointed House by another name. The secondary mandate system

leaves power almost entirely in the hands of the parties and may not meet public concerns about party control over who enters the House. It also counts votes cast for one purpose and uses them for a different purpose, which is unlikely to be regarded as satisfactory.

7.32 Such a system might also have consequences for voter behaviour at General Elections – acting as a distraction from the main purpose of electing MPs.

7.33 It can also be argued that the lack of any clear and transparent link in any indirect system between voters and the Lords would do little to increase the perceived legitimacy of the Lords.

7.34 The Wakeham Commission discounted⁴² any form of indirect election from the devolved institutions or United Kingdom MEPs to a reformed House. However, one of the three potential systems it put forward for electing its proposed regional element was what it called a ‘complementary system’, which was similar to the secondary mandate. Under this system, the votes cast for the parties’ general election candidates would be accumulated at regional level and the parties would secure a number of regional members of each region proportional to their share of the vote in that region.

Direct Election

7.35 Direct election of individuals plainly would confer more legitimacy than an indirect system. Many other second chambers around the world use direct election as the method for selecting the whole or part of their membership, and it allows every voter in the country to have a say in who sits in the House of Lords.

7.36 If direct election is agreed as a principle, the next question is about the method of election to be deployed, and what constituencies should be used.

Direct Election – Electoral Method

7.37 Direct elections to the Lords could either be (a) first past the post, or (b) by one of the more proportional methods of election. There are two basic forms of the latter – list systems, or transferable or alternative vote systems.

⁴² Royal Commission on Reform of the House of Lords, *A House for the Future*, Cm. 4534, January 2000, paragraph 30, pg. 7

First Past The Post

7.38 This system of voting is strongly linked to the idea of territorial representation, where an individual would stand for election and represent individual constituencies, rather than segments of opinion or political parties. The candidate who secured the most votes would be elected to Parliament and the chamber (or the elected element of it) would be comprised of all the individual representatives from the different constituencies.

7.39 The electorate is familiar with this method of voting. It would be simple and straightforward, and people would clearly understand how the voting would work. It also meets the legitimacy principle; voters would have a direct say in exactly which individual represented them in the reformed House of Lords, as they do in respect of the House of Commons.

7.40 It has also been argued that first past the post is better than list systems in allowing independent candidates to stand and be successful. A number of elected independents, as well as the appointed non party-political members, might further enhance the independent nature of the chamber.

7.41 The classic argument in support of first past the post is that it generally delivers majority Governments with a clear mandate, and that this benefit far outweighs the fact that the system is not proportionate. Supporters of first past the post also argue that no system of election is able to translate a proportionality of votes into a proportionality of power, and that first past the post does ensure that it is typically the largest minority of votes, not the smallest minority, which is able to exercise power, via a majority of seats. Although very strong, these arguments are only relevant to the chamber in Parliament which delivers the Government of the day. In the United Kingdom, that is the responsibility of the Commons. As a scrutinising and revising chamber, the Lords does not have any responsibility for delivering a Government. The argument in favour of using first past the post to elect its members therefore is considerably weaker than it is in respect of the Commons.

7.42 Those in favour of first past the post for the House of Commons cite the clear link between the member and the constituency as key strength – people would know which individual represented their area in a reformed House of Lords. And the personal accountability

of that member would be transparent – people could see what ‘their’ member was voting for, and against.

7.43 For elections to the Lords however, this strength could easily become a weakness, as it poses a potential threat to the primacy of the House of Commons. Not only would the electoral mandate of the two Houses be identical, but it would also create the greatest potential for a rival focus to the constituency MP. A constituent who was, for example, unhappy with their MP’s stance on an issue could try and get their member of the House of Lords to help them, thus creating a rivalry between the MP and member of the Lords. Of course, such rivalry may exist between elected representatives covering the same area but in different democratic bodies (e.g. in the devolved legislatures, European Parliament, or local government) but rivalry within the same Parliament could pose a problem of quite a different order.

7.44 The importance of the current link between constituent and MP in the Commons cannot be overstated. At present, every citizen of the United Kingdom has a clearly identifiable point of contact for their issues and concerns, and a direct link to the legislature of the country. They also know that their MP is expected to represent their interests whether or not they happened to vote for the MP. Another person who might try and carve out a similar role would undermine the link between constituent and MP, and erode the clarity of the connection between citizen and Parliament, and the distinction in function between the two chambers.

7.45 Because of the way in which seats are allocated compared to proportions of votes cast, if first past the post were applied to the second chamber it makes acute the risk of the Lords becoming either a block or a rubber stamp for the policies of the Government of the day. A Government with a significant majority in the Commons could also have a large majority in the Lords too (even if, say, 20% of the seats were non political-party appointments). This would undermine the desired complementary role of the House of Lords, making it a more openly party political House, in competition with the Commons. It could also make it much more difficult to deliver a situation where no single party can under normal circumstances enjoy a majority in the Lords.

7.46 First past the post is criticised in some quarters for not delivering seats in proportion to votes cast. A variant could be to apply the alternative vote (where candidates are ranked in preference and votes are transferred until one candidate achieves more than half of the vote), which would deliver a more proportionate result within the individual constituencies. It can lead, however, to a less proportionate vote nationally, with first and second choice votes being split between two parties, squeezing out the first choice votes for the third.

7.47 Constituency size is a particularly important factor when considering any system of first past the post. If the same constituencies are used as for MPs, the risk of a competing role with the MP is heightened, and the size of the House increases beyond that proposed. If larger constituencies are used, then some of the advantages of first past the post (e.g. representativeness, connection with the constituency) carry less weight.

Regional Lists

7.48 In a regional list system voters are asked to choose between lists of candidates proposed by the political parties, on a regional basis. Seats are then allocated to the parties in accordance with their proportion of the vote. This is the system which Parliament established in 1999 in respect of the European Parliamentary elections. Lists can be run on open or closed systems.

7.49 The advantage of the list system, whether open or closed, is that it produces a proportionate result, thus ensuring that more shades of political opinion in an area are represented. It also reduces the personal involvement of the member in the “constituency”, thus reducing the risk of the representative(s) of a particular area becoming a rival focus to the MP.

7.50 It emphasises that all the elected members represent the whole of the electoral area, and this wider-range of interests also helps to mitigate the risk of competition with the role of the MP.

7.51 In a closed list system, such as that used for elections to the European Parliament, voters simply select from the choice of parties, and the parties’ ranking of the candidates is used to select the candidates who eventually take up a seat. Members who leave the House would be replaced by the next person on the list from that region, as is the case for European Parliament elections.

7.52 In a closed list system, the voter has a clear choice over the party for which they vote but no discretion over the identity of those elected. This gives a good deal of power to the political parties, allowing them to select and rank their candidates. It has been argued that this compromises the accountability and the independence of the candidates – dissenting voices are unlikely to be highly ranked within a list.

7.53 Partially open list systems go some way to overcoming the criticism levelled at closed lists by enabling the voter, if he or she wishes, to vote for an individual on the list, rather than for the party. The vote will still count towards the party’s total in determining the number of seats to which it is entitled. Individuals on the list, however, may collect sufficient votes to entitle them to a seat within their party’s quota, even if their original place on the list was too low to qualify.

7.54 As with a closed list, a partially open system would ensure that the relationship between the elected member and the electoral area is qualitatively different from that between the MP and his constituency. At the same time, it would give electors the opportunity to express support for an individual on the list, and therefore help them to connect better with the electoral process. It is more complicated to understand than a straightforward closed list system, and a method of election not presently used for other elections in the United Kingdom.

Single Transferable Vote

7.55 In a multi-member constituency, a Single Transferable Vote (STV) system would rank all (or some) of the candidates in preferential order. Seats within each constituency would then be allocated on the basis of a ranking of the proportion of votes cast for each candidate, with the least popular candidates dropping out of contention (and their votes transferring to the voters’ alternative choices) until the seats are filled.

7.56 The advantage of such a system is that it produces a proportional result. It also allows the voter to nominate an individual, rather than a party, and thus it is claimed enhances accountability, and can give voters a feeling of ownership of at least one of the selected members. It can also allow voters to spread their votes among the parties and independent candidates.

7.57 This is a complicated system to operate, primarily in terms of counting the votes. It is the system of choice in some countries, e.g. Ireland, but it has been argued that such a complex system discourages voters.

7.58 The fact that individuals, rather than parties, have to campaign for votes may lead to individuals attempting to gain a higher public profile which could create a more political House. Individuals elected in this way may view themselves as having a more democratic mandate than in other systems, and could even argue that they have more of a mandate than MPs in the Commons, thus risking undermining the relationship between the Houses.

Constituencies

7.59 Because the existing Westminster constituencies would produce too large a House, and would risk competition between the role of the MP and the role of the member of the House of Lords, the only realistic options for the constituencies for Lords elections are as follows :

- (a) Those used for the European Parliament
- (b) Cities and counties of the United Kingdom (the 'top-up' constituencies recommended by the 1998 Report of the Independent Commission on the Voting System⁴³)
- (c) Ad hoc groupings of Westminster constituencies

(a) European Parliament Constituencies

7.60 European Parliament constituencies are coterminous with the nations and regions of the United Kingdom, and use of them would therefore emphasise the regional basis for membership of the House.

7.61 There is a political structure already in place in these constituencies, and election officials are used to operating within them. They are also large enough to deliver a proportional result when electing in staggered tranches of one-sixth of the whole House, within a total House of the size discussed later in the paper and on the basis of a 50/50 model (see Chapter 9).

7.62 The size of the European constituencies would also be large enough to diminish the risk of competition with the local MPs. However, some see their size as a disadvantage, arguing that they are too large and not easily identifiable, and therefore, the regional link between voters and their elected representative in the Lords would be almost non-existent. That said, this may not be of crucial significance in the case of a reformed House as it is not envisaged that regional representatives will have the same role or visibility at a local level as an MP.

7.63 Another potential disadvantage is that constituency sizes vary quite widely, with small geographical but densely populated areas, like London, electing a higher number of members than, for example, a physically larger but sparsely populated region like the north-east.

(b) Cities and Counties of the United Kingdom

7.64 The 1998 Report of the Independent Commission on the Voting System (commonly known as the Jenkins Commission) suggested that for elections to the House of Commons, 80 special constituencies could be created to elect by alternative vote additional MPs as a top-up to the existing ones. These constituencies were based on the cities and counties of the United Kingdom, and there have been proposals to use these constituencies, or very similar ones, to elect representatives to the House of Lords.

7.65 The advantages are that these constituencies are readily identifiable for voters, they have more meaning and are more clearly linked to the area in which they live than the European Parliament regions. This would be particularly important if a first past the post electoral system were used, where one of the main benefits is a clear connection between constituent and representative.

7.66 The disadvantage is that, because of the number of constituencies, only a small number of representatives could be elected at each staggered election. Without this, the size of the eventual House becomes too large. For example, on a 50/50 model, electing 3 members per constituency per election means electing 240 members per election, and over a 3 election cycle this gives a House containing 720

⁴³ *The Report of the Independent Commission on the Voting System Cm. 4090-I, Cm. 4090-II, 1998*

elected members, with the possibility of some appointed members on top. Electing one or two members per constituency reduces the proportionality of the result within the constituency, and nationally, because only one person would represent the diverse range of views within an area.

7.67 The nature of these constituencies also makes it more likely that members will be drawn into local constituency work, creating competition between members and MPs.

7.68 Another drawback is that there would be no relevant political infrastructure to support these constituencies as there would be with the European constituencies. This would increase the cost of elections to the Lords.

(c) Ad hoc Groupings of Westminster Constituencies

7.69 A variation on the Jenkins Commission constituencies would be to devise new ones, of a size better suited to elections to the Lords. Careful selection would enable the constituencies to be the same size and return the same number of members, which may be seen to be fairer. Separating the constituencies from those used in other elections will also emphasise the importance in their own right of the elections to the House of Lords.

7.70 That said, these ad hoc groupings might not have any inherent identity and arguments about which areas should fall in which constituency could be complex. Voters would also be less likely to know which constituency they live in, and consequently, who their representative in the Lords was. As with the criticisms levelled at the European constituencies, this is not necessarily a major problem given that there is not intended to be a constituency role.

7.71 Ad hoc groupings share similar problems with the cities and counties of the United Kingdom, in terms of their lack of political infrastructure.

7.72 For the system to allow a proportional result with only a proportion of members being elected at any one time, the constituencies would need to be quite large. In practice, they could therefore end up as little different from the regions used for European Parliament elections. It also seems unnecessary to design new constituencies when appropriate ones are already used for elections to the European Parliament.

Timing of Elections

7.73 There are several options for when elections and appointments to a reformed House of Lords could be held. All of the options discussed here are predicated on the idea that elections will be staggered, specifically, that a third of the elected element will be replaced at an election, and will sit for a term of three elections. This is to help ensure that the principle of continuity is not lost if there is an elected element in the Lords. Under the 50% elected, 50% appointed model, this will mean that one-sixth of the whole House will be chosen at each election.

(a) At the Same Time as a General Election

7.74 Holding elections to the House of Lords at the same time as elections to the House of Commons would be likely to give the highest turnout, thus enhancing the democratic accountability of the reformed House.

7.75 It would also emphasise the nature of the House of Lords as an important part of our Parliamentary system. Voters would be electing their regional representatives to it, as well as electing their local MP and helping to determine the party of Government.

7.76 Although some would argue that using two different voting systems at the same time may confuse voters, other combined elections already frequently require this.

7.77 The risk that Parliamentary terms under this timing system would be uneven and slightly uncertain (particularly if two General Elections were held quite close together) can be mitigated by having minimum terms of a specific number of years to compensate for any such circumstances, but these arrangements would be complex, and not readily understood. For example, the term of office could be until the dissolution of the Parliament in existence on the twelfth anniversary of the election to the reformed Lords. This would give terms of between 12 and up to just under 17 years, though in practice the term would be likely to be between 12 and 15 years. There would also need to be very detailed rules for determining whether elections to the reformed Lords should need to be held at all if a second General Election were held shortly after the first (as in 1964-66, and in 1974). It would also be inevitable that people would serve terms of differing lengths under this system.

7.78 However, elections at the same time as a General Election do not, unlike the other options, demonstrate that elections to the Lords are clearly different from the elections that deliver the Government.

(b) Alongside Elections to the European Parliament

7.79 The main advantage of elections at the same time as elections to the European Parliament is that the electoral cycle is fixed at 5 years, so it would be very straightforward to set the length of a member's term in a reformed House at 15 years.

7.80 It would also be more straightforward administratively if the same regions and electoral cycle were used for both European and House of Lords elections, and it could enhance the regional aspect of the elections.

7.81 Although turnout for European elections is historically much lower than that for General Elections, the prospect of elections to the House of Lords could boost turnout, enhancing the credibility of both elections.

7.82 It is likely that European elections would fall between General Elections, which creates a difficulty in respect of Parliamentary procedure. If elections to a reformed Lords fell within sessions of Parliament, there is some risk that voting on individual pieces of legislation could be affected by the replacement of a third of the membership of the Lords part-way through consideration of legislation.

7.83 Similar arguments apply in respect of elections tied to those for the devolved administrations and to entirely freestanding elections, but these are not insurmountable difficulties.

(c) Alongside Elections to the Devolved Assemblies

7.84 There are two advantages of holding elections alongside elections to the devolved assemblies. First, there is a regular election cycle of four years, giving a fixed overall term for members of the Lords. Secondly, the coincidence of elections would help to bind the devolved elections more closely into the United Kingdom electoral system, and would mean that the whole of the United Kingdom, not just parts of it, were all voting on the same day.

7.85 The disadvantage is that there is at present no structure in England that is set up to hold major elections alongside elections to the devolved assemblies, as there is for the European Parliament elections.

7.86 Another drawback is that the electorate may be unhappy if elections to the Lords use different voting systems from those to the devolved assemblies.

By-election

7.87 There are different ways of replacing members of the Lords following resignation or death, but all are faced with the same difficulty. The term of office will be fixed, and entry and exit will only normally takes place at an election or at an appointment round. Therefore any entry or exit that takes place away from an election or appointment round causes difficulties in deciding how long an individual's term should be.

7.88 All options for replacement have their drawbacks. Some proposals lead to variable sizes of cohorts of Lords entering the House at each election or appointment round. Some, such as not replacing members who leave the House, would require a very large House in order to cope with the effect of membership declining over time.

7.89 The simplest option, favoured by the Government, is to replace members as and when they leave (unless there was less than a year of their term remaining) with the incoming members serving the remainder of the term of the person they replaced.

7.90 The drawback of this option is that some individuals will serve very short terms, of perhaps as little as a year, with no prospect of re-election. Although it might seem at first that it would be difficult to find suitable candidates to serve shorter terms, in practice there are likely to be a good many people with the necessary abilities who would like to serve in the Lords, but would prefer not to serve for a full term.

7.91 The question of whether a by-election is necessary will depend to a large extent on the method of election chosen. If first past the post is used, then a by-election will almost certainly be required. List systems allow the option of 'promoting' the next candidate willing to stand off the list of the party that won the seat. Under STV, it may well be that the next

most popular candidate is someone of a different party, but since no party will be in the majority in the Lords, this may not be a serious consideration.

7.92 Appointed members who leave the House could, of course, simply be replaced by another appointment.

Government Proposals: Elections

7.93 The Government's overall judgement is that the most appropriate system of election for a reformed House of Lords is a partially open regional list system – which is the most consistent with the principles set out in Chapter 6. We will consider further the precise details of the list system to be used.

7.94 Under this kind of system, parties will wish to consider how they ensure that their lists are representative of the diversity of the United Kingdom. The Government will consult on and consider whether there is a case for making diversity a formal requirement for party lists., in respect of gender and/ or ethnicity, and/ or other factors.

7.95 In terms of constituency, the simplest approach is to use the regions used for elections to the European Parliament. Constituencies which are smaller and encourage a more direct constituency role could undermine both the position of MPs, and the role of the member of the House of Lords in a reformed chamber.

7.96 Overall, the advantages of holding elections to the Lords at the same time as elections to the European Parliament seem to outweigh the disadvantages. It is proposed therefore that elections should take place at the same time as elections to the European Parliament, giving a 15-year term for members of a reformed House. This approach also produces the simplest procedure for the electorate, who would vote at the same time, in the same area, for both their European representatives and the Lords. It is likely that parties would need to reach a minimum threshold of votes before they could gain entry to the Lords. The Government will consult further on this point.

7.97 Both appointed and elected members would sit for 15 years, and there would be no prospect of re-election or re-appointment. One-third of the elected members and one-third of the appointed members of a reformed House would be replaced at each election. Members who had been elected could not subsequently be appointed, nor could former appointees be elected.

8. A Reformed Chamber: a Statutory Appointments Commission

8.1 There seems to be general agreement that under any system with appointed members, party and non party-political appointments would be overseen and made by an independent Statutory Appointments Commission.

Pre 2000

8.2 Prior to the establishment of the current Appointments Commission in 2000, the arrangements for appointing life peers were somewhat haphazard. There was no system of inviting widespread nominations and no systematic machinery in place to identify appropriate candidates. The Prime Minister decided nominations from his or her own party, sometimes creating peerages to enable individuals to serve as Ministers. The Prime Minister invited recommendations from other party leaders to fill vacancies on their own benches. Non party-political appointments were in the control of the Prime Minister and the Political Honours Scrutiny Committee vetted all nominations for life peerages.

Current Appointments Commission

8.3 The House of Lords Appointments Commission, an independent, advisory, non-departmental public body, was established in May 2000 to assist with the transitional phase in reforming the House of Lords, to recommend non party-political appointments and vet all nominations of individuals to sit in the House of Lords. In February 2005, its remit was extended to take on the functions of the Honours Scrutiny Committee to scrutinise for propriety individuals added to the honours lists by the Prime Minister.

8.4 The Appointments Commission currently consists of six members, including the Chairman. Three members represent the main political parties and ensure expert knowledge of the House of Lords, and the other members, including the Chairman, are independent of Government and political parties. The current members of the Appointments Commission have been invited by the Prime Minister to continue to serve, pending further discussions on the House of Lords. The posts are part-time, and the Cabinet Office provides the secretariat to the Appointments Commission.

8.5 Under the current arrangements, the Prime Minister retains the power to decide the overall number of new peers created and the balance between the parties. The appointment of party-political peers is a matter for the Prime Minister, in consultation with the other party leaders. The Appointments Commission is responsible for vetting the nominations but does not assess the suitability of those nominated by the political parties, which is a matter for the parties themselves. The Appointments Commission's role is to advise the Prime Minister of any concerns about propriety and it is the Prime Minister who then passes on the nominations from other parties to The Queen.

8.6 The responsibility for recommending non party-political appointments lies with the Appointments Commission. The Prime Minister then passes on these recommendations to The Queen and will not intervene, except in the most exceptional circumstances.

8.7 The Prime Minister has retained the power to nominate direct to The Queen a limited number of distinguished public servants on retirement and has agreed that the number of appointments under this arrangement will not exceed ten in any one Parliament. The Prime Minister also makes direct nominations to the Queen in respect of ministerial appointments.

8.8 The Appointments Commission role in vetting nominations does not extend to ministerial appointments, the Law Lords or the Lords Spiritual.

Performance of the Current Appointments Commission

8.9 As of May 2006, the Appointments Commission had appointed 36 individuals as non party-political members to the House of Lords, making up almost a fifth of the total number of non political-party members sitting in the House. Of these appointments, there are 9 from minority ethnic groups and 2 with disabilities. The Appointments Commission has appointed almost half of the female members sitting on the Cross-Benches.

8.10 Some of the members appointed by the Commission sit on Lords' committees. Many have made important contributions to discussions in the House on key matters of public interest, reflecting their own experience and expertise.

Proposed Statutory Appointments Commission

8.11 The current system of appointment cannot be retained in a reformed House. The establishment of the non-statutory Appointments Commission was a temporary measure designed to assist with the transitional phase in reforming the House of Lords. Under any system with an appointed element in a reformed House, an independent United Kingdom body would need to oversee future appointments, as the Wakeham Commission recommended.

8.12 The proposals for the Appointments Commission set out here are broadly based on the Wakeham Commission's proposals, which envisaged that the Appointments Commission would have the only role in appointments to the reformed House:

"The Appointments Commission should be charged by the Crown with a general duty to appoint members to the second chamber and empowered to appoint individual members on its own authority." (Recommendation 80).⁴⁴

8.13 Whilst the Wakeham Commission acknowledged that there was no direct parallel for such a body in the United Kingdom or abroad, it argued that it was by no means an entirely new approach in the British constitution (Wakeham Commission report, paragraph 13.8). It identified several bodies in the United Kingdom that already had responsibility for sensitive elements of the relationship between the Government and Parliament – for example, the National Audit Office, the Parliamentary Commissioner for Standards and, more recently, the Electoral Commission. All these independent bodies play an important role in ensuring the smooth running of the Parliamentary system.

Legal Status

8.14 The role of the current Appointments Commission is limited to the appointment of non party-political appointments. Its only role in relation to party political appointments is to check nominations for propriety. Whilst it would be acceptable for the Appointments Commission to remain on a non-statutory basis if its current role were to continue, it would not be appropriate if its role were to increase significantly.

8.15 As it is envisaged that the new Statutory Appointments Commission would have power over both non-party and party-political appointments, the parameters of those powers would have to be laid down in statute. The body should be established by primary legislation. The Statutory Appointments Commission would be independent of Government and should be accountable to Parliament, rather than Ministers.

Membership of the Statutory Appointments Commission

8.16 It is envisaged that the Statutory Appointments Commission would consist of a total of 9 Commissioners to be formally appointed by The Queen on the address of both Houses of Parliament. There would be three members to represent the main political parties and the remaining six would be independent of Government and the political parties. The Commissioners would serve fixed but renewable terms of office.

Role of the Statutory Appointments Commission

8.17 The Statutory Appointments Commission would recommend people for appointment in two different classes:

- Political-party appointments (where nominations would be invited from the parties) and;
- Non party-political appointments (where individuals would be selected by the Statutory Appointments Commission).

8.18 It is envisaged that the principal functions of the Statutory Appointments Commission would be:

- To establish the characteristics as to suitability which members of the House of Lords should possess (and publish these criteria).
- To ensure that these characteristics deliver high calibre appointees who make a significant contribution to the work of the House of Lords.

⁴⁴ Royal Commission on Reform of the House of Lords, *A House for the Future*, Cm. 4534, pg. 130

- To select all non party-political members using an open and transparent selection procedure.

8.19 Under the current arrangements, the Appointments Commission has no responsibility for ministerial appointments, the Law Lords, representatives of the Church of England and ex-officio members. The Wakeham Commission, however, suggested that the Appointments Commission should be the only route into the reformed House although, in practice, their view was that this would be a formality in regard to the regionally elected members, the Law Lords and the Lords Spiritual.

8.20 The current proposals envisage following Wakeham's recommendations in this regard, with the exception of the Lords Spiritual and the elected members of the reformed House, who would enter the House without going through the Statutory Appointments Commission. It appears eccentric that those who have been elected to seats in the House should have to go through the Statutory Appointments Commission, even as a formality. However, the Government believes that where members of the legislature are not elected, it is important that the constitutional principle that the Prime Minister should pass names to the Monarch should be preserved. Therefore it is proposed that the Prime Minister will receive a list of names for appointment from the Statutory Appointments Commission, and pass this to the Monarch without alteration.

Non Party-Political Members

8.21 The principle that 20% of the reformed House should be non party-political members is discussed in Chapter 6. It is envisaged that the Statutory Appointments Commission would select these non party-political members to be recommended for appointment, with the exception of the Lords Spiritual. This would also include the retired Justices of the Supreme Court, although as the Wakeham Commission suggested, this will likely be a formality.

8.22 As with all public appointments, the Statutory Appointments Commission would be expected to consider nominations on the basis of merit and would follow strict criteria.

8.23 There would be a duty on the Statutory Appointments Commission to encourage nominations from a broad range of applicants

and the Government will look at how appointments to the reformed House could better reflect the diverse makeup of the United Kingdom.

8.24 For example, the Government would want to urge the Statutory Appointments Commission to set up its procedures and methods of selection in a way that encourages the appointment of a widely representative House of Lords. In looking at diversity, the Statutory Appointments Commission could be expected to consider matters such as economic and professional background, as well as issues like gender, ethnicity and regional roots. The Government does not at this stage envisage any statutory provisions in this respect. Nor does it expect that those appointed by the Statutory Appointments Commission should feel that they have been appointed as 'representatives' of a particular group. Most people are likely to feel that they have multiple identities and interests, and appointed members in particular will be sitting as individuals with no mandate to act as representatives. The intention is that the House of Lords, taken as a whole and taking all the qualities that each member brings to it, should better reflect the diverse make up of United Kingdom society.

8.25 It will clearly be important to assess this aspect of the Statutory Appointments Commission's work, and whether the requirement was being adhered to in an appropriate way, over a reasonably long timescale.

Political Party Members

8.26 Political party appointees would only form part of a reformed House in a hybrid model where the proportion of elected members was below 80%. In the event that the free vote resulted in support for an 80% elected chamber, there would then be no party political appointees. This is because of the principle that 20% of the reformed House would have to be non party-political members. The following paragraphs illustrate how this appointments procedure might work in practice.

8.27 It is envisaged that the Statutory Appointments Commission would have to take account of the balance of the parties at the last General Election and appoint party-political members in line with the proportion of votes cast.

8.28 So, for example, a party that polled 20% of the vote at the General Election would receive 20% of the party political seats. Based on the model of a House of 540 members, with a third of the appointed members put in place at each appointment round, this would mean they received 11 out of the 54 party political appointed seats available in that round.

8.29 This is of course a version of the secondary mandate proposal discussed above, but it does not make a direct link between the votes cast and the overall composition of the Lords, and therefore does not risk altering voter behaviour. It is designed to ensure that the party political appointments reflect the support of the parties in the country at that time. This, combined with the elected members, helps ensure that while the composition of the Lords would be different to the Commons, it would nevertheless have an element of similarity with it, and would help reduce the risk of a reformed Lords acting as a block to the decisions of the Commons.

8.30 As the Wakeham Commission proposed, the parties would put forward recommendations for suitable members to the Statutory Appointments Commission. In parallel to any diversity considerations used by the Statutory Appointments Commission, the political parties could be required to take account of diversity criteria in making their nominations. This would ensure that the Statutory Appointments Commission had an adequate pool of nominations from which to create the necessary balance of new nominations to the House.

8.31 It is proposed that the Statutory Appointments Commission would perform a more extensive role in relation to the party members than it does now, and assess the suitability of those put forward by the parties against its published criteria. The Statutory Appointments Commission would therefore have the power to refuse to recommend a person for appointment on more than simply grounds of propriety.

8.32 The Statutory Appointments Commission could ask the political parties for a list of candidates, perhaps ranked in preferential order, which would include more candidates than there were spaces. Should the Statutory Appointments Commission reject a candidate, it could refer to the next candidate on this list. It would be for the Statutory Appointments Commission to make the final selection in terms of its published criteria.

Prime Minister's Appointments

8.33 The Prime Minister is currently able to make a small number of appointments directly to the House, both of former public servants and individuals to serve as Ministers. There is a question as to whether this practice should continue in a reformed House.

8.34 There is a case for retaining the current arrangements and allowing the Prime Minister to make Ministerial appointments and up to 10 appointments of former public servants per Parliament. The Statutory Appointments Commission would vet candidates for the House for suitability, and would be able to reject those they did not feel met the criteria for appointment.

8.35 However, some argue that, beyond the Prime Minister submitting the Statutory Appointments Commission's list of nominees to the Monarch, and his or her role in selecting party-political nominations as leader of their party, there should be no other role for the Prime Minister in appointments to the Lords. The Government agrees with this.

8.36 In this circumstance, Ministers could only be drawn from the already appointed and elected membership of the House. This is discussed further in Chapter 9. Distinguished former public servants and those that the Government felt would be suitable to be Ministers would be considered by the Statutory Appointments Commission as part of its usual appointment round (with potential Ministers being part of the governing party's allocation of appointed seats). Former such public servants would be likely to rate highly against the Statutory Appointments Commission's appointment criteria, as would individuals nominated to serve as Ministers, but the current situation, where the holders of certain offices are always offered a seat in the Lords on retirement, would end.

9. A Reformed Chamber: Membership

Size of the Chamber

9.1 Before the 1999 changes, the House of Lords had a membership of over 1000. The House of Lords currently has a membership consisting of around 740 Members, 92 of whom are hereditaries. This is larger than the House of Commons which has 646 MPs and is one of the largest Parliamentary chambers in the world. It is highly unusual for a second chamber to be larger than the first. However, not all members of the Lords attend on a regular basis. For instance, taking the 2005-2006 session, the average attendance was around 408, which better reflects the ‘working’ size of the House of Lords.

9.2 It would be practical and, in our view, desirable for the size of a reformed House to be reduced from its current membership, and it should be smaller than the House of Commons to reflect its status as the second chamber. This in turn suggests that a form of remuneration might be needed to ensure that a higher proportion of members attend regularly than current attendance figures show.

9.3 There is no precise science for determining the exact size of the House but it must be large enough to allow for the right proportion of non party-political members for the House to be effective, but in its final form not larger than the House of Commons.

9.4 Suggestions for the size of a reformed House have ranged from 350 members in the PASC report and in “*Breaking the Deadlock*”, to the 550 mark suggested by the Wakeham Commission.

9.5 The Government believes that a House of 540 members, near Wakeham’s suggestion, is a realistic target and an appropriate size. Given the lengthy transitional arrangements we are proposing (see Chapter 10) it is likely to be the middle of the century before the House reduces to the desired size. A House of 540 members on a 50/50 model would see 90 elected members being replaced at each election, and 84 appointed members being replaced in each round of appointments (36 non party-political, and 54 party-political appointments). Lords Spiritual would count towards the appointed total (which is why the number of appointed members at each election is lower than the number of elected members), but would be appointed on different terms to the remainder of the House.

9.6 Based on the percentages of votes cast at the last three General Elections, and assuming a House of 50% elected, 30% party-political appointments, and 20% non party-political appointments, *Table 5* below shows the possible makeup of the House in numerical and percentage terms⁴⁵. Note that this is an estimate of the “steady state” composition of the Lords under the proposed new arrangements, once any effects of the transition mechanism have dissipated.

Table 5: Possible makeup of the Lords in numerical and percentage terms ⁴⁶			
Group	Number of Seats	Percentage share of Party-Political Seats	Percentage of all Seats
Conservative	159	37	29
Labour	166	38	31
Liberal Democrat	78	18	15
Other	29	7	5
Non party-political	108	n/a	20

⁴⁵ Proportion based on parties average share of the vote in all General Elections since 1970

⁴⁶ In the tables ‘other’ refers to those members currently described as such by the Lords Information Office, and to minor parties

Minimum age limit

9.7 Traditionally membership of the House of Lords has consisted of individuals who have made a significant contribution to the role of their chosen profession and to society. Those individuals tend to be older, having worked for the majority of their career in their chosen field. It is important that in a reformed House of Lords the experience of fields other than politics is retained to achieve a broadly representative membership. Whether or not this would be achieved by introducing a minimum age limit is debatable.

9.8 The Wakeham Report highlighted that many overseas second chambers, including the USA, Canada, France and India, have a minimum age requirement higher than that set for the lower House. However the report did not suggest that a minimum age should be introduced for a reformed House of Lords, suggesting instead that the appointments commission should ensure that those nominated had the requisite experience and expertise to make an effective contribution to the work of the House. The Government agrees that this is the most sensible way forward, and that the minimum age to enter the House of Lords should be the same as for the House of Commons (currently 18).

Payment and Resourcing of Members

9.9 Currently the expenses of members attending the House are reimbursed up to certain maxima per sitting day as detailed in *Table 6*.

Table 6: Allowance Provided To Members Attending The House	
Overnight accommodation	£159.50
Day subsistence	£79.50
Office cost	£69.00

9.10 A new system of remuneration for members of a reformed House should be considered. The question of levels of remuneration is properly one that should be subject to consideration and recommendation by the Review Body on Senior Salaries (SSRB) once the final shape of the reforms has been decided.

9.11 However, recommendations 119-124 and recommendation 126 of the Wakeham Commission⁴⁷ are likely to be the guiding principles for any changes to the remuneration of members of the Lords.

- **“Recommendation 119:** *The financial arrangements which apply to members of the second chamber should make regular attendance economically viable for people who live outside the South East of England and who do not have a separate source of income. (Paragraph 17.7.)*
- **Recommendation 120:** *Payment should be made for the time members of the second chamber devote to their Parliamentary duties. (Paragraph 17.9.)*
- **Recommendation 121:** *Financial support for members of the reformed second chamber should be related to attendance in Parliament. (Paragraph 17.10.)*
- **Recommendation 122:** *Total payments made to members for time and lost income should be less than the basic salary of an MP over an average session. (Paragraph 17.11.)*
- **Recommendation 123:** *Chairmen of significant Committees of the second chamber should receive a salary in respect of their additional duties. (Paragraph 17.12.)*
- **Recommendation 124:** *The SSRB should consider the issue of severance payments and pension arrangements for members of the reformed second chamber. (Paragraph 17.13.)*
- **Recommendation 126:** *The SSRB should review the rules governing the payment of expenses incurred in respect of travel and overnight costs by members of the second chamber in the course of their Parliamentary duties with a view to ensuring that regular attendance is economically viable for people who live outside London. (Paragraph 17.17.)”*

9.12 It will also be important that any new arrangements are flexible enough to allow members to attend the House on a full or part time basis.

⁴⁷ Royal Commission on Reform of the House of Lords, *A House for the Future*, Cm. 4534, January 2000, pg. 193

9.13 The Wakeham Commission recommended that resources should be provided for additional office resources for Members of a reformed Lords. This is properly a matter for Parliament to consider. However, any future discussions on this particular aspect of resourcing will need to take into account the threat to complementarity which could result from a package which encouraged individuals to start working on a constituency basis, and which might distract members' attention from the work in the House and its Committees.

9.14 Consideration will have to be given to whether the existing members of the Lords could and should remain on the existing arrangements or transferred onto any new ones. The Government will give careful consideration as to whether a retirement package could be provided for existing members who wish to leave the House of Lords.

9.15 The Government believes that there may be a case for additional remuneration for leaders of the opposition parties in Lords, in addition to that already provided, and for the Convenor of the Cross-Bench peers, both in recognition of their hard work, and to make it easier for them to attend as often as possible. The Government will consider asking the Review Body on Senior Salaries to look at these posts in any review of remuneration in the Lords.

Ministers in the Lords

9.16 Two questions arise over the position of Ministers in the House of Lords. First, should there be any? Secondly, if so, how should they get there, and should they have special terms of membership?

9.17 It has been suggested that there should be no Government Ministers in a reformed House. This would further underline the distinction between the Commons, which gives a Government the authority and resources to govern and the Lords, which scrutinises and revises legislation and policy proposals.

9.18 If there were no Ministers in the Lords, arrangements could be put in place to allow Commons Ministers to appear in the Lords to answer questions on Government policy and legislation, so that the role of the Lords in helping to hold Government to account is not diminished.

9.19 However, the Government proposes to maintain the current place of Ministers in the House of Lords, where they play a valuable role. As well as more easily allowing the Lords to hold the Government to account, and improving the Lords' understanding of the position of the Government, it also enhances the Lords' role in scrutinising legislation, because Ministers and Whips in the Lords help take legislation through. It also means that the Government has a better understanding of the concerns of the Lords because Ministers spend time there.

9.20 Ministers would be drawn from the elected and appointed members of the party of Government. In a House with a very high proportion of elected members, there is a possibility, albeit extremely slim, that the party of Government might not have enough members of the Lords from which to draw Ministers. The question of how Ministers enter the Lords may therefore need to be returned to if Parliament decides upon a very high proportion of elected members for a reformed House of Lords.

9.21 In making nominations for appointment, as noted by the Wakeham Report, it is likely that anyone nominated because they were felt suitable to serve as Ministers would easily meet the nomination criteria. It would be very unusual for a Statutory Appointments Commission to reject someone who was nominated to serve as a member of the Government.

Law Lords and Retired Justices of the Supreme Court

9.22 With the creation of the Supreme Court in 2009 to take over the appellate jurisdiction of the House of Lords, judges will no longer need to be members of the second chamber in order to be members of the United Kingdom's highest court. Indeed the Constitutional Reform Act 2005 will prevent any Justice of the Supreme Court and other holders of judicial office from sitting and voting in the House of Lords while they hold office.

9.23 There is, however, no doubt that retired Law Lords make a very valuable contribution to the work of the current House of Lords, and the non party-political peers have 19 retired Law Lords in their ranks.

9.24 Offering every retiring Justice of the Supreme Court a seat in the House of Lords would ensure the continuity of the kind of contribution brought by the current retired Law Lords. The value of the expertise brought to the work of the House by the retired Law Lords would justify the offer of a seat in the reformed House to retiring Justices. They would become part of the non party-political cohort of the reformed House, and would be appointed by the Statutory Appointments Commission at the next appointment round following their retirement.

9.25 It must also be remembered that the peerage, and a seat in the House of Lords, will be separate things in a reformed House. The question of whether all Justices of the Supreme Court should be offered an automatic peerage either on appointment or retirement is therefore separate from the question of a seat in the Lords, but will also be considered as part of the question of Lords reform.

Lords Spiritual

9.26 At present, the Church of England is represented in the House of Lords by the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester and the 21 Bishops next in seniority in order of appointment to a diocesan see (a Bishop who changes diocese keeps his seat in the Lords once he has entered it). This arrangement dates back to 1878, when it was agreed that the need to increase the number of Church of England dioceses should not lead automatically each time to an increase in their representation in the House of Lords. When the 1878 Act was passed, there were four qualifying Welsh Bishoprics. When the Church in Wales was disestablished, there were no changes in the number of seats allocated to the Lords Spiritual; instead, any seats then occupied by Welsh Bishops were re-allocated to the next qualifying English Bishops.

9.27 The Government has always recognised that the nature of diocesan Bishops' work means that it is very difficult for many of them to attend the House of Lords with regularity and therefore that their overall representation needs to be higher than would otherwise be appropriate. However, a smaller number than 26 would still deliver this. Much of the work in

the House is already done by a smaller core team of Bishops. For example, of the Lords Spiritual between April 2005 and March 2006, 11 attended more than 25 times (out of a possible total of 134). 12 attended fewer than 20 times. 42% of the total number of attendances was accounted for by just 5 of the Bishops and the top 16 Bishops accounted for 89% of total attendances.

9.28 In the light of these figures, and taking into the account the reduction in the overall size of the House, the Government believes that the Church could continue to be well represented with fewer Bishops. It proposes reducing their number in discussion with the Church of England.

9.29 However, given that it would then be more important that those who were members of the House were those who were best able to contribute, the Government sees a strong case for the Church of England to have the legal flexibility to decide itself which Bishops should sit in the House, rather than this being determined on seniority.

Resignation

9.30 Members of the House of Lords should be able to relinquish their membership, should they wish to do so, irrespective of how they arrived in the House. This could be for a number of reasons, including ill health. It would also help address the current anomaly under which members cannot become MEPs, arising from the rules preventing an existing member of a domestic legislature from pursuing a career with the European Parliament at the same time.

9.31 No grounds should be required for a member to resign. It should be a formal but straightforward process.

Leave of Absence

9.32 The Government believes that if resignation provisions are introduced, together with a remuneration package based on attendance, then there is little case for continuing the present arrangements through which peers can seek leave of absence from the House, and that the system should be abolished.

Restriction on Former Members of the Lords Standing as MPs

9.33 To ensure that the complementary role of the House is enhanced it is important that an individual should not use his or her membership of the Lords to build a political base for a career in the House of Commons. The intention would be that the House of Lords should attract those who have wider interests outside politics, including among the members representing political parties. To counteract the possibility of members using the House of Lords to build a political base, members who have held a seat in the House of Lords could be prevented from seeking election to the House of Commons for a certain period of time after their Lords' term expired.

9.34 It would remain open to former members of the Lords to seek election to other political bodies, or to serve in politics in another capacity, but a gap between service in the two Houses of Parliament is important in maintaining good relations between them, and in ensuring that members of the House of Lords are dedicated to the work of the House.

9.35 Both the Wakeham Commission and PASC proposed a waiting period of ten years. "Breaking the Deadlock" proposed a period of five years, and the Government is minded to agree with this, and that the period should be calculated from the moment when the member's term was due to expire, whether the member served the full term or resigned beforehand.

Breaking the Link with the Peerage

9.36 If, in a reformed House of Lords, members (whether appointed or elected) were to serve for a fixed number of years rather than for life, it would seem odd for those individuals to be given a lifetime honour simply to enable them to do a job for a fixed period of time. The automatic link between the peerage and membership of the House of Lords should therefore come to an end. The peerage would continue as an honour but unconnected with a seat in Parliament, though it is highly probable that many people of distinction holding a seat in the reformed Lords would receive this honour.

Franchise

9.37 Current rules prevent a member of the House of Lords (which includes all life peers) from voting in a General Election. This prohibition would no longer make sense if all peers did not automatically qualify for membership of the Lords. Therefore all members of the peerage and members of the reformed House of Lords (whether members of the peerage or not) should be allowed to vote in all elections, and members of either House would not be prohibited from voting in elections to the other House. Allowing members of the peerage outside the House to vote would also address the anomaly where the current Law Lords, who will eventually transfer to the Supreme Court, will not be able to vote in General Elections because of their peerages.

9.38 Hereditary peers outside the House can already vote.

Disqualification

9.39 MPs who are convicted of a criminal offence and sentenced to more than 12 months imprisonment are disqualified from the House of Commons, and their seat is automatically declared vacant (ex-MPs in these circumstances wishing to return to the House would need to seek re-election). Current rules however, allow a member of the House of Lords in the same circumstances to resume their seat immediately upon release from prison.

9.40 To address this anomaly provisions could be brought in to bring the disqualification of members of the House of Lords into line with those of the House of Commons. Arrangements could be brought in as for the House of Commons in relation to members who are subject to a bankruptcy restriction order (BRO) or detained under the Mental Health Acts. Members currently cannot sit and vote in those circumstances but are free to return to the House immediately the condition is lifted. It would be more consistent to bring all these provisions in line with the Commons so that the member will lose his or her seat, rather than simply being disqualified for sitting and voting.

9.41 There may be an argument for having a minimum sitting requirement which members have to fulfil, and the Government will listen to suggestions, particularly from the House of Lords, on this issue.

Name of Reformed Chamber

9.42 For the time being, the future House of Lords will be referred to as the ‘reformed chamber’ but we will consult on the name in the lead up to legislation. Decisions on the name will partly depend on what final decisions Parliament reaches on composition. This was the approach adopted by the Wakeham Commission.

10. A Reformed Chamber: Transition

10.1 Although there is a range of different options for managing the transition to a reformed House, the Government believes that a long transitional period, where new members are introduced but none of the current members of the Lords are forced to leave, is the best way forward.

10.2 The current members have entered the House in the expectation that they will stay for life. Some will have given up careers and other roles to do so. It would be unfair to require them to leave in these circumstances.

10.3 A long transition period also helps ensure the continuity of the work of the Lords, blending the experience of the current membership with the qualities that new members would bring to the House.

10.4 The United Kingdom also has a history of gradual change, with institutions and practices adapting over time to changes in circumstances, and a long transition is in keeping with this tradition. It will allow the House of Lords, and Parliament as a whole, to adapt to the reform over time, moulding their procedures and traditions onto the new shape of the legislative process.

10.5 Critics will argue that the transitional period, which could last into the middle of the century, is too long. However, if the changes argued for in this paper are the right ones, then they are likely to last well beyond this relatively short period of change. As stated in the introduction, any change must be gradual or reform will not take place at all. We must learn from the lessons of previous efforts to reform the Lords. Of course, once reform has bedded down, it will be up to Parliament in the future to decide whether the proportion of the elected to appointed members settled on after the free vote continues to be the right one.

10.6 It is also important to remember that the transition period is not a period until reform starts and the first new members arrive, it is a period until the House is constituted only of members who have entered under the new arrangements.

10.7 Tables 7 and 8 below show what the House could look like. As can be seen, as new members are introduced, the size of the House starts to increase, and then fall away again in line with the decline in number of the current membership.

10.8 The modelling work for the transitional period is based on the eventual total size of the House being 540 (108 non-party, 432 party) with 50% elected, 30% party appointed, 20% non party-political appointed. Previous post-war General Election results have been used to generate estimates of the strength of the parties in the House.

10.9 The modelling is based on European election dates, where the first election date is 2014, the second 2019, the third 2024, and so on every five years. The decline in the size of the current House (including the hereditary peers) has been mapped onto these dates, and the appropriate number of elected and appointed party members added in. The modelling assumes that 36 non party-political members will be appointed when an election to the Lords takes place. It also assumes that 20% of the existing House will resign or retire.

10.10 It is important to remember that these figures represent all members eligible to sit. Attendance in the chamber may be lower. Under this model the maximum size of the House during the transition period is 751. Although this is still lower than the number of members eligible to sit before the 1999 reforms (which was well over a thousand) this could still create difficulties in terms of office space for that many active members. However, this will not arise as a question for some years, so there will be time for the House to decide what approach it wishes to take to this issue.

Table 7: Overall Membership

	2006	Projected number retired, resigned or deceased by 2014	2014	2019	2024	2029	2034	2039
Existing House of Lords members (at Dec 2006)								
Conservative	204	89	115	83	56	35	20	10
Labour	211	81	130	101	72	47	27	14
Liberal Democrat	77	29	48	38	28	19	12	7
Crossbench	202	98	104	74	49	30	17	9
Other	12	2	10	8	6	4	2	1
Bishops	26	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total	732		407	304	211	135	78	41
New House of Lords members								
Conservative			53	106	159	159	159	159
Labour			55	111	166	166	166	166
Liberal Democrat			26	52	78	78	78	78
Crossbench			36	72	108	108	108	108
Other			10	19	29	29	29	29
Total			180	360	540	540	540	540
Combined total								
Conservative	204		168	189	215	194	179	169
Labour	211		185	212	238	213	193	180
Liberal Democrat	77		74	90	106	97	90	85
Crossbench	202		140	146	157	138	125	117
Other	12		20	27	35	33	31	30
Total	706		587	664	751	675	618	581
Percentage of seats								
Conservative			29	28	29	29	29	29
Labour			32	32	32	32	31	31
Liberal Democrat			13	14	14	14	15	15
Crossbench			24	22	21	20	20	20
Other			3	4	5	5	5	5
Total			100	100	100	100	100	100

Removing the Hereditary Peers

10.11 The Government has been clear that in a modern democracy it is unacceptable that individuals still qualify for a seat in Parliament on the basis of their ancestry. The transitional arrangements made in 1999 should therefore come to an end by formally ending the right of the remaining hereditary members to membership of the second Chamber.

10.12 If Parliament indicates support for the further reform of the composition of the House of Lords (see Chapter 11 on Next Steps), then the Government intends formally to end the right of the hereditary peers to sit in the House of Lords, whatever the precise outcome of the Free Vote on the composition. This is an explicit commitment of its 2005 manifesto.

10.13 Removing the hereditary peers is technically straightforward. Legislation could be brought forward either (a) to remove their right to sit and vote (by cancelling the relevant provisions of the 1999 House of Lords Act), or (b) to cancel the provision for by-election of hereditary peers, effectively placing the existing 92 hereditary peers who sit in the Lords in the same position as the existing life peers.

10.14 The first alternative would be the most direct and obvious way of removing the remaining sitting hereditaries from membership of the Lords. This could be done with immediate effect as soon as the legislation came into force. Conversion of the existing sitting hereditaries into life peers would have the same formal effect – the removal of the hereditary peerage from the Lords, but it would mean that its full impact would take many years.

10.15 The first alternative is the one with the obvious advantage of fairness between the political parties – but for one important consideration. The Conservative group in the Lords relies disproportionately on sitting hereditary peers compared to the other parties, as table 9 below shows⁴⁸. So if the first alternative were chosen, it is the Government's view that in order to maintain the balance of the parties, the Leader of the Conservative Party would be entitled to nominate an equivalent number of life peers – some of whom of course might be existing hereditary peers (there could be much smaller rights of nomination to the Leaders of the other parties and a special invitation to the Appointments Commission to consider the claims of the outgoing non-party sitting hereditary peers to become life peers).

Table 8: House Of Lords Hereditary Peers

Party	Hereditary: Elected by Party	Hereditary: Elected Office Holders	Hereditary: Royal Office Holder	Total
Conservative	39	9	0	48
Labour	2	2	0	4
Liberal Democrat	3	2	0	5
Crossbench	29	2	2	33
Other	2			2
TOTAL	75	15	2	92

⁴⁸ House of Lords Information Office

10.16 Currently, the membership of the three main parties breaks down as shown in *Table 9*.⁴⁹

Table 9: Current Membership Of The Three Main Parties Of The House

	Percentage of 3 Main Parties	Percentage of Whole House
Conservative	41	28
Labour	43	29
Liberal Democrat	16	10

10.17 Removing the hereditary peers changes this picture to what is shown in *Table 10*.

Table 10: Forecast Membership Of The Three Main Parties Of The House

	Percentage of 3 Main Parties	Percentage of Whole House
Conservative	36	25
Labour	47	32
Liberal Democrat	17	11

10.18 The removal of the hereditary peers will disadvantage the Conservatives much more than the other parties, not just because there are more Conservative hereditary peers but because the average age of Conservative life peers is higher than that of the other parties – 74 compared to 67 for Labour and 65 for the Liberal Democrats. Given a long overall transitional period this will not correct itself until around 2050.

10.19 Converting the existing hereditary peers into life peers goes some way to dealing with the imbalance in average ages. This is because the average age of Conservative hereditary peers is 62, which brings the overall average age of Conservatives down to 70.

10.20 Of course, if the hereditary peers were to be removed immediately, and new members appointed in their place, the Leader of the Conservative Party could choose to appoint younger members in order to bring down the party's average age.

10.21 Currently the non party-political peers, excluding the minor parties but including the Lords Spiritual, make up 28% of the whole House. Discussions thus far have indicated that at least 20% of a reformed House should be non party-political. If the hereditary peers were removed, the number of non party-political members would decline to 23% of the total House.

10.22 In terms of the percentage of non party-political peers in the House, there is no requirement to replace any hereditaries who leave. Nor does the removal of the hereditary peers bring the percentage fully down towards the 20% mark.

10.23 In a reformed House, the Statutory Appointments Commission would make enough non party-political appointments to ensure that the proportion of non party-political members was maintained at least the 20% mark. Initially, it might therefore make relatively few appointments to the non party-political peers.

10.24 The question of what to do about the non party-political hereditary peers is therefore a fairly open one. However, it might be thought invidious if the non party-political hereditary peers were treated in a different way to the party-political hereditary peers. The arrangements should therefore be the same, party affiliation or not.

10.25 The Government believes that both options for removing the hereditary peers have their benefits and their disadvantages, and will discuss further the best way to proceed.

Titles

10.26 Existing hereditary titles, and the inheritance of such titles, will continue unchanged. The power vested in the Crown to create new hereditary peerages is little used (save for members of the Royal Family). Since the power when exercised confers no right to sit in the Lords we make no proposals in the White Paper in relation to the continuance of this process. That could properly be considered alongside any wider review of the honours system.

⁴⁹ This table, and other related material that models the possible future composition of the House of Lords, draws on the Government Actuary's Department (GAD) Life Tables to project the decline of the current members of the House. GAD's tables provide general-purpose estimates of life expectancy drawn from demographic analysis of the whole population. There are likely to be differences between actual and projected life expectancies when the tables are applied to a small, distinct population such as the current membership of the House of Lords

Royal Office Holders

10.27 It would not be necessary for the Earl Marshal or Lord Great Chamberlain to be members of the House of Lords in order to perform their duties. There is a question as to whether or not these two posts should continue to be linked to a seat in a reformed House of Lords. We are consulting further on this point.

Costs

10.28 It is difficult to assess the overall cost of any reform to the House of Lords until the final shape of reform is known. Therefore the estimates provided are based on some of the aspects of reform, where this has been possible.

Statutory Appointments Commission

10.29 Assuming there is an appointed element in a reformed House, one-off costs will be incurred in establishing the new independent Statutory Appointments Commission. The expenditure for the current Appointments Commission in its first year of operation in 2000-2001 was £248,000. In addition the Cabinet Office incurred further costs in recruiting the Commissioners – approximately £100,000 on top of the running costs for the first year.

10.30 The initial start-up costs for the new United Kingdom body will be higher than the current non-statutory Appointments Commission. This reflects the new body having a much broader remit, with powers over both non-party and party-political appointments and the overall size of the new body.

10.31 The annual expenditure for the current Appointments Commission for 2005/2006 was £103,000, which includes staff costs, and other administration costs including the Commission members' fees, travel and subsistence, communication advice, staff training and IT equipment. Annual expenditure on the new body will also be higher than the existing Appointments Commission.

10.32 It is difficult to estimate the one-off establishment, the first year running costs and the on-going running costs of the new body at this stage until it is clear what proportion of the House will be appointed. The proportion of appointed members will have cost implications on a number of other factors including the number of staff to recruit and accommodation.

Elections

10.33 Assuming there is an elected element in a reformed House any likely costs incurred will depend mainly on the election system chosen. An advantage of holding the House of Lords elections alongside the European Parliament elections, as set out in Chapter 6 of the paper, is the efficiency saving it produces. Costs could be reduced in relation to polling staff, buildings and promotion, although the number of ballot boxes would increase significantly. We estimate the additional cost for House of Lords elections held alongside another national election to be in the region of £30m, and there are likely to be additional consequential calls on the public purse – for example the provision of free postage for campaign leaflets.

Members' Expenses

10.34 Members' expenses of £15.6m accounted for 15% of the total budget of £106.4m for the House of Lords in 2005-2006. It is difficult to estimate members' remuneration under any system of reform to the House of Lords at this stage. The levels of remuneration are likely to be affected by a change in the size of the House, and will of course be affected by changes to the way that members of the Lords are paid. There may be a requirement for additional staff in Parliament to support a reformed chamber. A reformed House will certainly cost more than the current House.

10.35 Once there are firmer decisions on composition, and whether members of a reformed House should be salaried rather than receive expenses, the Government would discuss proposals with the other parties, and then invite the SSRB to consider the matter in detail and make recommendations.

11. Next Steps

11.1 This paper is designed to inform the free votes in the House of Commons and the House of Lords on the composition of a reformed House.

11.2 As discussed, the Government believes that it is important that Parliament is able to express its preference on the composition of a reformed House. To enable a clear outcome, it is proposing that this be done using an alternative vote (AV) process. The detailed proposed arrangements for the vote itself are outlined at Annex B. But the process used for the free vote would ultimately be a matter for each House to decide

How would the process work?

Commons

11.3 The Government proposes two stages separated by at least a week.

Stage 1: 'Paving' Motion

11.4 The Government would move a Motion setting out the procedure for the ballot on options for composition at Stage 2. This paving motion would include reference to three Motions for debate at Stage 2: to take note of the White Paper; for the retention of a bicameral Parliament; and for further reform to the composition of the House of Lords (including the establishment of the Statutory Appointments Commission for any appointed members and the removal of the remaining retained places for hereditary peers). It would then make provision for the House to use the alternative vote procedure for the options for composition of a reformed House. The Motion would set out (by reference to Annex B of this White Paper) the rules for the ballot and the ballot paper. Members would have the opportunity at this discussion on the paving motion at Stage 1 to move amendments to the pattern outlined and to the ballot paper. No substantive votes would take place at this stage on the White Paper or on any potential final outcome for a reformed House of Lords.

Stage 2: Main Debate and Free Vote

11.5 There would be 4 motions preceding the alternative vote ballot itself – a 'take note' Motion for the White Paper; a Motion to seek approval for retention of a bicameral parliament; a Motion to approve further reform to the composition of the House of Lords (including the establishment of the Statutory Appointments Commission for any appointed members and the removal of the remaining retained places for hereditary peers); and a Motion to proceed to the AV ballot. Only if the House agreed to the retention of a bicameral Parliament would it move to a vote on the call for further reform (including the establishment of the Statutory Appointments Commission for any appointed members and the removal of the remaining retained places for hereditary peers). If the House agreed to the Motion for further reform, it would then proceed to agree to move to the AV procedure, using the ballot paper and the process agreed to in the earlier resolution.

11.6 Explanatory memoranda will set out, in more detail, the distribution of the ballot papers, the duration of the ballot, the arrangements for counting the votes, the announcement of the results the next day and placing the ballot papers in the public domain after the vote has been counted and the result announced. The detailed arrangements for the ballot would be under the direction of the Speaker.

Lords

Stage 1: 'Paving' procedure

11.7 The House will be invited to consider whether it wishes to adopt a procedure for the free vote which is similar to that being proposed for the Commons. **No recommendations for any procedural change would be made without first being considered by the Procedure Committee.** Any recommendations made by the Procedure Committee would be embodied in a report, and submitted for consideration by the House as a whole.

Stage 2: Main debate and Free Vote

11.8 There would be a full debate to take note of the White Paper, followed by the free vote using the process agreed by the House.

12. Conclusion

12.1 Reform of the House of Lords is an issue which has been on the political agenda for many years. The Government believes that, with the three main parties now committed to reform, there is currently an unusual opportunity to find a lasting solution to this question.

12.2 The Government believes that the centre of gravity on opinions for a reformed House lies around the hybrid option, with elections run on a partially-open list system in European constituencies at the same time as European elections. A hybrid House can deliver a second chamber which is a complement to the House of Commons, and delivers the important principles of representation which are essential for an effective House of Lords.

12.3 The benefits that would accrue from combining the two methods of entry to the Lords far outweigh the losses that, as with any compromise, come with a hybrid House. Such a House can deliver a chamber which properly represents the regions of the United Kingdom, and its gender, religious and ethnic balance. This system would ensure that the balance of support for the parties in the country is properly reflected in the membership of the Lords. And a hybrid House would be more democratically legitimate, while ensuring that the membership of the House is not overly political in the relatively partisan way of the House of Commons. It is the best compromise, and a sensible system for reform of the House of Lords.

Annex A – Membership of the Cross-Party Working Group on Lords Reform

The Rt Hon Jack Straw MP, Leader of the House of Commons and Lord Privy Seal (Chair)

The Rt Hon Lord Falconer of Thoroton, Lord Chancellor and Secretary of State for Constitutional Affairs (Labour)

The Rt Hon Lord Strathclyde, Shadow Leader of the House of Lords (Conservative)

The Rt Hon Theresa May MP, Shadow Leader of the House of Commons (Conservative)

Oliver Heald MP, Shadow Secretary of State for Constitutional Affairs (Conservative)

The Rt Hon Lord McNally, Leader of the Liberal Democrats in the House of Lords (Liberal Democrats)

Simon Hughes MP, Constitutional Affairs Spokesman and Shadow Attorney General (Liberal Democrats)

David Heath MP, Shadow Leader of the House of Commons (Liberal Democrats)

The Bishop of Chelmsford

Lord Williamson of Horton (Convenor of the Crossbench Peers)

Annex B – Arrangements for the Free Vote Using an Alternative Vote Ballot

1. The aim of the free vote proposal is to seek a clear final preference on the options put before the two Houses. The alternative vote procedure should encourage Members to vote ‘for’ a particular option, rather than against, as MPs did in 2003. Although it is an unusual method of voting, both Houses have decided to use a similar approach to choosing their Speakers (through a single ballot in the Lords and sequential votes in the Commons). The House of Lords used its adopted system in its Speakership election in 2006. A difference between those processes and that proposed here is that, whereas the votes in Speakership elections are anonymous, the votes for the proposed free vote on reform of composition of the House of Lords, as with normal Parliamentary votes, would be put into the public domain after the vote has been counted and the result has been announced.

Ballot by Alternative Vote for Options on Composition of a Future House of Lords

2. Members would, under this process, be invited to express their preferences on seven options, as set out on the ballot paper below. Members would indicate on the ballot paper their preferred option, or options, in order of preference, marking their first choice with a 1, their second choice with a 2 and so on, down to their lowest preference. Members would not have to allocate a preference to all the options. They could vote for a single option only or for a number of the 7.
3. In the initial count, any option that obtained more than 50% of the first preference votes cast would become the endorsed option. If this was not achieved in the first round there would be a series of counts, with the lowest scoring option eliminated at each count and the votes redistributed to the next preference. All low scoring options which did not jointly reach the next highest option in total would be eliminated. If there was a tie for the option with the lowest number of votes in any round, then all tied options would be eliminated. This process of elimination and redistribution of the votes would continue until one option obtained more than 50% of the votes in that round.
4. It is proposed that the ballot papers in both Houses would take the form shown in Table 12 below.

Table 12: Proposed Format of Ballot Papers BALLOT ON COMPOSITION OF A FUTURE HOUSE OF LORDS	
Option:	Order of preference:
<i>Fully appointed</i>	
<i>80% appointed and 20% elected</i>	
<i>60% appointed and 40% elected</i>	
<i>50% appointed and 50% elected</i>	
<i>40% appointed and 60% elected</i>	
<i>20% appointed and 80% elected</i>	
<i>Fully elected</i>	
Members may indicate on the ballot paper their preferred option or options in order of preference, marking their leading preference with a 1 and so on down to their lowest preference; Members need not allot a preference to all options.	

5. The options reflect the analysis described in this White Paper. Accordingly, where the options on the ballot include appointed members, this includes the 20% of the House who would be the non party-political members. So for example, under the 80% elected 20% appointed option, none of the appointed members would come from the parties – they would all be non party-political.

6. The options on the ballot take account of the Bishops and the retired Justices of the Supreme Court, who would enter the House as part of the appointed element. The exception is the 100% elected option, which would contain no places for the Bishops or the retired Supreme Court Justices.

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