



House of Lords  
House of Commons

Joint Committee on the Draft  
House of Lords Reform Bill

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# Draft House of Lords Reform Bill

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Report

Session 2010–12

*Volume I*

*Report, together with appendices and formal minutes*

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## The Joint Committee on the Draft House of Lords Reform Bill

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

### Membership

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The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

### Publications

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

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The staff of the Committee were: Rhodri Walters (Lords Principal Clerk), Liam Laurence Smyth (Commons Principal Clerk), Eve Samson, and Eliot Wilson (Commons Clerks), Nicolas Besly, Antony Willott, and Ian Cruse (Lords Clerks), Christine McGrane, Committee Assistant, Melanie Moore, Committee Assistant, and David Burrell, Committee Support Assistant.

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# 1 Introduction

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1. On 17 May 2011, the Government published the House of Lords Reform Draft Bill White Paper<sup>1</sup> which included the text of a draft Bill to reform the House of Lords. In June the provisions of the draft Bill were debated in both Houses and remitted to a Joint Committee for pre-legislative scrutiny.<sup>2</sup> The Committee began its work on 11 July 2011.

2. The draft Bill's principal provisions are as follows:

- To provide for a reformed House of 300 members: 80 per cent (240) to be elected and 20 per cent (60) to be nominated (or, alternatively, for a 100 per cent elected House).
- Election would be by single transferable vote for large multi-member constituencies.
- Appointments would be made by a statutory Appointments Commission, which for certain purposes would be overseen by a Statutory Joint Committee.
- Members would serve single non-renewable terms of 15 years and the membership would be elected/appointed one third at a time at each General Election.
- 12 bishops would continue to sit *ex officio*; and the Prime Minister would appoint persons as members to serve as ministers, for the duration of their ministerial appointment only.
- Transitional arrangements would reduce the existing membership by one third in 2015, 2020 and 2025 as one third of the new membership arrives at each General Election. (Two alternative transitional arrangements are set out in the White Paper but not in the draft Bill.)
- By-elections for the current 90 hereditary peers would cease in 2015, although existing excepted hereditary peers could be selected to remain under transitional arrangements.
- Members would be full-time; their salaries and allowances would be set by IPSA (the Independent Parliamentary Standards Authority).
- Provision is made for expulsion or suspension for misconduct; voluntary resignation; and disqualification.

3. The history of reform is a long one and summaries of the principal milestones since the passing of the Parliament Act in 1911 may be found in the First Report of the Joint Committee on House of Lords Reform 2002–03 and in House of Lords Library Notes.<sup>3</sup> Following the passing of the House of Lords Act in 1999, which removed the right of all but 92 hereditary peers to sit in the House of Lords, the then Government pursued a

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1 Government White Paper, *House of Lords Reform Draft Bill*, Cm 8077, May 2011

2 HC Deb 27 June 2011 col 646, HL Deb 20 June 2011 col 1155 and 21 June col 1251

3 HL Paper 17 Session 2002–03

number of initiatives to further the debate on reform. In 1998 the Government published a White Paper (*Modernising Parliament Reforming the House of Lords*).<sup>4</sup> They received the report of the Royal Commission on the Reform of the House of Lords, chaired by Lord Wakeham, in early 2000.<sup>5</sup> There followed two further White Papers in 2001 (*Completing the Reform*)<sup>6</sup> and 2007 (*The House of Lords: Reform*),<sup>7</sup> the consultation paper of 2003 (*Constitutional Reform: next steps for the House of Lords*),<sup>8</sup> and the White Paper in 2008 (*An Elected Second Chamber: Further reform of the House of Lords*).<sup>9</sup>

4. Backbench and cross party groups in both Houses also produced ideas for reform—the *Constitutional Commission on options for a new Second Chamber* chaired by Lord Mackay of Clashfern in 1999;<sup>10</sup> a working group of Labour Peers, chaired by Lord Hunt of Kings Heath in 2004 (*Reform of the Powers, Procedures and Conventions of the House of Lords*);<sup>11</sup> and a cross party group of MPs (Ken Clarke, Robin Cook, Paul Tyler, Tony Wright and Sir George Young) in 2005 (*Reforming the House of Lords: Breaking the Deadlock*).<sup>12</sup>

5. In addition both Houses voted in 2003 and 2007 on a series of resolutions relating to the composition of the House of Lords. On both occasions the Lords voted for a fully appointed House. On the first occasion in 2003 the Commons vote was inconclusive. The Commons decided in favour of an 80 per cent or 100 per cent elected House on the second occasion in 2007, although 71 members of the House of Commons voted for both a fully elected House and a fully appointed House.

6. Many of the key features of the present draft Bill were either recommended or otherwise foreshadowed in one or other of these publications. Thus, for example:

- The concept of a hybrid House, part elected, part nominated, was proposed by the Royal Commission in 2000 and in the 1998 White Paper. The 2001 White Paper proposed 20 per cent election. *Breaking the Deadlock* proposed a 70 per cent elected and 30 per cent nominated House, with election in thirds on a STV system at each General Election (it recommended STV over open lists). The 2007 White Paper again proposed a hybrid House with election in thirds. The 2008 White Paper took this further by proposing an 80 per cent elected and 20 per cent nominated House, with election in thirds at each General Election.
- Proposals on size have varied. *Breaking the Deadlock* suggested 385 members, and Lord Mackay's Commission 450 members, for a hybrid House. The 2008 White Paper proposed a House smaller than the Commons without being more specific.

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4 Government White Paper, *Modernising Parliament Reforming the House of Lords*, Cm 4183, December 1998

5 Royal Commission on the Reform of the House of Lords, *A House of the Future*, Cm 4534, January 2000

6 Government White Paper, *The House of Lords: Completing the Reform*, Cm 5291, November 2001

7 Government White Paper, *The House of Lords: Reform*, Cm 7027, February 2007

8 Government consultation paper, *Constitutional Reform: next steps for the House of Lords*, September 2003

9 Government White Paper, *An Elected Second Chamber: Further reform of the House of Lords*, Cm 7438, July 2008

10 Constitutional Commission, *The Report of the Constitutional Commission on options for a new Second Chamber*, 1999

11 Labour Peers Group, *Reform of the Powers, Procedures and Conventions of the House of Lords*, 2004

12 Rt Hon Kenneth Clarke MP et al., *Reforming the House of Lords: Breaking the Deadlock*, July 2007

- Both the 2007 and 2008 White Papers proposed that a reduced number of bishops should continue to sit. *Breaking the Deadlock* saw strong arguments for ending the right of bishops to sit but did not wish to upset current arrangements so proposed a reduction to 16.
- The establishment of a statutory Appointments Commission has been consistently recommended since the Royal Commission recommended it, the exception being the 1998 White Paper which proposed the current non-statutory arrangements.
- Election for non-renewable 12-to-15 year terms was first recommended by Lord Mackay of Clashfern's group and more latterly by *Breaking the Deadlock* and the 2008 White Paper.
- The appointment of members to serve specifically as ministers was mooted both in the 2003 government consultation paper and in *Breaking the Deadlock*.
- The 1998 White Paper affirmed at some length that the current House's functions and powers would be carried over following any reform and this presumption prevailed in subsequent papers and studies.
- A lengthy transition, with current members reducing by thirds, was proposed by both Lord Mackay of Clashfern's Commission and *Breaking the Deadlock*. The 2007 and 2008 White Papers both foresaw a transitional period but of no specified duration.

7. It is readily apparent that many of the principal elements of the current draft Bill have been proposed before, and indeed this is acknowledged by the Government. Familiarity does not necessarily render some of them any less controversial, however.

8. At the heart of the controversy around the draft Bill lies the effect of electing a reformed chamber on current constitutional arrangements and, in particular, the balance of power between the two Houses. At present the House of Lords has a wide range of powers over legislation—it can initiate, amend and reject bills. These powers do not extend to supply and Money Bills, and are constrained in respect of other bills by the provisions of the Parliament Acts which provide that a bill may become law without the agreement of the Lords where the Lords have rejected or failed to pass it in two successive sessions. The House of Lords also has the capacity to reject delegated legislation.

9. Because the House of Lords is not elected, however, these powers are used very sparingly indeed. If the House chose to use its powers it would be one of the most powerful second chambers in the world. The restraint it presently exercises, as a consequence of its non-elected status, is expressed in the conventions which govern relations between the two Houses (see section 5 below).

10. The issue therefore is how the practice of the Lords will change once it is elected—whether a reformed house will continue exercise restraint and whether the conventions will survive in their current form. This question and the Government's arguments in respect of Commons primacy—in particular as they are expressed in the provisions of clause 2 of the draft Bill which asserts that elections to the House of Lords will not change

the status, functions and powers of the House of Lords—have therefore featured prominently in the Committee’s deliberations.

11. Other approaches to reform are of course possible. A number of our witnesses advocated an incremental approach, focusing on issues on which there exists a large degree of consensus: the mode of appointment, the size of the House, retirement, disqualification and expulsion. Lord Steel of Aikwood’s private member’s Bill attempted to address some of these issues. The Joint Committee was established to consider the draft Bill, however, and we have kept within our remit.

12. Nor does the report attempt to cost the Government’s proposals. The White Paper accompanying the draft Bill contains no such costings. We asked the Minister to provide financial information, but he twice declined to do so on the grounds that there were “so many variables at the moment”.<sup>13</sup> We assume that this information will be made available on introduction of the Bill.

13. Finally, some words of explanation. As set out in Erskine May’s *Parliamentary Practice*, a report from a committee embodies the conclusions agreed to by the majority of its members, and members who dissent from the report may not make minority reports to be appended to it. If a member disagrees to certain paragraphs in the report, or to the entire report, they can record their dissent by dividing the committee against those paragraphs, or against the entire report, as appropriate. Members can also put on record their observations and conclusions, as opposed to those of the majority, by proposing an alternative draft report or moving amendments to the draft. Any alternative draft or amendment on which a division takes place is recorded in full in the minutes of proceedings of the committee.<sup>14</sup> The Joint Committee’s Formal Minutes of 19, 21 and 26 March 2012, relating to the Committee’s consideration of the Report, are attached in Appendix 8.

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13 QQ 14, 67

14 *Erskine May*, 24th edition, page 901



## 2 Functions, Role, Primacy and Conventions

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### 1. The principle of an electoral mandate

14. The Government’s rationale for bringing forward this legislation is set out in the Foreword to the White Paper containing the draft Bill, to which the Prime Minister and Deputy Prime Minister are signatories: “We are now publishing a draft Bill to change the House of Lords into a more democratically elected second chamber. In a modern democracy it is important that those who make the laws of the land should be elected by those to whom those laws apply. The House of Lords performs its work well but lacks sufficient democratic authority”.<sup>15</sup>

15. Mr Mark Harper MP, the Minister for Political and Constitutional Reform, (‘The Minister’) elaborated this argument in oral evidence to the Committee: “in terms of making the law members of the second chamber are very influential. The argument is that people who make the laws ought to be elected by those to whom those laws apply. That is the simple principle. It is not in essence more complex than that. Although they are not forming the Government, they are playing a very important role in how laws are made in our country and in how that Government is scrutinised”.<sup>16</sup> He also made the point “that having elected members of the Upper House meant that they were more legitimate because they had been put there by voters—in terms of the party members—rather than by their parties”.<sup>17</sup> That is to say, the patronage of the political parties would be supplanted by the direct choice of the electorate.

16. Some witnesses took the same line as the Government. As Graham Allen MP told the Committee, “... any political power can be exercised only by those who are legitimately elected. That is my ultimate principle. It is one that applies to Commons’ Members and to local government councillors and I think ultimately we must aim to make it apply throughout our constitution”.<sup>18</sup> Lord Adonis took the view “that people who make the law should be elected—period”.<sup>19</sup> David Howarth, formerly a Liberal Democrat MP and now Reader in Law at the University of Cambridge, said that “people who take part in making new law need to be elected in some sense” and that no other form of authority was a sufficient substitute.<sup>20</sup> Other witnesses agreed with this principle.<sup>21</sup>

17. Professor John Curtice, Co-Director of the Centre for Elections and Representation at the University of Strathclyde, broadened the debate by drawing the Committee’s attention

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15 Cm 8077, page 5

16 Q 33

17 Q 273

18 Q 639

19 Q 494

20 Q 224

21 Damien Welfare and Campaign for a Democratic Upper House (Q 570), Unlock Democracy, Electoral Reform Society, Lord Foulkes of Cumnock, Green Party, Alan Renwick, Fawcett Society

to “very clear evidence from polling data that in today’s society, people are doubtful about a Chamber that does not have an element of election to it”.<sup>22</sup>

18. The argument that an equal case for election can be made for the House of Lords as a revising chamber, as for the House of Commons, was challenged in a range of evidence. For example, Professor Sir John Baker, Downing Professor Emeritus of the Laws of England at the University of Cambridge, took a completely different view. He challenged “the widespread assumption that the House of Lords must be elected as a requirement of democracy. That seems to me to be quite a serious fallacy given the unusual nature of our constitution”.<sup>23</sup> The House’s essential scrutiny role “does not require the sanction of the ballot box to give it legitimacy any more than the judicial role, because the House of Commons can insist on the last word”.<sup>24</sup> The Archbishops of Canterbury and York wrote that “the argument that such a [revising] chamber can only be effective and have proper legitimacy if it is wholly or mainly elected is no more than an assertion”.<sup>25</sup>

19. Similar views were expressed by Lord Cormack in his written evidence on behalf of the Campaign for an Effective Second Chamber, a group of some 200 members of both Houses. He wrote that the “ ‘democratic’ option ... is given—so much so it comes close to being unstated—but is not self evident. Democracy lies in the elected House of Commons and the government it sustains. It is this power of the Commons that ensures we are governed democratically and to create an elected Lords merely confuses the present clear line of accountability to the people.” Lord Cormack went on to say that the House of Lords alone does not “make the law”, but ultimately the elected House of Commons prevails.<sup>26</sup>

20. Professor Vernon Bogdanor, Research Professor at the Institute of Contemporary History, Kings College London, saw merit in avoiding election, “so there is a sense” he said “in which the current composition of the Lords evades the dilemma that faces all democracies about how to choose an effective second chamber ...”.<sup>27</sup>

21. It is arguable too that an elected mandate for a reformed second chamber will not in itself necessarily add to good governance. That will depend very much on what emerges under any new arrangements.

22. These differing views as to the need for an electoral mandate in a reformed second chamber underlie most of the evidence, both oral and written, received by the Committee. For some an electoral mandate is necessary—even paramount—and any uncertain consequences of election are deemed insufficient reasons not to proceed with the draft Bill.

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22 Q 309. The 2010 British Social Attitudes Survey found of those asked about the Lords: 6 per cent wanted it wholly appointed; 31 per cent mainly/wholly elected; 28 per cent equally elected/appointed; 22 per cent abolished. A January 2012 YouGov poll found that 10 per cent supported a wholly appointed House, 39 per cent a fully elected House and 32 per cent a partially elected one. See: House of Lords Library, *Public Attitudes Towards the House of Lords and House of Lords Reform*, (March 2012). However, a 2006 Populus poll found that respondents could hold contradictory positions: 75 per cent of respondents believed that the House of Lords should remain a largely appointed chamber and 72 per cent thought at least half the members should be elected. An Ipsos MORI poll conducted in 2007 also showed that respondents prioritised trust in the appointments process, detailed legislative scrutiny, the presence of experts, and making decisions in accordance with public opinion over the presence of elected members.

23 Q 222

24 Q 222

25 Archbishops of Canterbury and York. See also Lord Grenfell

26 Lord Cormack

27 Q 100

For others, the proposals represent an unbridgeable gap between election of the House of Lords and the primacy of the House of Commons, together with an unacceptable lack of clarity about how the two Houses will operate in terms of the legislative process once there are elected members in the Lords.

**23. Not surprisingly these differences of perception exist within the Committee too, as well as within political parties and across the two Houses. They will doubtless condition the debate when the Bill is introduced and considered in both Houses. The Committee, on a majority, agrees that the reformed second chamber of legislature should have an electoral mandate provided it has commensurate powers.**

## 2. Functions, powers and role

24. The current functions of the House of Lords are to serve as a chamber of legislature both initiating and revising Bills; to scrutinise the executive through questions, statements and select committee work; and as a forum of debate.

25. The Government describe these functions in its introduction to the draft Bill in the following terms:

“The House of Lords plays an important role in our legislature and, as a second chamber, is a vital part of our constitutional arrangements. The House of Lords shares responsibility for legislating with the House of Commons. Bills are debated and scrutinised in both Houses. The House of Lords has a reputation for the careful consideration of legislation and has the ability to delay and ask the Government and House of Commons to think again and, in some cases, offer alternative amendments for further consideration. The House of Lords also plays a vital role in scrutinising the work of the Government and holding it to account for its decisions and activities. It does this by members asking oral and written questions, responding to Government statements and debating key issues. Select Committees of the House of Lords conduct inquiries into matters of public policy and publish their findings to Parliament”.<sup>28</sup>

26. The Government believe that these functions would remain unchanged when the House of Lords is reformed and that the Lords should continue this work, which the Government considers valuable. Indeed, in 2002 the Joint Committee on House of Lords Reform came to a very similar view as to functions in its first Report.<sup>29</sup> Rt Hon Nick Clegg MP, the Deputy Prime Minister, in evidence to the House of Lords Constitution Committee said, “I do not think that there is an automatic link between composition and function. We are arguing that ... the mandates and the constitutional role of the House of Lords as a revising chamber can remain intact notwithstanding the fact that the legitimacy of the members of the House of Lords would be different in a House of Lords that is wholly or largely elected”.<sup>30</sup> In addition to these functions—legislation, scrutiny and debate—an elected or largely elected House would acquire a fourth function: representation. Once elected, albeit for large multi-member electoral districts, members of the Lords will

<sup>28</sup> Cm 8077, page 10

<sup>29</sup> HL Paper 17, Session 2002–03, pages 7–13

<sup>30</sup> Q 14, Constitution Committee, *Meeting with Nick Clegg MP, Deputy Prime Minister*, 1 February 2012

represent electors for the first time. The Minister recognised this when he told the Committee that elected members “will not have the same level of constituency responsibilities, but I do not think that it is true to say that you will not have any”.<sup>31</sup> This issue of constituency responsibilities is separately treated in section 14 below.

27. So far as concerns the present functions of the House of Lords, there was a broad consensus in the evidence received by the Committee that the House of Lords was an important and valued component of the parliamentary process and should be retained. While many witnesses suggested that the intended functions of a reformed House should first be defined before proposals for reform were devised, we received little evidence making a case for substantially varying the current functions.<sup>32</sup> This degree of acceptance spanned the divide between those who broadly supported the terms of the draft Bill and those who did not. Thus Lord Cormack wrote, “The House of Lords as it presently operates adds value to the political process”.<sup>33</sup> The Electoral Reform Society saw reform as “a means to preserve and enhance the Chamber’s vital constitutional role”.<sup>34</sup> And the Political Studies Association’s report, *House of Lords Reform: A Briefing Paper*, recognised that the House in scrutinising Bills and the actions of the executive “is widely seen as playing an important role within the British political system”. The Council of the Law Society of Scotland thought that the legislative and scrutiny functions “should be preserved and not affected by reform”.<sup>35</sup>

28. But while witnesses thought that the functions of the current House should be preserved—whether or not the House was reformed—it was also broadly accepted that a wholly or largely elected House would be likely to exercise its powers in relation to those functions in a more assertive way. Dr Meg Russell, Deputy Director of the Constitution Unit, University College London, articulated this in her written evidence:

“First, to what extent would the House of Lords, if transformed into an elected (or largely elected) chamber, make use of the substantial powers that it has? This of course is unknown. In practice it would be dependent on the extent of partisan conflict between the chambers, as well as on how political culture develops over time. The experience from other bicameral states suggests that elected chambers generally feel free to use their powers to the full, in a way that the House of Lords currently does not. So the second critical question, which is perhaps even more difficult than the first, is how powerful it is desirable for the reformed British second chamber to be? Some would argue, and some argued in the recent parliamentary debates, that it would be good for British politics if the second chamber acted as a greater constraint on government and the House of Commons. What this article has demonstrated is that a reformed House of Lords left with its existing powers, if it chose to use these more freely, would be one of the more powerful such chambers amongst parliamentary democracies”.<sup>36</sup>

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31 Q 254

32 David Howarth set out alternative “functions” in his chapter “Addressing the central policy questions” in “*The End of the Peer Show*”, pages 103–8

33 Lord Cormack

34 Electoral Reform Society

35 Law Society of Scotland

36 Dr Meg Russell. See also Q 166

29. The Minister acknowledged that the relationship between the Houses would change:

“I do not think that the Government’s position is that there will be no change whatever in the relationship between the two Houses, but the statutory underpinning in the Parliament Acts means that the House of Commons remains the primary Chamber. The exact relationship will change, as it has, but the idea that we could now, today, set out the exact relationship and codify the powers on the way in which the two Houses work together and set those in stone is not realistic”.<sup>37</sup>

30. Witnesses’ opinions varied as to the consequences of the more assertive use of powers which derived from election. Many thought that this would lead to an unacceptable level of conflict between the two Chambers. Professor Vernon Bogdanor wrote “direct election, however much the principle is qualified, is likely to make the second chamber more powerful. The upper House would become an opposing rather than a revising chamber”.<sup>38</sup> Rt Hon Peter Riddell, Director of the Institute for Government, stated “members of an elected chamber would feel they had a strong right to challenge the Commons, at least on non-financial legislation, since both Houses could claim democratic legitimacy”.<sup>39</sup> The Archbishop of Canterbury noted that “An elected second chamber, we believe, runs the risk ... of being in competition with the first chamber in terms of legitimacy, especially if the second chamber is elected by a method, the single transferable vote, that in the eyes of a good many people ... is regarded as a more legitimate and more credible method of election than first-past-the-post”.<sup>40</sup> Others were of similar opinion.<sup>41</sup>

31. Various witnesses thought that greater assertiveness would benefit Parliament as an institution and improve scrutiny of the executive. They did not, in other words, view any increase in assertiveness of the reformed House in terms of a ‘zero-sum game’ in which the relative influence of the Commons was likely to be diminished. Lord Adonis told the Committee, “I have no doubt at all that Members of the second Chamber would behave in a more forthright manner if they had a democratic mandate behind them. I personally think that that would be a jolly good thing. That is my judgment. I do not think that we suffer from an excess of parliamentary power vis-a-vis the Executive in this country; on the contrary, I think that the problem is that the Executive is too dominant in our system”.<sup>42</sup> According to Donald Shell, formerly a Senior Lecturer in Politics at the University of Bristol:

“If the process of strengthening Parliament is to continue, while this may primarily be a matter for the House of Commons, the second chamber can and should play a complementary role. In the long run it may not be able to do this if it remains an entirely appointed House (as at present) whatever changes may be made to the machinery for appointment. Many have argued that a largely elected House would inevitably rival the Commons and indeed could threaten the “primacy” of the Commons. This is a danger, but I believe one that can be guarded against partly by

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37 Q 2

38 Professor Vernon Bogdanor. See also Q 94

39 Mr Peter Riddell

40 Q 439

41 Paul Murphy MP (Q 604), Lord Cormack, Dr Colin Tyler, Conor Burns MP, Thomas Docherty MP

42 Q 498

ensuring a clearer statutory embodiment of the limitations on the powers of the second chamber, and partly through ensuring that it is elected on a completely different basis”.<sup>43</sup>

32. Several witnesses who saw merit in a more assertive House agreed that any heightened assertiveness could be manageable.<sup>44</sup> This question of preserving Commons primacy and managing relationships between two elected chambers is fundamental and is discussed in greater detail in the following sections.

**33. The Committee agrees with the Government’s view that in order to enhance the effectiveness of the parliamentary process it is appropriate that a reformed House should perform, but not be constrained by, the functions of the present House of Lords—including initiating and revising legislation, subjecting the executive to scrutiny, and acting as a forum of debate on matters of public policy. Indeed, the Committee agrees that for the first time the reformed House will, in respect of its elected members, acquire a representative function. (The implications of this are discussed more fully in section 14 below under constituency issues).**

**34. The Committee is firmly of the opinion that a wholly or largely elected reformed House will seek to use its powers more assertively, to an extent which cannot be predicted with certainty now.**

**35. The Committee considers that a more assertive House would not enhance Parliament’s overall role in relation to the activities of the executive.**

**36. Any overall strengthening of Parliament would have to be subject to a defined understanding of the relationship between the Commons and the reformed House and of any conventions governing that relationship.**

### 3. Primacy of the House of Commons

Relevant section of the draft Bill: Clause 2(1)

#### **2 General saving**

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

37. We have discussed above the effects which changing the composition of the House of Lords would have on the role, powers and functions of the House of Lords. The Government believe that the proposed changes in the composition of the second chamber ought not to change the status of that chamber as a House of Parliament or the existing constitutional relationship between the two Houses of Parliament.<sup>45</sup>

<sup>43</sup> Donald Shell

<sup>44</sup> Dr Alan Renwick (Q 196), David Howarth (QQ 230–31), Damien Welfare (Campaign for a Democratic Upper House), Professors Simon Hix and Iain McLean, Democratic Audit, Unlock Democracy

<sup>45</sup> Cm 8077, page 11



38. In its Summary of the White Paper, the Government state “We propose no change to the constitutional powers and privileges of the House once it is reformed, nor to the fundamental relationship with the House of Commons, which would remain the primary House of Parliament. That primacy rests partly in the Parliament Acts and in the financial privilege of the House of Commons”.<sup>46</sup>

39. The statutory provisions which underpin the primacy of the House of Commons include but are not limited to:

- the Parliament Acts 1911 and 1949;
- the Ministerial and other Salaries Act 1975, in its definition of the Leader of the Opposition as the Member of the House who is for the time being the Leader of the party in opposition to Her Majesty’s Government which has the greatest numerical strength in the House of Commons;
- the Fixed-term Parliaments Act 2011, in relation to the Dissolution of Parliament;
- Part 2 of the Constitutional Reform and Governance Act 2010, in relation to treaties; and
- Section 130 of the Localism Act 2011, in relation to parliamentary consideration of National Policy Statements.

40. Non-statutory provisions include the principle that the Government of the day can continue in office only so long as they retain the confidence of the House of Commons. Most important though, in the Government’s view, are the long-standing financial privileges of the House of Commons dating from Resolutions in 1671 (“That in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords”) and 1678:

“That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords”.<sup>47</sup>

41. As the White Paper points out, the Parliament Acts are rarely resorted to: the relationship between the Houses is influenced on a day-to-day basis by a series of conventions which have grown up over time. These include:

- the principle that the House of Lords should pass the legislative programme of the Government which commands the confidence of the House of Commons;
- the principle that, whether or not a Bill has been included in a Manifesto, the House of Lords should think very carefully about rejecting a Bill which the Commons has approved; and

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<sup>46</sup> *Ibid.*, page 7

<sup>47</sup> *Erskine May*, 24th edition, page 786

- the principle that the House of Lords will consider Government Bills in reasonable time.

The Government's position is that these conventions have served the relationship between the Houses well and that they represent a delicate balance which has evolved over the years, and will continue to evolve.<sup>48</sup> We discuss these conventions in more detail in section 5 below.

42. The Government believe that the primacy of the House of Commons should be preserved. In the Government's view, the present balance between the two Houses serves the legislative process well, and gives the second chamber the opportunity to make a substantive contribution while not at the same time undermining the relationship between the Government and the House of Commons.<sup>49</sup>

43. According to the White Paper, the Government believe that Clause 2 of the draft Bill, simply asserting that status, powers and functions will not change, is the best way of preserving the primacy of the House of Commons because the Bill does not attempt to codify the use of the existing powers of the Houses in legislation but rather, as now, accepts that the position is a matter of convention.<sup>50</sup>

44. Two questions arise from Clause 2. First, is the inclusion of Clause 2 an effective way to maintain the status quo, as the Government claim? Secondly, if it is not, are the Parliament Acts and other statutory provisions and the financial privileges of the House of Commons sufficient to maintain the primacy of the lower chamber in the face of a more assertive House of Lords?

## Clause 2

45. We sought to examine in depth the intention behind the propositions expressed in Clause 2 of the draft Bill. According to the Cabinet Office's *Guide to Making Legislation*, a Bill's legal adviser prepares Drafting Instructions, on the basis of the Minister's policy instructions, to say what is wanted, but also to tell Parliamentary Counsel the reasons behind the various proposals.<sup>51</sup> As the Cabinet Office guidance points out, poorly drafted or inadequately thought-through Instructions can cost time later on. The Minister declined to share the Government's Drafting Instructions for Clause 2 with the Joint Committee, on the grounds that such Instructions were subject to legal professional privilege.<sup>52</sup> The Committee deeply regrets that the Government felt unable to disclose this advice—it would have been helpful to the Committee in its deliberations and this lack of transparency has hampered Parliamentary scrutiny of the draft Bill.

46. Following our final oral evidence session on Monday 27 February, the Minister submitted a paper explaining the Government's thinking in drafting Clause 2, and the alternatives that were considered. This letter is attached as Appendix 7. The Minister

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48 Cm 8077, page 11

49 *Ibid.*, page 11

50 *Ibid.*, page 11

51 Cabinet Office's *Guide to Making Legislation*, Chapter 9

52 Q 47



explained that the Government's preferred approach was to preserve the current situation of a non-legislative, flexible relationship between the two Houses which could evolve, but to state on the face of the legislation that changes made by the Bill itself were not to affect the current powers. The Government had considered three other options:

- to set out each of the powers and the relationship between the two Houses in statute;
- as above, but in addition to amend the Parliament Acts to include further key elements of privilege, for example the Salisbury-Addison convention (see paragraph 76) and/or aspects of financial privilege; or
- to remain silent on the face of the Bill in relation to each of the powers and the relationship between the two Houses in statute.

The Minister's paper set out the reasoning behind the Government's rejection of each of these three options. The Government recognised the risk that a complete statutory codification would lead to tensions as to where the boundary lay between Parliament's jurisdiction over its own processes and the courts' interpretation of statute law. Even a more limited codification would lead to similar problems. Having recognised these problems, the Government nevertheless rejected its third option, of remaining silent in the Bill, in the belief that a general clause would provide clarity and reassurance that the House of Commons would retain its primacy.

47. A major difficulty is that Clause 2 (1), as drafted, seeks to establish a series of *negative* propositions, which raise several different problems. A problem common to the series of negative propositions is that there is no existing body of statute defining these key terms: status, primacy, powers, rights, privileges, jurisdiction and conventions. While *Erskine May* (the authoritative text on parliamentary practice and constitutional convention) states that "for some three and a half centuries, the boundaries between the competence of the law courts and the jurisdiction of either house in matters of privilege has been disputed",<sup>53</sup> it is also the case that the courts have been reluctant to investigate how Parliament exercises its functions. There has been comity between the institutions. To import these terms into statute at all raises the risk that these terms would become subject to statutory interpretation by the courts. That would be a significant constitutional development in itself.

48. It is paradoxical and self-defeating to refer to conventions in statute: once the meaning of a convention had been legally determined, it would no longer be a convention. Rt Hon Lord Cunningham of Felling, who chaired the Joint Committee on Conventions of the UK Parliament, told us in oral evidence: "Codification is another word for writing conventions into either Standing Orders or statute. Codifying conventions is a contradiction in terms. They cease to be conventions if they are codified. Therefore, the Committee [on Conventions of the UK Parliament] concluded not that it could not be done but that it was not a good idea".<sup>54</sup>

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<sup>53</sup> *Erskine May*, 24th edition, page 282

<sup>54</sup> Q 681

49. Furthermore, the inclusion of conventions alongside the powers, rights, privileges, and jurisdiction of either House of Parliament in subsection (1)(c) of Clause 2 lays these conventions open to judicial intervention. The Courts could infer that if Clause 2 were passed that Parliament intended the courts to have the authority to determine what those conventions (and indeed the powers, rights, privileges, and jurisdiction) were. The Committee's view is that no provisions in the Bill should afford the opportunity for judicial interference in a manner inconsistent with Article 9 of the Bill of Rights 1689.<sup>55</sup>

50. The negative proposition, that the House of Lords Reform Act will not affect the primacy of the House of Commons, is the central problem in Clause 2. The primacy of the House of Commons would not be reduced by any explicit provision in the Act. But as we have discussed above, most observers expect the behaviour of a wholly or mainly elected House of Lords would become more assertive. This raises the critical question of whether this would call into question the extent or nature of that primacy in the future.

51. Lord Adonis said that the contention in the draft Bill that the Bill does not alter the relationship between the two Houses was “clearly an absurd proposition”.<sup>56</sup> Rt Hon Lord Grocott told us that Clause 2 “at its best it is wishful thinking and at its worst sloppy draftsmanship or bad direction or whatever”.<sup>57</sup> Lord Cunningham of Felling told us that “In Clause 2 of the Bill, which, trying to be kind, I can describe only as disingenuous, there are a number of naive propositions. It is almost like someone walking off a cliff-edge in the dark. It suggests that all these things can happen—that profound changes can take place—but nothing else will be changed”.<sup>58</sup> Peter Riddell, regarded Clause 2 as defective.<sup>59</sup>

52. When we asked Professor Dawn Oliver, Treasurer of the Middle Temple, if she agreed with Peter Riddell on Clause 2, she replied: “I do not think there is much harm in putting it there. It is a symbolic statement of a wishful thought, really. I do not think there is anything damaging about that and it is probably a wishful thought that ought to be kept in people's minds, but I do not think it is enforceable”.<sup>60</sup> Others expressed similar views.<sup>61</sup> According to Dr Meg Russell of University College, London, “Clause 2 of the Bill is a fiction; it is pretty meaningless”.<sup>62</sup>

53. David Howarth told us: “If I were doing this Bill, I certainly would not have Clause 2. I am in a group of anti-Clause 2 people; the clause is just silly”.<sup>63</sup> He argued that “[Clause 2] cannot change the world. If you have elected people in the Lords, they will start to feel more legitimate in many respects than the existing Members and will start to do stuff. All

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55 See Section 21 below on Parliamentary privilege for further discussion of this issue.

56 Q 499

57 Q 696

58 Q 680

59 Q 129

60 Q 153

61 Q 197 (Dr Alan Renwick)

62 Q 192

63 Q 229

Clause 2 says is that nothing in the Bill changes the situation, but that does not mean that the world does not change. The world will change”.<sup>64</sup>

54. We observe that only the Government felt that Clause 2 was a useful addition to the draft Bill.

**55. We concur with the overwhelming view expressed to us in oral and written evidence that Clause 2 of the draft Bill is not capable in itself of preserving the primacy of the House of Commons.**

### *The primacy of the House of Commons*

56. While many witnesses drew attention to the threat to primacy which could follow from an elected House, some felt that a more assertive House of Lords could enhance the effectiveness of Parliament as a whole vis-à-vis the Executive which tends to dominate the House of Commons, provided that its majority there remains secure. Dr Alan Renwick, Reader in Comparative Politics and at the University of Reading, thought that in general Commons primacy would not be undermined and stated:

“There is much to be said for a more powerful second chamber: power is presently highly concentrated in the British political system, creating the danger that legislation may be passed without adequate consideration of all its implications”.<sup>65</sup>

57. In his evidence to us on behalf of Unlock Democracy (formerly known as Charter 88) its Director, Peter Facey, said:

“Let us be clear: a directly elected or predominantly elected second Chamber would be more assertive. It would use the powers that it has. That does not mean that it affects primacy. In some ways, this is a strange debate. If by primacy you mean that the Executive, dominating the House of Commons, always gets its way on everything possible, I am against that definition of primacy. If you are talking about the House of Commons as the prime Chamber from which the Government are formed, where votes of confidence are held, from which most legislation comes through and which is the prime—the stronger—of the two Chambers, under a directly elected second Chamber that will still be the case. Is it going to be more assertive than now? Is it going to be more confident than now? Yes. Do I think that that is a bad thing? No”.<sup>66</sup>

58. A number of submissions doubted whether an elected Lords would necessarily question Commons primacy. The Hansard Society argued that: “The different electoral system, term lengths and limits proposed for the reformed Lords, coupled with the constitutional reality that it is the Commons from which the government is formed and where it must sustain confidence, should underpin the primacy of the Commons”. The Hansard Society nevertheless recommended that a comprehensive review of the legislative powers of the executive and Parliament should be undertaken to lead to a concordat “which clearly sets out where key powers lie, and clarifies the relationships between, and

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64 Q 230

65 Dr Alan Renwick

66 Q 354

responsibilities of, the executive, the legislatures and the courts”.<sup>67</sup> Katie Ghose, Chief Executive of the Electoral Reform Society, told us that the Electoral Reform Society “[did] not have massive concerns about the primacy issue. We think that there should be an elected House of Lords. We think that it is entirely achievable and indeed essential that the House of Commons retains primacy”.<sup>68</sup> The Electoral Reform Society pointed to a number of factors that would help maintain Commons primacy, including a clear role differentiation between members of the Commons and the Lords with members of the latter elected to scrutinise legislation with no incentive for individual constituency casework, and election by thirds which would ensure that a clear majority of the Lords would have a weaker mandate than the Commons. The Electoral Reform Society also suggested that codifying the Lords’ powers and conventions would also help remove potential ambiguity.<sup>69</sup>

59. The authoritative manual on Parliamentary practice, *Erskine May*, describes the principal power of the Commons as follows: “The dominant influence enjoyed by the House of Commons within Parliament may be ascribed principally to its status as an elected assembly, the members of which serve as the chosen representatives of the people”.<sup>70</sup>

60. The Explanatory Notes on the draft Bill also intimate a link between primacy and the currency of a popular mandate: “Having simultaneous elections, apart from the exception, means that it will not be possible for the House of Lords to have a more recent popular mandate than the House of Commons, which will continue to have primacy”.<sup>71</sup> Other witnesses agreed,<sup>72</sup> including Professors Simon Hix and Iain McLean who believed that staggered elections would provide a safeguard for Commons primacy as “the mandate of the Commons will always be more recent than that of the upper house—two-thirds of whom will have been elected more than five years ago”.<sup>73</sup> The Electoral Reform Society argued that election by thirds would ensure that a clear majority of the Lords would have a weaker mandate than the Commons.<sup>74</sup>

61. Other witnesses took the view that any notion that primacy is rooted in the legitimacy of the electoral process would be called into question by changing the composition of the House of Lords to become wholly or mainly elected. Professor Vernon Bogdanor argued that as the House of Lords was currently not elected, “it can make no claim to be a representative chamber, and therefore can never challenge the primacy of the Commons”. As such he contended that “a government seeking to tamper with that logic does so at its peril”.<sup>75</sup> Lord Peston, The Rt Hon Lord Barnett and Baroness Gould of Potternewton maintained that: “It is obvious if a substantial elected element is included in the new House

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67 Hansard Society

68 Q 289

69 Electoral Reform Society

70 *Erskine May*, 24th edition, page 181

71 Cm 8077, page 164

72 Donald Shell, *Unlock Democracy*, Damien Welfare and the Campaign for a Democratic Upper House

73 Professors Simon Hix and Iain McLean

74 Electoral Reform Society

75 Vernon Bogdanor

of Lords, they will demand more powers and will not regard themselves as subservient to the Commons”. They also contended that the Parliament Acts would be “irrelevant” to an elected Lords.<sup>76</sup>

62. The fundamental question of the possibility of an elected House of Lords challenging the financial privilege of the House of Commons was also raised by witnesses. The Rt Hon Lord Howarth of Newport suggested that an elected Lords, with arguably a more legitimate electoral system, would threaten the primacy of the Commons. He thought that “in due course, an elected Second Chamber will challenge the financial privilege of the House of Commons” and “the Parliament Acts will come under challenge”.<sup>77</sup> The Clerk of the House of Commons concurred that there was a risk the House of Lords would challenge Commons’ financial privilege: “Perhaps I may put myself—this is an eventuality that I can only marginally imagine—in the position of being an elected Member of the House of Lords. I cannot imagine representing constituents who are taxpayers without feeling that I should have a role in expressing views about the way in which money is being spent”.<sup>78</sup>

63. Penny Mordaunt MP argued that “the only reason that the Parliament Acts have legitimacy, the only reason that the House of Commons can legitimately claim the power of the purse, is because it is elected in contradistinction to the House of Lords”. This, she thought, would be undermined by an elected Lords and especially one elected by an electoral system that was perceived to be more legitimate. In addition, this could lead to a situation in which the Commons “will increasingly be regarded as the domain of the executive which must be held to account by the Upper House”, so changing the dynamic between the two Houses.<sup>79</sup> A number of other submissions also maintained that an elected House of Lords would challenge the primacy of the House of Commons.<sup>80</sup> Peter Riddell told us:

“I think the current Bill is defective. Clause 2 is the major flaw in the Bill because all it does is state, ‘Because we believe it to be so, it will be so.’ I think that is completely fallacious because the actual statutory limitations are pretty limited—the absolute bar on amending designated finance Bills and the one year suspensory veto—but beyond that it is custom and practice and what Professor Bogdanor referred to as the self-imposed constraints. I do not believe that those are sustainable under an altered composition of the House ... There would be a very fractious relationship. There would be claims of more legitimacy by the second Chamber. There are also issues about the transitional phase, but essentially there would be claims of more legitimacy. There would be more resistance—the ping-pong would break. I know there are conventions about how often ping-pong can be done. You would have many more problems. That is why this has to be addressed, I think, in any legislation.

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76 Lord Peston, Lord Barnett and Baroness Gould of Potternewton

77 Lord Howarth of Newport

78 Q 652

79 Penny Mordaunt MP

80 Christopher Hartigan, John F H Smith, Lord Judd, The Bishop of Worcester, Bernard Jenkin MP, Pauline Latham MP, Dr Julian Lewis MP, Richard Douglas, The Muslim Council of Britain, Joseph Corina, Lord Bilston et al, Archbishops of Canterbury and York, Lord Higgins, Conor Burns MP, Thomas Docherty MP

To rely on the Parliament Act is just completely unworkable for a coherent Government”.<sup>81</sup>

Dr Meg Russell noted that “what limits the House of Lords’ *de facto* powers is not the Parliament Acts but convention, culture and, in particular, the views about the legitimacy of the present membership of the House of Lords ... If you had an elected second chamber, those arguments would not hold in the same way”.<sup>82</sup>

**64. We agree that the existing primacy of the Commons rests on a number of factors including, but not limited to, the self-restraint of the current House of Lords.**

**65. We are wary of according too much weight to claims about the relative strength of individual mandates, not least in relation to the passage of time. A mandate is a mandate for the period for which a member is elected. An MP’s mandate is no weaker in the fourth or fifth session of a Parliament than in the first.**

**66. We agree that following election the increased assertiveness of a reformed second chamber will affect the balance of power between the two chambers in favour of the House of Lords.**

**67. Opinion within the Committee varied as to the impact which any shift in the balance of power would have on House of Commons primacy. Some members believed that Commons primacy would remain absolute, buttressed by the provisions of the Parliament Acts: some believed that an electoral mandate would inexorably lead to claims of equal primacy with the Commons. Some believed that that no attempt should be made to preserve Commons primacy, while others believed Commons primacy would be undermined. A majority, while acknowledging that the balance of power would shift, consider that the remaining pillars on which Commons primacy rests would suffice to ensure its continuation.**

#### **4. Primacy: additional statutory provision**

**68. Several contributors outlined measures which could address the concern that Commons primacy might be challenged by way of additional statutory provision.**

**69. Lord Desai, who thought that if the Lords were elected “the primacy of the House of Commons cannot be taken for granted”, suggested that a constitutional “lock-in device” might be required to ring fence Commons primacy from repeal.<sup>83</sup> Donald Shell suggested a number of additional steps to help ensure primacy:**

“I do think that the concern over primacy could in part be met by a re-formulation and extension of the Parliament Acts. The delay on primary legislation is 12 months from the date of first second reading of a Bill in the Commons, and excludes Bills introduced in the Lords. This should be replaced with a stipulated period (say six months?) from a declared date of disagreement (perhaps after two rounds of ping pong?), invoked by a vote in the Commons initiated by the minister in charge after

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81 QQ 116,129

82 Q 178

83 Lord Desai



exhausting whatever efforts to secure compromise between the Houses s/he had considered appropriate. This should be made applicable to legislation originating in either House”.<sup>84</sup>

70. The Campaign for a Democratic Upper House also suggested a number of possible additional mechanisms which could be deployed to buttress the primacy of the House of Commons: a requirement for the Prime Minister to be appointed from the Commons; a rule that no more than 20 per cent of Ministers (or paid Ministers) may be members of the second chamber; a clear statement of the roles, functions and status of the two Houses; lower salaries; and a job description for members of the Lords to differentiate their role from the Commons.<sup>85</sup>

71. The applicability of the Parliament Acts once the House of Lords is “constituted on a popular basis”, to paraphrase the 1911 Act, was commented upon in evidence to us by Rt Hon Lord Goldsmith QC and by Lord Pannick. This issue is considered in section 22 below.

72. Commons primacy could be buttressed by further limiting in statute the powers of the House of Lords by, for example:

- limiting the suspensory veto under the Parliament Acts to—say—six months;
- extending the Parliament Acts to amendments made to Lords bills in the Commons;
- replacing the power to reject statutory instruments with a power to delay.

The Clerk of the Parliaments confirmed in his evidence to us that such limitations were in theory possible, although he expressed doubts as to both their workability and practical effect.<sup>86</sup>

73. Professor Vernon Bogdanor also expressed the view that “Proposals to limit the power of the new second chamber would commit the absurdity of giving an elected chamber less power than the current unelected House”.<sup>87</sup> Some members of the Committee, meanwhile, believe that the election of the Lords will inevitably erode Commons primacy and that it will necessitate a constitutional settlement on the conventions, powers, rights, and privileges of both Houses of Parliament. There is a minority view on our Committee that, given the undoubted fact that primacy will move measurably towards the House of Lords under this Bill, the 1949 Parliament Act should be repealed thus restoring the allowable delay for non-financial measures to two years as originally provided for in 1911.

**74. A majority of the Committee does not advocate any proposals for making statutory provision to entrench Commons primacy. These ideas and others in the same vein may be brought forward during the legislative passage of the Bill through Parliament. If such proposals are advanced, it may be expected that they will meet opposition on the grounds that they would diminish the powers of an elected House of Lords too greatly,**

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84 Donald Shell

85 Damien Welfare and the Campaign for a Democratic Upper House

86 QQ 623–6

87 Professor Vernon Bogdanor

that they would weaken scrutiny of the Executive, or that they would be meaningless and unworkable. Such proposals may also give rise to the possibility of judicial intervention which the Committee considers to be profoundly undesirable.

## 5. Conventions

75. As we have said above, the primacy of the Commons is only partly expressed in statutes such as the Parliament Acts and the various Acts making exceptions to the general rule that secondary legislation requires the approval of both Houses or may be struck down by either House. The relationship between the two Houses and the way in which they exercise their wide powers in relation to each other are largely determined by certain conventions. The remit of the Joint Committee on Conventions of the UK Parliament, appointed in 2006 and chaired by Lord Cunningham of Felling, required it to accept the primacy of the House of Commons. The Joint Committee (“the Cunningham Committee”) did not offer a definition of “convention”, believing that it would know one when it saw one.<sup>88</sup>

76. The Cunningham Committee suggested that the Salisbury-Addison Convention be described as the Government Bill Convention, which it formulated thus:

In the House of Lords:

- A manifesto Bill is accorded a Second Reading;
- A manifesto Bill is not subject to ‘wrecking amendments’ which change the Government’s manifesto intention as proposed in the Bill; and
- A manifesto Bill is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose.

The Cunningham Committee, having noted the difficulties about defining a “manifesto Bill”, did not recommend any attempt to define one, but expressed the hope “that it will be as possible to deal pragmatically with any problems which may arise as it has in the past”.<sup>89</sup>

77. The Cunningham Committee agreed that it was a convention that the Lords should consider Government business in reasonable time.<sup>90</sup> But it went on to note that there was no conventional definition of ‘reasonable’, and concluded “we do not recommend that one be invented. The Government wants to define ‘reasonable’ or set a time limit; but in our view there is no problem which would be solved by doing so”.<sup>91</sup>

78. The Cunningham Committee agreed that the exchange of amendments between the Houses was an integral part of the legislative process, carried on within the context of the primacy of the House of Commons and the complementary revising role of the House of Lords, was not a convention, but a framework for political negotiation.<sup>92</sup> The Cunningham

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<sup>88</sup> HL Paper 265–I/HC 1212–I of Session 2005–06, paragraph 17

<sup>89</sup> *Ibid.*, paragraph 113

<sup>90</sup> *Ibid.*, paragraph 153

<sup>91</sup> *Ibid.*, paragraph 154

<sup>92</sup> *Ibid.*, paragraph 168



Committee called for more rigorous observation of the convention that neither House would in general be asked to consider Amendments without notice.<sup>93</sup>

79. In relation to financial privilege, the Cunningham Committee concluded that “If the Commons have disagreed to Lords Amendments on grounds of financial privilege, it is contrary to convention for the Lords to send back Amendments in lieu which clearly invite the same response”.<sup>94</sup>

80. On secondary legislation, the Cunningham Committee took the view that opposition parties should not normally use their numbers in the House of Lords to defeat an statutory instrument simply because they disagreed with it, as this would be contrary to the fundamental conventions which govern the relationship between the Houses and would also defeat the purpose of delegating that particular legislative power to Ministers in the first place.<sup>95</sup>

81. The Cunningham Committee agreed unanimously that conventions as such were flexible and unenforceable,<sup>96</sup> and was opposed to legislation or any other form of codification which would turn conventions into rules, remove flexibility, exclude exceptions and inhibit evolution in response to political circumstances.<sup>97</sup> The final recommendation from the Cunningham Committee was that the courts have no role in adjudicating on possible breaches of parliamentary convention.<sup>98</sup>

82. The Cunningham Committee noted that the conventions would be affected by House of Lords Reform. It stated that:

“Our conclusions apply only to present circumstances. If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again. What could or should be done about this is outside our remit”.<sup>99</sup>

Both Houses debated the report in January 2007 and took note with approval.<sup>100</sup>

83. Much of the evidence on conventions we received recognised that in greater or lesser degree they would be affected by reform and could be expected to evolve. Thus the Minister acknowledged to us in oral evidence that “the exact relationship [between the Houses] and the conventions will change over time”.<sup>101</sup> Peter Riddell told us that the

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93 *Ibid.*, paragraph 169

94 *Ibid.*, paragraph 252. See also *Companion to the Standing Order and Guide to the Proceedings of the House of Lords*, 2010 edition, paragraph 8.182

95 *Ibid.*, paragraph 230

96 *Ibid.*, paragraph 281

97 *Ibid.*, paragraph 284

98 *Ibid.*, paragraph 285

99 *Ibid.*, paragraph 61

100 House of Lords Journal, 2006–07, Vol 240, page 150; House of Commons Journal, 2006–07, Vol 263, page 109

101 Q 8

current conventions were not sustainable with a predominantly or wholly elected upper House and that he expected there to be a “bruising interlude” before the relationship settled down and a new set of conventions developed.<sup>102</sup> Meanwhile Professor Vernon Bogdanor stated that current conventions would have to be revisited if the Lords were to be elected:

“The conventions regulating the relationship between the Lords and the Commons are unlikely to survive an elected chamber. The third paragraph of the preamble to the 1911 Parliament Act recognises this in suggesting that, for a chamber constituted on a ‘popular’ basis, new proposals would be needed ‘for limiting and defining the powers of the new Second Chamber’. But the government has made no such proposals for limiting and defining powers of its proposed ‘new Second Chamber’”.<sup>103</sup>

84. Rt Hon Paul Murphy MP also expected the existing conventions to be called into question: “the whole situation changes when people are elected to it. You can have all the agreements and conventions in the world, but *realpolitik* takes over”.<sup>104</sup>

85. Professor Dawn Oliver drew attention to the likelihood of a more assertive Lords, suggesting that the existing Salisbury-Addison convention depended largely on the fact that “the House of Lords knows jolly well that it does not have democratic legitimacy—that is why it more or less follows the convention—but if the House of Lords knew that it did have democratic legitimacy I do not see why it would feel it necessary to obey the convention”.<sup>105</sup> Drawing on the Australian experience, however, Dr Meg Russell of University College, London told us that in systems with two elected Houses, it was their relative legitimacy which was politically significant:

“Members of the lower House [in Australia] do their best to argue that the primary House is the more legitimate ... despite the fact that both Chambers are elected. There are a number of things in the Government’s proposals that seek to create that kind of situation—the long terms of office, the non-renewability of terms, the renewal in parts and so on—and those aspects of the proposals are very important”.<sup>106</sup>

86. Thus several contributors questioned whether the conventions would unravel if the Lords were to be elected. Unlock Democracy pointed to the Australian Senate which “demonstrates that it is possible for a directly elected second chamber, even one with more formal powers than the House of Lords, to be constrained by convention”.<sup>107</sup> Dr Alan Renwick also considered that an elected Lords might not necessarily fundamentally question existing arrangements, though he accepted that reform would lead to a more powerful Lords:

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102 Q 116

103 Professor Vernon Bogdanor

104 Q 610

105 Q 143

106 Q 178

107 Unlock Democracy

“... the reformed second chamber would have greater democratic legitimacy; but it would still be constrained by the Parliament Acts and probably by some conventional constraints, and the government would still be based in the House of Commons”.<sup>108</sup>

87. The Hansard Society suggested that “reform of the House of Lords would provide the necessary impetus to undertake such work; codifying the desired conventions between the two Houses would establish a clear and shared understanding of the relationship between the Houses—for example, in relation to the extent of the Lords’ delaying powers—and thereby ensure that it is more likely to be respected in the future”.<sup>109</sup> The Council of the Law Society of Scotland and Liam Finn, a Law undergraduate at the University of Cambridge, went further, suggesting that the Salisbury-Addison convention be put on a statutory basis:

“If the second chamber were to be given a greater degree of democratic legitimacy it would be necessary to review the relationship between the two Houses of Parliament. In particular the Salisbury Convention would require to be revisited. At the very least it should be committed to legislative form”.<sup>110</sup>

88. Several submissions accepted that the conventions would come under strain, but questioned whether they could be codified. Donald Shell stated that conventions could not be codified as this “would be to impose rigidity on rules which depend for their effectiveness on their flexibility, and their capacity thereby to change and adapt to meet new situations”.<sup>111</sup> Peter Riddell noted that: “By definition, conventions are unenforceable and only work if there is a shared understanding and acceptance of what they mean”.<sup>112</sup> Lord Howarth of Newport stated: “you cannot legislate to perpetuate conventions, which are the product of a particular history and dynamic and whose acceptance depends upon their reflecting a particular reality, in this case the relationship between an elected and an unelected House”. This would be especially true for a “flexible, unwritten constitution” combined with a “doctrine of the omni-competence of statute”.<sup>113</sup>

89. By way of meeting this challenge, Damien Welfare, Co-ordinator of the Campaign for a Democratic Upper House proposed the establishment of a political and constitutional framework within which the two Houses would come to parallel Resolutions expressing the terms of conventions agreed upon by a Joint Committee, which would continue to review the conventions as they evolve and recommend adoptions of new ones.<sup>114</sup> One area he identified for some sensible developments in the conventions was in relation to “ping-pong” and exchanges of amendments to Bills.<sup>115</sup>

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108 Dr Alan Renwick

109 Hansard Society

110 The Law Society of Scotland, Liam Finn

111 Donald Shell

112 Peter Riddell

113 Lord Howarth of Newport

114 Q 569

115 Q 573

90. We deal in section 14 below with whether a new understanding between the Houses might be required on taking up constituency cases.

91. **We agree with the weight of the evidence we have received which suggests that the conventions governing the relationship between the two Houses will evolve further once the House of Lords is reformed and would need to be re-defined.**

92. **As we have already said, the essential character of conventions cannot be preserved if they are defined in legislation. The Government's approach in Clause 2(1)(c) of the Bill of simply referring to conventions in a general Savings Clause is not only ineffective but risks judicial intervention in the most highly-politicised circumstances of all, a dispute over the conduct of business between the two Houses. This would be a constitutional disaster.**

93. **We think it inevitable—and desirable—that following any reform the two Houses will need to establish a means of defining and agreeing the conventions governing the relationship between the two Houses and thereafter keeping them under review. We agree that any new conventions or modifications of existing conventions should be promulgated by the adoption of a “concordat” in the form of parallel, identical resolutions prepared by a Joint Committee and adopted in each House. We note, however, that any concordat will only have force so long as both chambers continue to accept its terms.**

94. **The question then arises when such an exercise should be conducted. We agree with the Cunningham Committee report, noted with approval by both Houses of Parliament, that as there are now firm proposals in this draft legislation to change the composition of the House of Lords preliminary work should begin as soon as possible. We recognise, however, that it cannot be completed until after 2015. There would be little point in finalising a concordat to which elected members of the second chamber were not a party.**

## 3 Electoral System, Size, Voting System and Constituencies

### 6. Ratio of elected to appointed members

Relevant section of the draft Bill: Clause 1
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#### *The Government's Proposals*

95. Part 1 of the draft Bill provides for 80 per cent of members of a reformed House to be elected and 20 per cent to be appointed. The ratio of appointed to elected Members after the first two elections would be affected by the draft Bill's transitional arrangements. After the third election an 80:20 split will deliver a House composed of 240 elected members, 60 appointed members, up to 12 Lords Spiritual and any ministerial members. The Government has indicated that it is prepared to consider other options including a wholly elected House. The Deputy Prime Minister stated that "I am a supporter, of course, of a fully elected House of Lords, but I do not want to make the best the enemy of the good. If the centre of opinion across parties is such that the 80 per cent option, which we very deliberately proposed in the White Paper alongside the 100 per cent model, gains more favour and support, in the cause of consensus and cross-party work, I would support that because, bluntly, 80 per cent is a lot better than zero per cent".<sup>116</sup> The White Paper states that the presence of elected members reflects the "fundamental democratic principle", while the inclusion of an appointed element would enable the contribution of "independent, non-party political voices" and those who are "pre-eminent in their field and have done great things", and who would not seek election.<sup>117</sup>

#### *The 80:20 Split between elected and appointed Members*

96. A number of witnesses were against a fully elected or hybrid House. Lord Cormack argued:

"If we have a 100 per cent elected second Chamber, Senate or whatever it is called, there will not be many independents in it. It will be elected mainly on party-political lines and the Cross-Bench element will virtually disappear. If, on the other hand, we have an 80 per cent elected Chamber with 20 per cent appointed, we would create a situation where the will of the elected could be frustrated by the non-elected".<sup>118</sup>

Lord Cunningham of Felling was against what he termed the "the muddle in the middle": "You cannot be half democratic. You have to be either democratic or not".<sup>119</sup> Several other witnesses argued in favour of a fully appointed House,<sup>120</sup> such as Paul Murphy MP who

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<sup>116</sup> Q 742

<sup>117</sup> Cm 8077, page 12

<sup>118</sup> Q 591

<sup>119</sup> Q 685

<sup>120</sup> David Blunkett MP (Q 703), Professor Dawn Oliver (Q 149), Professor Sir John Baker QC, Campaign for an Effective Second Chamber, Jonathan Boot, Christopher Hartigan, Michael Keatinge, Lord Jenkin of Roding, Bernard Jenkin

stated that the role of a reformed House would be “best performed by people with wisdom and experience” and who were not elected, but “nevertheless could have an influence on an elected Chamber by virtue of who they are”.<sup>121</sup>

97. The written evidence suggested a range of views regarding the ratio between elected and appointed Members. Several submissions supported a fully elected House. Democratic Audit maintained that once the principle of direct election was accepted it would be difficult to “justify any unelected presence within the second chamber”. It also dismissed the notion that appointed Members could provide qualities that might be lacking amongst elected members, such as expertise and independence, as anti-democratic.<sup>122</sup> The Electoral Reform Society and others also supported a fully elected Lords.<sup>123</sup>

98. Several witnesses who supported a fully elected chamber were prepared to accept an 80:20 split. Damien Welfare argued that elected members afforded the House legitimacy and accountability and gave it “weight within Government so that its views count”.<sup>124</sup> Though his organization was mainly in favour of a 100 per cent elected House, he supported the Government’s 80:20 split. This was because it would allow an independent element and a strand of expertise in a House which would “be less likely to develop the aggressive tendencies that some fear”.<sup>125</sup> Though Unlock Democracy questioned the notion of appointed expertise and generally preferred a fully elected House, it agreed that a larger reformed House with a 20 per cent appointed element that was not full-time would be preferable to the current Lords. Unlock Democracy could not support a reformed House if fewer than 80 per cent of the members were elected.<sup>126</sup>

99. Other witnesses preferred a hybrid House. The Minister said that the 80:20 split was to “make it clear that the House of Lords has to be predominantly or mainly elected to change its nature” whilst an appointed element “would help reduce the ability of the House of Lords to challenge the Commons as the primary Chamber”, as the former would not be as accountable and as legitimate as the latter.<sup>127</sup> He argued that an appointed element would allow the Lords to be more independent.<sup>128</sup> It would also bring a different perspective, as did the Cross-Benchers in the present House,<sup>129</sup> although he did not think that a largely elected House would lead to a deficiency in expertise and experience: “If you had a House of 300 people—240 of who were elected and 60 appointed—I just do not accept that you would not have people in a debate on the NHS who were directly experienced practitioners, or who had a lot of life experience to bring to those debates”.<sup>130</sup>

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MP, Pauline Lathan MP, Julian Lewis MP, Lord Howarth of Newport, Viscount Younger of Leckie, Lord Luce, Edward Choi, Lord Peston, Lord Barnett and Baroness Gould of Potternewton, James Moore

121 Q 594

122 Democratic Audit

123 Electoral Reform Society, Alice Onwordi, Professor Hugh Bochel, Dr Andrew Defty and Jane Kirkpatrick, Liam Finn, RC Dales, Green Party, Unlock Democracy

124 Q 570

125 Q 579

126 QQ 363–4

127 QQ 4, 6–7

128 Q 5

129 Q 4

130 Q 12



100. Lord Adonis thought that elected Members could, as he believed was the case in the Commons, provide “a wide spectrum of experience and expertise” and that if there was a concern that certain types of expertise would not be brought forward by election then an 80:20 solution could address this.<sup>131</sup> Dr Alan Renwick broadly agreed with the Government’s proposals, arguing that the 20 per cent appointed element would allow some retention of expertise and, alongside long, non-renewable terms and staggered elections, would help to maintain the primacy of the Commons.<sup>132</sup>

101. Lord Jay of Ewelme, the Chairman of the Appointments Commission, thought that elections would provide some expertise and experience but suggested that it would be different from the expertise found in the current House and amongst the proposed 20 per cent appointed element.<sup>133</sup> Other witnesses agreed.<sup>134</sup> We consider the question of expertise among appointed members further in section 15 below.

102. Other submissions accepted a hybrid House but supported a larger appointed element. The Muslim Council of Britain was worried that if “the majority of members of the new Lords are elected on party lines, then the level of scrutiny and debate on legislation will be reduced if a single party holds the majority in both Houses”. It called for a reconsideration of the 80:20 split.<sup>135</sup>

### ***Possible tensions between elected and appointed Members***

103. The Minister did not think that an 80:20 split would lead to tensions between different types of Members, or appointed Members being seen as second-class. In the current House hereditary peers, Bishops and life Peers were not treated differently and evidence from other legislatures did not suggest that this would be a problem. He also did not think that it would be a problem if appointed members voted against the government, as governments would need to listen to the strength of the arguments following a defeat, rather than be concerned about the complexion of the opposition vote.<sup>136</sup>

104. Lord Cormack was concerned that appointed Members would be regarded as second class Members.<sup>137</sup> Both he and Lord Cunningham of Felling also feared that appointed Members could tip the balance in votes against elected Members with constitutional consequences.<sup>138</sup>

105. Dr Meg Russell did not think that there would be major issues between elected and appointed Members noting that tensions had not arisen in the current House between Hereditary and Life Peers: “You might have expected that, in the last 12 years, we would have heard a lot about how the hereditary Peers have been the ones to swing the balance of

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<sup>131</sup> Q 496

<sup>132</sup> Q 196

<sup>133</sup> Q 387

<sup>134</sup> Donald Shell, Professors Simon Hix and Iain McLean, Dr Alan Renwick. Damien Welfare and the Campaign for a Democratic Upper Chamber, Professor Gavin Phillipson

<sup>135</sup> Muslim Council of Britain. See also Cecilie Rezutka

<sup>136</sup> Q 13

<sup>137</sup> Q 607

<sup>138</sup> QQ 607, 685

votes. I have heard nothing about that”. She also suggested that public opinion was mixed on the issue of elected and appointed Peers, with polls showing that many people valued the presence of independents and experts in the current House.<sup>139</sup>

**106. Some members of the Committee would prefer a fully appointed House. They hold the view that as the House of Commons has primacy it holds ultimate responsibility for legislation. That being the case, they do not consider it necessary for the members of the House of Lords to be elected. However, a fully appointed House is not being proposed in the draft Bill.**

**107. If there are to be elections, the Committee agrees on a majority with the proposal for a 80 per cent elected and 20 per cent appointed House as a means of preserving expertise and placing its mandate on a different footing from that of the Commons.**

## 7. Size

Relevant section of the draft Bill: Clause 1
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108. Part 1 of the draft Bill provides for a reformed House of 300 members consisting of 240 elected members, 60 appointed members, up to 12 Lords Spiritual and any ministerial members. Part 1 of the draft Bill and the White Paper also make provision for several transitional options, which could result in the House being substantially larger than the current House of Lords before reform is completed. The Government rests its case in part on the fact that the average daily attendance in 2009–10 was 388, many of whom had other commitments, and that 300 full-time members in a reformed House would be able to fulfil the same range of duties as the present House. The current average attendance in 2010–12 is 480/90—but this is deemed by Members to be too large.

109. The Minister said that the existing House of Lords over recent sessions had had an average daily attendance of about 400 Members and that the Government believed that 300 full-time members could cope with the workload of the present House. This number did not have to “be set in stone” and the Government was willing to listen to the Committee’s recommendations on this point. He thought that the proportion—80:20—was most important, not the overall number, which was open to discussion.<sup>140</sup>

110. Several witnesses agreed with the Government’s proposal regarding a reformed House of 300 Members. Dr Alan Renwick said that if the House was full-time “then 300 is a sensible number” though he added that if there was an expectation that some Members would be part-time “then increasing the number to something like 400 or 450 makes a lot of sense”.<sup>141</sup> Professor Vernon Bogdanor saw 300 as “not a bad number”, though he also thought that it might need to be larger if part-time Members were included.<sup>142</sup>

111. Others disagreed. Dr Meg Russell was concerned that 300 would “not be an adequate number to do the work of the House as now”.<sup>143</sup> Lord Cormack thought that the

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<sup>139</sup> Q 194

<sup>140</sup> QQ 12, 79

<sup>141</sup> Q 200

<sup>142</sup> Q 115

<sup>143</sup> Q 192



Government’s estimation of average attendance—388—did not take into account that not always the same people turned up. He thought that the aim should be “somewhere between 450 and 600—probably nearer the smaller number than the larger one—but that should be achieved over a period”.<sup>144</sup> Lord Cunningham of Felling thought that 300 would not be enough to cover key functions such as Committee work: “If one looks at the Committee structure in the House of Lords now—at the Select Committees and other Committees—it just would not be possible to run an effective second Chamber scrutiny process with that small a number of people”.<sup>145</sup>

112. A number of written submissions agreed with a cap of 300 members. For instance, Unlock Democracy argued that though it would result in a significant reduction in the size of the second Chamber it “would not undermine the current structures and methods of working” and “would take into account that all members would serve on a full time basis and would be given adequate staffing support to carry out their roles”.<sup>146</sup> Others were content with slightly higher ranges. Lords Dubs agreed with 300-350 members,<sup>147</sup> while Professors Simon Hix and Iain McLean saw 300 as within the “normal and reasonable range for upper houses” but were relaxed about a House of 450.<sup>148</sup> Several submissions argued that a House of 300 might be too low if it were to maintain its present functions and deal with new pressures.<sup>149</sup>

113. A number of others, such as the Campaign for a Democratic Upper House and the Electoral Reform Society recommended a House of 400-450 members.<sup>150</sup> Some submissions suggested larger numbers—500 members and more, especially if the House was to contain many part-time members.<sup>151</sup> Conversely, several called for a House that contained fewer than 300 members; Rt Hon Lord MacLennan of Rogart, for instance, proposed a House of 111 members.<sup>152</sup>

**114. The Committee agrees that a House of 300 members is too small to provide an adequate pool to fulfil the demands of a revising chamber, for its current range of select committees, and for the increasingly common practice of sitting as two units: the main chamber and Grand Committee. In addition, we have recommended that appointed members should not have to attend as frequently as those who are elected. Accordingly, we favour a House of 450 members.**

## 8. The electoral system

Relevant section of the draft Bill: Clause 7
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144 Q 602

145 Q 692

146 Unlock Democracy. See also Alice Onwordi, RC Dales, Imran Hayat

147 Lord Dubs

148 Professors Simon Hix and Iain McLean

149 Donald Shell, Mark Ryan, Jesse Norman MP, Lord Howarth of Newport, Professor Hugh Bochel, Dr Andrew Defty and Jane Kirkpatrick, Michael Winters, Hansard Society

150 Electoral Reform Society, Damien Welfare and the Campaign for a Democratic Upper Chamber. See also Craig Whittaker MP, Viscount Younger of Leckie

151 Lord Lucas, Programme for Public Participation in Parliament, Lord Howarth of Newport, Michael Winters, Christine Windbridge, Phillip Bradshaw, St Philip’s Centre

152 Lord MacLennan of Rogart. See also David White, Daniel Shintag

### *The Government's proposals*

115. The Government propose that the House of Lords be elected by a form of proportional representation (PR). Under PR the proportion of the seats won by any given party closely corresponds to the proportion of the votes cast for that party at the election. The draft Bill provides for the single transferable vote (STV) system, but the Government state that they recognise that “a case can be made for other proportional systems and the arrangements set out in the draft Bill to underpin the use of STV could be applied to an open list system”.<sup>153</sup>

116. Proportional systems are based on multi-member constituencies, and the draft Bill proposes electoral districts returning between five and seven members each, with a floor of three seats in a district. Elections to the House of Lords would be staggered, with a third of the House elected in each Parliament (under the terms of the Fixed-term Parliaments Act 2011 this would, in normal circumstances, be every five years).

117. The Government state that using a form of proportional representation combined with elections staggered over three parliaments would “make it less likely that one particular party would gain an overall majority in the House”, and would ensure that members of the reformed House “never collectively have a more recent mandate than MPs”. Large multi-member constituencies would “protect the important link between constituents and their Member of Parliament in the Commons,” and establish a role for elected members that “is complementary to the important work undertaken by MPs”.<sup>154</sup>

### *Indirect elections and “constituencies of expertise”*

118. Direct elections are not the only means of determining the membership of second chambers. An alternative is indirect election: the election of members by a group of people who were themselves chosen by the public. This might mean, for example, election by local councillors (as in France). A comparative study of 76 national second chambers worldwide by Dr Meg Russell showed that a form of indirect election is used (to a greater or lesser extent) to elect the membership of second chambers in 34 countries. Of these 34 second chambers, 16 are wholly indirectly elected.<sup>155</sup>

119. The Committee received proposals for a type of indirect election where the votes cast for party candidates at General Elections for the House of Commons are translated into a proportionately representative upper House or its elected element (as originally espoused by Billy Bragg).<sup>156</sup> This would be a similar system to a national closed list which we consider below (paragraphs 127–9). Other submissions proposed elections by “constituencies of expertise” or “functional constituencies”, rather than geographical electoral districts. These suggest elections for candidates within particular categories on a national basis, for example science, the arts, faith, academia and education, and so on.<sup>157</sup>

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<sup>153</sup> Cm 8077, page 14

<sup>154</sup> *Ibid.*, page 14

<sup>155</sup> Dr Meg Russell

<sup>156</sup> Christopher Hartigan, James Hand, Philip Bradshaw

<sup>157</sup> Lord Lowe, Lord Desai, Frank Field MP, Professor Reg Austin, Richard Douglas, John FH Smith, Martin Wright

There were varied proposals as to how such functional constituencies could be chosen or defined.

120. The draft Bill proposes direct elections to the upper House. As a result, we did not consider these forms of election in detail and we therefore do not take a view as to their merits or otherwise. We note that in making these proposals for indirect elections or election by constituencies of expertise their proponents have argued that they would counteract perceived risks of constituency conflicts, confusion and weakening of MPs' constituency link with electors that might be thrown up by direct elections. The Committee examines these issues in section 14 below. **However, the Committee would like the Government to give further consideration to a nationally indirectly elected House as an alternative in the event that Parliament does not support direct elections with geographical electoral boundaries.**

### *Proportional representation vs first-past-the-post*

121. Some witnesses questioned whether the use of a proportional voting system was appropriate, given that the public recently voted down the proposal to use the alternative vote system for elections to the House of Commons in a national referendum.<sup>158</sup> The Minister argued that:

“If you are electing a Government, my own view is that the challenge with voting systems is that the system which you choose should be one that is weighted towards getting a Government with a majority, who are able to take decisions and where the voters are then able to make a judgment at the end of the term of office ... But if you have a revising or scrutiny Chamber where you do not want the Government to have a majority, you need to use a different voting system. If you were to have first past the post for a second Chamber, all you would do is create a replica of the first Chamber and you would have one of two outcomes. Depending on when you had the elections, you would either give the Government of the day a majority in the second House, in which case there would be little point in having one, or you would give the Opposition a majority ... you would then set up a bloc in the upper House of people who were fundamentally opposed to the proposals that the Government were bringing forward because they were of a different political party”.<sup>159</sup>

122. Other witnesses drew attention to the downsides of a House elected by first-past-the-post.<sup>160</sup> A House elected by a proportional system is unlikely to be dominated by one political party,<sup>161</sup> and we note that the various reports published on House of Lords reform over the past 15 years that have recommended election have all recommended a proportional system.<sup>162</sup> Professor Gavin Phillipson, Professor of Constitutional Law at the University of Durham, summed up much of the evidence when he told us that it was “vital

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<sup>158</sup> Bernard Jenkin MP

<sup>159</sup> Q 26

<sup>160</sup> Lord Low of Dalston stated that if the same electoral system were used the Lords would “duplicate” the Commons, while Bernard Jenkin MP noted that, were the same party or parties to dominate both Houses they would be more likely to “rubber stamp” legislation.

<sup>161</sup> Professors Simon Hix and Iain McLean

<sup>162</sup> Cm 4534; Cm 5291; Cm 7027; Public Administration Select Committee, 5<sup>th</sup> Report (2001–02), *The Second Chamber: Continuing the Reform*, (HC Paper 494)

to ensure that the party balance in the chamber is different, and more proportional from that in the Commons, to prevent one-party domination ... the use of first past the post would *not* be suitable for the second chamber”.<sup>163</sup>

123. The Committee discussed the form of election at some length. Some members of the Committee agreed with those who thought it was inappropriate to recommend electing part of the legislature on any basis other than first-past-the-post so soon after the British people had decisively rejected AV in a referendum on the method of election of members of the House of Commons. Other members thought that the referendum result was not relevant because elections to the House of Commons determine who will form the government and who has the final decision over legislation, while the House of Lords would not determine the government of the day.

**124. A majority agreed with the Government’s proposal to use a form of proportional representation for elections to the House of Lords. A proportional system will best preserve the independence and political diversity of the current House of Lords and ensure that it retains a different character from that of the House of Commons. It is less likely to lead to elected members challenging the link between MPs and their constituents. We consider these issues in more detail below. Most importantly, however, it makes it unlikely that any one party will achieve and maintain a majority in the upper chamber.**

### **Proportional representation**

125. We heard evidence on three main types of proportional systems: closed lists, open lists and the single transferable vote (STV) system.<sup>164</sup> All three systems are based on multi-member constituencies.

- Under a closed list system members of the upper chamber are chosen from lists drawn up by parties based on the share of votes those parties received. Electors can cast a vote for a single party, but not for individual candidates. Voters thus “determine how many of each party’s candidates are elected, but not which these candidates are”.<sup>165</sup>
- Under open list systems parties still draw up a list of candidates in a preferred order and electors can still vote ‘above-the-line’ for a single party, indicating their support for the party’s list of candidates. As an alternative, electors can cast their vote ‘below-the-line’ for one or more of their party’s candidates and so influence the order of candidates on their party’s list.
- Under STV parties do not order their candidates at all. Voters rank the candidates on the ballot paper in their order of preference—this can be for candidates from a single party or for several candidates from different parties. Candidates must reach a certain threshold of votes to be elected, with the threshold depending on how

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<sup>163</sup> Professor Gavin Phillipson

<sup>164</sup> Because the intention of the Government’s proposal is to avoid members having constituency responsibilities, we have not examined the additional member system (AMS), which entails an element of constituency representation, although it can be offered as a system with the potential to be more proportional than the others we address.

<sup>165</sup> Political Studies Association, *House of Lords Reform: A Briefing Paper*, July 2011

many candidates are being returned in that constituency. Voters' preferences are used to determine the total allocated to each candidate.

126. The key difference between the open list systems and the STV-based systems is how they interpret voters' preferences. Dr Alan Renwick and Professor Iain McLean told us that:

“list systems always count a vote for a candidate in the first instance as a vote for the candidate's party, whereas STV systems count a vote for a candidate solely as a vote for that candidate. Under STV, therefore, a voter can vote for one candidate from a party without giving any advantage to any of that party's other candidates, whereas under a list system a vote for a candidate can help secure election for another candidate from the same party”.<sup>166</sup>

### ***Closed lists***

127. We asked our witnesses about closed list systems, whether at a regional level or through a national party list, but this electoral system received little support from our witnesses. The Minister argued that under closed lists “you effectively give all the power to the party leaderships ... Technically, people would be elected, but in reality I do not think that that would take us much further forward than we are at the moment”.<sup>167</sup> Professor Bogdanor asked whether national closed lists would “have any advantage over the current method by which the party leaders choose working Peers for their parties? Would such people have any more legitimacy than the current working Peers? It seems to me a roundabout way possibly of achieving the same result”.<sup>168</sup> Other witnesses also opposed such a system as being too similar to appointment.<sup>169</sup>

128. There was little support from our witnesses for a closed list system, and it was generally agreed that it would be much the same as the current system of political appointments. There are better systems for elections at regional level, which give voters more choice. We note however that a national list system would avoid any potential intrusion by elected members into the relationship between MP and constituents (see section 14 below). Systems which offer more voter choice such as open lists and STV are less practical at national level. We have not considered whether or not this outweighs the disbenefits identified by our witnesses, because a national list system is not proposed in the draft Bill.

**129. We do not support the introduction of a closed list system for the sort of regional elections proposed in the draft Bill.**

### ***Open lists and single transferable vote***

130. We received substantial amounts of evidence on these merits or otherwise of the STV and open list systems. This evidence focused on the following issues:

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<sup>166</sup> Supplementary evidence from Dr Alan Renwick and Professor Iain McLean

<sup>167</sup> Q 21

<sup>168</sup> Q 101

<sup>169</sup> Unlock Democracy (Q 349), Meg Russell (Q 177), Unlock Democracy, Simon Gazeley, Dr Alan Renwick, Electoral Reform Society

- the election of independent candidates;
- the election of party candidates relatively free from party control;
- diversity; and
- complexity.

### *Independent candidates*

131. One of the key differences between STV and open list system is the extent to which independent candidates, who do not belong to a political party, are likely to get elected. Dr Alan Renwick stated that “with regard to the electability of independents, the evidence is pretty clear that that is more likely under STV than under an open list system,” and he was optimistic about the possibility of this happening: “I would be very surprised, given the fact that British voters like having independents in the second Chamber, if no independents were elected under the proposed system”.<sup>170</sup> The Minister was more cautious, noting that “it is not incredibly likely that you will get independents elected,” but nevertheless he agreed that “STV is a system under which you maximise the chances of independent, non-party candidates being elected”.<sup>171</sup> Other witnesses agreed.<sup>172</sup> Professor David Denver, Professor of Politics at the University of Lancaster, argued that list systems are “simply a party stitch-up, because the parties control who gets elected and non-party candidates are virtually excluded ... Party list systems are awful, in my view”.<sup>173</sup>

132. Other witnesses were more sceptical about the possibility of independents being elected under any system, whether that was open list or STV. Professor Sir John Baker felt that “a candidate without substantial means, unless very well known to the public already, would not be brave enough to stand and certainly would not be elected”,<sup>174</sup> echoed by Professor Gavin Phillipson who stated that “experience has shown that it is extremely difficult for independent candidates to gain election; even under a PR system”.<sup>175</sup> Other witnesses agreed.<sup>176</sup>

133. Professor Jonathan Tonge, Professor of Politics at the University of Liverpool, noted that while STV had struggled to provide for independents in Northern Ireland, he suspected that this was “due to the party and ethnic bloc loyalties of the electorate.” In respect of elections to the House of Lords, he concluded that “multi-member regional contests for the House of Lords, conducted in a less partisan environment than that in Northern Ireland, could offer the prospect of independents being elected”.<sup>177</sup>

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170 Q 196

171 Q 19

172 Electoral Reform Society (Q 279), David Howarth (Q 231), Unlock Democracy (Q 345), Professors Simon Hix and Iain Mclean

173 Q 308

174 Q 222

175 Professor Gavin Phillipson

176 Lord Wright of Richmond et al, Dr Julian Lewis MP

177 Professor Jonathan Tonge



### *Independence from party*

134. It was maintained by some witnesses that members of political parties who were elected under STV arrangements tended to be more independent-minded *vis-a-vis* their parties. Professor John Curtice described the issue:

“the House of Lords has at least developed, perhaps partly by accident, a role [as] ... a revising Chamber that occasionally is willing to tackle the detail of a Bill without necessarily debating it entirely on party lines, and considering whether the technical merits of the Bill are adequate ... Certainly an obvious danger is that, whatever electoral system we have, the expectation in most elections is that most elected representatives are going to be representatives of parties, so the elections tend to be about party. There is therefore a clear risk a system of election will increase the partisanship of the upper Chamber ... if we are to preserve its ability to do the job for which it has become renowned, we need to try to minimise the extent to which partisanship becomes a problem ....”<sup>178</sup>

The STV system, in his view, helped to promote a non-partisan approach because “... all votes are for candidates, formally they are not for parties ...”.<sup>179</sup>

135. Independence from party was often held up as an advantage of the current House of Lords.<sup>180</sup> Professor Sir John Baker, for example, commented that the Lords “works reasonably well at the moment. Peers who are appointed have shown a certain independence which the Commons certainly does not”,<sup>181</sup> although some questioned whether this was accurate. The Hansard Society, for example, suggested that the independence of party-affiliated peers was could be overstated and that despite weak whipping and the absence of constituency pressures most peers tended to vote along party lines.<sup>182</sup> Looking forward to an elected chamber, the Electoral Reform Society noted that it was “important, especially in terms of having a distinctive second Chamber that it very different in terms of look and feel from the other chamber, that you get a good mix of independent-minded people, both from within political parties and from outside them”.<sup>183</sup> Other witnesses agreed.<sup>184</sup>

136. Professors Simon Hix and Iain McLean stated that STV would help promote candidates who were independent from the party whip since it was a strongly ‘candidate-centric’ electoral system which encouraged candidates to campaign directly to voters.<sup>185</sup> Candidates have to distinguish themselves not only from candidates from other parties, but from candidates within their own party. David Howarth explained the result: “a good thing about STV is that it makes it easier for independents and party dissidents to get elected, and if dissidents get elected they might think their job is to defy the whips”.<sup>186</sup> Rt Hon Lord

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178 Q 309

179 Q 309

180 Bernard Jenkin MP

181 Q 223

182 Hansard Society

183 Q 279

184 Unlock Democracy (Q 345), Simon Gazeley

185 Professors Simon Hix and Iain McLean

186 Q 231

Lipsey, however, questioned whether this might cause tensions as candidates from the same party would seek to offer “individual constituents and groups of constituents boons whereby they could distinguish themselves from, and show themselves superior to, other candidates”.<sup>187</sup> Thus candidates from the same party compete against each other for votes.

137. Under open lists, by contrast, a candidate’s ranking is likely to be more influenced by their position on the party list rather than by elector’s votes—a candidate’s primary concern therefore is ensuring they are highly placed on the party’s list. A study of European parliamentary elections by Professor Robert Hazell, Director of the Constitution Unit at University College London, and Joshua Payne showed that elections using open list systems (although just over half of all MEPs were elected under closed list systems) in western Europe rarely succeeded in altering the parties’ rank order of candidates, giving little incentive to candidates to campaign for personal, as opposed to party votes. They did note that in Eastern Europe voters were far more likely to use preference votes to overturn parties’ preferred order, but argued that “the UK is more likely to follow the Western European pattern”.<sup>188</sup>

138. We wondered whether it was likely that elected members would genuinely be more independent of the party whip than MPs, given that it was likely that parties would select individuals who they thought would follow the party line once elected. The Electoral Reform Society stated that:

“In the House of Commons, party discipline is arguably important because, after all, people do elect governments, not just MPs. In the Lords, it should be different. The forces of party loyalty and constituency interest should be weakened and the members’ independent judgements about morality, ideas and the national interest should be relatively strong”.<sup>189</sup>

139. Other witnesses thought that the long non-renewable terms would be more important in fostering independence, rather than the electoral system used. The Minister argued that “the party would have a fair amount of sway prior to the candidate getting elected, because the party would have some kind of process by which someone would become a party candidate. But the logic of having single, non-renewable terms is to have members who are a little more independent of their parties”.<sup>190</sup> Other witnesses agreed.<sup>191</sup> Dr Alan Renwick did not see any reason why “elected members would be more constrained by the Whip than they are at present ... under the proposals there would be some sense of loyalty towards the party. I do not see any reason to think that would be particularly greater or less than it is at present”.<sup>192</sup> We consider this argument further later in this chapter when considering electoral terms (see section 9 below).

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187 Further written evidence from Lord Lipsey

188 Professor Robert Hazell and Joshua Payne

189 Electoral Reform Society

190 Q 276

191 Professors Simon Hix and Iain McLean, Peter Riddell (Q 138)

192 Q 216



140. Penny Mordaunt MP thought it “disingenuous” to suggest that STV would ensure independence from the party control inherent in list systems because candidates were chosen by political parties,<sup>193</sup> an argument also put forward by the Hansard Society.<sup>194</sup>

### *Diversity*

141. The Minister set out the dilemma: “The challenge for us ... is that a number of mechanisms in place, particularly for dealing with gender, are ironically not at all easy to deliver if you are going to have a system which maximises voter choice”.<sup>195</sup> He suggested that it would be up to parties to “get their act together and have a more diverse set of candidates”.<sup>196</sup>

142. Unlock Democracy argued that “the most effective means of increasing the representation of under-represented groups is to move to a proportional electoral system”.<sup>197</sup> Other witnesses were slightly more cautious, if still supportive. Counting Women In and the Fawcett Society both stated that a proportional system, whether STV or an open list system, would make it easier for women to be chosen as candidates. They argued that such electoral systems needed to be used in conjunction with additional positive action measures, such as quotas, all-women-shortlists, zipping or twinning shortlists to ensure a gender balance.<sup>198</sup> Other witnesses agreed.<sup>199</sup>

143. While much of the evidence on diversity centred on gender balance, the diversity issue goes much wider. The current House of Lords is, in many ways, a very diverse chamber, and it is by no means certain that election under a proportional system will of itself preserve that characteristic, although it should at least lead to greater geographic diversity. The three characteristics of the House of Lords which a new system of election should aim to achieve are independence, diversity and expertise (see section 15 below). Evidence suggests that each of these will continue to be difficult to sustain. The Committee’s recommendation of a larger House of 450 members will help in this regard. **The Committee considers that it will be for the political parties to address the diversity issue in their selection of candidates so that a reformed House will be no less diverse on gender, ethnic or disability grounds than the present one.**

### *Complexity*

144. Compared to first-past-the-post any proportional system will be more complicated—at least for English voters who will have had no experience of it. Bernard Jenkin MP was among those who commented that STV is a “much more complex electoral system than that used for the House of Commons”.<sup>200</sup> Professor David Denver admitted that “one disadvantage also seems to be that STV might seem complicated,” although he argued that

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<sup>193</sup> Penny Mordaunt MP

<sup>194</sup> Hansard Society

<sup>195</sup> Q 23

<sup>196</sup> Q 23

<sup>197</sup> Unlock Democracy

<sup>198</sup> Fawcett Society, Counting Women In

<sup>199</sup> Electoral Reform Society (Q 293), Hansard Society, Professor Hazell and Joshua Payne

<sup>200</sup> Bernard Jenkin MP

“it worked very well in Scotland when it was introduced in 2007 for the Scottish local elections. 1.8 per cent of ballots were rejected, which is a bit more than you would get on first past the post”.<sup>201</sup> Professor Jonathan Tonge and Joshua Payne noted that “healthy turnouts” had been recorded under STV in Northern Ireland, and that spoiled ballot papers were “uncommon”. He suggested this should “provide reassurance in terms of prospective use for elections to the House of Lords”.<sup>202</sup> Under an open list system voters can, rather than ranking individual candidates, simply put a cross next to one party if they wish, making it a simpler alternative.

145. Professors David Denver and John Curtice raised the issue of ‘alphabetical voting’, described as when “people placed at the top of the list clearly do better” under STV.<sup>203</sup> Professor David Denver suggested randomising the order of the candidates on the ballot paper as a potential solution. The issue does not arise under open lists as candidates are generally listed in the order that they have been ranked on their party’s list.

**146. A proportional system of election based on STV or open lists will be new to English voters, less so to voters in Scotland, Wales and Northern Ireland. The Government must publicise the new system so as to maximise electors’ understanding and to avoid confusion arising from the use of different voting systems on the same day.**

### ***STV or Open List?***

147. In the Committee’s view, the voting system chosen should give voters the widest choice possible of where to cast their preferences, whether that is within a single party or across candidates from multiple parties and yet be as intelligible as possible to the voter. We also believe that voters who wish to simply vote for a political party, rather than individual candidates, should be free to do so. We looked into the potential, therefore, for a voting system that would encapsulate these two conditions. It would:

- allow voters the option of casting a simple party vote; and
- allow voters to express preferences among individual candidates across, as well as within, parties.

148. Dr Alan Renwick and Professor Iain McLean produced a paper at our request, outlining possible voting systems meeting these criteria. This paper is attached as Appendix 6. The paper details four options. We have considered these options against further criteria. First, we think it desirable that the system should maximise voter choice and enable—at least in theory—independent members to be elected. Secondly, we think it desirable that the role of party in the distribution of ‘excess’ party votes should be minimised.

149. Of the four options, two are based on the open list system and two are based on STV. Of these, option 4, a system of STV currently used in New South Wales, is similar to the pure STV proposed by the Government except that as an alternative to ranking individual

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201 Q 308

202 Professor Jonathan Tonge

203 Q 308

candidates by voting below-the-line, voters can rank the parties by voting above-the-line. As an STV system, it has the following advantages:

- a vote for a candidate is solely a vote for that candidate, whereas under a list system it would be primarily be a vote for that candidate's party. This means that a voter can vote for one candidate from a party without giving any advantage to other candidates from that party.
- it is easier (if not necessarily easy) for independents to be elected than under a list system.

150. As an additional attraction, since voters can rank parties in order of preference as an alternative to candidates, voters control where their 'excess' party votes are allocated (i.e. if all of a party's candidates were either elected or eliminated before the count was completed, voters would determine to which party they wished their excess votes transferred to). Under the standard system transfers are determined by parties in a way that is unlikely to be transparent to voters, or such votes are wasted.

151. We recognise the concerns that have been expressed about the complexity of proportional systems, and we note that Dr Alan Renwick and Professor Iain McLean state that all four options "are complex compared to most other electoral systems ... in the sense that they increase the range of choice available to voters".<sup>204</sup> We consider that by providing an 'above-the-line' option, and by allowing voters to cast as many or as few preferences as they wish, voters can make voting as simple or as complicated as they wish. For example, if a voter wished, they could effectively vote as if it were first-past-the-post by simply placing one vote next to a party above the line. Critical to this process will be a suitable public information campaign, as recommended by the Electoral Commission,<sup>205</sup> to ensure that the electorate is familiar with the new system. Concerns were raised about 'alphabetical voting' under pure STV; in our proposed system candidates names would be listed according their order on their parties list, eliminating any such problems.

**152. For the above reasons, the Committee recommends that the Government should consider introducing the version of STV currently used in New South Wales, as an alternative to the pure STV system currently proposed in the draft Bill.**

**153. Given the relative complexity and novelty of the system, compared with first-past-the-post, we recommend that the Government should ensure that ballot papers are not regarded as spoiled where a clear intention has been expressed, reflecting the practice at other UK elections.**

## 9. Non-renewable terms

Relevant sections of the draft Bill: Clauses 6 and 36
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154. The draft Bill proposes that elected members should serve a single non-renewable term of three normal parliaments. The provisions of the Fixed-term Parliaments Act 2011 means that this would normally equate to a 15-year term. The rationale behind this is that

<sup>204</sup> Supplementary evidence from Dr Alan Renwick and Professor Iain McLean

<sup>205</sup> Electoral Commission

by not having to face re-election members of the reformed House will be more likely to be independent-minded and less likely to get involved in individual casework in competition with members of the House of Commons.<sup>206</sup> It will also ensure that the mandate of the reformed House is never more recent than that of the House of Commons.

### *Independence vs accountability*

155. At the heart of the debate on non-renewable terms is the question of the independence of members versus accountability to the electorate. The White Paper explains the Government's position: "a single term, with no prospect of re-election would enhance the independence of members of the reformed House of Lords". Indeed, it could be said that a non-renewable term would afford a reformed House its distinguishing characteristic from the House of Commons. The Minister nevertheless acknowledged that while Members would be more legitimate "because they had been put there by voters", non-renewable terms would mean they were "less accountable than members of the House of Commons".<sup>207</sup>

156. Many witnesses agreed that non-renewable terms would promote independence.<sup>208</sup> The Electoral Reform Society summed up the reason why: "long, non-renewable terms of office mean that members will be insulated from the pressures of party and constituency which would apply if they were seeking to be re-selected and then re-elected".<sup>209</sup> Dr Alan Renwick and Professor Iain McLean stated this would be the "most important factor" in determining the "independence of spirit" of elected members.<sup>210</sup> Others were not convinced.<sup>211</sup> The Hansard Society, for example, said that it could not be "assumed that the independence of members will be enhanced because they will not face election", noting that current members of the House of Lords tend to vote with their party.<sup>212</sup> Unlock Democracy suggested that at present, since members were appointed for life, parties instead tended to pick individuals who are "a safe pair of hands".<sup>213</sup> Still others pointed to the loyalty that members were likely to show to the party which had provided the route through which they were elected,<sup>214</sup> or argued that it was "inconceivable that elected 'Senators' could maintain their expert, detached and national view of issues when they were in regular contact with those who had elected them".<sup>215</sup>

157. Others disagreed strongly because of the lack of accountability to the electorate inherent in non-renewable terms.<sup>216</sup> Professor Vernon Bogdanor contended that "there is

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206 Cm 8077, page 13. See also Deputy Prime Minister (Q 716)

207 Q 273

208 David Howarth (Q 231), Donald Shell, Professors Simon Hix and Iain McLean

209 Electoral Reform Society

210 Supplementary evidence from Dr Alan Renwick and Professor Iain McLean

211 Dr Julian Lewis MP, Lord Howarth of Newport

212 Hansard Society

213 Q 376

214 Michael Keatinge, Christopher Hartigan, RC Dales

215 Lord Jenkin of Roding

216 Lord Cormack (Q 594), Sir Stuart Bell MP, Mark Ryan, Christopher Hartigan, Pauline Latham MP, Penny Mordaunt MP, Democratic Audit, North Yorkshire for Democracy, Christine Windbridge, Lord Peston, Lord Barnett and Baroness Gould of Potternewton, Lord Howarth of Newport, Campaign for a Democratic Upper House, Conor Burns MP

no incentive for members elected for a single 15 year term, to make themselves accountable”. This was counter to one of the purposes of having elections, which was the ability “to remove representatives who prove unsatisfactory”.<sup>217</sup> Lord Cunningham of Felling put a little more strongly, calling it “preposterous. I see no relationship between that [non-renewable terms] and democratic accountability”.<sup>218</sup> The Minister suggested that the reforms would be an improvement on a House filled by political patronage with members “who are accountable to no one and are there for the whole of their natural life”.<sup>219</sup>

158. Dr Alan Renwick summed up the arguments:

“On the positive side, lack of accountability would promote independent-mindedness. Members would be freed from the game of calculating the effects of their every move upon their prospects for re-election ... On the negative side, members, once elected, would be free to do as they wished. They might disregard the interests of those who elected them”.<sup>220</sup>

159. Both of these arguments have merit. On the one hand election for a single non-renewable term might encourage members to act more independently than if they were required to seek re-election. They might also be expected to take a longer-term view of policy issues, unfettered by the electoral round, thus preserving some of the characteristics of the present House. On the other hand they will not be accountable to their electors in the sense that they will be answerable to them at a future election. Accountability will have to be delivered by other means—through party, the media, and by any recall mechanism (see section 12 below). Fixed-terms do not exclude the possibility of responsiveness to party patronage. At the end of their term, members may expect some preferment from their party, other than in the form of a candidature for election to the House of Commons. The proposals in the draft Bill do not preclude responsiveness to party in preference to that of the electors who put the members there. Members may thus privilege party loyalty over independence. Whether the emphasis should be placed on independence or accountability comes down, in the end, to a matter of judgement.

## **Re-election**

160. For those who feel that the draft Bill should place more emphasis on accountability, there are two options. The first would be to retain non-renewable terms but to put in place some form of accountability mechanism. This issue is dealt with later in this chapter. The second would be to require elected members wishing to stay in the House for longer than a single term to stand for re-election, as MPs do.

161. Although many witnesses expressed concern about the lack of accountability provided by non-renewable terms, most of them expressed this concern in the context of opposing elections to the House of Lords. Few, therefore, proposed allowing members to stand for re-election as a solution. Unlock Democracy suggested that members should be able to stand for re-election once. This would allow “for some accountability”, but would ensure

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217 Professor Vernon Bogdanor

218 Q 695

219 Q 273

220 Dr Alan Renwick

“that members of the second chamber will move on”. They noted that of the nearly 4000 people who responded to their survey on House of Lords Reform, just over 75 per cent supported members being able to stand for re-election. The Campaign for a Democratic Upper House proposed allowing members to stand for re-election—but only after a period away from the House. They suggested the length of a Parliament, which in normal circumstances would be five years.<sup>221</sup> Supporters of re-election maintain that continued accountability to the electorate is a key feature of democratic election.

162. There is of course a contrary view. Non-renewable terms were cited by several witnesses as a factor that would contribute to maintaining the primacy of the House of Commons, since only MPs would be accountable to the electorate for their actions.<sup>222</sup> The Minister, for example, argued that the fact that there will be “a House with Members who are legitimate because they are elected but are less accountable because they cannot be re-elected is one of the things that will militate against that House being able to assert that it can wrestle with the Commons over primacy”.<sup>223</sup> Indeed, the concept of election for a non-renewable term has a long pedigree—Lord Mackay of Clashfern’s Constitutional Commission in 1999, *Breaking the Deadlock* in 2006, and the 2008 White Paper. Furthermore, members who had to stand for re-election would inevitably become more involved in constituency matters to build support for their re-election. This would not only interfere in the link between MPs and their constituents (see section 14 below for more detail) but would distract members from their primary role as careful scrutinisers and revisers of legislation.

163. Dr Alan Renwick thought that the non-renewable terms would contribute to making the upper chamber distinctive from the House of Commons. He argued that “to stand for election for a Chamber where you will not be involved in a life of constantly seeking re-election and playing party politics ... is a very different thing from standing in the elections that we have. Many people who want to play a part in debating the legislation of the country would be interested in standing for this chamber, even if they loathe the thought of standing in our current Commons elections”.<sup>224</sup>

**164. Non-renewable terms have the potential to make members of a reformed House of Lords more independent, both from public opinion and from party structures (since they would not be standing for re-election on a party ticket). They would do much to distinguish the character of the reformed House from that of the House of Commons. Although political parties would continue to be accountable to the electorate at the ballot box, individual members would not.**

**165. Allowing members to stand for re-election would make them feel more individually accountable, but would have the disadvantage of members of the reformed House of Lords having a similar electoral mandate to those elected to the House of Commons and might encourage them to undertake more constituency-based activities. It would, however, allow the electorate the choice of keeping an elected member of the Lords they support rather than being deprived of that option.**

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221 Campaign for a Democratic Upper House

222 Graham Allen MP (Q 642), Dr Alan Renwick (Q 196)

223 Q 28

224 Q 196



166. The Committee is divided on whether election should be for a non-renewable term or whether a single further term—say for ten years—might be available for any member wishing to stand again.

167. A majority of the Committee agree with the Government’s proposal for non-renewable terms.

## 10. Length of term

Relevant section of the draft Bill: Clauses 6

168. If elected members are to serve non-renewable terms, the question arises how long those terms should be. The White Paper suggests that a 15-year term would be “sufficiently long” to “attract able people”, while the Minister added that one of the “really important” results of such a long term would members who held the Government to account on long-term projects, such as infrastructure or social programmes.<sup>225</sup> Professors Simon Hix and Iain McLean supported this view, stating that 15-year terms would “help to recruit the sort of people likely to be able to help the house with its work”.<sup>226</sup> Other witnesses agreed.<sup>227</sup>

169. The Hansard Society, while agreeing that a “15-year term length for elected Peers allows for a long-term perspective”, noted that a term of 15 years was “significantly beyond international norms”.<sup>228</sup> Other witnesses agreed that 15 years was unusually long,<sup>229</sup> or noted that a 15-year term would deter professionals with careers from putting themselves forward for election.<sup>230</sup> The Deputy Prime Minister noted that “some people may say that 15 years is a long time. It is a whole lot shorter than life membership”.<sup>231</sup>

170. An alternative proposal was put forward by the Campaign for a Democratic Upper House who suggested that, since “a period of 15 years is ... extremely long in terms of both a mandate and of keeping in touch with the electorate”, 10-year terms might be more appropriate.<sup>232</sup> Other witnesses supported this suggestion.<sup>233</sup>

171. The Committee considered the arguments in favour of 15-year terms. It should be noted that the transition period (see section 18 below) will be determined by the length of term, and as such was a significant factor in the Committee’s deliberations. With a 15-year term, transition would end in 2025, allowing for more members of the current House to remain for longer thus guaranteeing continuity and the preservation of the current ethos of the House. Fifteen-year terms would also enable election by thirds, which make it less likely that short-term electoral swings would shift the party balance

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225 Q 3

226 Professors Simon Hix and Iain McLean

227 Lord Goodhart QC, Dr Alan Renwick

228 The Hansard Society

229 Democratic Audit, Mark Ryan

230 Lord Cunningham of Felling (Q 695)

231 Q 724

232 Damien Welfare and the Campaign for a Democratic Upper House

233 Peter Riddell (Q 126), The Law Society of Scotland, Unlock Democracy, Green Party

in the reformed House dramatically. And the longer the term, the weaker the mandate of the House of Lords as a whole compared with the House of Commons.

172. A 10-year term would have some of these characteristics, but to a lesser degree. On the other hand, a 10-year term might be more appealing to candidates who wished to stand for election in mid-career. It would also make the House as a whole more accountable, allowing the electorate to influence its composition to a greater extent at each election since half of the House would be elected at each general election.

173. A majority of the Committee consider on balance that a 15-year term is to be preferred.

## 11. The timing of elections

Relevant section of the draft Bill: Clause 4
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174. The Government propose that elections to the House of Lords should be held at the same time as elections to the House of Commons. They suggest that this would maximise voter turnout, provide the “least disruption to the work of Parliament”, and would be the most “efficient” option.<sup>234</sup>

175. A number of witnesses supported the Government’s position. Professor Vernon Bogdanor, echoed by other witnesses,<sup>235</sup> noted that “if you are having the election the same day as the general election turnout will be higher, obviously, than it would be if you were having it at some intermediate point”.<sup>236</sup> Democratic Audit stated it was a “sensible proposition” as holding elections for the House of Lords in between general elections “might result in exaggerated results arising from ‘mid-term blues’”, and disrupt the legislative timetable.<sup>237</sup> John F H Smith added that “staggered elections ... could easily produce an upper house antipathetic to the lower, with the risk of direct conflict between two houses”.<sup>238</sup> Professor David Denver noted that it would be more expensive to run elections to the Lords and Commons separately.<sup>239</sup> The 2005 report by a cross party group of MPs *Breaking the Deadlock* and the last Labour Government’s 2008 White Paper on Lords Reform also proposed holding elections to the Lords on general election day for the same reasons.<sup>240</sup>

176. Others witnesses were less convinced. The Electoral Reform Society pointed to four drawbacks<sup>241</sup> which were echoed in other evidence. First, if held at the same time as the more “decisive and important” general election, the House of Commons “would dominate media and public attention” which would make it more difficult for voters to make a considered assessment of potential candidates for an “independent-minded chamber of

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<sup>234</sup> Cm 8077, page 13

<sup>235</sup> Peter Riddell (Q 125)

<sup>236</sup> Q 108

<sup>237</sup> Democratic Audit

<sup>238</sup> John Smith

<sup>239</sup> Q 309

<sup>240</sup> *Breaking the Deadlock*, Cm 7438

<sup>241</sup> Electoral Reform Society

expertise and legislative revision”. Secondly, it was likely that the voting patterns for the upper chamber would mirror the votes cast for the Commons, and the supremacy of the Commons could be “eroded” if the Lords were considered to have a “superior mandate” due to its election by a form of proportional representation. Thirdly, it would be harder to “promote knowledge and understanding of the new electoral system”. Finally, it would increase an already “complex and heavy administrative load”, particularly if the boundaries of Commons constituencies and Lords electoral districts did not match up.

177. Other witnesses added to this list of concerns. The Campaign for a Democratic Upper House was concerned that “if similar patterns of voting produced different outcomes (as could be expected as between a proportional system and first past the post) there could be criticism of the result produced by whichever system was perceived to be less fair”.<sup>242</sup> Professor Jonathan Tonge, drawing on his experience of Northern Ireland, stated that holding two elections on the same day, one using first-past-the-post and one using a form of proportional representation, might lead to more spoilt ballot papers, and could add to the length of the count.<sup>243</sup> Unlock Democracy, while recognising that holding the elections on the same day would reduce the cost of elections to the second chamber and potential increase turnout, decided that on balance holding the elections on different days would reinforce the primacy of the Commons, and emphasise “the different roles that the different chamber play in the legislature”.<sup>244</sup>

178. The Electoral Commission did not take a view on when the elections should be held, but issued a general call for more evidence and research: “there are questions about the potential impact on voters that will need to be addressed where elections (especially new elections like these) are combined with others”.<sup>245</sup>

179. Of those witnesses who recommended holding the elections on a separate day from the general election, many advocated synchronizing elections for the Lords with European Parliamentary elections instead. These are due in June 2014, and then every five years thereafter. Assuming that the next general election takes place in May 2015, and subsequently every five years, the European Parliamentary elections will take place early in the fifth year of each Parliament cycle. The Campaign for a Democratic Upper House argued that “members of the second chamber would serve for the majority of the term of a Government, while the election would doubtless be seen as a forerunner of the General Election due less than one year later”. In addition, it argued that “there is no reason ... to assume that the turnout in elections for the second chamber would be poor, given their significance at national level ... a higher turnout in those elections could assist the level of participation in the European election”.<sup>246</sup> Other witnesses also proposed aligning with the European Parliament elections.<sup>247</sup>

180. Donald Shell suggested that an alternative would be to elect members of the second chamber by thirds on a three year cycle for nine year terms. Such elections could take place

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<sup>242</sup> Campaign for a Democratic Upper House

<sup>243</sup> Professor Jonathan Tonge

<sup>244</sup> Unlock Democracy

<sup>245</sup> The Electoral Commission

<sup>246</sup> Damien Welfare and the Campaign for a Democratic Upper House

<sup>247</sup> Unlock Democracy, Electoral Reform Society (Q 299)

on the same day as local elections for most of the electorate. If adopted, it might allow individuals to serve a maximum of two terms and “would slightly re-balance the electoral system from independence towards accountability”.<sup>248</sup>

**181. We recognise the concerns expressed by some witnesses over the prospect of holding elections to the House of Lords at the same time as elections to the House of Commons, in particular the likelihood that it might lead to elections to the Lords being overshadowed by the general election. On balance, we consider that the arguments in favour of doing so—the reduced cost, the avoidance of mid-term ‘protest voting’ and minimum disruption to the Government’s legislative programme—outweigh these drawbacks. We support the Government’s proposals to hold elections to both Houses of Parliament at the same time.**

182. We observe that under the provisions of the Fixed-term Parliaments Act 2011 there are circumstances in which general elections could take place before five years have elapsed. Those circumstances are covered in the draft Bill.

## 12. Accountability mechanisms

183. As discussed earlier in this chapter, electing members for a fixed non-renewable term ensures continuity and independence, rather than electoral accountability. Since members will not be accountable to the electorate once they are elected, the Committee considered whether other measures should be instituted to hold elected members to account. Dr Alan Renwick described such measures as “a kind of stop against the worst abuses that could arise from a lack of accountability without removing the overall ... gain to be had from non-renewable terms”.<sup>249</sup>

184. We considered two such measures: minimum attendance requirements and a recall mechanism. If either were triggered during a Member’s first two five-year terms it would force the member concerned to stand for re-election at the next set of elections to the House. This would mean that these measures could not be applied to members serving the last five years of their term. Such members would simply be in the same position as current members of the House of Commons who had decided not to stand for re-election. The alternative, of holding a by-election, is not a practical solution. As the multi-member constituencies proposed by the Government would contain millions of voters by-elections would be extremely expensive and would violate the principle that members of the reformed House of Lords should be elected by proportional representation (see section 13 below on vacancies).

### Recall

185. The White Paper notes that the Government are “committed to bringing forward legislation to introduce a power to recall MPs where they have engaged in serious wrongdoing” and that they “will also consider whether elected members of the reformed house of Lords should be subject to a similar system”. In December 2011 the Government published a draft Recall of MPs Bill which proposes that a petition to recall an MP could

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<sup>248</sup> Donald Shell

<sup>249</sup> Q 196

only be initiated in two circumstances: where an MP is convicted of an offence and receives a custodial sentence of 12 months or less, or when the House of Commons resolves that an MP should face recall. The draft Recall of MPs Bill suggests that 10 per cent of the registered electorate in an MP's constituency would need to sign a petition for the recall to go ahead.<sup>250</sup>

186. We received little evidence on this issue, but a few witnesses indicated their support for a recall mechanism based on constituency petitions.<sup>251</sup> Dr Alan Renwick noted that a petition requirement of 10 per cent of a constituency electorate would be difficult to achieve in large multi-member constituencies, but he thought they might provide “an ultimate constraint against unrepresentative behaviour”.<sup>252</sup> Unlock Democracy supported a model of recall in which, if 5 per cent of an electoral district signed a petition, a recall ballot would be held on the same day as the next second chamber election. This petition could be initiated at any time, and would not require Parliament to have already disciplined the member as envisaged in the draft Recall of MPs White Paper. If 50 per cent of voters then voted to recall that member they would be excluded from the chamber and the number of members to be elected for that constituency in the subsequent election would be increased by one.<sup>253</sup>

187. The Electoral Reform Society opposed a recall mechanism altogether, arguing that it could be used by well-organised interest groups to target public figures who opposed their agenda.<sup>254</sup>

**188. We consider that a recall mechanism would be an appropriate way to ensure elected members can be held accountable by the electorate in exceptional circumstances. We do not attempt to set out the details of a scheme in this report, but we recommend that the Government make provision in the Bill for a recall mechanism, tailored to multi-member constituencies, based on constituency petitions that could force members serving the first ten years of their 15-year term to stand for re-election at the next set of elections to the House of Lords. The Government should consider how to minimise the risk of the recall mechanism being manipulated for frivolous or vexatious reasons.**

### ***Minimum attendance requirements***

189. In addition to a recall mechanism, a few witnesses proposed a minimum attendance requirement for elected members. Dr Alan Renwick suggested that “it is reasonable to expect ... that members should regularly participate in the work of the House. Minimum service requirements might therefore be set as a condition for continuing membership beyond five years”.<sup>255</sup> He proposed a minimum participation rate of 20 per cent. The Electoral Reform Society also suggested that members should be subject to “rigorous and

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250 Under the Representation of the People Act 1981, imprisonment for more than a year in the British Islands or the Republic of Ireland carries an automatic disqualification from being a Member of the House of Commons.

251 Mark Ryan, Dr Alan Renwick, Unlock Democracy

252 Dr Alan Renwick

253 Unlock Democracy

254 Electoral Reform Society

255 Dr Alan Renwick

properly enforced standards of conduct, including attendance”,<sup>256</sup> while Michael Keatinge, writing in the context of an appointed rather than elected House, suggested that “it is important for public confidence that members of the second chamber should be seen to be contributing actively ... It is necessary therefore to provide a mechanism for members to retire either voluntarily or if they fail to maintain a minimum level of activity”.<sup>257</sup>

**190. We agree that members should be required to participate regularly in the work of the House. In section 15 below we recommend that appointed members should not have to commit to the same level of activity as elected members of the House. Elected members, however, will be salaried and expected, as a general rule, to spend most of their time on their parliamentary duties while the House is sitting. In addition, unlike members of the House of Commons they will not have to deal with a large volume of individual casework. We consider it reasonable, therefore, to set high expectations for their expected level of participation. We recommend that elected members should have to stand for re-election at the next general election if they fail to attend over 50 per cent of sitting days in a session. A decision to force a member to stand for re-election on these grounds would have to be agreed to by the House, on a report from the Privileges and Conduct Committee, to ensure that members with extenuating circumstances were not penalised inappropriately.**

### 13. Filling Vacancies

Relevant sections of the draft Bill: Clauses 10—15 and Schedule 3
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191. The White Paper states that “it is the Government’s intention that vacancies in the House of Lords should not be left open until the end of the departing member’s term, as this could mean that voters were under-represented for significant periods of time”. It adds that by-elections would be inappropriate as they would be costly and would have to use a majoritarian, rather than proportional, system of election.

192. The Government therefore propose that “an elected member would be temporarily replaced by a substitute member until the next election”. This would be the candidate from the same party who at the last election achieved the highest number of votes without actually gaining a seat. If they were unable to take up the seat it would go the candidate in the same party with the next highest number of votes, and so on. If no candidate from the same party were available the seat would go to the candidate with the highest number of votes outside the party. If an independent vacated their seat, the candidate who received with the highest number of votes without being elected would be offered the seat, irrespective of party.

193. The substitute would hold the seat until the next House of Lords election. If the departed member would have stood down at that election, the vacant seat is filled as usual. If the departed member had one or two electoral periods still to serve, a replacement member would be elected for those one or two periods.

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<sup>256</sup> Electoral Reform Society

<sup>257</sup> Michael Keatinge



## By-elections

194. An analysis of different proportional electoral systems used in European parliamentary election by Professor Robert Hazell and Joshua Payne found that it was “uncommon for countries to make provision for by-elections” if an MEP’s seat became vacant. Under list systems, the usual practice was for the candidate who had the next place on the list to take up the seat.<sup>258</sup> Witnesses agreed that by-elections were not a sensible option, with most commenting on the cost,<sup>259</sup> while Democratic Audit added that by-elections “will tend to be won by the predominant party in the region, even if the vacant seat previously belonged to a party in the minority locally”.<sup>260</sup>

195. Professor Hugh Bochel, Dr Andrew Defty and Jane Kirkpatrick, from the University of Lancaster, were sceptical about the use of previous unsuccessful candidates to fill vacancies instead of running by-elections. They noted that parties might find their candidates unwilling to fill vacancies years later, for example if they had moved area or changed jobs, or simply did not wish to leave work in order to fill in as an interim member of the House of Lords.<sup>261</sup>

**196. We agree with the Government’s view that by-elections should not be used to fill vacant seats. The multi-member constituencies proposed by the Government would contain millions of voters making by-elections extremely expensive, and they would violate the principle that members of the reformed House of Lords should be elected by proportional representation.**

**197. In the circumstances, we agree with the Government proposal to replace departed members with substitute members only until the next set of elections to the House of Lords.**

198. There are several possible ways to fill vacancies:

- i) The seat could remain vacant until the next election, when an additional member could, if necessary, be elected in the electoral district to serve out any time remaining of the departed member’s term;
- ii) The votes of the election of the departed member could be re-run, removing the votes for the member whose departure had caused the vacancy.
- iii) The seat could go to the candidate with next highest number of votes in the same party at the last election (the Government’s choice) ; or
- iv) The seat could go to the candidate with the next highest number of votes at the last election, irrespective of party.
- v) A fifth possibility is suggested by current practice in Northern Ireland. The Northern Ireland Assembly (Elections) (Amendment) Order 2009 introduced a new system for replacing members of the Northern Ireland Assembly who vacate

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<sup>258</sup> Professor Robert Hazell and Joshua Payne

<sup>259</sup> Dr Alan Renwick (Q 563) , Professor David Denver (Q 309)

<sup>260</sup> Democratic Audit

<sup>261</sup> Professor Hugh Bochel, Dr Andrew Defty and Jane Kirkpatrick

their seats: the “nominating officer” of the party that the vacating MLA belonged to at the time of his or her election may nominate a replacement for the vacant seat at the time the vacancy arises. An independent MLA may submit lists of substitutes who may be approached to fill his or her seat should it become vacant.

199. Professors Simon Hix and Iain McLean suggested that it would be acceptable to leave vacancies unfilled until the next election (option 1),<sup>262</sup> as did Unlock Democracy and Jim Riley.<sup>263</sup>

200. Dr Alan Renwick noted that the Government’s proposal to fill vacancies with unsuccessful candidates would give parties a “strong incentive to run more candidates than they expect initially to secure election”, thus widening voter choice.<sup>264</sup> He told us that this might mitigate the possibility that “parties might put up only as many candidates as they thought would be elected and voters would not be able to choose among candidates from the same party”.<sup>265</sup> Other witnesses also commented on this effect,<sup>266</sup> which would apply under options 2, 3 and 4.

201. Democratic Audit suggested that a ‘count back’ system (option 2) in which the original election was re-counted ignoring the candidate whose departure causes the vacancy was a “possible different approach”. They argued that this would “tend to preserve the balance of opinion as originally expressed in the election”.<sup>267</sup>

202. Professor David Denver spoke out against the Government proposal (option 3), stating that it “bespeaks a fixation with party that is contrary to the spirit of STV, and I fail to see why the replacement should not simply be the next person in line, as it were, irrespective of party”.<sup>268</sup> David Le Grice, on the other hand, argued that it would be “completely wrong” if a vacant seat was filled by someone from another party (option 4).<sup>269</sup> Professor Hugh Bochel and his colleagues agreed, noting that “the idea that if a party is unable to find one of its previous candidates to take a seat it should lose it would seem to go against the fundamental democratic principle expressed elsewhere in the White Paper”.<sup>270</sup>

203. We note that both Democratic Audit and the Electoral Reform Society contended that the Government’s proposed method of determining the substitute candidate, the candidate with “the highest vote without being elected” was “crude”.<sup>271</sup> Both recommended instead the “final preference count” procedure, which produces a ranked order result under STV, as devised by Colin Rosenstiel and as used in internal Liberal Democrat elections.

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262 Professors Simon Hix and Iain McLean

263 Unlock Democracy, Jim Riley

264 Dr Alan Renwick

265 Q 561

266 Democratic Audit

267 Democratic Audit

268 Q 309

269 David Le Grice

270 Professor Hugh Bochel, Dr Andrew Defty and Jane Kirkpatrick

271 Electoral Reform Society, Democratic Audit

204. Option 1, leaving a seat vacant, would not be appropriate unless the interval before the next election to the House of Lords was relatively brief. **The Committee recommends, however, that if a vacancy should occur within a year of the next set of elections to the House of Lords, the seat should remain vacant and an additional member should be elected at the next election to fulfil the remainder of the departed member’s term.**

205. A “count back” system (option 2) in which the original election is re-counted ignoring votes for the departed member has some merit, but we do not consider that it is feasible given the long, multi-parliament terms of elected members. If a vacancy arose 13 years into a 15-year term, it would mean re-running election results from over a decade ago. Apart from any other considerations, we think it unlikely that many of the candidates from the original election would be in a position, or willing, to take up a seat in Parliament for a relatively short interim period such a long time after the election took place.

206. Options 3, 4 and 5 are viable. Of these, the Committee prefers option 3—the Government’s preferred option—in which the seat would go to the candidate with next highest number of votes in the same party at the last election. This would not disrupt the party balance in the House mid-term. (We note that an exception to this rule might occur if a seat was vacated by an independent member. Under the Government’s proposals the seat would be filled by the candidate with the next highest number of votes at the last election, irrespective of party. This could result in a change to party composition). Even this arrangement has its shortcomings in that sometimes reliance will have to be placed on electoral information several years old.

207. We note this whole area is complex and the way in which it will operate is sometimes difficult to predict. We invite the Government to consider further the technicalities of its proposals for replacement and substitute members. For example, it seems anomalous that arrangements for substitute members rely on parties having candidates who are unsuccessful at the initial elections, but that Clause 9(2)(h) confers on the Minister an order making power to limit “the number of persons who may be nominated as candidates for election in the name of a registered party in an electoral district to the number of elected members to be returned for that district in the election”.

## 14. Constituency issues

208. The Committee is agreed that an electoral mandate will bring with it a representative function. The Committee discussed the scope and nature of that function and in particular constituency responsibility. The White Paper states that the Government does not want elected members of a reformed House of Lords to affect the relationship between MPs and constituents:

“The Government wishes to protect the important link between constituents and their Member of Parliament in the Commons, and we believe that establishing larger, multi-member constituencies as the basis of representation in the reformed House of Lords will provide a role and mandate for members of the reformed second chamber that is complementary to the important work undertaken by MPs”.<sup>272</sup>

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<sup>272</sup> Cm 8077, page 12

The White Paper states that a Member of the reformed House would be paid a lower salary than that of an MP to “recognize that they would have responsibilities for UK-wide legislation but would not have constituency duties”.<sup>273</sup> Fears that Members of a reformed Lords might seek to build a base for future election in the Commons are addressed by Clause 55 of the draft Bill which would disqualify a former Member of the Lords for 4 years and 1 month from standing for the Commons.

209. In the Welsh and Scottish devolved legislatures Members are elected to represent both regions and constituencies, illustrating how relationships between Members of the same legislature whose representation overlap can be governed. The guidance given to regional and constituency representatives in Scotland and Wales sets out how Members must describe themselves—regional Members, for example, cannot describe themselves as ‘local’ representatives. It states that it is up to constituents to decide whom to approach with their cases. Regional MSPs are told that they have a responsibility to all those in the region for which they were elected, and they “must therefore work in more than two constituencies within their region”.<sup>274</sup>

210. The Minister acknowledged that elected Members would have some correspondence from constituents. He noted that unelected Members of the current House were lobbied already. He accepted that if somebody reached an unsatisfactory outcome with an MP they might approach a Member of the upper House and could write to the latter in relation to legislation and the scrutiny of government. He thought that Members might become involved in issues of a regional nature and he gave the example of the High Speed 2 rail link, where an elected Member of the upper Chamber could engage in debate as to whether such a policy delivered benefits to their part of the country or whether it delivered benefits to only certain parts of the region they were representing.<sup>275</sup> He maintained that the primary focus of constituency case work (in the sense of constituents’ personal problems) would be Members of the Commons and that the workload for Members of the upper House would not be of the same magnitude.<sup>276</sup>

211. The Minister did not think it advisable to legislate for the roles of Members of the upper House, including those in relation to individual constituency casework, as it would become justiciable.<sup>277</sup> He thought instead that there would be some conventions that would make it very clear that the expected role of elected Members of the upper House would be to hold the Government to account and scrutinize and improve legislation. This would be a very different role from that of Members of the House of Commons, which the public would quickly understand.<sup>278</sup> Convention could also suggest that elected Members of the upper House should direct a constituent towards their Member of Parliament so that they might pick up casework. Prospective Members of the upper Chamber standing for election

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273 Cm 8077, page 24

274 For Guidance issued by the National Assembly for Wales see: Code on Different Roles and Responsibilities of Constituency Members and Regional Members. For Guidance issued by the Scottish Parliament see: Code of Conduct for MSPs, Volume 2, Section 8: Engagement and Liaison with Constituent

275 Q 84

276 QQ 254, 258

277 Q 258

278 Q 270

could also explain to the electorate what their role was and the balance between to be struck as to constituency issues between Members of both Houses.<sup>279</sup>

212. The Minister considered other things that would militate against elected Members of the second Chamber actively picking up constituency work. The expenses regime for members of a reformed House could make it clear that the lesser resources available to them compared to those for MPs were a “limiting factor” on their ability to undertake casework.<sup>280</sup> The significant size of the regions and the non-renewable terms would also dampen appetite for such responsibilities.<sup>281</sup> In addition, the cooling off period, which prevented Members of the Lords standing for election to the Commons for 4 years and one month, would help deter Members from building up support in a particular constituency.<sup>282</sup>

213. The Committee took evidence by video-link from three Australian Senators, who gave their views on constituency issues and their relationship with Members of the House of Representatives. Senator the Hon Ursula Stephens, a Member of the government of Australia, said that the “people of Australia believe the House of Representatives to be their local representatives” and that they “identify very clearly with their local Member, who works his or her constituency very hard”. She thought that there was “a generally held view that the Senate performs the role of review”.<sup>283</sup> Senator Lee Rhiannon, a Member of the Australian Greens, had a slightly different view. She said that as a minor party, with nine Senators and only one Member in the House of Representatives, the issue of working with constituents was very important and took up a lot of their time.<sup>284</sup> Senator the Hon Michael Ronaldson, a Member of the opposition Liberal Party, thought that elected Members of the Lords might engage in constituency-type work if in an area with other elected representatives from another party: “If you are a Member of the non-ruling party, the Lords might find that they have more people knocking on their doors than they might otherwise have anticipated”.<sup>285</sup> He also said that in terms of elections, Senators did not campaign as Senators but campaigned for one of the lower House Members of their own party in a marginal seat or against a marginal lower House Member from another party.<sup>286</sup>

214. A number of witnesses feared that elected Members of an upper Chamber would become involved in constituency work, causing tension with Members of the Commons. Lord Cormack thought that in cases where a Member of the Commons could not satisfy a constituent there “would be an inevitable tendency to turn to the Senator and there would be an inevitable temptation, so far as the Senator was concerned, to get involved and put his or her name on the issue.”<sup>287</sup> He said that MEPs had clashed with Members of the

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279 Q 271

280 Q 265

281 QQ 7, 17

282 Q 267

283 Q 412

284 Q 412

285 Q 414

286 Q 424

287 Q 596

Commons but that this “would be as nothing to what would happen if we had two elected bodies” at Westminster.<sup>288</sup>

215. Paul Murphy MP argued that he could not see a situation where “high-flying Senators” would not have any constituency work and whose job would simply be to revise legislation.<sup>289</sup> Such Members would have been selected by their parties to represent people and would “have been returned by a different method of election which they might well regard as more legitimate”.<sup>290</sup> Lord Grocott was similarly concerned that such elected Members might claim a greater legitimacy and have a higher profile than Members of the Commons.<sup>291</sup>

216. The Clerk of the House of Commons, Robert Rogers, said that though it might be expected that the issues that elected Members of the Lords might engage in would be of a bigger and broader character, such as regional and economic issues, “hard cases come to individuals, and individual representatives then decide how they are going to raise them”. He was “quite certain” that Ministers would be answering more questions on such issues from the Lords than they did now if its Members were elected. He also raised the possibility for confusion surrounding “constituency case tourism” where a constituent might go to the member whom they believed would give a satisfactory outcome to a problem.<sup>292</sup>

217. Other witnesses did not think that there would be issues between elected Members of both Houses in terms of constituency work. Dr Alan Renwick said that non-renewable terms and the very large regions covered by elected Members of the upper House would mean that there was not a “significant danger” of a constituency focus and that there would be “little opportunity to vote for people who are selling themselves as doing the best job in terms of bringing the pork back home to this little local area”.<sup>293</sup> Professor Vernon Bogdanor stated that the large regions of 500,000 would make it difficult for people to get know their representatives, as was currently the case with MEPs.<sup>294</sup> He was of the opinion that electors would have little difficulty in continuing to consult their constituency MP over problems they might have with housing, education and other such issues, while elected Members of the upper House would not seek to trespass on the functions of the lower House.<sup>295</sup> Similar views were expressed by the Electoral Reform Society and Professor David Denver.<sup>296</sup>

218. Graham Allen MP thought that both Houses between them could “work out clearly how things could happen and who would be responsible for what” and that on the specific question of who should do casework this could “be worked out very easily by people of good will”.<sup>297</sup> The Campaign for a Democratic Upper House said that it would be difficult

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288 Q 597

289 Q 591

290 Q 591

291 Q 702

292 Q 655

293 Q 565

294 Q 108

295 Q 109

296 QQ 285, 320

297 Q 645



to stop elected Members of the second Chamber from carrying out constituency work, though the large regional constituencies would make it quite unlikely. It suggested that concerns regarding this issue could be addressed if the political parties “could create a culture in which the public expectation is not that that is what they are there to do”.<sup>298</sup>

219. Several written submissions stated that elected Members of the Lords would engage in constituency work. The Hansard Society was concerned that newly elected peers would come into conflict with MPs at a constituency level: “There is a risk that peers will find themselves to be the next stop on the constituency casework conveyor belt, as constituents who cannot find satisfaction with one representative move on to another until they have exhausted all avenues”.<sup>299</sup> Rt Hon Lord Low of Dalston and Lord Lipsey were both worried that the election of members based on geographical constituencies could lead to possible “turf wars” at a constituency level between MPs and peers.<sup>300</sup> Dr Julian Lewis MP thought that there would either be friction between MPs and elected members of the Lords or “justifiable resentment” towards the latter on the part of those who elected them if they ignored constituents’ approaches.<sup>301</sup>

220. Professor Hugh Bochel and his colleagues also thought that it was “inevitable” that elected members of the House of Lords would develop some form of constituency ties and work. They suggested that the adoption of STV, with its attendant large constituencies, might lead to work that was quite different to that of MPs.<sup>302</sup> To address such issues, Unlock Democracy recommended “that members of the second chamber be resourced in such a way that discourages them from establishing constituency offices and competing with members of the House of Commons for casework”.<sup>303</sup>

**221. The Committee considers that elected members will inevitably be concerned with, and be approached about, regional, local and legislative matters.**

**222. The Committee believes that in general it would be inappropriate for elected members to involve themselves in personal casework of the kind currently undertaken by MPs on behalf of their constituents.**

**223. The Committee observes that the level of engagement with constituency work will be governed by the resources available to elected members. Accordingly, we recommend that IPSA should make no provision for members of the reformed House to deal with personal casework, as opposed to policy work, or to have offices in their constituencies. The Committee believes that the practical difficulties of large regional constituencies, together with a lack of resources, will make any substantial level of individual casework less likely. We anticipate, however, that some elected members will seek to carve out a constituency role for themselves even without dedicated resources and we do not see how this can be prevented.**

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298 Q 587

299 Hansard Society

300 Lord Low of Dalston, Lord Lipsey, Ken Batty

301 Julian Lewis MP, Thomas Docherty MP

302 Professor Hugh Bochel, Dr Andrew Defty and Jane Kirkpatrick

303 Unlock Democracy

**224. The Committee considers that no further action should be taken to define the manner in which elected members of the reformed House carry out their representative role. As the Minister suggested it will be for the members of the two Houses to come to a mutual understanding on these matters.**

## 4 Appointments, Bishops and Ministers

### 15. Appointments

Relevant sections of the draft Bill: Clauses 16 – 25, and Schedules 4 and 5
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#### *The Government's proposals*

225. The draft Bill proposes that 20 per cent of the reformed House of Lords should be appointed to “bring a non-party political perspective to the work carried out by the reformed House of Lords”. The Committee considered the case for having an appointed element in a reformed House of Lords earlier in this report (section 6 above), and supported the Government’s proposed 80:20 split.

226. An Appointments Commission, established on a statutory basis, would recommend members who would be appointed at the same time as elected members take their seats. The draft Bill proposes that a third of the total number of appointed members be appointed every five years, to match the staggered elections envisaged for elected members. The Appointments Commission would comprise seven Commissioners. While MPs and Minister would not be eligible for appointment as Commissioners, the Government propose no ban on former or current members of the House of Lords serving as Commissioners.

227. According to the draft Bill, when appointing members the Appointments Commission “must select persons for recommendation ... on merit on the basis of fair and open competition” and “in doing so it must take account of the principle that, although past or present party political activity or affiliation does not necessarily preclude selection, the role of an appointed member is to make a contribution to the work of the House of Lords which is not a party political contribution”.<sup>304</sup>

228. While existing cross-bench peers will leave the House during the transitional period, it is to be assumed they could re-apply to the statutory Appointments Commission for membership in the reformed House.

#### *The Appointments Commission*

229. The current House of Lords Appointments Commission is an independent, advisory, non-departmental public body established by the Prime Minister in May 2000. It has two functions. First, it recommends individuals for appointment as non-party members of the House of Lords. Secondly, it vets all nominations for life peerages, including those proposed by the UK political parties, for propriety. It has seven members, and operates on a five-year term.<sup>305</sup>

230. There was general agreement among witnesses that appointments to the House of Lords should be made by a statutory Appointments Commission. Those witnesses in

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<sup>304</sup> Cm 8077, page 47

<sup>305</sup> Q 379; <http://lordsappointments.independent.gov.uk>

favour of an wholly elected House who commented on this aspect of the draft Bill, such as Unlock Democracy, agreed that, should an appointed element be retained they, “would expect this process to be managed by an Appointments Commission rather than by political patronage”.<sup>306</sup> Others agreed.<sup>307</sup> Those opposed to an elected chamber also supported the introduction of a statutory Appointments Commission,<sup>308</sup> often stating their support for the provisions included in Lord Steel of Aikwood’s House of Lords Reform Bill, which at the time included provision for a statutory Appointments Commission.<sup>309</sup> Lord Howarth of Newport, also opposed to an elected upper House, explained why:

“The government are right also to include in their proposals the creation of a statutory Appointments Commission. For so long as there are to be appointed members of the second chamber a Statutory Appointments Commission will be needed. It is not respectable that the existing Appointments Commission (admirable though its work has been) should be the creature of Prime Ministerial patronage”.<sup>310</sup>

**231. We agree that the Appointments Commission should be placed on a statutory footing.**

**232. We support the establishment of a statutory Joint Committee of members of the two Houses to oversee the Appointments Commission, as proposed in the draft Bill. This Joint Committee should oversee the governance of the Commission in addition to the responsibilities set out for it in the draft Bill.**

**233. We support the Government’s proposal that the Appointments Commission could appropriately include former and current members of the House of Lords, but not serving MPs or Ministers.**

### ***Criteria for appointed members***

234. The White Paper stated that the Commission would “set its own criteria and process of appointment but it would be under a statutory duty to publish the criteria of appointment and the details of the appointments process”.<sup>311</sup> Lord Jay of Ewelme, Chair of the House of Lords Appointments Commission, told us however that there might be certain criteria which it would be “useful to have on the face of the Bill,” such as “political independence and the ability to make an effective contribution to the work of the House”.<sup>312</sup> We consider below certain key criteria which could be placed on the face of the Bill to inform and guide the work of the Appointments Commission.

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<sup>306</sup> Unlock Democracy, Democratic Audit

<sup>307</sup> Lord Foulkes of Cumnock, Professor Gavin Phillipson, Professors Simon Hix and Iain McLean, Lord Wright of Richmond et al.

<sup>308</sup> Campaign for an Effective Second Chamber, Jonathan Boot, Christopher Hartigan, Ken Batty, Sir Stuart Bell MP, Lord Higgins, Lord Luce, Lord Cobbold, Archbishops of Canterbury and York, Peter Riddell, Professor Sir John Baker QC

<sup>309</sup> These provisions were removed from Lord Steel of Aikwood’s Bill during its report stage in the House of Lords.

<sup>310</sup> Lord Howarth of Newport. See also Penny Mordaunt MP

<sup>311</sup> Cm 8077, page 18

<sup>312</sup> Q 380

### *Independence of appointees*

235. Questioned on the political independence of appointed Peers, Lord Jay was clear:

“The Commission’s view is that you are appointing to the Cross Benches and that that should be for the length of period for which you are in the House. You are appointing people to the Cross Benches of the House of Lords, not as a way in to a party-political position”.<sup>313</sup>

236. The Minister agreed with this position: “we set out the fact that we thought that the Members who were appointed should be non-party political. We are very clear in the legislation that anyone who has a party label should get elected. The role of the Appointments Commission should be to appoint those who effectively are Cross-Benchers, to use the current parlance”.<sup>314</sup> He thought that such independence was helpful. He noted that “the Cross-Benchers bring a set of experiences where they are not necessarily guided by that party Whip. We felt that that was an advantage, given the different role that we see for the House of Lords”.<sup>315</sup>

<sup>237</sup> Several witnesses commented on the independence of cross-bench peers. Professor Gavin Phillipson supported a mixed chamber as he believed that appointed members would allow a degree of independence that might be difficult to achieve through elections alone.<sup>316</sup> Unlock Democracy, while in favour of a 100 per cent elected House, were adamant that “if you are going to have appointment ... let us have those people not as party people ... Party people should be elected through the electoral system”.<sup>317</sup>

238. The Committee agrees that appointed members should be independent. One of the benefits that we see arising from the presence of independent cross-benchers is the effect that it has on debates. The inclusion of genuinely independent members ensures that speakers in debate do not simply make party political points, but have to make a persuasive argument that will appeal to the non-politically aligned. Damien Welfare agreed that “certainly there is an argument that, in a mixed elected and appointed House, that would still be the case and would be something that the Government would have to consider”.<sup>318</sup> This is not to say that individuals who have previously been party politically active should be banned from appointment, but rather that such members should no longer have an recent overt party political affiliation which would influence their behaviour in the chamber.

### *Expertise and experience*

239. In any project to reform the membership of the current House of Lords the problem will arise of how to replace the breadth of expertise and experience found amongst members of the present House, and in particular among cross-bench peers. Some witnesses

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<sup>313</sup> Q 401

<sup>314</sup> Q 75

<sup>315</sup> Q 4

<sup>316</sup> Professor Gavin Phillipson

<sup>317</sup> Q 352

<sup>318</sup> Q 571

argued that directly elected members would not possess the same level of expertise as the current appointed membership. For such witnesses an essential function of a 20 per cent appointed element would be to increase the overall expertise of a mainly elected House. Pauline Latham MP, for example, wrote:

“The House of Lords is currently made up of many specialists in the areas of academia, health, business, the services, and many, many more. With such specialist talent, it is highly unlikely that these people would be likely to stand for election”.<sup>319</sup>

She added, however, her concern that were only 20 per cent of a reformed House appointed this would jeopardise the current level of expertise. Lord MacLennan of Rogart, while a supporter of an elected House, likewise thought that there would be an “inescapable loss” of expertise and experience with the removal of appointed members.<sup>320</sup> The Archbishops of Canterbury and York pointed to the expertise that appointments could bring but also to the breadth of civil society it could help to include in terms of the voluntary, community and charitable sectors.<sup>321</sup> A large number of other submissions concurred with this view of expertise and appointments.<sup>322</sup>

240. Others were less convinced that the appointment of cross-benchers was the only means to introduce expertise into a reformed House. The Minister thought that cross-benchers brought “a different perspective” to debates on legislation, but he was clear that expertise would be not be found solely on the cross-benches, stating bluntly that “in the generality, I just do not buy the argument that people who are prepared to seek election do not bring a lot of experience with them”.<sup>323</sup> Others agreed.<sup>324</sup> Professor Hugh Bochel and his colleagues meanwhile stated that in the current House of Lords expertise was “patchy, may be deficient in a number of key policy areas, and as members are appointed for life, is in some cases a diminishing resource”.<sup>325</sup>

241. Unlock Democracy wondered whether “expertise can more effectively be brought into the legislature though the appointment of special advisers to select committees or to committees to consider specific Bills rather than through full time membership of the second chamber”. This would also ensure that the expertise was always relevant and up-to-date and that experts would not have to “choose between their existing careers and advising on legislation in their field”.<sup>326</sup> Others proposed similar suggestions for including outside expertise in the legislative process.<sup>327</sup>

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319 Pauline Latham MP

320 Lord MacLennan of Rogart

321 Archbishops of Canterbury and York

322 Sir Stuart Bell MP, Jonathan Boot, Christopher Hartigan, Michael Keatinge OBE, Lord Lipsey, Ken Batty, The Bishop of Worcester, Nadhim Zahawi MP, Lord Howarth of Newport, Joseph Corina, Dr Martin Wright, Lord Rowe-Beedoe, Campaign for an Effective Second Chamber, Lord Grenfell, Lord Low of Dalston, Jesse Norman MP, Lord Higgins, James Hand, Professors Simon Hix and Iain McLean, Donald Shell, Muslim Council of Britain, Professor Gavin Phillipson, Damien Welfare and the Campaign for a Democratic Upper House, Cecile Rezutka, James Moore, Conor Burns MP

323 Q 81

324 Lord Dubs, Unlock Democracy (Q 377)

325 Professor Hugh Bochel, Dr Andrew Defty, and Jane Kirkpatrick

326 Unlock Democracy

327 Professor Hugh Bochel at al., Electoral Reform Society, Liam Finn, Lord McLennan of Rogart



242. Lord Jay was clear that “it would be the job of the Appointments Commission to ensure that there was a sufficient range of expertise”. He noted that the current House of Lords Appointments Commission had commissioned a study on the expertise available to the House and then “tried to make certain that we can fill those gaps, in so far as that is consistent with merit and so on”. He thought that “that kind of work would be necessary under the Bill with 20% nominated .. It would be necessary to continue to try and make certain that there was a good diversity of skills”.<sup>328</sup>

243. Evidence suggested that a 100 per cent elected House would be unlikely to attract the breadth and depth of expertise now present in the House of Lords. Outside expertise is of course already brought into the House’s deliberations through the work of Select Committees—one obvious example being the work of this Joint Committee—but the evidence clearly shows that there is a role for appointed members to ensure that a range of necessary expertise is represented in the chamber.

### *Diversity*

244. We asked whether the Appointments Commission should take pains to appoint a diverse range of members. Lord Jay suggested that “I think that you would want to try to ensure that there was a reasonable balance of diversity in the broadest sense in the 20 names that you were proposing for appointment—diversity in terms of ethnic background and gender throughout the United Kingdom”.<sup>329</sup> When asked whether the Appointments Commission should try to appoint members to correct gender or ethnic imbalances amongst elected members, however, Lord Jay felt that “you would just have to look at the appointed only”.<sup>330</sup>

245. Other witnesses agreed that diversity was an issue that an Appointments Commission should focus on.<sup>331</sup> Lord Howarth of Newport observed that the appointed House of Lords “already has a better gender balance than the Commons, and a statutory Appointments Commission, tasked to make progress on this, would be well placed to do so”.<sup>332</sup> Some witnesses supported more stringent requirements: the Hansard Society, the Fawcett Society, the Electoral Reform Society and others argued that it should be a statutory requirement of the Appointments Commission to appoint equal numbers of men and women.<sup>333</sup>

246. We heard specific evidence on the issue of whether the Appointments Commission should promote religious diversity in a reformed House. Among others,<sup>334</sup> Theos and the Archbishops of Canterbury and York argued that the Appointments Commission’s criteria should include a focus on religious diversity to ensure that a range of faiths were represented in the upper House.<sup>335</sup> The Minister told us that “it would be perfectly open to

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328 Q 386

329 Q 395

330 Q 395

331 David Le Grice. A similar approach was also taken by St Philip’s Centre

332 Lord Howarth of Newport

333 Hansard Society, Fawcett Society, Electoral Reform Society, Counting Women In, Cecilie Rezutka

334 Zoroastrian Trust Funds of Europe

335 Theos, Archbishops of Canterbury and York. See also Cecilie Rezutka

the Appointments Commission to take into account the faith diversity of the country, in the same way as it is able to now, when thinking about whom it appointed”.<sup>336</sup> Lord Jay stressed, however, that an Appointments Commission should make appointments “on merit and to be looking at the range of expertise that the House clearly needed, rather than by quotas”.<sup>337</sup>

247. Lord Jay stated that he was “very conscious of geographic imbalance” in the current house,<sup>338</sup> an issue which the Minister described more strongly as a “massive skewing of representation towards London and the south-east and slight overrepresentation in Scotland, with massive underrepresentation in all the other parts of the United Kingdom”.<sup>339</sup> The Committee note that, should elected members be elected on a regional basis, this would obviously cease to be an issue among the 80 per cent elected element of a reformed House.

**248. We consider that the values set out above—independence, expertise and experience, and diversity—should form a core around which the Appointments Commission should construct its criteria for appointing members to the House of Lords. While we recognise that the Appointments Commission should apply its criteria independently, we believe that it is appropriate that Parliament should have the final say on the criteria devised by the Appointments Commission, and the guidance it produces on how it will apply those criteria.**

**249. We consider that there would be merit in placing on the face of the Bill certain broad criteria to which the Appointments Commission “should have regard” when recommending individuals for appointment. We recommend that these should be:**

- an absence of recent overt party political affiliation;
- the ability and willingness to contribute effectively to the work of the House;
- the diversity of the United Kingdom, in the broadest sense;
- inclusion of the major faiths; and,
- integrity and standards in public life.

**250. Variations of the Appointment Commission’s criteria, or guidance produced under them, should be subject to parliamentary approval through the super-affirmative procedure.**

### ***Part-time vs full-time***

251. We questioned Lord Jay on the effect of requiring appointed members to perform a full-time role in the House. He replied:

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336 Q 39

337 Q 396

338 Q 397

339 Q 19

“this in a way goes to the heart of it. The nature of the expertise of people who would come to the House if it were as proposed in the Bill would be different from what it is now. Some people who would now choose to apply would not choose to apply, while some people having looked closely at the terms of reference will conclude that it is not possible to be a full-time Member of a reformed House of Lords and continue to do other things as well”.<sup>340</sup>

adding that:

“if you are appointing people with a degree of expertise to a full-time House, how are they going to maintain that expertise when they do not have the time that they now have to pursue other interests and bring the expertise thus gained into the work of the House of Lords?”.<sup>341</sup>

252. Lord Jay told us that his “own view is that the Cross-Bench Peers in an 80:20 elected House should be full-time and not part-time” because if they were part-time “there will be a very great distinction between the elected Members and the appointed Members”.<sup>342</sup>

253. Other witnesses took a different view however.<sup>343</sup> The Clerk of the Parliaments did not see any practical difficulties arising from a House containing both full-time and part-time members, noting that “we already have members who devote different portions of their time to their membership. That seems to work ... I would certainly not accept that it has to be full-time”.<sup>344</sup>

254. The Deputy Prime Minister acknowledged that it was a “finely balanced argument”<sup>345</sup> noting that:

“On the one hand, if one is going to confer a democratic mandate on elected Members of the House of Lords, in order to reciprocate the confidence the people have invested in you, you should be applying yourself full time to the job of scrutinising and revising Government legislation. There is a very powerful argument that says that, precisely in order to retain that independence of spirit and objectivity of mind and thought, not only is it worth having people elected, particularly under the STV system where they are freer of party strictures, but there might be a case for allowing them to continue to do other things so they have one leg in politics, if you like, and one leg in the real world”.<sup>346</sup>

**255. We consider that the advantages of having part-time appointed members (the maintenance of professional expertise and the ability to attract individuals who would not want to commit to a full-time role) outweigh the possible disadvantage (that it might result in a two-tier House). We recommend therefore that appointed members should not have to commit to the same level of activity as elected members of the**

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<sup>340</sup> Q 393

<sup>341</sup> Q 398

<sup>342</sup> Q 388. See also Unlock Democracy (Q 344)

<sup>343</sup> David Howarth (Q 230), Professor Sir John Baker QC (Q 230), Dr Alan Renwick (Q 201), Muslim Council of Britain

<sup>344</sup> QQ 633, 636

<sup>345</sup> Q 757

<sup>346</sup> Q 758

**reformed House of Lords.** The pay implications of this decision are discussed at section 19 below.

### ***Accountability***

256. Earlier in this report (section 12 above) the Committee recommended that elected members should be subject to a minimum attendance requirement, with members who failed to attend over 50 per cent of sittings days in a session being forced to stand for re-election. Such a mechanism would not be appropriate for appointed members, particularly if they do not have to commit to a full-time role in the House. We believe, however, that there should be some mechanism to remove appointed members who fail to contribute as expected to the work of the House.

**257. To ensure that there is a mechanism to remove appointed members who fail to contribute to the work of the House as expected, we recommend that appointments made by the Commission should be for an initial term of five years, with the expectation of reappointment up to the maximum limit of an elected term.**

**258. The Committee expect that the Appointments Commission will use its discretion to decide what they consider to be an appropriate “contribution to the work of the House,” and that such a definition will be published.**

**259. Finally, the Committee note that appointed members wishing to leave the House at the end of a five-year period could do so by giving notice to the Appointments Commission that they did not wish to be reappointed.**

## **16. Appointed Ministers**

Relevant section of the draft Bill: Clause 34
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260. For many years, Prime Ministers have used grants of peerages to appoint individuals from outside the political mainstream as Ministers of the Crown. It is a convention that Ministers of the Crown should be members either of the House of Commons or the House of Lords, and Clause 34 of the draft Bill enables Her Majesty The Queen to appoint ministerial members of the House of Lords on the advice of the Prime Minister. Their membership of the House ceases when they cease to be a Minister. Accordingly, the writ of summons previously issued has no further effect.

261. In Clause 34 of the draft Bill, Subsection (7) confers on the Prime Minister wide-ranging power by order to make provision about the appointment, number, disqualification and payment (including allowances) of ministerial members, and about the circumstances in which they cease to be a ministerial member. It also allows for persons who are or have been ministerial members to be disqualified from being another kind of member of the House (e.g. from seeking election).

262. The Government propose that Ministers may also be drawn from elected members of the House of Lords and from transitional members during the transitional period. No

reason is given on the face of the Bill why appointed members could not also be ministers.<sup>347</sup>

263. Most witnesses who contributed views on this part of the Bill favoured these provisions, including Lord Adonis and Lord Carter of Barnes (both of whom were appointed with a view to serving as ministers). Some were concerned that the Prime Minister’s power to appoint ministerial members of the House of Lords gave him or her the power to alter the party balance in a reformed House, which could be decisive if one side had a narrow majority.<sup>348</sup> Lord Adonis argued that a limit on ministerial appointments should be imposed: “Being realistic, what flexibility does a Prime Minister need? They are not realistically going to want to appoint more than about five, unless the objective was to sway the balance of parties in the Lords, I would have thought”.<sup>349</sup>

264. Another suggested solution to this issue was that ministerial members of the House of Lords might be denied the right to vote; they would simply speak, and represent their departments in the Upper House. We acknowledge the argument that a Minister of the Crown unable to vote for a Bill which he was responsible might be disappointed but by what logic should he be permitted to vote on other matters? Another proposed solution was that a reformed House of Lords should not contain any Ministers of the Crown at all, but that ministers should have the ability to address the House. This would preserve a degree of accountability, while also distinguishing the reformed House from the Commons.<sup>350</sup> Such an arrangement would present certain practical difficulties—for example, Ministers would be unable to move Government amendments to Bills which would clearly be absurd.

265. There was support for the notion that Members appointed to the reformed House as Ministers of the Crown should cease to belong to the House when they cease to hold ministerial office. Lord Adonis, for example, stated that “if the second Chamber were wholly elected or 80% elected, with the non-elected Members as the Cross-Benchers, the sole legitimacy of that person being in the Lords would be their possession of ministerial office, so the argument for their membership ceasing when their ministerial office ceases is logically and democratically very strong”.<sup>351</sup> This would prevent the House from becoming too large, and emphasise the particular purpose of specially-appointed ministers in the House of Lords.

**266. We recommend that a reformed House of Lords should continue to contain Ministers of the Crown to represent the Government. In a fully-elected House, there should be no power to appoint additional members to carry out ministerial roles.**

**267. We agree that the Prime Minister should be able to appoint a small number of additional members to a hybrid (part-elected, part-appointed) House as Ministers of the Crown. We believe that these members should have the right to sit, but not to vote, in a reformed House.**

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347 Cm 8077

348 For example, Q 230

349 Q 485

350 Q 343

351 Q 465

268. We acknowledge that the appointment of ministers to the Lords is a significant power of patronage. We have recommended that such appointees should not vote. Were the Government not to accept this recommendation, however, we would recommend that the number of additional ministerial appointments should be limited, to no more than five at any one time. This limit should be on the face of the Bill.

269. We also agree that Members appointed to the House of Lords specifically as Ministers of the Crown should cease to be Members on the termination of their ministerial appointment. This reflects the special circumstances under which they come to be Members.

270. The House of Lords Appointments Commission should vet the individuals appointed as Ministers of the Crown for probity. In this capacity, it should act only as an advisory body to the Prime Minister. It should not have the power of veto over ministerial appointments.

## 17 Lords Spiritual

Relevant sections of the draft Bill: Clauses 26 – 33
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271. Lords Spiritual have been a part of the legislature since Parliament's earliest meetings. Under the current arrangements, 26 bishops of the Church of England sit in the House of Lords. Five sit *ex officio*: the Church's two primates, the Archbishop of Canterbury (Primate of All England) and the Archbishop of York (Primate of England); and the three diocesan bishops of the "great sees", the Bishops of London, Durham and Winchester. Of the remaining 37 eligible diocesan bishops (the Bishops of Sodor and Man, and Gibraltar in Europe are ineligible for service in the House of Lords), the 21 most senior by length of service<sup>352</sup> also sit in the Lords.

272. The United Kingdom's other established church, the Church of Scotland, is not formally represented in the House of Lords. No other faith leaders sit *ex officio*.

### *The Government's proposals*

273. The draft Bill would preserve the presence in a reformed House of the two Archbishops and the Bishops of London, Durham and Winchester, for as long as the incumbents hold their offices. In addition, the draft Bill provides for the presence of a decreasing number of "ordinary Lords Spiritual" to sit alongside those five "named Lords Spiritual" in a reformed House. For the first transitional period, the draft Bill provides that there shall be 16 ordinary Lords Spiritual; for the second, 11; and for all subsequent electoral periods, there shall be seven ordinary Lords Spiritual. These Lords Spiritual will be selected by the Church of England in "whatever way it considers appropriate", except that during transition they must be drawn from the existing group of Lords Spiritual prior to commencement of each transitional period. In subsequent periods, they may be selected before or during the period in question. After the two transitional periods, the Church of England may select new ordinary Lords Spiritual to replace those who ceased to be eligible for membership of the reformed House.

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<sup>352</sup> As diocesan bishops, not in a specific see.



274. The Lords Spiritual, unlike the Lords Temporal, are not Peers but Lords of Parliament. Their historic status means that they sit in the reformed House on a different basis from other members. Currently, bishops sit in the House of Lords by virtue of their being serving office holders within the Church of England. They attend as their episcopal duties allow and a rota system ensures that there is always at least one bishop in the House each day, to read prayers at the start of the day's business. They are also subject to the Church's terms and conditions on remuneration and discipline. The Government's White Paper and draft Bill recognises that bishops would continue to sit in a reformed House on a different basis and not as full time salaried members. In the transitional period, and in a fully reformed chamber, the Government proposes that bishops would not be entitled to a salary or pension in the reformed House of Lords but would continue to receive allowances set by IPSA; they would be exempt from the tax deeming provision; they would be subject to the disqualification provision; and they would not be subject to the serious offence provision and those on expulsion and suspension—as it is expected that such members would be subject to the disciplinary procedures established by the Church of England.<sup>353</sup>

### ***Bishops: the case for and against***

275. The Government's argument for retaining the bishops in a hybrid House is that "there should continue to be a role for the established Church".<sup>354</sup> In his evidence to us the Minister elaborated that "because our proposal is for a mainly elected House with appointed Members, we thought it sensible to keep a role for the established Church in England given where we start from. I think that there is a fair degree of consensus among other faiths that they want that faith representation to continue, so that is why we have proposed it".<sup>355</sup> The Minister went on to say that "It is for the Lords Spiritual to make the case for remaining in the House of Lords".<sup>356</sup>

276. The continued presence of bishops of the Church of England received substantial support. The Archbishops of Canterbury and York quoted a speech delivered by the Archbishop of York in 2007 which summed up their position as follows: "The Lords Spiritual remind Parliament of the Queen's coronation oath and of that occasion when the divine law was acknowledged as the source of all law. We do not see ourselves as representatives, but as connectors with the people and parishes of England. Ours is a sacred trust—to remind your Lordships' House of the common law of this nation, in which true religion, virtue, morals and law are always intermingled; they have never been separated".<sup>357</sup> The bishops, they went on to say, spoke for that substantial part of civic society represented by the Church of England, other Christian denominations and other faiths. The Lords Spiritual were increasingly engaged in the day to day work of the House and its committees, though as independent Lords of Parliament rather than as formal "representatives of the Church of England" or a "Bishops Party". They acted as a voice for all faiths and the presence of the established Church in Parliament was valued by other faith leaders.<sup>358</sup> In his oral evidence the Archbishop of Canterbury emphasised how

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<sup>353</sup> Cm 8077, page 23

<sup>354</sup> Cm 8077, page 22

<sup>355</sup> Q 35

<sup>356</sup> Q 40

<sup>357</sup> HL Deb col 580 Session 2006–07

<sup>358</sup> Archbishops of Canterbury and York

bishops, through their parishes, had “personal access to a very wide spread of civil organisation and experience—perhaps wider than is enjoyed by many comparable public figures. Their personal contribution to the work of the House of Lords therefore draws not on partisan policy but on that direct experience, as well as engagement generally with questions of ethics, morality and faith. Bishops know every church in their diocese. They know the communities they serve—and they serve far more people than church attendance in a narrow sense represents”.<sup>359</sup>

277. Other faith leaders—significantly from the two other Abrahamic religions—supported these premises. The Chief Rabbi, Lord Sacks, argued that the House of Lords should be a place for “covenantal conversations”.<sup>360</sup> The Muslim Council of Britain opposed the reduction in the number of bishops from 26 to 12 because it further reduced the “voice for the spiritual and moral dimension in formulating new law or influencing public policy”.<sup>361</sup> Theos viewed the presence of the bishops as “ecclesiologically and theologically appropriate to the Church of England, since its place is founded both on the historical and symbolic link between church and state, and on the substantive contribution that the bishops have been able to make over time”.<sup>362</sup>

278. Other witnesses saw things differently. Professors Simon Hix and Iain Mclean said the “position of bishops in an elected House is anomalous, whether that House is 100 per cent or 80 per cent elected” and that they would be “by far the largest interest group among the non-elected members”.<sup>363</sup> Some contended that reserved places were unfair on other churches of the UK. Donald Shell said that the bishops’ presence in the House of Lords “is widely perceived as anomalous because they represent one Church from only one of the four constituent parts of the United Kingdom.”<sup>364</sup>

279. Others claimed it was unfair to reserve places for only one religion. Professor Hugh Bochel and his colleagues said that “in the contemporary world, including where there are significant questions of representation and fairness, it appears hard to defend such a proposition.” They added “The white paper does not provide any rationale for this, and again it would seem to conflict with the fundamental democratic principle which is claimed to underpin the reforms.”<sup>365</sup> Similarly, Democratic Audit said the “proposed continued presence of Anglican bishops in a reformed second chamber by implication discriminates against other religious faiths, since no such provision is made for them—or indeed for individuals avowedly of no faith”.<sup>366</sup> The Electoral Reform Society said it did not believe “it is acceptable for one denomination to receive such representation” and that reserved seats for the bishops should be removed.<sup>367</sup> The British Humanist Association and the National Secular Society argued in favour of a secular state in opposing reserved seats

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359 Q 428

360 Chief Rabbi Jonathan Sacks

361 Muslim Council of Britain. See also Zoroastrian Trust Funds of Europe

362 Theos

363 Professors Simon Hix and Iain McLean

364 Donald Shell. See also Lord Goodhart

365 Professor Hugh Bochel, Dr Andrew Defty and Jane Kirkpatrick

366 Democratic Audit

367 Electoral Reform Society

for Church of England bishops.<sup>368</sup> The All-Party Parliamentary Humanist Group said that reserved places for Bishops would “undermine the legitimacy of the reform by reserving a set number of places for one branch of one religion, all of whom would be men”.<sup>369</sup>

### ***Bishops and establishment***

280. A number of witnesses expressed views on the connection between the presence of the bishops in the Lords and the establishment of the Anglican Church in England. Donald Shell put it clearly: “It is been argued that removing bishops from the House is tantamount to disestablishing the Church of England. But this is mistaken view”. He argued that there “are many different strands to ‘Establishment’ and these have frequently been adjusted in the past; removing bishops from the House would be a further such adjustment. There are many models for an established church which can certainly continue to exist without the presence of bishops in Parliament”.<sup>370</sup>

281. But a number of witnesses thought that while the removal of the Lords Spiritual would not spell the immediate end of the establishment of the Church of England, it would seriously undermine it, call into question the future of the established relationship and send a strong negative signal about the place of Christianity—and religion more generally—in British public life. Thus the Archbishop of Canterbury wrote, “The established status of the Church would not be at an end if the Lords Spiritual no longer had a place in parliament but its character would be significantly changed and weakened”.<sup>371</sup>

282. Others took this view. Sir Stuart Bell MP believed that the “removal of Bishops by the creation of a wholly-elected second chamber will be detrimental to the Church-State relationship, shall weaken the established Church, and shall lead to further calls for an ending to establishment”.<sup>372</sup> Penny Mordaunt MP felt that removing the Lords Spiritual from the House of Lords “would be an attack on the very heart of the constitution”.<sup>373</sup> The Bishop of Worcester (not a member of the House of Lords) wrote that the complete removal of bishops “would also be likely to trigger a wider debate about the future of Establishment and send unhelpful signs about the place of religious voices in the public square”.<sup>374</sup>

### ***Bishops and other faiths***

283. Irrespective of the continued presence of the Church of England bishops, many witnesses spoke of the desirability of having other faiths represented in the House too, *ad personam* rather than *ex officio*.<sup>375</sup> There was also a presumption that the Appointments

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368 British Humanist Association (Q 455), National Secular Society

369 All-Party Parliamentary Humanist Group

370 Donald Shell

371 Archbishops of Canterbury and York. See also Q 443

372 Sir Stuart Bell MP

373 Penny Mordaunt MP

374 The Bishop of Worcester

375 Jonathan Sacks, Zoroastrian Trust Funds, Law Society of Scotland, Damien Welfare and the Campaign for a Democratic Upper House, Archbishops of Canterbury and York

Commission should see this as part of their remit.<sup>376</sup> Some argued for no specific faith representation.<sup>377</sup>

284. Some witnesses addressed the difficulty in identifying suitable representations from faiths with no priestly hierarchy.<sup>378</sup> But the Muslim Council of Britain countered this by saying that it would not be difficult to identify suitable candidates, at least from the main minority faith communities as identified in the National Census (Buddhist, Hindu, Jewish, Muslim and Sikh): “... All major religious communities have well developed national representative bodies which can provide the link. MCB would be pleased to present specific proposals in this regard for our community”.<sup>379</sup>

### ***Bishops and disciplinary provisions***

285. As we have seen, the draft Bill exempts bishops in the reformed House from the disciplinary provisions applicable to other members, because bishops would be subject to the disciplinary provisions of the Church of England. They would also be exempt from the tax deeming provision that they are deemed to be ordinarily resident and domiciled in the United Kingdom. But as the Archbishop of Canterbury admitted to us in oral evidence “the number of Lords spiritual who are building us vast tax fortunes in the Cayman Islands is quite small—it may even be vanishingly small”.<sup>380</sup> The Archbishops of Canterbury and York maintained therefore “that the Lords Spiritual should be subject to the same disqualification provisions as other members of the reformed House of Lords” and did not see the exemptions as necessary. “We did not seek them and unless there are legal or constitutional reasons of which we are not aware, we believe that the Lords Spiritual should be in the same position as other members of the House on these matters.”<sup>381</sup>

### ***The named bishops***

286. The Bill in its draft form prescribes five of the twelve bishops who will eventually sit in a reformed House: the Archbishops of Canterbury and York, and the Bishops of London, Durham and Winchester. The other seven diocesan bishops are to be chosen by the Church as “ordinary Lords Spiritual”. But with a reduction in the number of bishops, greater flexibility might be afforded were there to be fewer “named” bishops in the Bill. Indeed the Archbishop of Canterbury’s written evidence makes this very point, doubting “whether continuing with the arrangement of five reserved places for the occupants of the senior sees would still be right for a Bishop’s Bench less than half its former size”. One possibility, wrote the Archbishop, was for the named bishops to be confined to the two Archbishops and the Bishop of London—all of whom are Privy Counsellors—but the

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376 Professors Simon Hix and Iain McLean, Theos

377 Professor Dawn Oliver (Q 162), Democratic Audit, All-Party Parliamentary Humanist Group, National Secular Society, Alice Onwordi

378 Mr Mark Harper MP (Q 35); National Secular Society

379 Muslim Council of Britain

380 Q 451

381 Archbishops of Canterbury and York

wider Church would need to come to a view before making representations to the Government on this.<sup>382</sup>

### ***Transitional arrangements***

287. The transitional arrangements for bishops provide in Clause 28(4) of the draft Bill that a person can only be selected as an ordinary Lords Spiritual for the first and second transitional period if he was already a Lord Spiritual in the period preceding it. In the event of the Church of England successfully promoting a Measure to enable the ordination of women bishops, the Archbishop of Canterbury argued that clause 28(4) would prevent the Church from “fast-tracking” any women bishops into the House of Lords, were any to be appointed.<sup>383</sup> In his written evidence the Archbishop said that there was in any event a case for giving the Church the broadest possible choice from among its diocesan bishops” sooner than 2025. This would require the removal of Clause 28(4) and clarification that Clause 28(1) referred to all diocesan bishops and not just existing Lords Spiritual.<sup>384</sup>

### ***Conclusions and recommendations***

288. The Committee agrees that, in a fully elected House, there should be no reserved places for bishops.

289. The Committee agrees, on a majority, that bishops should continue to retain *ex officio* seats in the reformed House of Lords.

290. The Committee agrees, on a majority, with the Government’s proposal that the number of reserved seats for bishops be set at 12 in a reformed House.

291. The Committee recommends that the Appointments Commission consider faith as part of the diversity criterion we recommend at paragraph 249.

292. The Committee recommends that the exemption of bishops from the disciplinary provisions be removed, as requested by the Archbishops.

293. The Committee recommends that any approach to the Government by the Church to modify the provision on the named bishops be looked upon favourably.

294. The Committee recommends that Clause 28(4) be left out of the Bill so as to allow greater flexibility in transition arrangements so that any women bishops and the wider pool of diocesan bishops can be eligible for appointment in the second transitional parliament.

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<sup>382</sup> *Ibid.*

<sup>383</sup> Q 446

<sup>384</sup> Archbishops of Canterbury and York

## 5 Transition, Salaries, IPSA, Disqualification, etc

### 18. Transition

Relevant sections of the draft Bill: Clause 36 and Schedule 6

#### *The Government's proposals*

295. The Government considers a period of transition to be important so that the culture of the present House of Lords may be transferred to the reformed house.<sup>385</sup> Having current members working alongside new members would “help the reformed House of Lords work effectively during this period”.<sup>386</sup>

296. The Government have proposed that one third of the membership of the reformed House of Lords be chosen at each of the three next general elections. This would result in the following composition of the House for the three electoral periods (assuming that the House is 80 per cent elected):

- In the first transitional period (after the first election) the House of Lords would comprise a) 80 elected members, b) 20 appointed members, c) up to 21 Bishops, d) any ministerial members, and e) any transitional members.
- In the second transitional period (after the second election) the House of Lords would comprise a) 160 elected members, b) 40 appointed members, c) up to 16 Bishops, d) any ministerial members, and e) any transitional members.
- After the third election, and subsequently, the House of Lords would comprise a) 240 elected members, b) 60 appointed members, c) up to 12 Bishops, and d) any ministerial members.

297. While the Government's preferred option is the one for which provision is made in the draft Bill, two other options are described in the White Paper and we are told that “the Government remains open to views on the exact process of transition”.<sup>387</sup> The Government have set out three possible options for determining the number of transitional members.

298. Option 1 is set out in the draft Bill. It would reduce the number of current members in parallel with the introduction of new elected and appointed members. In the first transitional period the maximum number of transitional members would be two thirds of the membership of the House as at the date the Bill was introduced in the House of Commons. In the second transitional period the maximum number of transitional members would be one third of the membership of the House as of the date the Bill was introduced in the House of Commons—i.e. half of the transitional members of the first transitional period. Only peers who were transitional members in the first transitional

<sup>385</sup> Mr Mark Harper MP (Q Q 56, 61)

<sup>386</sup> Cm 8077, page 19

<sup>387</sup> Cm 8077, page 20



period would be able to be selected as transitional members in the second transitional period. After the third election, and subsequently, there would be no transitional members.

299. Option 2 would allow all the current membership of the House of Lords to continue until the third election. This would result a very large House, of nearly 1000 members in the second transition period. In addition, the current membership of the House would have a majority until the third election, at which point which they would all leave at once. The Government note that this option would ensure that the knowledge of existing members would be retained as new members joined (though the same could be said too of Option 1 and to a lesser extent Option 3).

300. Option 3 would see the House of Lords reduced to 300 members immediately, in the first transition period. The Government state that “this would mean that the advantages of a smaller House could be realised immediately and would make clear that the House of Lords had been reformed”. In the first transition period 200 members from the current House would remain, joined by 100 new elected and appointed members. In the second transition period, only 100 members of the current House would remain, alongside 200 new elected and appointed members. As with the other options, all members of the current House would leave at the third election.

301. The Bill leaves the means of choosing transitional members under all these options to the House of Lords which can put conditions on which members can be selected as transitional members, and choose whether transitional members should be selected by election or by another means (such as selection by party groups). Transitional members would have to be selected before the House of Lords was dissolved in the run-up to each election. If an individual chosen as a transitional member was subsequently either elected or appointed to the reformed House instead, they cease being a transitional member. No other person would take their place. The Clerk of the Parliaments would have the final say where there was any question as to the maximum number of transitional members allowed under these provisions, and the validity of the selection of a transitional member

302. Of those witnesses who commented on the proposals for transition most accepted that such a gradual transition was desirable for the reasons advanced in the White Paper. A period of transition would be “welcome and beneficial for the elected members”<sup>388</sup> and it was “necessary to ensure the upper house’s operational continuity”.<sup>389</sup> Some thought that having different classes of membership during transition—with elected members claiming greater legitimacy than others—was undesirable.<sup>390</sup>

303. There were sceptics who questioned the need for transitional arrangements at all. In the view of Democratic Audit, “... transitional arrangements are probably more significant as a sweetener intended to secure compliance for reform from existing members, and their exact nature is more of a political judgement than one of constitutional and democratic principle”.<sup>391</sup> Other witnesses also questioned the logic of having a transitional period,

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388 Unlock Democracy

389 Electoral Reform Society

390 Professor Hugh Bochel, Dr Andrew Defty and Jane Kirkpatrick

391 Democratic Audit

“other than to reduce dissatisfaction among members of the existing House.” If the system needed replacing, “it should arguably be replaced as one”.<sup>392</sup>

304. So far as concerned the choice of transitional Option, views varied. Option 1, as in the draft Bill, was preferred by several respondents as it “balance[ed] the smooth running of the House with a wealth of continued experience”.<sup>393</sup>

305. Option 2, which allows all eligible current members of the House of Lords to remain in the reformed House until the dissolution of parliament immediately prior to the third election, had little support. A number of submissions objected that this would result in a very large number of members. Unlock Democracy described this as “impracticable” and claimed “This model would lead to the second chamber growing even larger in size, guarantee that the unelected members continue to outnumber the elected members for more than a decade and ensure that the costs of the second chamber would rise exponentially before coming down again, to no identifiable purpose.”<sup>394</sup>

306. The Electoral Reform Society pointed out that while “a critical mass of elected peers will be necessary to establish the chamber’s new working practices” it saw “no merit in allowing all current peers to remain for a full electoral cycle”.<sup>395</sup> David Beamish, Clerk of the Parliaments, said “I very much hope that the Committee will not be tempted by Option 2, under which all the present Members would stay until the third round of elections to the House. The practical problems of accommodating and supporting a House with such a large number of Members during the transition period should not be underestimated”.<sup>396</sup> Option 2 had some support. The Campaign for a Democratic Upper House proposed a modified version of Option 2, whereby all hereditary peers would leave when elected members joined, but existing life peers would be allowed to stay. In its view, “The temporary large size of the House which would result for a period should not be seen as a barrier to reform”.<sup>397</sup> Graham Allen MP thought that retaining all current members would ease transition.<sup>398</sup>

307. Opinions were divided over Option 3, which would see all but 200 existing peers leave the House of Lords at the time of the first election. While some saw such an arrangement as a way to prevent “delays and wrangling at each stage”, others saw it as “a rather brutal cut” and politically less attractive.

308. The Archbishop of Canterbury drew the Committee’s attention to one—possibly unintended—consequence of the transitional arrangements as they affected the bishops. This is considered at section 17 above.

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392 Professor Hugh Bochel, Dr Andrew Defty and Jane Kirkpatrick, Green Party

393 James Hand, Democratic Audit, Archbishops of Canterbury and York

394 Unlock Democracy

395 Electoral Reform Society

396 Q 621

397 Damien Welfare and the Campaign for a Democratic Upper House

398 Q 639

### *Opinion of the Committee on options 1 to 3*

309. It is useful to set out the likely size of the House under the various options during the ten year transitional period.<sup>399</sup>

#### *Reformed House of 300 members*

##### **Option 1**

	<b>2015</b>	<b>2020</b>	<b>2025</b>
Elected/Appointed	100	200	300
Transitional	535	268	0
<b>Total</b>	<b>635</b>	<b>468</b>	<b>300</b>

##### **Option 2**

	<b>2015</b>	<b>2020</b>	<b>2025</b>
Elected/Appointed	100	200	300
Transitional	803	701	0
<b>Total</b>	<b>903</b>	<b>901</b>	<b>300</b>

##### **Option 3**

	<b>2015</b>	<b>2020</b>	<b>2025</b>
Elected/Appointed	100	200	300
Transitional	200	100	0
<b>Total</b>	<b>300</b>	<b>300</b>	<b>300</b>

#### *Reformed House of 450 members*

##### **Option 1**

	<b>2015</b>	<b>2020</b>	<b>2025</b>
Elected/Appointed	150	300	450
Transitional	535	268	0
<b>Total</b>	<b>685</b>	<b>568</b>	<b>450</b>

<sup>399</sup> Based on the current membership of the House on 1 January 2012, and a natural annual attrition of 2.67 per cent.

**Option 2**

	<b>2015</b>	<b>2020</b>	<b>2025</b>
Elected/Appointed	150	300	450
Transitional	803	701	0
<b>Total</b>	<b>953</b>	<b>1001</b>	<b>450</b>

**Option 3**

	<b>2015</b>	<b>2020</b>	<b>2025</b>
Elected/Appointed	150	300	450
Transitional	300	150	0
<b>Total</b>	<b>450</b>	<b>450</b>	<b>450</b>

310. The Committee consider that a gradual transition is desirable to enable the second chamber to continue to perform its functions, and so as to facilitate the retention of the conventions and procedures of the present House by the reformed house. The Committee also thinks that the transition option chosen should give fair treatment to current members.

311. Option 2 is not feasible. The Committee agrees with the Clerk of the Parliaments and other witnesses who consider the likely size of the transitional house under option 2 to be too big.

312. Option 3, while perfectly feasible, is likely to be seen as unfair to present members and is for that reason politically less acceptable than Option 1. **Of the options set out in the White Paper, the Committee therefore considers Option 1 the best of those canvassed.**

**313. The Committee agrees that the House of Lords should itself, through the medium of the political parties and the crossbench peers, be responsible for establishing the selection of transitional members.**

### ***Opinion of the Committee: a fourth option***

314. The Committee has given some thought to the feasibility of making a bigger cut in transitional membership in 2015 than is proposed by option 1. This idea arose out of the evidence given by Rt Hon Baroness Hayman, former Lord Speaker—in the rather different context of reducing the current appointed House to a smaller appointed house of some 600 members over 5 to 10 years. In subsequent exchanges it was acknowledged that a significant one-off reduction would be possible.<sup>400</sup>

315. If this idea is applied to the provisions in the draft Bill relating to the transitional members it should be possible to make a one-off reduction in 2015, with no further reduction in transitional numbers except by death or resignation/retirement until 2025. The size of the one-off reduction would be equivalent to the number of members who

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400 QQ 613, 618–19

currently attend fewer than one in three sitting days. This would result in a transitional element who would then be apportioned to the political parties and crossbench peers *pro rata* their current numerical strength. While it would be for the political parties and crossbench peers to determine the criteria for selecting the transitional members, under this scheme there would be a strong case for using a member's attendance record as a criterion for selection.

316. A scheme on these lines provides greater continuity till 2025 and could preserve the position of those current members of the House of Lords who are regular attenders for longer. It would give the following outcomes, assuming a reformed house of 450 and annual attrition of 2.67 per cent.

**Possible outcomes for a reformed House of Lords**

	2015	2020	2025
<b>Elected/Appointed</b>	150	300	450
<b>Transition</b>	449	392	0
<b>Total</b>	<b>599</b>	<b>692</b>	<b>450</b>

*Note: the initial transition element of 449 members is derived from the benchmark figure of the number of members who attended 66 per cent or more of sitting days in the financial year 2011–12 as at 26 March 2012. The attrition rate of 2.67 per cent is a Government estimate—see Mark Harper MP supplementary written evidence (3).*

317. Accordingly, the Committee recommends an alternative fourth option with three characteristics:

- a) a transitional membership in 2015 equal to a benchmark figure derived from the total number of members attending 66 per cent or more of sitting days in the financial year 2011–12. These transitional members will remain in place until the final tranche of elected members arrive in 2025, at which point they will all leave;
- b) an allocation of the transitional seats to parties and crossbench peers in proportion to their current membership; and
- c) parties and crossbench peers to determine for themselves the persons to serve as transitional members.

318. The Committee further recommends that, if this option finds favour, parties and crossbench peers should have regard in particular to a member's attendance record over a designated period for determining who should remain as a transitional member.

319. The Committee strongly suggests that, as in 1999, the authorities of the current House of Lords may wish to consider the extension of certain club and access rights to those members who are not selected as transitional members.

## 19 Salaries, etc

Relevant sections of the draft Bill: Clause 59 and Schedule 7
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320. Currently, members of the House of Lords (other than Ministers and office-holders) are not paid a salary. They may claim a daily allowance of £300 (or £150 for a half-day) for each qualifying day of attendance at Westminster and are also able to recover travel expenses incurred in connection with their Parliamentary duties.

321. The Bill envisages that those joining the reformed House, whether appointed or elected, would be salaried, since members “would be full-time Parliamentarians”.<sup>401</sup> The Independent Parliamentary Standards Authority (IPSA) would set and administer their pay and allowances. The draft Bill also provides for salaries to be paid to transitional members.

322. The White Paper states:

“The Government considers that the level of salary for a member of the reformed House Lords should be lower than that of a member of the House of Commons but higher than those of members of the devolved legislatures and assemblies. This would recognise that they would have responsibilities or UK-wide legislation but would not have constituency duties. However, it will be for the IPSA to set the level of salaries”.<sup>402</sup>

323. There are two main issues to be considered in relation to the Government's proposals:

- is it correct to assume that all members should be full-time and paid a salary?
- what would be an appropriate level of salary?

### *Should part-time appointed members receive a salary?*

324. Elected members in a reformed House would receive a salary and pension and would be expected to devote most of their time to their parliamentary duties while the House is sitting. We have already recommended, however, that the presumption should be that appointed members would not have to commit to the same level of activity. If experts are to maintain their expertise, they need to remain engaged in their original activities. Similar arguments will apply to transitional members, those who are currently members of the House of Lords, many of whom have other interests. The Minister argued that although members of a reformed chamber would be expected to be full-time parliamentarians in sitting periods, they would be able to continue their previous work at times when the House was not sitting, but we are unconvinced by this argument.<sup>403</sup> He also argued that:

“In the same way as in the House of Commons we have a set salary for every Member, I think that you have to have a set salary for every Member of the House of Lords. Some will work incredibly hard and some will work less hard. That is just

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<sup>401</sup> Cm 8077, page 24

<sup>402</sup> Cm 8077, page 24

<sup>403</sup> Q 251



what we get used to in politics. I do not think that you can start differentiating salaries by how hard people work or how many hours they put in”.<sup>404</sup>

325. Although Lord Jay of Ewelme thought it would be undesirable to treat appointed members differently from elected ones, including in salary level,<sup>405</sup> Dr Alan Renwick considered that it would be desirable to have a system which meant “that varying levels of attendance can be acknowledged.” He noted “It is clearly unsatisfactory if members can arrive, sign in, and promptly leave again, thereby securing their daily allowance. But it is surely not impossible to design a system that works better than this”.<sup>406</sup> We asked the Clerk of the Parliaments about the practicality of a House in which some members were part time and others not. He considered “we already have Members who devote different portions of their time to their membership. That seems to work”.<sup>407</sup> The Chair and Chief Executive of IPSA were more cautious, since, as Sir Ian Kennedy said, “Per diem allowances might have a degree of bureaucratic underpinning that a salary will not have—not least the necessity to discover whether they are appropriately paid, what evidence is required for them and so on”.<sup>408</sup> He told us that:

“What is relevant is the range of responsibilities and how you remunerate them. You can remunerate them by a salary that is fixed at 100 and you get 50% or 20% or you can remunerate them by using a per diem. It is not the difference between salary and per diem; it is really a question of, number one, the range of responsibilities and, number two, the mechanism for remuneration”, also noting that “My default position as regards transitional arrangements is that ordinarily we would wish to treat every parliamentarian the same, given that they have similar responsibilities”.<sup>409</sup>

326. There are problems with that approach. Elected members may have additional functions from appointed or transitional members. While their responsibilities may appear similar, they may well carry them out in a different way. Attempting to use a range of responsibilities by which to assess what proportion of salary should be paid comes dangerously close to a job description. That approach is unsatisfactory. First, each parliamentarian should have the freedom to determine how best to approach the job: that is a key function of their individual independence, and of Parliamentary sovereignty. Secondly, in a 15-year term, how would it be possible to tell in advance what responsibilities an individual Member might choose to take? It is far simpler to base remuneration on attendance for those who are not expected to attend regularly, whether they are appointed or transitional members. That will automatically link the amount of payment received with activity. There should be no difficulty in “the bureaucratic underpinning” for an allowance system, given that the House of Lords is currently able to link allowances with attendance.

**327. We recommend that transitional Members should receive a per diem allowance rather than a salary. We further recommend that IPSA should consider whether**

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404 Q 254

405 Q 403

406 Dr Alan Renwick

407 Q 636

408 Q 518

409 Q 513

**appointed members may elect to receive a per diem allowance if it better reflects their level of participation in the work of the House. The Bill should leave it to IPSA to set the level of those allowances.**

### *Salary level*

328. The majority of the written evidence agreed with the principle that members should be salaried but there were differing opinions about the level at which a salary should be set. The Campaign for a Democratic Upper House supported the suggestion in the draft Bill that members of a revised second chamber would receive a smaller salary than members of the Commons, not simply because they would not deal with individual constituency casework, but because of the subsidiary status of the second chamber.

329. The Electoral Reform Society in contrast suggested that members of a reformed Lords should receive an equal salary (and allowances) to those of the Commons. This was so that “people from all social backgrounds and all regions of the UK could serve in the chamber without facing financial hardship”.<sup>410</sup>

330. Unlock Democracy also supported equal salaries, arguing that although members of the second chamber might not have the large constituency casework of MPs, they would have more specialist Committee work. The Chair of IPSA considered that salaries should be set in the light of job descriptions, and pointed out that MPs salaries were to be reviewed.

**331. We agree that, as proposed in the draft Bill, IPSA should determine the level of salary and allowances. Membership will likely entail for many members the need to maintain a second home in London. We concur with the Electoral Reform Society that the salary and allowances should be set at such a level as to enable people from all social backgrounds and all parts of the United Kingdom to serve in the second chamber.**

## **20. Disqualification**

Relevant section of the draft Bill: Clauses 36–55
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332. As the draft Bill now stands, the criteria for disqualification are similar for appointed and elected members, and both are broadly similar to the disqualification regime for Members of the House of Commons, set out in the House of Commons Disqualification Act 1975. Some disqualifications are contained on the face of the draft Bill; others are framed by reference to the House of Commons Disqualification Act 1975. We deal first with the disqualifications on the face of the Bill.

### *Disqualifications on the face of the Bill*

#### *Age*

333. The first ground for disqualification is age: persons under 18 either on the day on which they are nominated as candidates, or on the day of their appointment are

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410 Electoral Reform Society

disqualified. Some of the evidence given to us favoured a higher age for disqualification; those concerned argued that the House of Lords should be place for reflection and experience. Dr Alan Renwick disagreed, on the grounds that, although “vanishingly few” 18-year-olds would be elected “I think it would send out the wrong signals at a time when it is very difficult to get young people engaged in politics to impose a higher limit”.<sup>411</sup> The Minister agreed.<sup>412</sup>

### *Disqualification on grounds of conduct*

334. Both elected and appointed members are disqualified if either they are the subject of an insolvency order, or the “serious offence condition” has been met. As the explanatory notes make clear, “a person is not disqualified merely because they are bankrupt: an insolvency order may only be made where there has been additional behaviour by the individual such as fraud, or a neglect of business affairs which may have increased the bankruptcy or failure to cooperate with the official receiver”.<sup>413</sup>

335. The serious offence condition is specified in Clause 47: briefly, it is that the person concerned has been convicted of an offence, whether in the United Kingdom or elsewhere, and has been sentenced to be detained for more than one year. This is related to the Representation of the People Act 1981, which provides that the seat of a Member of the House of Commons imprisoned for more than one year is automatically vacated. The Archbishops of Canterbury and York thought that “a sentence of more than twelve months as the bar for disqualification” “seems too high in the interests of retaining public confidence and propriety”.<sup>414</sup>

336. The Council of the Law Society of Scotland was concerned about Clause 50 of the draft Bill, which would allow the Lords to excuse someone from the serious offence provision:

“The electorate is entitled to expect that its legislators have not committed serious offences. It should not be at the discretion of the House to determine whether this ground of disqualification should be disregarded.”<sup>415</sup>

The Explanatory Notes say “the clause would allow the House of Lords, for example, to disregard disqualification for offences which may not be punishable at all under UK law”.<sup>416</sup> In drafting the Bill, the Government is faced with a dilemma: if only serious offences committed in the United Kingdom are included, then those punished for breaches of the law elsewhere will be able to remain in the House; if disqualification follows a custodial sentence in any jurisdiction, then there is a risk that members of the reformed House may be disqualified for behaviour that is not criminal in the United Kingdom. **There are sound constitutional arguments for avoiding fettering the discretion of Parliament by statute law. On balance, we consider the provisions of the draft Bill**

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411 Q 210

412 Q 257

413 Cm 8077, page 147

414 Archbishops of Canterbury and York

415 The Law Society of Scotland

416 Cm 8077, page 149

which allow the reformed House to resolve to disregard some grounds for disqualification are appropriate. We expect this power is most likely to be used (if ever used) in cases where a member of the House has been convicted in another jurisdiction for behaviour which would not be criminal in the United Kingdom, or where the judicial process is open to serious criticism.

### *Disqualification by reference to House of Commons Disqualification Act 1975*

337. The key provisions of the draft Bill relating to the House of Commons Disqualification Act 1975 are Clause 36 (1) (c) and (d) and 38 (1) (c), and (d).

338. Section 1 of the House of Commons Disqualification Act 1975 expressly disqualifies anyone who:

- (a) holds any of the judicial offices specified in Part I of Schedule 1 to this Act;
- (b) is employed in the civil service of the Crown, whether in an established capacity or not, and whether for the whole or part of his time;
- (c) is a member of any of the regular armed forces of the Crown;
- (d) is a member of any police force maintained by a police authority;
- (e) is a member of the legislature of any country or territory outside the Commonwealth (other than Ireland).

The draft Bill excludes holders of those offices (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures) from membership of the reformed House of Lords as well. This prohibition is absolute, and would require primary legislation to alter.

339. The 1975 Act contains other disqualifying offices, which may be varied from time to time, and the disqualification regime for the reformed House of Lords operates by reference to these provisions. Section 1(f) of the House of Commons Disqualification Act prescribes that those who hold “any office described in Part II or Part III of Schedule 1” shall also be disqualified. As Erskine May says, Part II contains “executive and regulatory bodies in a wide range of areas, and certain quasi judicial and other statutory bodies whose members are appointed by the Crown”.<sup>417</sup> Part III “contains a long list of residual offices which disqualify either on the grounds that their holders are appointed by the Crown or that their holding is incompatible with membership of the House of Commons”.<sup>418</sup> Part IV of Schedule 1 sets out offices disqualifying particular constituencies: broadly speaking, Lord-Lieutenants or holders of equivalent functions cannot represent a constituency of their Lord-Lieutenancy. Schedule 1 of the Act can be amended relatively easily to allow the disqualification regime to adapt to changes in the machinery of government, and the creation or abolition of new public bodies.

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<sup>417</sup> *Erskine May*, 24th edition, page 38

<sup>418</sup> *Erskine May*, 24th edition, page 39

### *Elected Members*

340. The draft Bill provides that “for the time being” disqualifying offices for the Commons will also disqualify for the Lords, with the exception of membership of the House of Lords Appointments Commission (Clause 36 (3)). Clause 36(4) provides that “if the House of Lords resolves that Part 2 or 3” of Schedule 1 “is to be modified in its application to elected members by virtue of subsection (3), Her Majesty may by Order in Council modify the application of that Schedule accordingly” The provision mirrors section 5 of the 1975 Act, which allows the House of Commons to amend Schedule 1 of that Act. As the Explanatory Notes make clear, each House may accordingly have a different disqualification regime for elected members.<sup>419</sup>

### *Appointed Members*

341. In regards to appointed members, Clause 38(4) makes a similar provision to Clause 36(4): “an office within subsection (2) is not a disqualifying office of an appointed member if it is listed in an Order in Council made by her Majesty under this subsection.” Clause 64(2) specifies that such an Order in Council will be subject to annulment in pursuance of a resolution of either House of Parliament. The Explanatory Notes say:

“Subsection (3) provides that an office defined according to subsection (2) may be listed in an Order in Council made by Her Majesty so that it is not a disqualifying office. The list of disqualifying offices for appointed members would therefore be modified by reference to the list of disqualifying offices for elected members of the House of Lords. This would permit a less restrictive list of disqualifying offices to be drawn up for appointed members than for elected members, in order to bring specific experience or expertise to the House of Lords.”<sup>420</sup>

The Minister reiterated this: “we think that it would be acceptable for there to be a different regime for appointed Members as opposed to elected Members, given that you are getting appointed Members in for their experience”.<sup>421</sup>

342. We have already recommended that appointed members of the reformed House should be able to serve on a part-time basis and be paid a per diem allowance while retaining outside interests. **There are good reasons for different disqualification regimes for elected and appointed members. Otherwise, the disqualification regime would permit those with significant private sector interests to serve, but exclude those with experience drawn from important public sector posts. Since elected members will be full-time, professional politicians they should be subject to the same disqualification regime as Members of the House of Commons. Part-time appointed members should be allowed to keep their outside interests and should instead be subject to a code of conduct on similar lines as that applying to current members of the House of Lords.**

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419 Cm 8077, page 143

420 Cm 8077, page 145

421 Q 264

### *Defining the grounds for disqualification*

343. The House of Lords will have the power to vary the disqualifying offices for elected members of the reformed House by resolution; this means that there will be a debate on the proposals before any order is made, and the House of Commons will not have any right to intervene. While the draft Bill is clear that the disqualification regime for appointed members will be set by Order in Council, there is no indication as to who will influence the content of such an Order in Council before it is made, although each House may subsequently cause its annulment. We asked the Minister why the Bill applied different mechanisms for determining what were disqualifying offices for elected and appointed members. He indicated that this difference was due to the need to provide for a list of disqualifying offices to be drawn up in advance of the first elections and the first round of appointments and that “to permit this we included a provision for the list of disqualifying offices to be modified for appointed members by an Order in Council”.<sup>422</sup> He then went on to say:

“We agree that after the first round of appointments it should be open to the reformed House to make a resolution to amend the list of disqualifying offices for both elected and appointed members. We will examine the drafting of the Bill and make any necessary amendments, before introduction to ensure it reflects this, subject to any further views from the Joint Committee”.<sup>423</sup>

344. **The disqualification scheme for elected members of the reformed House is based on that for the House of Commons, which rests on clear and long established principles. Moreover, the electorate has power to ensure that candidates it considers have a conflict of interest are not elected. It is appropriate for the reformed House to approve changes to the lists of disqualifying offices for elected members just as the Commons approves changes to the relevant schedules of the House of Commons Disqualification Act. There is as yet little clarity about the principles which might underpin the disqualification regime for appointed members. We consider that the Government should set out what it thinks those principles should be. The Government should also reflect on whether it is in fact appropriate for a single House to determine the disqualification regime for appointed members.**

## **21. Parliamentary Privilege and the draft House of Lords Reform Bill**

Relevant sections of the draft Bill: Clause 56 and 58, and paragraphs 3 and 5 of Schedule 6

345. Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament possess to enable them to carry out their parliamentary functions effectively. The principal privileges for present purposes are freedom of speech and exclusive cognisance. Freedom of speech is primarily achieved by the absolute protection of proceedings in Parliament guaranteed by Article 9 of the Bill of Rights 1689. Under this article the debates or proceedings in Parliament “ought not to be impeached or questioned in any court or place out of Parliament”. The privilege of exclusive cognisance (or exclusive

<sup>422</sup> Mr Mark Harper MP—Supplementary written evidence (4)

<sup>423</sup> Mr Mark Harper MP—Supplementary written evidence (4)



jurisdiction) is that Parliament must have sole control over all aspects of its affairs and determine for itself what its procedures shall be.

346. It is of course possible for Parliament to provide that the Courts may encroach on matters falling within its exclusive cognisance or even upon Article 9 as it relates to proceedings in the courts. But in such circumstances Parliament should make such provisions advisedly. There are a number of provisions in the draft Bill which sit uncomfortably with the principles of Article 9 and with exclusive cognisance. This is acknowledged in Clause 2 of the draft Bill whereby subsection 2 qualifies the assertion at subsection 1 (c) that nothing in the Act affects the privileges of the House.

Clause 2, subsection (2):

(2) Subsection (1)(c) is subject to—

- (a) sections 36(1)(a) and 38(1)(a) (minimum age for elected and appointed members);
- (b) sections 49 and 50 (resolutions that disqualification is to be disregarded);
- (c) section 56 (standing orders about expulsion and suspension);
- (d) paragraphs 3 and 5 of Schedule 6 (standing orders about selection of transitional members).

(3) Nothing in the provisions of this Act affects the validity of anything begun before the provision comes into force (for any purpose) and completed afterwards.

*Cm 8077, page 36*

347. The principal areas of concern are Clauses 56 and 58, and paragraphs 3 and 5 of schedule 6.

348. The Clerk of the Parliaments and the Clerk of the House of Commons raised their concerns in respect of these provisions both in general and specifically in the following terms. The Clerk of the Parliaments warned:

“At present, the courts and Parliament have a generally good relationship whereby each respects the other’s position, and the Committee may want to consider whether there is a risk of the courts being drawn into passing judgment on whether the House has complied in particular cases with provisions in the Bill. That would undermine the principle laid down by Article 9 of the Bill of Rights that proceedings in Parliament “shall not be questioned in any place out of Parliament”.<sup>424</sup>

The Clerk of the House of Commons shared his concerns:

“I think that, if you are talking about legislation, a great many undesirable consequences follow from that. If you start to regulate the internal processes of Parliament by legislation, there is only one way of deciding any difference and that is through the courts. It may take a fairly long time to decide something or resolve an issue that the two Houses might well decide in parliamentary business overnight or in the course of a sitting day. Also, because the courts are going to have to look at parliamentary materials to come to a decision, that will drive a coach and horses through Article 9 of the Bill of Rights. That is an outcome about which I would be extremely concerned”.<sup>425</sup>

424 Q 621

425 Q 657

349. The Clerk of the Parliaments was particularly concerned about Clauses 56 and 58. He said to the Committee:

“Clause 56 is headed ‘Expulsion and Suspension’ and goes into various provisions as to how it should work. I suppose that the bit I am most nervous about is subsection (4) onwards ... Subsections (4) to (7) are in effect about retrospection. They raise the question of whether things that are a ground for suspension happen before or after a set date. That immediately sounds like the sort of thing that might be challenged. On practical grounds it may not be very sensible, because, as the Lords Members of the Committee will know, the House has used its power of suspension. It would probably like what is available to be clearer. This would leave a gap in relation to any conduct before the relevant date. Those are the bits that, by going into detail about what happens within the House, make it look as if an attempt to bring a case to court might well get a hearing. On Clause 58, there is perhaps little more that I need to say, except that by specifying that we cannot question proceedings because of “(a) a vacancy among the members, or (b) the participation of a person who should not be participating” on general legal principles, it hints that other things might give rise to questioning it. These are obviously things that could be tested only when they arose, but the Committee might want to guard against the risk of opening up a field day for lawyers”.<sup>426</sup>

350. We consider Clause 56 first. It provides for standing orders to make provision under which the House of Lords may by resolution expel or suspend a member. A statutory power is necessary because currently members of the House of Lords cannot be expelled, and suspensions cannot last longer than a single Parliament. The clause provides that such resolutions must specify when the matters giving rise to the resolution occurred, and that the matter cannot have occurred before the person became a member of the House of Lords, or before the beginning of the transitional period (as defined in the Bill). This is the most problematic of the provisions, because it defines what must be specified in the text of the resolution of the Lords, and also, by implication, stipulates that such resolutions will only be valid if made according to Standing Order. The courts could potentially be asked to adjudicate not on whether or not a resolution had legal effect, but on the adequacy of the House’s Standing Orders, or whether or not it had properly applied them.

351. Providing for matters to be determined by Standing Order is not new; the House of Lords Act 1999 provides for excepted hereditary peers to be chosen by a process set out in standing orders, and that there should be by-elections, but that provision explicitly states that “Any question whether a person is excepted from section 1 shall be decided by the Clerk of the Parliaments, whose certificate shall be conclusive.” The draft Bill by contrast, contains no such provision for deciding disputed matters without resort to the courts.

**352. We recommend that Clause 56 should be restricted to providing that the House of Lords has power to expel or suspend its members. We are confident that the House will use that power responsibly and make appropriate provision itself.**

353. In the draft Bill, Clause 58 (Proceedings) provides:

“The proceedings of the House of Lords are not to be called into question because of—

- (a) a vacancy among the members, or
- (b) the participation of a person who should not be participating.”

354. Given that Clause 2 maintains nothing in the draft Bill “affects the rights, powers or privileges or jurisdiction of either House of Parliament”, it is hard to see why the provision in Clause 58 is necessary. We are also mindful of the concerns of the Clerk of the Parliaments.

**355. We consider that Clause 58 of the draft Bill is unnecessary and should be omitted.**

356. Paragraphs 3 and 5 of Schedule 9 also seek to specify the contents of Lord Standing Orders relating to transition. Here too the House should be trusted to work out for itself a suitable way of proceeding.

**357. The sub-paragraphs in paragraphs 3 and 5 of Schedule 9 which go beyond prescribing that “selection is to be made in accordance with standing orders of the House of Lords” are unnecessary and should be omitted, reflecting the approach of the House Lords Act 1999.**

**358. We further recommend that for the avoidance of doubt the Government should consider the insertion into the Bill of a general saving provision, like that used in the Parliamentary Standards Act 2009, as follows: “Nothing in this Act shall be construed by any court in the United Kingdom as affecting Article IX of the Bill of Rights 1689”.**

## 22. The Parliament Acts

359. The draft Bill makes no mention of the Parliament Acts, although the Government both in the White Paper and in their evidence to the Committee placed great reliance on the fact that the Acts will continue in force, and may be used with more frequency, even after the reform is in place. They also assume that the eventual Bill, when introduced, can itself be passed under the Parliament Acts, should it prove necessary. The written evidence from Lord Pannick, who had taken part in the *Jackson* case, and Lord Goldsmith, a former Attorney General, are particularly illuminating on both these questions, as is Lord Pannick’s oral evidence.

360. First, can a Bill on these lines be presented for Royal Assent under the Parliament Acts? Lord Morris of Aberavon submitted written evidence which expressed doubts, reflecting some of the views expressed by some of the judges in *Jackson*. He said that the constitutional issues raised by the Bill might be such as to be “so fundamental that even a sovereign Parliament cannot act”. At Lord Morris’ exhortation, the Committee sought the advice of the Attorney General. The Attorney General declined to provide that advice on the grounds that it was inappropriate for the Law Officers to advise Parliament on the Government’s legislative programme. The Committee regrets that the Attorney General felt unable to assist the Committee to understand his reasoning in respect of such an important matter.

361. Both Lord Pannick and Lord Goldsmith considered that the Parliament Acts could properly be used to reform the House of Lords, and that the courts would uphold such a decision, despite the remarks by some of the judges in *Jackson*. In oral evidence, Lord Pannick set out the reasons why he considered the Parliament Acts could be used in such a way:

The first is that the 1911 Act makes very clear the circumstances in which it does not apply. It lists exceptions; constitutional reform—reform of the upper House—is not one of them. As Lord Bingham said in the Hunting Act case, the word used in Section 2 of the 1911 Act is “any”, and any Bill means any Bill, subject to the defined exceptions. The second reason is that the whole point of the 1911 Act was to provide a mechanism by which disputes between the two Houses could be resolved without the appointment of a large number of new Peers. It would be very surprising if the courts were to interpret the 1911 Act so that it could not resolve a dispute between the two Houses. The third reason is that it is absolutely clear that the reason why the 1911 Act was passed in the first place was to enable the House of Commons to have its way, if there were a dispute, on issues of major constitutional reform. ... The fourth reason, if one needs to go this far, is that there are ample statements in Hansard indicating that it was very much the intention of the Government to have the ability to use the 1911 Act to secure fundamental constitutional reform, in particular reform of the House of Lords.<sup>427</sup>

362. In his written evidence, Lord Pannick gave more detail about the historic context:

“The legislation was deliberately designed to ensure that, in the event of a dispute, the elected House of Commons could prevail over the unelected House of Lords. ... Courts should be very reluctant to undermine the political victory of the House of Commons by restricting its ability to decide when it is appropriate to use the powers conferred by the 1911 Act, subject only to the express limitations contained in the 1911 Act itself. Any use of the section 2(1) powers would occur only in the circumstances of a highly contentious political dispute. The courts should stay well away from implying limits on the ability of the Government, through its majority in the House of Commons, to resolve a political stalemate.”<sup>428</sup>

363. A second question then arises, about whether the Parliament Acts would continue to apply to a largely elected second chamber. The Government clearly assumes that this would be the case, since the ability to use the Parliament Acts is one of the reasons given for continued Commons primacy.

364. Lord Goldsmith considered that the Parliament Acts might not apply once the House had been reformed. He gave a number of reasons for this. Parliament “did not intend that the provisions of the Act would apply to “a second Chamber constituted on a popular ... basis.” Further the Act clearly contemplated that when that came about it would be for the legislation at the time to make provisions “for limiting and defining the powers of the new second Chamber”.<sup>429</sup> In consequence, he thought the following difficulties might arise.

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427 Q 664

428 Lord Pannick. See also Professor Sir John Baker QC (Q 227)

429 Lord Goldsmith

First, it could provide a new and elected House of Lords moral justification for declining to give way to the House of Commons and put to rest any argument that failing to give way was unconstitutional; second, there could be a legal challenge, in accordance with the principle that legislation must be interpreted in the context of the conditions at the time of its enactment, so that the words “House of Lords” might be considered only to apply to a House in its unelected form. Lord Goldsmith said: “Whilst the application of this principle may be uncertain in the context of this Bill and the precise way the Parliament Acts operate this does at least give rise to doubt that the Parliament Acts, or at least all their provisions, would apply in the absence of clear Parliamentary enactment to that effect”.<sup>430</sup>

365. When we put this to Lord Pannick, he considered it a difficult question, but agreed with Lord Goldsmith:

“My opinion is that the better view is that the 1911 Act would not apply in the event that the upper Chamber were wholly or mainly elected. I say that for these reasons. First, the Preamble to the 1911 Act makes it very clear indeed that Parliament’s intention was to move in the future to a second Chamber that was popularly elected. Secondly, it is clear to my mind that the purpose of the Parliament Acts was to regulate the relations between the two Houses at a time when one House was elected and one was not. Thirdly, there is no material that I can see in the Hansard debates that suggests that the 1911 Act was intended to apply even when we moved at some time in the future to a position where both Houses would be elected”<sup>431</sup>.

366. Lord Goldsmith warned “whilst it would be open to Parliament to legislate now to make clear that the Parliament Acts should operate in the same way in relation to an elected House the vague and general provisions of the proposed Section 2 including Section 2(1)(b) do not seem to me adequate for that purpose”.<sup>432</sup> Lord Pannick concurred:

“it is absolutely vital, in my opinion, for the reform Bill to specify with clarity whether or not it is the intention that the Parliament Acts should continue to apply in the event of there being a substantially or wholly elected upper Chamber. It would be extremely undesirable to leave that fundamental question unclear for the future; the inevitable consequence is that the matter would end up in court rather than being decided by Parliament.”<sup>433</sup>

He did not consider that Clause 2 of the Bill “adequately addresses that question”.

**367. It is not for this Committee to give legal advice on the applicability of the Parliament Acts to a reform Bill. We leave the evidence of Lord Pannick and Lord Goldsmith to speak for itself.**

368. In spite of the Government’s confidence, distinguished lawyers have some doubts as to whether the Parliament Acts would continue to be effective once the second chamber was elected or largely elected. **If the Government wish to ensure that the Parliament Acts apply to a reformed House, they should make statutory provision for it.**

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430 *Ibid.*

431 Q 665

432 Lord Goldsmith

433 Q 665

## 23. Dispute Resolution

369. The draft Bill contains no provisions about conciliation mechanisms between the two Houses. The Government seeks to rely on the Parliament Acts (see section 22) to maintain primacy. Currently disputes about legislative drafting are resolved through "ping-pong", backed by the implicit threat of the use of the Parliament Acts. Several witnesses, such as Graham Allen MP, Peter Riddell and Damien Welfare thought improved conciliation mechanisms might be needed to settle disputes between the reformed House and the Commons.<sup>434</sup> While the Clerk of the Parliaments had some doubts about the practicality<sup>435</sup> of, for example, a conference between the Houses, he considered that "as a way of changing the tone, so that we looked at reconciliation rather than one House withdrawing its decision, it might be worth a try. As I say, it has happened before, so it could be practical".<sup>436</sup>

370. The Minister for Political and Constitutional Reform considered that it was not necessary to take a view on conciliation mechanisms at present, and that the dangers of setting down the dispute resolution mechanism in statute outweighed the benefits:

"Ultimately, the back-stop is that the Commons has primacy through the Parliament Acts. Because of that, our tradition suggests that you would get that dispute resolution mechanism, as happens now, evolving through convention. I think that that is much more sensible than saying that we have got to decide today what the relationship will be between the two Chambers in 15 years' time, decide now how you would deal with those disputes and set that down in statute so that it would be decided by the courts. I do not think that that is how we have traditionally done things in this country, and I do not think that it is necessary in this case".<sup>437</sup>

**371. We agree that dispute resolution procedures should be a matter for the two Houses of Parliament, not for the courts. Nonetheless, we believe that the Government should consider proposing improved dispute resolution procedures as part of the process of reforming the House of Lords. We have already recommended that a Joint Committee be established to consider the conventions which should govern the relationship between the two Houses; it should also examine the ways in which differences might be resolved without resort to the Parliament Acts.**

## 24. Referendum

372. By any standard, the Government's proposal to reform the House of Lords is of major constitutional significance. While the current draft Bill is advanced by the coalition Government, the Labour Party also expressed itself at the last general election as being in favour of a democratically elected upper House. The Government's view is that:

"because all three parties were in favour of this, we did not think that a referendum was justified. When the House of Lords Constitution Committee looked at

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434 Peter Riddell, Campaign for a Democratic Upper House. See also Unlock Democracy, Dr Meg Russell, Peter Riddell (Q 141), Damien Welfare (QQ 572ff), Graham Allen MP (QQ 639ff)

435 See also Lord Grocott (Q 699)

436 Q 634

437 Q 741



referendums, it said that it thought that abolition of the House of Lords would be a subject on which you would automatically want to have a referendum, but it did not say that changing the composition of the House of Lords would be such a proposition. So, no, we do not think that a referendum is necessary, and that is why we did not propose it in our draft Bill or White Paper”.<sup>438</sup>

373. Despite the constitutional importance of the subject, the lack of a clear party division on the issue means that any opposition to the proposed reform cannot readily be tested at any future election by voting for one or other candidates seeking election to the House of Commons. If the Government has its way, the draft Bill will have become an Act before the next general election, at which the first tranche of elected Members of a reformed House of Lords would be seeking election. There is thus no opportunity for the electorate to provide a mandate for these proposals.<sup>439</sup>

374. Several witnesses giving evidence to this Joint Committee called for a referendum before the proposals in the draft Bill are commenced. As Mr Christopher Hartigan, who described himself as “a member of the public with an interest in constitutional matters and Lords Reform in particular” put it:

The fact that elections were mentioned in the three manifestoes does not mean it is the settled view of a party, it is not, or the majority of members of a party agree with it or that the electorate want it either. It can be said that the fact that it was in three manifestos makes it clear that the people had no choice. It should also be remembered all three parties LOST the election. ... If the government believe this is the will of the people then it should proceed on a free vote of their representatives or hold a constitutional referendum before such important changes are made.<sup>440</sup>

375. Sir Stuart Bell MP supported a referendum on “such a major change to our constitution” which sought to ask “whether the electorate wished the House of Lords to be replaced by a second chamber wholly-elected, whether the electorate wished the House of Lords to be replaced by a second chamber, partially elected, and whether it wished election to be by first-past-the-post or proportional representation”.<sup>441</sup> Bernard Jenkin MP similarly argued that a referendum was required because of the major constitutional change that the Bill would introduce and pointed to the AV referendum in 2011 as a recent precedent.<sup>442</sup> Penny Mordaunt MP did not necessarily advocate a referendum, but thought that the refusal to offer one “is at odds with the principles the Bill’s promoters advocate and is in contrast to that held on the less significant constitutional matter of the voting system for parliamentary elections”.<sup>443</sup> Thomas Docherty MP thought it was reasonable that the public should be asked their view on such a radical change to the dynamic and operation of

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438 Q 750 (Mr Mark Harper MP)

439 Sir Stuart Bell, Lord Rowe-Beedoe, Campaign for an Effective Second Chamber, Democratic Audit and Christine Windbridge were among those submitting evidence to us who noted that the Labour Party Manifesto had contained a commitment to create a fully elected Second Chamber in stages using an open-list proportional representation electoral system, before putting them to the people in a referendum.

440 Christopher Hartigan

441 Sir Stuart Bell MP

442 Bernard Jenkin MP

443 Penny Mordaunt MP

the Upper House, to say nothing of the decision to create another 300 full-time politicians.<sup>444</sup>

376. Mark Ryan, Senior Lecturer in Constitutional and Administrative Law at Coventry University, maintained that a referendum was necessary as “constitutional reform has been far too parliamentary-centric and introspective without any real reference to engaging the wider public”.<sup>445</sup> Liam Finn called for a referendum, but suggested that there be no turnout threshold requirement ensuring the binding nature of the referendum and a state-funded public education scheme, so that the public could make an informed decision.<sup>446</sup>

377. Professor Vernon Bogdanor told us in oral evidence that a referendum would be the right way forward because all three parties proposed an elected Lords in their election manifestos in 2010, so there was no way for the voter to indicate his or her opinion: “I think it would be right to hold a referendum on this issue, which I think is a greater change than the alternative vote system that has been rejected”.<sup>447</sup>

378. Peter Riddell referred us to the Report of the House of Lords Constitution Committee of the Lords on referendums, in which the Committee acknowledged that, if referendums were to be used, they were most appropriately used in relation to fundamental constitutional issues; the Committee concluded that whether an issue raised “an important question of principle about a principal part of the constitution” provided a useful test, first, of whether an issue was of fundamental constitutional significance, and second, of whether a referendum was therefore appropriate.<sup>448</sup> In the view of some members of the Committee, changing fundamentally the composition and method of selecting one chamber of Parliament appeared, *prima facie*, to meet the test in respect of affecting a principal party of the constitution and raising an issue of principle. Other members of the Committee noted, however, that the Constitution Committee’s report included a list of proposals which would fall within this definition: while the abolition of either House of Parliament was included, reform of the House of Lords was not.

379. Peter Riddell’s own view was that there was a strong argument that such a fundamental constitutional change in the relationship between the two Houses should be subject to a referendum.<sup>449</sup> According to Peter Riddell, polling evidence from the Hansard Society’s annual audit of political engagement “shows terribly shallow political engagement ... Knowledge about what the Lords does is pretty low, and knowledge of what the Commons does is pretty low too. I think people have contradictory views on it”.<sup>450</sup> He warned whatever the ostensible question, the way people voted in referendums depended on extraneous political circumstances.<sup>451</sup>

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444 Thomas Docherty MP

445 Mark Ryan

446 Liam Finn

447 Q 114

448 House of Lords Constitution Committee, 12th Report (2009–10), *Referendums in the United Kingdom* (HL Paper 99), paragraphs 62 and 94. The Committee’s views were re-affirmed in a more recent report: House of Lords Constitution Committee, 15th Report (2010–12), *The Process of Constitutional Change* (HL Paper 177), paragraphs 100 to 101

449 Peter Riddell

450 Q 135

451 Q 135

380. Professor Sir John Baker QC told us that he did not believe in referendums, because it was impossible to frame a question in a way that is not slanted: “Whenever you are faced with a single question in a referendum, you immediately want to say, ‘Well, yes if this, but no if that’. I am not sure how you could frame the question”.<sup>452</sup> The Electoral Reform Society did not see any need for a referendum.<sup>453</sup>

381. Unlock Democracy’s view is that referendums should be triggered by a popular process rather than by the government of the day.<sup>454</sup> Unlock Democracy told us that, as all the parties were committed the case of House of Lords reform, there was sufficient legitimacy to go ahead and do it; but on the other hand, if there was evidence that a significant proportion of the public disagreed and wanted a referendum on the subject—with a trigger of two million signatures—Unlock Democracy would not be opposed to a referendum in those circumstances. Peter Facey was not sure that a referendum would seal the argument:

I am not sure that the turmoil would be any less if we had a referendum. All it will do is that the issue over which there is a fight will be different—it will be over the terms of the referendum and there will be clauses on whether there should be a super-majority, for example. The idea that simply by having a referendum you will save time in Parliament and will all be able to move on, leaving it to the electorate, is a nice one, but from previous experience I do not think that it would happen.<sup>455</sup>

382. Lord Cormack of the Campaign for an Effective Second Chamber questioned why a Bill which sought to claim democracy as its hallmark, made no provision for the people to pronounce in a referendum.<sup>456</sup> Paul Murphy MP also argued the way in which Parliament was organised should also be subject to a referendum: “To be perfectly honest, I see great benefit in the public debate that will be held about it ... A referendum would generate a proper debate and people in the country could make their minds up. It would also obviously give legitimacy to the solution”.<sup>457</sup>

383. The clarity of a popular verdict in a referendum would depend on there being a straightforward question to put to the voters. As Baroness Hayman told us; “at the moment there are so many issues that it would be very difficult to focus the public debate on how to go forward”.<sup>458</sup>

**384. While our primary task is to review the draft Bill in the White Paper referred to us, it is highly probably that a desire will be expressed in both Houses to debate whether a referendum ought to be held on the House of Lords reform proposals. Even if the Government were to decide to make no such provision in the Bill itself, they would in our view nonetheless be well advised to facilitate debate before the Bill goes into Committee in the House of Commons on whether it be an Instruction to the**

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<sup>452</sup> Q 239

<sup>453</sup> Q 296

<sup>454</sup> Unlock Democracy

<sup>455</sup> QQ 368–70

<sup>456</sup> Q 591

<sup>457</sup> Q 609

<sup>458</sup> Q 612. See also Graham Allen MP (Q 649)

**Committee on the Bill that it may make provision in the Bill for a referendum on House of Lords reform.**

**385. The Committee recommends that, in view of the significance of the constitutional change brought forward for an elected House of Lords, the Government should submit the decision to a referendum.**

## 6 Conclusions and recommendations

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### Functions, Role, Primacy and Conventions

#### *The principle of an electoral mandate*

1. Differences of perception as to the need for an electoral mandate exist within the Committee too, as well as within political parties and across the two Houses. They will doubtless condition the debate when the Bill is introduced and considered in both Houses. The Committee, on a majority, agrees that the reformed second chamber of legislature should have an electoral mandate provided it has commensurate powers. (Paragraph 23)

#### *Functions, powers and role*

2. The Committee agrees with the Government's view that in order to enhance the effectiveness of the parliamentary process it is appropriate that a reformed House should perform, but not be constrained by, the functions of the present House of Lords—including initiating and revising legislation, subjecting the executive to scrutiny, and acting as a forum of debate on matters of public policy. Indeed, the Committee agrees that for the first time the reformed House will, in respect of its elected members, acquire a representative function. (Paragraph 33)
3. The Committee is firmly of the opinion that a wholly or largely elected reformed House will seek to use its powers more assertively, to an extent which cannot be predicted with certainty now. (Paragraph 34)
4. The Committee considers that a more assertive House would not enhance Parliament's overall role in relation to the activities of the executive. (Paragraph 35)
5. Any overall strengthening of Parliament would have to be subject to a defined understanding of the relationship between the Commons and the reformed House and of any conventions governing that relationship. (Paragraph 36)

#### *Primacy of the House of Commons*

6. The inclusion of conventions alongside the powers, rights, privileges, and jurisdiction of either House of Parliament in subsection (1)(c) of Clause 2 lays these conventions open to judicial intervention. The Courts could infer that if Clause 2 were passed that Parliament intended the courts to have the authority to determine what those conventions (and indeed the powers, rights, privileges, and jurisdiction) were. The Committee's view is that no provisions in the Bill should afford the opportunity for judicial interference in a manner inconsistent with Article 9 of the Bill of Rights 1689. (Paragraph 49)
7. We concur with the overwhelming view expressed to us in oral and written evidence that Clause 2 of the draft Bill is not capable in itself of preserving the primacy of the House of Commons. (Paragraph 55)

8. We agree that the existing primacy of the Commons rests on a number of factors including, but not limited to, the self-restraint of the current House of Lords. (Paragraph 64)
9. We are wary of according too much weight to claims about the relative strength of individual mandates, not least in relation to the passage of time. A mandate is a mandate for the period for which a member is elected. An MP's mandate is no weaker in the fourth or fifth session of a Parliament than in the first. (Paragraph 65)
10. We agree that following election the increased assertiveness of a reformed second chamber will affect the balance of power between the two chambers in favour of the House of Lords. (Paragraph 66)
11. Opinion within the Committee varied as to the impact which any shift in the balance of power would have on House of Commons primacy. Some members believed that Commons primacy would remain absolute, buttressed by the provisions of the Parliament Acts: some believed that an electoral mandate would inexorably lead to claims of equal primacy with the Commons. Some believed that that no attempt should be made to preserve Commons primacy, while others believed Commons primacy would be undermined. A majority, while acknowledging that the balance of power would shift, consider that the remaining pillars on which Commons primacy rests would suffice to ensure its continuation. (Paragraph 67)

### ***Primacy: additional statutory provision***

12. A majority of the Committee does not advocate any proposals for making statutory provision to entrench Commons primacy. These ideas and others in the same vein may be brought forward during the legislative passage of the Bill through Parliament. If such proposals are advanced, it may be expected that they will meet opposition on the grounds that they would diminish the powers of an elected House of Lords too greatly, that they would weaken scrutiny of the Executive, or that they would be meaningless and unworkable. Such proposals may also give rise to the possibility of judicial intervention which the Committee considers to be profoundly undesirable. (Paragraph 74)

### ***Conventions***

13. We agree with the weight of the evidence we have received which suggests that the conventions governing the relationship between the two Houses will evolve further once the House of Lords is reformed and would need to be re-defined. (Paragraph 91)
14. The essential character of conventions cannot be preserved if they are defined in legislation. The Government's approach in Clause 2(1)(c) of the Bill of simply referring to conventions in a general Savings Clause is not only ineffective but risks judicial intervention in the most highly-politicised circumstances of all, a dispute over the conduct of business between the two Houses. This would be a constitutional disaster. (Paragraph 92)



15. We think it inevitable—and desirable—that following any reform the two Houses will need to establish a means of defining and agreeing the conventions governing the relationship between the two Houses and thereafter keeping them under review. We agree that any new conventions or modifications of existing conventions should be promulgated by the adoption of a “concordat” in the form of parallel, identical resolutions prepared by a Joint Committee and adopted in each House. We note, however, that any concordat will only have force so long as both chambers continue to accept its terms. (Paragraph 93)
16. We agree with the Cunningham Committee report, noted with approval by both Houses of Parliament, that as there are now firm proposals in this draft legislation to change the composition of the House of Lords preliminary work should begin as soon as possible. We recognise, however, that it cannot be completed until after 2015. There would be little point in finalising a concordat to which elected members of the second chamber were not a party. (Paragraph 94)

## **Electoral System, Size, Voting System and Constituencies**

### ***Ratio of Elected to appointed members***

17. Some members of the Committee would prefer a fully appointed House. They hold the view that as the House of Commons has primacy it holds ultimate responsibility for legislation. That being the case, they do not consider it necessary for the members of the House of Lords to be elected. However, a fully appointed House is not being proposed in the draft Bill. (Paragraph 106)
18. If there are to be elections, the Committee agrees on a majority with the proposal for a 80 per cent elected and 20 per cent appointed House as a means of preserving expertise and placing its mandate on a different footing from that of the Commons. (Paragraph 107)

### ***Size***

19. The Committee agrees that a House of 300 members is too small to provide an adequate pool to fulfil the demands of a revising chamber, for its current range of select committees, and for the increasingly common practice of sitting as two units: the main chamber and Grand Committee. In addition, we have recommended that appointed members should not have to attend as frequently as those who are elected. Accordingly, we favour a House of 450 members. (Paragraph 114)

### ***The electoral system***

20. The Committee would like the Government to give further consideration to a nationally indirectly elected House as an alternative in the event that Parliament does not support direct elections with geographical electoral boundaries. (Paragraph 120)
21. A majority agreed with the Government’s proposal to use a form of proportional representation for elections to the House of Lords. A proportional system will best preserve the independence and political diversity of the current House of Lords and

ensure that it retains a different character from that of the House of Commons. It is less likely to lead to elected members challenging the link between MPs and their constituents. We consider these issues in more detail below. Most importantly, however, it makes it unlikely that any one party will achieve and maintain a majority in the upper chamber. (Paragraph 124)

22. We do not support the introduction of a closed list system for the sort of regional elections proposed in the draft Bill. (Paragraph 129)
23. The Committee considers that it will be for the political parties to address the diversity issue in their selection of candidates so that a reformed House will be no less diverse on gender, ethnic or disability grounds than the present one. (Paragraph 143)
24. A proportional system of election based on STV or open lists will be new to English voters, less so to voters in Scotland, Wales and Northern Ireland. The Government must publicise the new system so as to maximise electors' understanding and to avoid confusion arising from the use of different voting systems on the same day. (Paragraph 146)
25. In the Committee's view, the voting system chosen should give voters the widest choice possible of where to cast their preferences, whether that is within a single party or across candidates from multiple parties and yet be as intelligible as possible to the voter. We also believe that voters who wish to simply vote for a political party, rather than individual candidates, should be free to do so. We looked into the potential, therefore, for a voting system that would encapsulate these two conditions. It would:
  - allow voters the option of casting a simple party vote; and
  - allow voters to express preferences among individual candidates across, as well as within, parties. (Paragraph 147)
26. The Committee recommends that the Government should consider introducing the version of STV currently used in New South Wales, as an alternative to the pure STV system currently proposed in the draft Bill. (Paragraph 152)
27. Given the relative complexity and novelty of the system, compared with first-past-the-post, we recommend that the Government should ensure that ballot papers are not regarded as spoiled where a clear intention has been expressed, reflecting the practice at other UK elections. (Paragraph 153)

### ***Non-renewable terms***

28. Non-renewable terms have the potential to make members of a reformed House of Lords more independent, both from public opinion and from party structures (since they would not be standing for re-election on a party ticket). They would do much to distinguish the character of the reformed House from that of the House of Commons. Although political parties would continue to be accountable to the electorate at the ballot box, individual members would not. (Paragraph 164)

29. Allowing members to stand for re-election would make them feel more individually accountable, but would have the disadvantage of members of the reformed House of Lords having a similar electoral mandate to those elected to the House of Commons and might encourage them to undertake more constituency-based activities. It would, however, allow the electorate the choice of keeping an elected member of the Lords they support rather than being deprived of that option. (Paragraph 165)
30. The Committee is divided on whether election should be for a non-renewable term or whether a single further term—say for ten years—might be available for any member wishing to stand again. (Paragraph 166)
31. A majority of the Committee agree with the Government’s proposal for non-renewable terms. (Paragraph 167)

### ***Length of term***

32. The Committee considered the arguments in favour of 15-year terms. It should be noted that the transition period will be determined by the length of term, and as such was a significant factor in the Committee’s deliberations. With a 15-year term, transition would end in 2025, allowing for more members of the current House to remain for longer thus guaranteeing continuity and the preservation of the current ethos of the House. Fifteen-year terms would also enable election by thirds, which make it less likely that short-term electoral swings would shift the party balance in the reformed House dramatically. And the longer the term, the weaker the mandate of the House of Lords as a whole compared with the House of Commons. (Paragraph 171)
33. A 10-year term would have some of these characteristics, but to a lesser degree. On the other hand, a 10-year term might be more appealing to candidates who wished to stand for election in mid-career. It would also make the House as a whole more accountable, allowing the electorate to influence its composition to a greater extent at each election since half of the House would be elected at each general election. (Paragraph 172)
34. A majority of the Committee consider on balance that a 15-year term is to be preferred. (Paragraph 173)

### ***The timing of elections***

35. We recognise the concerns expressed by some witnesses over the prospect of holding elections to the House of Lords at the same time as elections to the House of Commons, in particular the likelihood that it might lead to elections to the Lords being overshadowed by the general election. On balance, we consider that the arguments in favour of doing so—the reduced cost, the avoidance of mid-term ‘protest voting’ and minimum disruption to the Government’s legislative programme—outweigh these drawbacks. We support the Government’s proposals to hold elections to both Houses of Parliament at the same time. (Paragraph 181)

### ***Accountability mechanisms***

36. We observe that under the provisions of the Fixed-term Parliaments Act 2011 there are circumstances in which general elections could take place before five years have elapsed. Those circumstances are covered in the draft Bill. (Paragraph 182) We consider that a recall mechanism would be an appropriate way to ensure elected members can be held accountable by the electorate in exceptional circumstances. We do not attempt to set out the details of a scheme in this report, but we recommend that the Government make provision in the Bill for a recall mechanism, tailored to multi-member constituencies, based on constituency petitions that could force members serving the first ten years of their 15-year term to stand for re-election at the next set of elections to the House of Lords. The Government should consider how to minimise the risk of the recall mechanism being manipulated for frivolous or vexatious reasons. (Paragraph 188)
37. We agree that members should be required to participate regularly in the work of the House. We recommend below that appointed members should not have to commit to the same level of activity as elected members of the House. Elected members, however, will be salaried and expected, as a general rule, to spend most of their time on their parliamentary duties while the House is sitting. In addition, unlike members of the House of Commons they will not have to deal with a large volume of individual casework. We consider it reasonable, therefore, to set high expectations for their expected level of participation. We recommend that elected members should have to stand for re-election at the next general election if they fail to attend over 50 per cent of sitting days in a session. A decision to force a member to stand for re-election on these grounds would have to be agreed to by the House, on a report from the Privileges and Conduct Committee, to ensure that members with extenuating circumstances were not penalised inappropriately. (Paragraph 190)

### ***Filling vacancies***

38. We agree with the Government's view that by-elections should not be used to fill vacant seats. The multi-member constituencies proposed by the Government would contain millions of voters making by-elections extremely expensive, and they would violate the principle that members of the reformed House of Lords should be elected by proportional representation. (Paragraph 196)
39. In the circumstances, we agree with the Government proposal to replace departed members with substitute members only until the next set of elections to the House of Lords. (Paragraph 197)
40. The Committee recommends, however, that if a vacancy should occur within a year of the next set of elections to the House of Lords, the seat should remain vacant and an additional member should be elected at the next election to fulfil the remainder of the departed member's term. (Paragraph 204)
41. A "count back" system in which the original election is re-counted ignoring votes for the departed member has some merit, but we do not consider that it is feasible given the long, multi-parliament terms of elected members. If a vacancy arose 13 years into

a 15-year term, it would mean re-running election results from over a decade ago. Apart from any other considerations, we think it unlikely that many of the candidates from the original election would be in a position, or willing, to take up a seat in Parliament for a relatively short interim period such a long time after the election took place. (Paragraph 205)

42. Of the options available, the Committee prefers the Government's preferred option—in which the seat would go to the candidate with next highest number of votes in the same party at the last election. This would not disrupt the party balance in the House mid-term. (We note that an exception to this rule might occur if a seat was vacated by an independent member. Under the Government's proposals the seat would be filled by the candidate with the next highest number of votes at the last election, irrespective of party. This could result in a change to party composition). Even this arrangement has its shortcomings in that sometimes reliance will have to be placed on electoral information several years old. (Paragraph 206)

### ***Constituency issues***

43. The Committee considers that elected members will inevitably be concerned with, and be approached about, regional, local and legislative matters. (Paragraph 221)
44. The Committee believes that in general it would be inappropriate for elected members to involve themselves in personal casework of the kind currently undertaken by MPs on behalf of their constituents. (Paragraph 222)
45. The Committee observes that the level of engagement with constituency work will be governed by the resources available to elected members. Accordingly, we recommend that IPSA should make no provision for members of the reformed House to deal with personal casework, as opposed to policy work, or to have offices in their constituencies. The Committee believes that the practical difficulties of large regional constituencies, together with a lack of resources, will make any substantial level of individual casework less likely. We anticipate, however, that some elected members will seek to carve out a constituency role for themselves even without dedicated resources and we do not see how this can be prevented. (Paragraph 223)
46. The Committee considers that no further action should be taken to define the manner in which elected members of the reformed House carry out their representative role. As the Minister suggested it will be for the members of the two Houses to come to a mutual understanding on these matters. (Paragraph 224)

## **Appointments, Bishops and Ministers**

### ***Appointments***

47. We agree that the Appointments Commission should be placed on a statutory footing. (Paragraph 231)
48. We support the establishment of a statutory Joint Committee of members of the two Houses to oversee the Appointments Commission, as proposed in the draft Bill. This

Joint Committee should oversee the governance of the Commission in addition to the responsibilities set out for it in the draft Bill. (Paragraph 232)

49. We support the Government’s proposal that the Appointments Commission could appropriately include former and current members of the House of Lords, but not serving MPs or Ministers. (Paragraph 233)
50. We consider that independence, expertise and experience, and diversity should form the core values around which the Appointments Commission should construct its criteria for appointing members to the House of Lords. While we recognise that the Appointments Commission should apply its criteria independently, we believe that it is appropriate that Parliament should have the final say on the criteria devised by the Appointments Commission, and the guidance it produces on how it will apply those criteria. (Paragraph 248)
51. We consider that there would be merit in placing on the face of the Bill certain broad criteria to which the Appointments Commission “should have regard” when recommending individuals for appointment. We recommend that these should be: an absence of recent overt party political affiliation;
  - the ability and willingness to contribute effectively to the work of the House;
  - the diversity of the United Kingdom, in the broadest sense;
  - inclusion of the major faiths; and,
  - integrity and standards in public life. (Paragraph 249)
52. Variations of the Appointment Commission’s criteria, or guidance produced under them, should be subject to parliamentary approval through the super-affirmative procedure. (Paragraph 250)
53. We consider that the advantages of having part-time appointed members (the maintenance of professional expertise and the ability to attract individuals who would not want to commit to a full-time role) outweigh the possible disadvantage (that it might result in a two-tier House). We recommend therefore that appointed members should not have to commit to the same level of activity as elected members of the reformed House of Lords. (Paragraph 255)
54. To ensure that there is a mechanism to remove appointed members who fail to contribute to the work of the House as expected, we recommend that appointments made by the Commission should be for an initial term of five years, with the expectation of reappointment up to the maximum limit of an elected term. (Paragraph 257)
55. The Committee expect that the Appointments Commission will use its discretion to decide what they consider to be an appropriate “contribution to the work of the House,” and that such a definition will be published. (Paragraph 258)



56. Finally, the Committee note that appointed members wishing to leave the House at the end of a five-year period could do so by giving notice to the Appointments Commission that they did not wish to be reappointed. (Paragraph 259)

### ***Appointed Ministers***

57. We recommend that a reformed House of Lords should continue to contain Ministers of the Crown to represent the Government. In a fully-elected House, there should be no power to appoint additional members to carry out ministerial roles. (Paragraph 266)
58. We agree that the Prime Minister should be able to appoint a small number of additional members to a hybrid (part-elected, part-appointed) House as Ministers of the Crown. We believe that these members should have the right to sit, but not to vote, in a reformed House. (Paragraph 267)
59. We acknowledge that the appointment of ministers to the Lords is a significant power of patronage. We have recommended that such appointees should not vote. Were the Government not to accept this recommendation, however, we would recommend that the number of additional ministerial appointments should be limited, to no more than five at any one time. This limit should be on the face of the Bill. (Paragraph 268)
60. We also agree that Members appointed to the House of Lords specifically as Ministers of the Crown should cease to be Members on the termination of their ministerial appointment. This reflects the special circumstances under which they come to be Members. (Paragraph 269)
61. The House of Lords Appointments Commission should vet the individuals appointed as Ministers of the Crown for probity. In this capacity, it should act only as an advisory body to the Prime Minister. It should not have the power of veto over ministerial appointments. (Paragraph 270)

### ***Lords Spiritual***

62. The Committee agrees that, in a fully elected House, there should be no reserved places for bishops. (Paragraph 288)
63. The Committee agrees, on a majority, that bishops should continue to retain ex officio seats in the reformed House of Lords. (Paragraph 289)
64. The Committee agrees, on a majority, with the Government's proposal that the number of reserved seats for bishops be set at 12 in a reformed House. (Paragraph 290)
65. The Committee recommends that the Appointments Commission consider faith as part of the diversity criterion we have recommended above. (Paragraph 291)
66. The Committee recommends that the exemption of bishops from the disciplinary provisions be removed, as requested by the Archbishops. (Paragraph 292)

67. The Committee recommends that any approach to the Government by the Church to modify the provision on the named bishops be looked upon favourably. (Paragraph 293)
68. The Committee recommends that Clause 28(4) be left out of the Bill so as to allow greater flexibility in transition arrangements so that any women bishops and the wider pool of diocesan bishops can be eligible for appointment in the second transitional parliament. (Paragraph 294)

## **Transition, Salaries, IPSA, Disqualification, etc**

### ***Transition***

69. Of the options set out in the White Paper, the Committee considers option 1 the best of those canvassed. (Paragraph 312)
70. The Committee agrees that the House of Lords should itself, through the medium of the political parties and the crossbench peers, be responsible for establishing the selection of transitional members. (Paragraph 313)
71. The Committee recommends an alternative fourth option with three characteristics:
  - a) a transitional membership in 2015 equal to a benchmark figure derived from the total number of members attending 66 per cent or more of sitting days in the financial year 2011–12. These transitional members will remain in place until the final tranche of elected members arrive in 2025, at which point they will all leave;
  - b) an allocation of the transitional seats to parties and crossbench peers in proportion to their current membership; and
  - c) parties and crossbench peers to determine for themselves the persons to serve as transitional members. (Paragraph 317)
72. The Committee further recommends that, if this option finds favour, parties and crossbench peers should have regard in particular to a member's attendance record over a designated period for determining who should remain as a transitional member. (Paragraph 318)
73. The Committee strongly suggests that, as in 1999, the authorities of the current House of Lords may wish to consider the extension of certain club and access rights to those members who are not selected as transitional members. (Paragraph 319)

### ***Salaries, etc***

74. We recommend that transitional Members should receive a per diem allowance rather than a salary. We further recommend that IPSA should consider whether appointed members may elect to receive a per diem allowance if it better reflects their level of participation in the work of the House. The Bill should leave it to IPSA to set the level of those allowances. (Paragraph 327)

75. We agree that, as proposed in the draft Bill, IPSA should determine the level of salary and allowances. Membership will likely entail for many members the need to maintain a second home in London. We concur with the Electoral Reform Society that the salary and allowances should be set at such a level as to enable people from all social backgrounds and all parts of the United Kingdom to serve in the second chamber. (Paragraph 331)

### ***Disqualification***

76. There are sound constitutional arguments for avoiding fettering the discretion of Parliament by statute law. On balance, we consider the provisions of the draft Bill which allow the reformed House to resolve to disregard some grounds for disqualification are appropriate. We expect this power is most likely to be used (if ever used) in cases where a member of the House has been convicted in another jurisdiction for behaviour which would not be criminal in the United Kingdom, or where the judicial process is open to serious criticism. (Paragraph 336)
77. There are good reasons for different disqualification regimes for elected and appointed members. Otherwise, the disqualification regime would permit those with significant private sector interests to serve, but exclude those with experience drawn from important public sector posts. Since elected members will be full-time, professional politicians they should be subject to the same disqualification regime as Members of the House of Commons. Part-time appointed members should be allowed to keep their outside interests and should instead be subject to a code of conduct on similar lines as that applying to current members of the House of Lords. (Paragraph 342)
78. The disqualification scheme for elected members of the reformed House is based on that for the House of Commons, which rests on clear and long established principles. Moreover, the electorate has power to ensure that candidates it considers have a conflict of interest are not elected. It is appropriate for the reformed House to approve changes to the lists of disqualifying offices for elected members just as the Commons approves changes to the relevant schedules of the House of Commons Disqualification Act. There is as yet little clarity about the principles which might underpin the disqualification regime for appointed members. We consider that the Government should set out what it thinks those principles should be. The Government should also reflect on whether it is in fact appropriate for a single House to determine the disqualification regime for appointed members. (Paragraph 344)

### ***Parliamentary Privilege and the draft House of Lords Reform Bill***

79. We recommend that Clause 56 should be restricted to providing that the House of Lords has power to expel or suspend its members. We are confident that the House will use that power responsibly and make appropriate provision itself. (Paragraph 352)
80. We consider that Clause 58 of the draft Bill is unnecessary and should be omitted. (Paragraph 355)

81. The sub-paragraphs in paragraphs 3 and 5 of Schedule 9 which go beyond prescribing that “selection is to be made in accordance with standing orders of the House of Lords” are unnecessary and should be omitted, reflecting the approach of the House of Lords Act 1999. (Paragraph 357)
82. We further recommend that for the avoidance of doubt the Government should consider the insertion into the Bill of a general saving provision, like that used in the Parliamentary Standards Act 2009, as follows: “Nothing in this Act shall be construed by any court in the United Kingdom as affecting Article IX of the Bill of Rights 1689”. (Paragraph 358)

### ***The Parliament Acts***

83. It is not for this Committee to give legal advice on the applicability of the Parliament Acts to a reform Bill. We leave the evidence of Lord Pannick and Lord Goldsmith to speak for itself. (Paragraph 367)
84. If the Government wish to ensure that the Parliament Acts apply to a reformed House, they should make statutory provision for it. (Paragraph 368)

### ***Dispute Resolution***

85. We agree that dispute resolution procedures should be a matter for the two Houses of Parliament, not for the courts. Nonetheless, we believe that the Government should consider proposing improved dispute resolution procedures as part of the process of reforming the House of Lords. We have already recommended that a Joint Committee be established to consider the conventions which should govern the relationship between the two Houses; it should also examine the ways in which differences might be resolved without resort to the Parliament Acts. (Paragraph 371)

### ***Referendum***

86. While our primary task is to review the draft Bill in the White Paper referred to us, it is highly probably that a desire will be expressed in both Houses to debate whether a referendum ought to be held on the House of Lords reform proposals. Even if the Government were to decide to make no such provision in the Bill itself, they would in our view nonetheless be well advised to facilitate debate before the Bill goes into Committee in the House of Commons on whether it be an Instruction to the Committee on the Bill that it may make provision in the Bill for a referendum on House of Lords reform. (Paragraph 384)
87. The Committee recommends that, in view of the significance of the constitutional change brought forward for an elected House of Lords, the Government should submit the decision to a referendum. (Paragraph 385)

# Appendix 1: Members and interests

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## Members of the Joint Committee

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

## Declaration of Interests

The following Declaration of relevant interests have been declared:

**Mr Tom Clarke MP:** Member of the Select Committee on Standards and Privileges.

**Oliver Heald MP:** Member of the Committee on Standards in Public Life.

**Lord Hennessy of Nympsfield:** Member of the Lords in receipt of daily attendance allowance; and contributes occasional articles and chapters on the House of Lords to various publishers.

**Tristram Hunt MP:** Father is a member of the House of Lords.

**Bishop of Leicester:** Member of the Lords in receipt of daily attendance allowance.

**Lord Norton of Louth:** Member of the Lords in receipt of daily attendance allowance; and co-chair, Campaign for an Effective Second Chamber.

**Baroness Scott of Needham Market:** Member of the House of Lords Appointments Commission; in receipt of Lords daily attendance allowance.

**Lord Richard:** Member of Lords in receipt of daily attendance allowance.

**Lord Rooker:** Member of Lords in receipt of daily attendance allowance.

**Laura Sandys MP:** chair, Open Democracy.

**Baroness Shephard of Northwold:** Member of Lords in receipt of daily attendance allowance.

**Baroness Symons of Vernham Dean:** Member of Lords in receipt of daily attendance allowance.

**Lord Trimble:** Member of Lords in receipt of daily attendance allowance; deputy chairman of the Association of Conservative Peers.

**Lord Tyler:** Member of Lords in receipt of daily attendance allowance.

**Baroness Young of Hornsey:** Member of Lords in receipt of daily attendance allowance.

A full list of members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/> and in the House of Commons Register of Members' Financial Interests: <http://www.publications.parliament.uk/pa/cm/cmregmem/contents.htm>



## Appendix 2: Call for Evidence

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The Joint Committee on the Draft House of Lords Reform Bill has been appointed to consider and report on the draft House of Lords Reform Bill (Cm 8077). It is required to report on the draft Bill by 29 February 2012.

A copy of the draft Bill and the accompanying description of the proposals and explanatory notes as published as Command Paper 8077.

Written evidence is invited on the terms of the White Paper and draft Bill, including but not limited to:

- How the draft Bill fulfils its objects;
- The effect of the Bill on the powers of the House of Lords and the existing conventions governing the relationship between the Lords and the Commons;
- The role and functions of a reformed House;
- The means of ensuring continued primacy of the House of Commons under any new arrangements;
- The size of the proposed House and the ratio of elected to non-elected Members (the draft Bill gives options);
- A statutory appointments commission;
- The electoral term, retirement etc;
- The electoral system preferred (the draft Bill gives options);
- Transitional arrangements (the draft Bill gives options);
- The provisions on Bishops, Ministers and hereditary peers;
- Other administrative matters like pay and pensions;
- Relevant comparisons with other bi-cameral parliaments; and
- Anything else relevant to the introduction of a largely elected House (e.g. name of a reformed House, referendum, applicability of the Parliament Acts etc.).

## Appendix 3: Witnesses

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### Monday 10 October 2011

**Mr Mark Harper MP**, Minister for Political and Constitutional Reform QQ 1–47

### Monday 17 October 2011

**Mr Mark Harper MP**, Minister for Political and Constitutional Reform. QQ 48–88

### Monday 24 October 2011

**Professor Vernon Bogdanor** (King’s College London); **Rt Hon Peter Riddell** (Institute for Government); and **Professor Dawn Oliver** (Master Treasurer of the Middle Temple) QQ 89–165

### Monday 31 October 2011

**Dr Meg Russell**, Constitution Unit, University College London; **Dr Alan Renwick**, University of Reading; **Professor Sir John Baker QC**, and **David Howarth**, University of Cambridge QQ 166–249

### Monday 7 November 2011

**Mr Mark Harper MP**, Minister for Political and Constitutional Reform QQ 250–277

### Monday 14 November 2011

**Ms Katie Ghose**, Electoral Reform Society, **Professor David Denver**, University of Lancaster, **Professor John Curtice**, University of Strathclyde QQ 278–332

### Monday 21 November 2011

**Mr Peter Facey**, and **Ms Alexandra Runswick**, Unlock Democracy; **Lord Jay of Ewelme**, and **Mr Richard Jarvis**, House of Lords Appointments Commission QQ 333–406

### Tuesday 22 November 2011

**Senator Lee Rhiannon**, Senator for New South Wales, Australian Greens, **Senator the Hon Michael Ronaldson**, Senator for Victoria, Liberal Party, and **Senator the Hon Ursula Stephens**, Senator for New South Wales, Labour Party QQ 407–427

### Monday 28 November 2011

**Most Rev and Rt Hon Rowan Williams**, Archbishop of Canterbury; **Andrew Copson**, Chief Executive, British Humanist Association, and **Elizabeth Hunter**, Director, Theos QQ 428–463

**Monday 5 December 2011****Lord Adonis, and Lord Carter of Barnes**

QQ 464–509

**Monday 12 December 2011****Professor Sir Ian Kennedy, and Dr Andrew McDonald**, Independent Parliamentary Standards Authority; **Sir Christopher Kelly, and Mr Peter Hawthorne**, Committee on Standards in Public Life

QQ 510–540

**Monday 19 December 2011****Dr Alan Renwick**, Reader in Comparative Politics, University of Reading, and **Professor Iain McLean**, Professor of Politics, Nuffield College, University of Oxford

QQ 541–568

**Monday 16 January 2012****Damien Welfare, and Daniel Zeichner**, Campaign for a Democratic Upper House (CDUH); **Lord Cormack, and Rt Hon Paul Murphy MP**, Campaign for an Effective Second Chamber; and **Rt Hon Baroness Hayman**

QQ 569–620

**Monday 23 January 2012****David Beamish**, Clerk of the Parliaments; **Mr Graham Allen MP**, Chair, Political and Constitutional Reform Committee; **Robert Rogers**, Clerk of the House, and **Jacqy Sharpe**, Clerk of Legislation

QQ 621–663

**Monday 30 January 2012****Lord Pannick; Rt Hon Lord Cunningham of Felling; Rt Hon Lord Grocott and Rt Hon David Blunkett MP**

QQ 664–707

**Monday 27 February 2012****Rt Hon Nick Clegg MP**, Deputy Prime Minister, and **Mr Mark Harper MP**, Minister for Political and Constitutional Reform

QQ 709–768

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## Appendix 6: Supplementary written evidence on electoral system options by Dr Alan Renwick and Professor Iain McLean

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### Electoral System Options

*Paper prepared for the Joint Select Committee on the Draft House of Lords Reform Bill  
Dr Alan Renwick, University of Reading and Prof. Iain McLean, University of Oxford,*

11th January 2012

In connection with our oral evidence session with you on 19 December 2011, we have been asked to answer a number of questions concerning the operation of electoral systems—either an open-list proportional system (open-list PR) or a single transferable vote system (STV)—that satisfy two conditions:

- they allow voters the option of casting a simple party vote;
- they allow voters to express preferences among individual candidates across as well as within parties.

Before answering the specific questions, we think it would be helpful to outline various forms that such systems could take. We will outline two versions of open-list PR and two versions of STV that would satisfy the two conditions.

### Open-List PR Systems

We are aware of two countries that presently use open-list PR and allow voters to express preferences across party lines: Switzerland and Luxembourg.<sup>1</sup> The systems used there allow voters to fill in their ballot papers in a great variety of different ways: they can shift names between lists, create new lists, delete names, and so on. Such complexity may make sense where it has evolved over time, but we suggest that it would not be desirable when designing a new system. In the UK context, it would create great confusion and open the procedures to ridicule.

Besides these cases, an attempt was made in the Australian Capital Territory in 1989 to combine the principle of a list election with that of the transferable vote, but the electoral system produced was probably the most complex ever implemented. It took over two months to count the votes and the system was quickly scrapped.<sup>2</sup> Again, we suggest that this is an example not to follow.

We suggest two simpler ways in which open-list PR could be combined with cross-party preferential voting. The first is a simplified version of the Swiss system. The second looks

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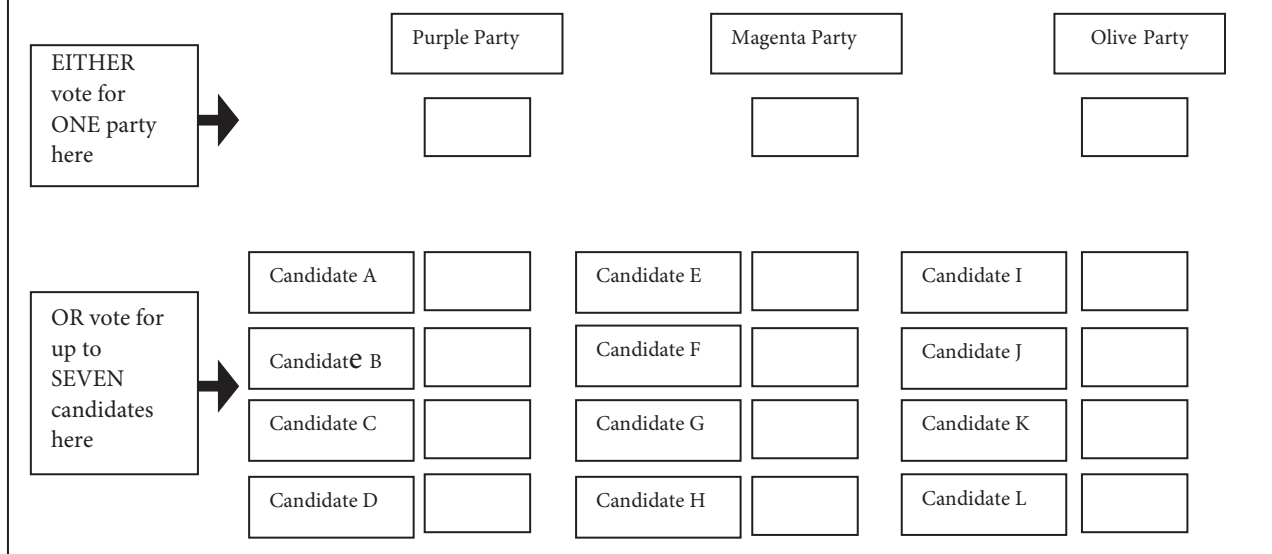
1 See Georg Lutz, “Open Ballot”, in Josep M. Colomer (ed.), *Personal Representation: The Neglected Dimension of Electoral Systems* (Colchester: ECPR Press, 2011), pp. 153–74.

2 On this, see Parliament of the Commonwealth of Australia, *Inquiry into the ACT Election and Electoral System*, Report No. 5 of the Joint Standing Committee on Electoral Matters, November 1989 (Canberra: Australian Government Publishing Service).

### Illustrative Ballot Paper Layout:

You have seven votes. You can cast them in one of two ways:

- EITHER vote for a party by placing an X in one of the boxes above the thick black line; if you choose this option, all seven of your votes will go to that party;
- OR vote below the thick black line for up to seven of the candidates listed; each of these votes will count for that candidate and his or her party; make sure not to cast too many votes – if you do, your vote will be invalid.



(at least to voters) more like STV. These are only illustrations of the sorts of system that could be adopted: much more work would need to be done in evaluating options before a precise recommendation could be made.

### Option 1

The first system would give voters as many votes as there are seats available in their region. Voters could cast these votes in either of two ways: either by placing an X next to a party (in which case all their votes would count for the party's preferred list order; or by voting for up to seven candidates. The ballot paper might be laid out roughly as shown below (for the example of a constituency electing seven members).

When it came to the count, the first step, as in any list system, would be to count all the votes cast for each party, whether directly for the party or for the party's candidates. This would determine the total number of seats allocated to each party. Then the number of votes cast for the party directly and for each of its candidates would be used to determine the order in which the candidates were elected. As we mentioned in our oral evidence on 19th December, there are several ways in which the party's preferred order and the voters' preferences could be combined to determine the final list order. The method selected is very important: some methods give greater weight to the party's preferences, others to voters' preferences. We would be happy to give further guidance on this if the Committee wished.

This system would allow voters to express some preference ranking among candidates: in a region where seven members were being elected, for example, a voter could give three votes to one candidate, two votes to another, and one vote to each of two more. But it does not allow a full ranking. Giving voters the opportunity to rank all candidates in order of preference would require something like Option 2.

### **Option 2**

Under the second form of open-list PR, voters would have two options as to how to vote: they could vote for a party or rank the candidates in order of preference. The layout of the ballot paper would be as above, but the instruction at the top of the ballot paper would be something like the following:

You can vote in one of two ways:

- EITHER vote for a party by placing an X in one of the boxes above the thick black line;
- OR indicate your preferences among candidates below the line by placing a '1' next to the candidate you most favour, a '2' next to your second favourite, and so on; you can express as many or as few preferences as you wish.

In counting the votes, as before, the first step would be to count up the votes for each party. The simplest option here would be to say that a voter who expresses preferences among candidates is deemed to have voted for the party of their first-preference candidate. But this would have the undesirable effect of allowing a voter to influence the order of the candidates on a party's list without giving support to that party. An alternative would be to give each preference a fractional value such that the fractions summed to 1. If a voter expressed two preferences, for example, their first preference could give that candidate's party  $\frac{2}{3}$  of a vote and the second preference  $\frac{1}{3}$ . If a voter expressed three preferences, these preferences could yield, respectively,  $\frac{4}{7}$ ,  $\frac{2}{7}$ , and  $\frac{1}{7}$  of a vote for each candidate's party. The same fractions could then be used in determining final list order.

This would allow voters to express a full set of preferences. But it would be necessary to make assumptions about the relative weight of these preferences in order to count them—assumptions that might or might not express the genuine nature of voters' preferences.

### **STV Systems Allowing a Party Vote**

Two ways of combining STV with the possibility of casting a simple party vote (so-called 'above-the-line voting') are used in elections currently: the standard form used in Australian Commonwealth elections and elections in three Australian states; and an alternative form used since 2003 in New South Wales. We describe these below as Options 3 and 4. We presume that, if either of these systems were proposed for the UK's second chamber, voters would be free to fill in as few or as many preferences as they wished. In either case, the layout of the ballot paper might again be roughly as shown above.<sup>3</sup>

<sup>3</sup> For detailed discussion of STV and its variants, see David M. Farrell, and Ian McAllister, *The Australian Electoral System: Origins, Variations and Consequences* (Sydney: University of New South Wales Press, 2006).

### Option 3

In the most familiar form of STV with a party vote option, voters can either express a vote for one party or rank candidates in order of preference. The instruction on the ballot paper is the same as under Option 2:

You can vote in one of two ways:

- EITHER vote for a party by placing an X in one of the boxes above the thick black line;
- OR indicate your preferences among candidates below the line by placing a '1' next to the candidate you most favour, a '2' next to your second favourite, and so on; you can express as many or as few preferences as you wish.

Votes here are always counted as votes for candidates, not parties. A vote for a party is counted as a vote for the ordering of candidates determined by the party. The usual STV counting rules are applied to these votes in the same way as to votes cast below the line.

In the Australian version of this system, parties are required to indicate ahead of the election their ordering not only of their own candidates, but of all candidates: if all of the party's own candidates are either elected or eliminated before the count has been completed, votes cast for the party will continue to transfer, as the party has indicated, to the other parties' candidates. This requirement fits the logic of the Australian system, under which a vote is valid only if all preferences are filled in. Assuming that, in the UK, voters would be free to express as many or as few preferences as they wished, it would make sense to apply the same logic to above-the-line voting and therefore not require parties to express their ranking of other parties' candidates. It is an interesting question whether parties should be allowed to express such a ranking.

The system as used in Australia has sometimes caused controversy when candidates with few first preferences have been elected because they received preference transfers from others. Few voters are aware of how their party has ranked other parties' candidates, so such outcomes can seem to have little to do with voters' preferences. Concerns such as these prompted the adoption of the alternative system in New South Wales following the 1999 elections. We describe this as Option 4.

### Option 4

In this version, voters can either rank the parties or rank the candidates. If they rank the parties, then their vote counts first for the candidates of their first-preference party (in the order determined by the party), then for those of their second-preference party, and so on. Thus, it is the voters, rather than the parties, who determine transfers from party to party. The parties rank only their own candidates and offer no official view on where votes should transfer thereafter. We reproduce a full sample ballot paper here, though, again, it is only the instruction that needs to change:



**Illustrative Ballot Paper Layout: Option 4**

You can vote in one of two ways:

- EITHER rank the parties in order of preference in the boxes above the thick black line by placing a ‘1’ next to the party you most favour, a ‘2’ next to your second favourite, and so on; you can express as many or as few preferences as you wish;
- OR rank the candidates in order of preference below the line by placing a ‘1’ next to the candidate you most favour, a ‘2’ next to your second favourite, and so on; you can express as many or as few preferences as you wish.

EITHER rank the parties in your preferred order here	→	Purple Party		Magenta Party		Olive Party	
OR rank the candidates in your preferred order here	→	Candidate A		Candidate E		Candidate I	
		Candidate B		Candidate F		Candidate J	
		Candidate C		Candidate G		Candidate K	
		Candidate D		Candidate H		Candidate L	

As noted above, this system was introduced in New South Wales because of concerns that voters’ preferences were being transferred in ways that most voters had no knowledge of. The Joint Standing Committee on Electoral Matters of the NSW legislature reviewed the new arrangements in 2005 and expressed satisfaction with them.<sup>4</sup>

Similar concerns to those that prompted the reform in NSW have been raised in Australia at the Commonwealth level. The Australian Parliament’s Joint Standing Committee on Electoral Matters advocated the adoption of the NSW system for Senate elections in its report on the 2004 elections.<sup>5</sup> The Government rejected this proposal, however, saying it believed that such a change was “likely to result in increased complexity and possible confusion for voters, leading to a potential increase in the level of the informal [i.e., invalid] vote”.<sup>6</sup> The same Joint Standing Committee conducted a further investigation on the specific issue of preferential voting among parties in 2009. This was in response to a Bill submitted by a Senator advocating such a system. The Committee rejected the proposal on the grounds that it would increase complexity and therefore, in all probability, lead to a rise

4 Parliament of New South Wales, Joint Standing Committee on Electoral Matters, Inquiry into the Administration of the 2003 Election and Related Matters, September 2005, paragraph 5.65.  
5 Parliament of Australia, Joint Standing Committee on Electoral Matters, Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, October 2005, pp. 224–9 and 232.  
6 Government response to the report cited in note 4, p. 18.

in the number of invalid votes.<sup>7</sup> It should be noted, however, that the Bill had proposed that voters be required to express a minimum of four preferences among parties if voting above the line. We presume that no such requirement would be proposed for the UK's second chamber.

### General Observations

Before moving to the committee's questions, we should like to make two general observations.

First, while we have tried to make the systems above as simple as possible, all are complex compared to most other electoral systems—including open-list PR systems without the option of cross-party preference voting and pure STV systems—in the sense that they increase the range of choice available to voters. Voter choice is desirable in a democratic election, but it can also become burdensome or confusing. Particularly when it is proposed that second chamber elections should be held concurrently with Commons elections that will use a different system (first past the post), it is important to bear this complexity in mind.

Second, while much discussion has focused on the degree of “independence of spirit” of members of the second chamber, we think, as we said in the oral evidence session on 19th December, that the electoral system will not be the primary determinant of this independence, at least as regards the independence of partisan members from their party. The non-renewable term is the most important factor here. The likelihood of election of non-partisan independents is another matter, and we discuss it below, under Question 1.

### The Committee's Questions

Through its Clerks, the Committee has asked us seven specific questions. In light of the options laid out above, we now address these questions.

Question 1. What would be the difference in outcome between having an STV counting system with the above characteristics [i.e., allowing voters the options of a party vote and cross-party preference voting], or an open list counting system with the above characteristics?

There are some differences between the systems described above in the nature of the preferences that voters can express. In addition, two sorts of effect can be noted:

1. Differences in the interpretation put on voters' preferences. The systems count the preferences expressed by voters in different ways. Most notably, list systems always count a vote for a candidate in the first instance as a vote for the candidate's party, whereas STV systems count a vote for a candidate solely as a vote for that candidate. Under STV, therefore, a voter can vote for one candidate from a party without giving any advantage to any of that party's other candidates, whereas under a list system a vote for a candidate can help secure election for another candidate from the same party.

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7 Parliament of Australia, Joint Standing Committee on Electoral Matters, Advisory Report on the Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008, June 2009, p. 24.

2. Differences in the amenability of the systems to independents. In our oral evidence on 19th December, we suggested that STV is more compatible with the election of independents than are list PR systems. This is because large numbers of votes cast for a popular independent under list PR can be wasted. There is some reason to think that this tendency would be weaker with the forms of list PR discussed here: voters would not need to put all their eggs in one basket by supporting an independent, but could rather split their vote. Nevertheless, such voters would be giving weaker support to the independent than they could (without risking wasting their vote) under STV, and we would therefore still expect independents to perform somewhat better under STV.

By contrast, we do not think there is any reason to expect any significant differences among the systems described here in the degree of independence of partisan representatives from their parties. These systems would all give candidates broadly equal incentives to compete on the basis of their personal reputations. More importantly, as we suggested above, the non-renewable terms in the proposed second chamber would leave parties unable to coerce rebellious members.

***Question 2. Would putting the party voting option below the line, rather than above, have any significant impact?***

We understand this question to relate to the physical appearance of the ballot paper: whether the option to vote for a party should come at the top or the bottom. So far as we are aware, all jurisdictions that currently give voters the choice of a party vote or a candidate vote place the party vote option first (either on the top or on the left). It is reasonable to suppose that reversing this order would increase the number of voters expressing preferences among candidates, but we are not aware of direct evidence on this point.

The Committee might remember that there is no reason to expect rates of “above-the-line” voting to be as high in the UK as in Australia. While fewer than 4 per cent of voters voted below the line at the most recent Australian Senate elections,<sup>8</sup> this low rate can be explained in significant part by the rule in that case that a candidate vote is valid only if all candidates are ranked. In other systems where voters have a choice as to whether to cast a party vote or a candidate vote, there is considerable variation in the proportion of voters taking the second option: around 20 per cent do so in Austria, two thirds in Belgium, and 90 per cent in Brazil.<sup>9</sup>

Question 3. How (particularly with an open list system) would a party voting option work with independents? Should they have an “independents” box (then get placed depending on how many individual votes they received), or would they only get votes if people voted for them directly under the line?

We suggest that an “independents” box would, particularly in a list system, be undesirable. As we noted above, in any system of list PR, a vote for a candidate is in the first instance a vote for that candidate’s party (or, more precisely, for the candidate’s list) as a whole. Thus,

<sup>8</sup> Australian Electoral Commission, [www.aec.gov.au](http://www.aec.gov.au).

<sup>9</sup> Lauri Karvonen, “Preferential Vote in Party List”, in Josep M. Colomer (ed.), *Personal Representation: The Neglected Dimension of Electoral Systems* (Colchester: ECPR Press, 2011), pp. 119–34, at p. 134.

voting for a candidate in an “independents” list could sometimes lead to the election not of that candidate but of another from the list.

There are two alternatives: it might be possible to vote for independents only below the line; or independents might be allowed to register as one-person “lists” appearing above the line. Independents are able to register this way in Australia; in practice, some do so while others do not. Given the bias in the Australian system towards above-the-line voting, those who do not register to appear above the line are severely disadvantaged. In the absence of the requirement to fill in all preferences, however, the difference would be minor: it would amount to a difference only in independent candidates’ visibility on the ballot paper.

Question 4. Assuming that the party’s candidate ordering has some weight, should the list of individual candidates below (or above) the line be ordered by party in their order on the party list?

If the party’s candidate ordering has some weight, this ordering should be transparent to voters. The most sensible way of doing this is to give that ordering on the ballot paper. An alternative would be to publicize the parties’ orderings widely, including in polling stations, and then use alphabetical, randomized, or rotated ordering on the ballot paper. This might permit a purer expression of voters’ preferences among candidates. If the system is designed, however, to allow parties’ rankings to matter, there would appear little reason to emphasize purity of voters’ candidate preferences, and using orderings that differ from the party’s ranking could create confusion.

*Question 5. Should electors voting for parties still order their votes (i.e. vote for more than one party), or just put a single x against their favourite party? Are both possibilities, and if so what difference would it make to the results? Does the answer vary depending on whether the chosen party has fewer candidates than there are seats to be contested?*

As described above, the standard form of STV with above-the-line voting allows voters who choose the above-the-line option to vote for only one party. But the New South Wales version allows voters to rank parties in the manner suggested in the question.

The advantage of the NSW version is that voters can control how their vote transfers from party to party, whereas in the standard system these transfers are controlled by parties in a way that is rarely transparent to voters.<sup>10</sup> Exactly how the systems compare depends, however, on whether parties are allowed and whether they are required to indicate ahead of the election how a vote cast for their list will transfer not only among their own candidates, but also among the candidates of other parties. If such extra-party transfers were barred, the problem identified in Australia would be removed, but rather more votes would be exhausted before the counting process was completed.

The number of candidates that a party runs relative to the number of seats available is one factor (though not the only one) influencing the importance of inter-party transfers. In so far as such transfers matter, it is important that voters understand them before deciding how to vote. That could happen either by ensuring that parties’ transfer declarations are

<sup>10</sup> The Australian Parliament’s Joint Standing Committee on Electoral Matters has noted that “the effect of the Group Voting Ticket system is that only the very few above-the-line electors who bother to inquire will have the faintest idea where their Senate preferences are going” (Parliament of Australia, Joint Standing Committee on Electoral Matters, Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, October 2005, paragraph 9.32); it continued that the system “lacks transparency, and results in electors ceding their preference allocation decisions to the political parties themselves” (paragraph 9.33).

well known or by allowing voters to dictate transfers. As we have suggested, the Australian experience of the standard system (our Option 3) is that, though transfer statements are public, most voters are ignorant of them.

Question 6. Can electors voting for parties also express individual preferences below the line, or is it an either / or situation? What difference would it make?

The four systems that we described above all require voters to choose between a party vote and voting for candidates. In STV systems this is necessarily so: under STV, votes are always counted at the level of candidates: a party vote is simply a vote for candidates in the order specified by that party. We see no way of combining this logic with the possibility that voters could vote both above and below the line.

Under open-list PR, it would be possible to revise Option 1 such as to permit voters to vote both for parties and candidates: voters could be allowed to spread their votes across both above-the-line and below-the-line boxes. This would, however, weaken the simplicity of the above-the-line option.

In principle, party and candidate votes could be decoupled under Option 2 as well: voters' party votes could determine the overall balance of seats across parties and their candidate votes could determine the distribution of each party's seats among its candidates. As we suggested above, however, it would be undesirable to give voters the power to influence the list order of a party they do not vote for, so we recommend against this possibility.

It might be sensible under Options 1–4 to include a provision saying that where a voter does mistakenly cast both party and candidate votes one of these shall be deemed to take precedence.

Question 7. Should constituencies under either STV or Open list systems (with the above characteristics) be no more than six or seven members?

All of the systems we have described give voters a great deal of choice. Just as under pure STV, we therefore recommend that constituencies should elect no more than seven members in any one round in order to prevent the range of options from becoming overwhelming.

## Appendix 7: Supplementary written evidence on Clause 2 from Mr Mark Harper MP

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### CLAUSE 2 OF THE DRAFT HOUSE OF LORDS BILL

#### *Paper from the Minister for Political and Constitutional Reform*

1. This paper explains the Government's thinking in drafting clause 2 of the draft House of Lords Bill, and the alternatives that were considered.
2. The Government has agreed that, in principle, there should be no fundamental change to the relationship between the two chambers and the House of Commons should retain its primacy.
3. The draft Bill deals with membership of the reformed House of Lords and the Government has made clear that it does not propose to change its functions. It will continue to scrutinise legislation, hold the government to account and conduct wider investigations. The Government does not intend to change the powers, rights, privileges or jurisdiction of the House of Lords (with limited exceptions eg new power to expel members).
4. However, a reformed House of Lords with an electoral mandate could be more assertive. The Government does not believe that that is incompatible with maintaining primacy of the House of Commons or that conventions would not be able to develop to deal with a new situation
5. The primacy of the Commons is not simply a matter of convention and of the Parliament Acts of 1911 and 1949. It is not only the conventions governing the relationship between the Houses which are relevant to primacy. Primacy also rests in the fact that the Prime Minister and most of the Government of the day are drawn from the House of Commons. The whole of the House of Commons will be renewed at each election, and that will clearly be the election through which the Government is chosen. Only a proportion of the House of Lords will be elected at each election.
6. This paper discusses whether and how this relationship could be set out in primary legislation and provides the background into the issues the Government took into consideration when producing clause 2 of the draft Bill.
7. There are a number of approaches to preserving the primacy of the House of Commons. The Government's preferred approach is to preserve the current situation of a non-legislative, flexible relationship between the two Houses which can evolve, but to state on the face of the legislation that changes made by the Bill itself are not to affect the current powers. However, we also considered three other options which are detailed below.



### Government's preferred approach: a general clause

8. This approach involves a clause in the draft Bill which sets out that the reformed House of Lords is a House of Parliament; a statement of the primacy of the House of Commons; and a statement that the Bill itself, other than where explicitly stated, is not to affect the privileges, powers, rights and jurisdiction of the House of Lords or the conventions governing the relationship between the two Houses of Parliament.

9. The advantages of this approach are that the Parliament Acts would be preserved but not expressly extended, limited or otherwise affected; the position of the House of Commons as the primary chamber would be given statutory underpinning (in addition to that already afforded under the Parliament Acts) and the conventions would be recognised but not defined. This approach also leaves room for flexibility in the future. Although the clause states that “This Act does not affect the conventions...”, the conventions can by their nature continue to evolve in response to other circumstances, just not as a direct result of the Act's provisions regarding the transition from the present House of Lords to the reformed House.

10. The possible disadvantage of this approach is that although the clause serves to underline the primacy of the House of Commons and the relationship between the Houses at the point of transition, permitting a degree of evolution and flexibility will be at the cost of some precision and may not guard against a gradual shift in the relationship between the Houses so far as it exists in convention. This is of course always against the long-stop of the Parliament Acts, which already provide a legislative expression of Commons supremacy.

### Other options considered

#### Option 1: Set out each of the powers and the relationship between the two Houses in statute.

11. This would be the most detailed form of codification, and would involve setting out in full the relationship between the two Houses, defining the primacy of the House of Commons, assigning powers and functions to each House (because it would be difficult to discuss powers and the limits on them without reference to what each House does), and defining all the aspects of financial privilege and the scope of each of the conventions.

12. The advantages of this would be a degree of certainty and precision, which would be a settled and agreed basis on which the relationship between the two Houses would then have to operate. Statutory codification might also serve to reassure those concerned about the gradual erosion of the primacy of the House of Commons as the reformed House of Lords gained in legitimacy and assertiveness.

13. However, there are disadvantages of this approach. In particular, to define in statute the relationship between the two Houses could be a broader exercise than setting out those elements outlined above, and could extend to the operation of Parliament as a whole. Second, to define each element would be extremely difficult to achieve, because it would require agreement between the Houses and Government as to the existing relationship with a far greater degree of precision than even the report of the Joint Committee on Conventions achieved. This would include, for example, defining in statute each of the

elements of financial privilege; when it could be waived; what constituted a manifesto commitment and what kinds of amendments the House of Lords would be permitted to make before they were “wrecking amendments” for the purposes of the Salisbury-Addison convention; and the exceptional circumstances in which it would be permissible for the House of Lords to reject secondary legislation.

14. This exercise would itself affect the nature of the relationship between the Houses, which is based on convention and flexibility, with use of the legislative long-stop of the Parliament Acts as a last resort. It could also inadvertently affect the existing relationship, for example in the inter-relationship between the Parliament Acts and the Salisbury-Addison convention once the latter was given statutory status.<sup>1</sup>

15. Finally this option would inhibit flexibility in further development of conventions in response to political circumstances—they would cease to be conventions—and would be the option most likely to increase the role of the courts in scrutinising Parliamentary procedure. The courts will generally be reluctant to enter into Parliament’s domain, in accordance with parliamentary privilege. However, the courts were in no doubt that they had jurisdiction to consider the challenge to the Parliament Acts in the Hunting Act case, on the basis that the case concerned a matter of statutory interpretation (s.2 of the 1911 Act) which was a matter for the courts. In approaching a complete statutory codification of the relationship between the Houses, the courts would be likely to continue to respect Parliamentary privilege, so not all aspects would automatically become justiciable, but challenges would lead to tension as to where the boundary between that privilege and questions of statutory interpretation properly lies, and in particular the use to which proceedings in Parliament may be cited in cases concerning questions of interpretation.

**Option 2: As Option 1, but in addition amend the Parliament Acts to include further key elements of privilege, for example the Salisbury-Addison convention and/or aspects of financial privilege**

16. This option would involve a general clause similar to that in clause 2 of the draft Bill, but at the same time codifying in statute key elements of the relationship which were thought to warrant legislative protection. These might perhaps include the Salisbury-Addison convention and some aspects of financial privilege, for example in relation to Bills of Aid and Supply. The advantages of such an approach would be that the most important elements of the existing relationship would be preserved and defined in statute, leaving the other conventions to evolve. It would not therefore require the wholesale approach of Option 1, but could give greater protection to key conventions than clause 2.

17. However, there are a number of problems with this kind of “partial codification” approach. Legally, even a more limited codification would lead to many of the problems outlined above in relation to Option 1, in particular of pinning down the existing scope and of definition. For example, in relation to the Salisbury-Addison convention, it would

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<sup>1</sup> For example, the convention would prevent a “manifesto bill” from being “killed” in the second session in which it was introduced, but there is a question about how this would operate with the requirements of the Parliament Acts. For example, the European Parliamentary Elections Bill was initially rejected by the Lords and had to be reintroduced under the Parliament Acts. However, time was running out to put in place the legislation for the European Parliamentary elections. By agreement with the Opposition, the Bill was voted down at Second Reading in the second session, which enabled it to proceed straight to Royal Assent. A question would arise as to how to preserve this element of flexibility if the convention were codified.

be necessary to set out what “quality” of electoral commitment triggered the convention. Manifesto commitments may be open to different interpretations, and there is a question of whether in fact reference to a “manifesto commitment” is convenient shorthand for any commitment which has been specifically endorsed by the electorate. Similarly, the question of how the convention applied to Lords amendments, and in particular when an amendment was a “wrecking amendment”, could be very difficult to define. There would then be the question of the inter-relationship between the legislative and non-legislative aspects of the convention, for example, whether legislating would end the practice, recognised by the Joint Committee on Conventions, of the Lords giving a second reading to any Government Bill, whether in the manifesto or not. There are additional issues in relation to the practicalities of any such legislation. For example, although it might be possible to legislate that the House of Lords may not vote against a Manifesto Bill on second reading, it would not be possible to legislate to require them to consider such a Bill once they had given it a second reading without rapidly getting into the details of parliamentary procedure. In legislative, as opposed to conventional terms, there is only a small space which is not already occupied by the Parliament Acts. Similar issues would arise as regards codifying financial privilege, in particular, in separating out its constituent parts with sufficient precision.

18. Finally, the Hunting Act challenge suggests how the courts might view their role in relation to an extension of the Parliament Acts, so for example, they might be prepared to consider whether a particular piece of legislation satisfied the definition of a “manifesto bill”, however defined, while not examining the Parliamentary proceedings in relation to that Bill.

### **Option 3: Remain silent on the face of of the Bill in relation to each of the powers and the relationship between the two Houses in statute.**

19. As a matter of law, primary legislation does not need to deal with powers and the relationship between the two Houses. If the Bill was silent on powers and the relationship between the Houses, the current position would not be changed by the Bill.

20. However, including a general clause would provide clarity and provide reassurance that the House of Commons would retain its primacy.

### **Conclusion**

21. The Government came to the conclusion that a general clause was the best way of achieving its intentions. Clause 2 was therefore included in the draft Bill. However, the Joint Committee on the draft House of Lords Bill, as a Joint Committee of both Houses, is in a good position to consider this issue and the Government looks forward to its report.

*Cabinet Office  
8 March 2012*

## Appendix 8: Formal Minutes

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*Extract from the House of Lords Minutes of Proceedings of 7 June 2011*

**Draft House of Lords Reform Bill**—Lord Strathclyde moved that it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on the draft House of Lords Reform Bill presented to both Houses on 17 May (Cm 8077), and that the committee should report on the draft Bill by 29 February 2012.

*Extract from the Votes and Proceedings of the House of Commons of 23 June 2011*

**Draft House of Lords Reform Bill (Joint Committee)**—Motion made, and Question put, That this House concurs with the Lords Message of 7 June, that it is expedient that a Joint Committee of Lords and Commons be appointed to consider the draft House of Lords Reform Bill presented to both Houses on 17 May (Cm 8077).

That a Select Committee of thirteen Members be appointed to join with the Committee appointed by the Lords to consider the draft House of Lords Reform Bill (Cm 8077).

That the Committee should report on the draft Bill by 29 February 2012.

That the Committee shall have power—

- (i) to send for persons, papers and records;
- (ii) to sit notwithstanding any adjournment of the House;
- (iii) to report from time to time;
- (iv) to appoint specialist advisers;
- (v) to adjourn from place to place within the United Kingdom.

That Gavin Barwell, Mr Tom Clarke, Ann Coffey, Bill Esterson, Oliver Heald, Tristram Hunt, Mrs Eleanor Laing, Dr William McCrea, Dr Daniel Poulter, Laura Sandys, John Stevenson, John Thurso and Malcolm Wicks be members of the Committee.—(*Bill Wiggin.*)

The House divided:  
Ayes 140, Noes 7.

*Extract from the House of Lords Minutes of Proceedings of 6 July 2011*

**Draft House of Lords Reform Bill**—The Chairman of Committees moved that the Commons message of 23 June be considered and that a Committee of thirteen Lords be appointed to join with the Committee appointed by the Commons to consider and report on the draft House of Lords Reform Bill presented to both Houses on 17 May (Cm 8077) and that the Committee should report on the draft Bill by 29 February 2012;

That, as proposed by the Committee of Selection, the following members be appointed to the Committee:

B Andrews	B Shephard of Northwold
L Hennessy of Nympsfield	B Symons of Vernham Dean
L Bishop of Leicester	L Trefgarne
L Norton of Louth	L Trimble
L Richard	L Tyler
L Rooker	B Young of Hornsey
B Scott of Needham Market	

That the Committee have power to agree with the Committee appointed by the Commons in the appointment of a Chairman;

That the Committee have power to send for persons, papers and records;

That the Committee have power to appoint specialist advisers;

That the Committee have leave to report from time to time;

That the Committee have power to adjourn from place to place within the United Kingdom;

That the reports of the Committee from time to time shall be printed, regardless of any adjournment of the House; and

That the evidence taken by the Committee shall, if the Committee so wishes, be published.

The motion was agreed to and a message was sent to the Commons.

*Extract from the House of Lords Minutes of Proceedings of 20 December 2011*

**Draft House of Lords Reform Bill**—Lord Strathclyde moved that, notwithstanding the Resolution of this House of 6 July, it be an instruction to the Joint Committee on the Draft House of Lords Reform Bill that it should report on the draft Bill by 27 March 2012. The motion was agreed to.

*Extract from the Votes and Proceedings of the House of Commons of 12 January 2012*

**Draft House of Lords Reform Bill (Joint Committee)**—*Resolved*, That this House concurs with the Lords Message of 20 December and that, notwithstanding the Resolution of this House of 23 June, it be an instruction to the Joint Committee on the Draft House of Lords Reform Bill that it should report on the draft Bill by 27 March 2012.—(*Jeremy Wright.*)

## Monday 11 July 2011

Present:

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

Members' interests: The full lists of Members' interests as recorded in the Commons Register of Members' Financial Interests and the Lords Register of Interests are noted.

Declared interests are appended to the report.

It is moved that Lord Richard do take the Chair.—(*Mr Tom Clarke MP*)

The same is agreed to.

The Orders of Reference are read.

The Joint Committee deliberate.

The Call for Evidence is agreed to.

*Ordered*, That the Joint Committee be adjourned to Monday 12 September at 5.00 p.m.

## Monday 12 September 2011

Present:

Lord Hennessy of Nympsfield	Gavin Barwell MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Mrs Eleanor Laing MP
Baroness Scott of Needham Market	Dr Daniel Poulter MP
Baroness Shephard of Northwold	Laura Sandys MP
Baroness Symons of Vernham Dean	John Stevenson MP
Lord Trefgarne	John Thurso MP
Lord Trimble	Malcolm Wicks MP
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 11 July are read.

The Joint Committee deliberate.

*Ordered*, That the Joint Committee be adjourned to Monday 10 October at 5.00 p.m.



**Monday 10 October 2011**

Present:

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

Lord Richard (*in the Chair*)

The proceedings of 12 September are read.

The following witness is examined:

Mr Mark Harper MP, Minister for Political and Constitutional Reform.

The Joint Committee deliberate.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Jonathan Boot  
 Professor Vernon Bogdanor  
 Roger S Fitzpatrick  
 Christopher Hartigan  
 John F H Smith  
 Michael Keatinge  
 Simon Gazeley  
 Lord Lucas  
 Alice Onwordi  
 Lord Lipsey  
 Craig Whittaker MP  
 James Hand  
 Lord Jenkin of Roding  
 Professors Simon Hix and Iain McLean  
 Ken Batty  
 Lord Wright of Richmond  
 Sir Stuart Bell MP  
 Law Society of Scotland  
 Lord Foulkes of Cumnock  
 Jim Riley  
 Lord Goodhart QC  
 Mark Ryan  
 Professor Sir John Baker QC,  
 Professor Hugh Bochel, Dr Andrew Defty and Jane Kirkpatrick

*Ordered*, That the Joint Committee be adjourned to Monday 17 October at 5.00 p.m.

### Monday 17 October 2011

Present:

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

Lord Richard (*in the Chair*)

The proceedings of 10 October are read.

The Joint Committee deliberate.

The following witness is re-examined:

Mr Mark Harper MP, Minister for Political and Constitutional Reform.

*Ordered*, That the Joint Committee be adjourned to Monday 24 October at 5.00 p.m.

### Monday 24 October 2011

Present:

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

Lord Richard (*in the Chair*)

The proceedings of 17 October are read.

The following witnesses are examined:

Professor Vernon Bogdanor, King's College London;

Rt Hon Peter Riddell, Institute for Government;

Professor Dawn Oliver, Master Treasurer of the Middle Temple.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

British Humanist Association

Liam Finn  
 Dr Colin Tyler  
 Lord Judd  
 Rt Revd Bishop of Worcester  
 R C Dales  
 Programme for Public Participation in Parliament (PPPP)  
 Dr Stephen Watkins  
 Dr Helena McKeown  
 Green Party  
 Dr Alan Renwick  
 Mr Bernard Jenkin MP  
 Fawcett Society  
 Ralph Hindle  
 Counting Women In  
 Pauline Latham OBE MP  
 Andrew George MP  
 Zoroastrian Trust Funds of Europe  
 Penny Mordaunt MP  
 Imran Hayat  
 Nadhim Zahawi MP  
 Democratic Audit  
 Dr Julian Lewis MP  
 Donald Shell  
 All Party Parliamentary Humanist Group  
 Rt Hon Peter Riddell  
 Unlock Democracy

*Ordered*, That the Joint Committee be adjourned to Monday 31 October at 4.30 p.m.

### Monday 31 October 2011

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Mr Tristram Hunt MP
Baroness Scott of Needham Market	Dr William McCrea MP
Baroness Shephard of Northwold	Laura Sandys MP
Baroness Symons of Vernham Dean	John Stevenson MP
Lord Trefgarne	John Thurso MP
Lord Trimble	
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 24 October are read.

The Joint Committee deliberate.

The following witnesses are examined:

Dr Meg Russell, Constitution Unit, University College London;

Dr Alan Renwick, Reading University;

Professor Sir John Baker QC, Cambridge University, and David Howarth, Cambridge University.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Richard Douglas  
Muslim Council of Britain  
Professor Gavin Phillipson  
Electoral Reform Society  
John Wainwright  
Lord Howarth of Newport  
Dr Meg Russell  
Joseph Corina  
Dr Martin Wright  
North Yorkshire for Democracy  
Lord Grocott

*Ordered*, That the Joint Committee be adjourned to Monday 7 November at 4.30 p.m.

### Monday 7 November 2011

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
Lord Norton of Louth	Ann Coffey MP
Lord Rooker	Oliver Heald MP
Baroness Scott of Needham Market	Mr Tristram Hunt MP
Baroness Shephard of Northwold	Mrs Eleanor Laing MP
Baroness Symons of Vernham Dean	Mr Daniel Poulter MP
Lord Trefgarne	Laura Sandys MP
Lord Trimble	John Stevenson MP
Lord Tyler	John Thurso MP

Lord Richard (*in the Chair*)

The proceedings of 31 October are read.

The Joint Committee deliberate.

The following witness is re-examined:

Mark Harper MP, Minister for Political and Constitutional Reform.

The Joint Committee deliberate.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Chief Rabbi, Lord Sacks  
David White  
Damien Welfare and the Campaign for a Democratic Upper House  
The Viscount Younger of Leckie  
Earl of Sandwich  
Lord Rowe-Beedoe  
Lord Bilston on behalf of an ad-hoc Group of Labour Peers  
Lord Cormack on behalf of the Campaign for an Effective Second Chamber  
Lord Grenfell  
Archbishop of Canterbury and Archbishop of York

*Ordered*, That the Joint Committee be adjourned to Monday 14 November at 4.30 p.m.

### Monday 14 November 2011

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
Lord Norton of Louth	Ann Coffey MP
The Lord Bishop of Leicester	Oliver Heald MP
Baroness Scott of Needham Market	Mr Tristram Hunt MP
Baroness Shephard of Northwold	Mrs Eleanor Laing MP
Lord Trefgarne	Dr William McCrea MP
Lord Trimble	Dr Daniel Poulter MP
Lord Tyler	Laura Sandys MP
Baroness Young of Hornsey	John Stevenson MP

Lord Richard (*in the Chair*)

The proceedings of 7 November are read.

The Joint Committee deliberate.

The following witnesses are examined:

Ms Katie Ghose, Electoral Reform Society;

Professor John Curtice, University of Strathclyde, and Professor David Denver, Lancaster University.

*Ordered*, That the Joint Committee be adjourned to Monday 21 November at 4.30 p.m.

### Monday 21 November 2011

Present:

Baroness Andrews	Mr Tom Clarke MP
Lord Hennessy of Nympsfield	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
The Lord Bishop of Leicester	Laura Sandys MP
Baroness Scott of Needham Market	John Stevenson MP
Baroness Shephard of Northwold	John Thurso MP
Lord Rooker	
Lord Trefgarne	
Lord Trimble	
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 14 November are read.

The Joint Committee deliberate.

The following witnesses are examined:

Mr Peter Facey, and Ms Alexandra Runswick, Unlock Democracy;

Lord Jay of Ewelme, and Mr Richard Jarvis, House of Lords Appointments Commission.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Lord Low of Dalston CBE

Correspondence between the Chairman and the Attorney General on the applicability of the Parliament Acts

*Ordered*, That the Joint Committee be adjourned to tomorrow at 9.00 a.m.

### **Tuesday 22 November 2011**

Present:

Lord Hennessy of Nympsfield	Mr Tom Clarke MP
Lord Norton of Louth	Ann Coffey MP
Lord Trefgarne	Oliver Heald MP
Lord Trimble	Mrs Eleanor Laing MP
Lord Tyler	John Stevenson MP

Lord Richard (*in the Chair*)

The proceedings of 21 November are read.

The following witnesses are examined by video-link:

Senator Lee Rhiannon (Senator for New South Wales, Australian Greens), Senator the Hon Michael Ronaldson (Senator for Victoria, Liberal Party), and Senator the Hon Ursula Stephens (Senator for New South Wales, Labor Party)

*Ordered*, That the Joint Committee be adjourned to Monday 28 November at 4.30 p.m.

### **Monday 28 November 2011**

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Mrs Eleanor Laing MP
Baroness Shephard of Northwold	Dr Daniel Poulter MP
Baroness Scott of Needham Market	John Stevenson MP
Baroness Symons of Vernham Dean	
Lord Trefgarne	
Lord Trimble	
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 22 November are read.

The Joint Committee deliberate.

The following witnesses are examined:

Most Rev and Rt Hon Rowan Williams, Archbishop of Canterbury;

Andrew Copson, Chief Executive, British Humanist Association, and Elizabeth Hunter, Director, Theos.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Jesse Norman MP  
 Martin Limon  
 Theos  
 National Secular Society

*Ordered*, That the Joint Committee be adjourned to Monday 5 December at 4.30 p.m.

### Monday 5 December 2011

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Tristram Hunt MP
Baroness Shephard of Northwold	Dr Daniel Poulter MP
Baroness Symons of Vernham Dean	John Stevenson MP
Lord Trefgarne	Malcolm Wicks MP
Lord Trimble	
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 28 November are read.

The following witnesses are examined:

Lord Adonis and Lord Carter of Barnes

The Joint Committee deliberate.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Rt Hon Lord Higgins  
 Michael Winter  
 Christine Windbridge  
 David Le Grice  
 John Wood  
 Lord Luce  
 Electoral Commission  
 Norman Payne  
 David Choi  
 The Venerable Seelawimala, Head Monk, London Buddhist Vihara

*Ordered*, That the Joint Committee be adjourned to Monday 12 December at 4.30 p.m.



### Monday 12 December 2011

Present:

Baroness Andrews	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Tristram Hunt MP
Baroness Scott of Needham Market	John Stevenson MP
Baroness Shephard of Northwold	Mrs Eleanor Laing MP
Baroness Symons of Vernham Dean	
Lord Trefgarne	
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 5 December are read.

The Joint Committee deliberate.

The following witnesses are examined:

Professor Sir Ian Kennedy, Chair, and Dr Andrew McDonald, Chief Executive, Independent Parliamentary Standards Authority;

Sir Christopher Kelly, Chair, and Mr Peter Hawthorne, Assistant Secretary, Committee on Standards in Public Life.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Lord Desai  
Professor Jonathan Tonge  
Hansard Society

*Ordered*, That the Joint Committee be adjourned to Monday 19 December at 4.30 p.m.

### Monday 19 December 2011

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Dr Daniel Poulter MP
Baroness Scott of Needham Market	Laura Sandys MP
Baroness Shephard of Northwold	
Baroness Symons of Vernham Dean	
Lord Trefgarne	
Lord Trimble	
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 12 December are read.

The following witnesses are examined:

Dr Alan Renwick and Professor Iain McLean.

The Joint Committee deliberate.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Lord Sudeley  
 Professor Andrew Le Sueur  
 Lord Peston, Rt Hon Lord Barnett and Baroness Gould of Potternewton  
 Lord Cobbold

*Ordered*, That the Joint Committee be adjourned to Thursday 12 January 2012 at 10.00 a.m.

### Thursday 12 January 2012

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Oliver Heald MP
Lord Norton of Louth	Tristram Hunt MP
Baroness Shephard of Northwold	Laura Sandys MP
Baroness Symons of Vernham Dean	John Stevenson MP
Lord Trefgarne	John Thurso MP
Lord Trimble	Malcolm Wicks MP
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 19 December 2011 are read.

The Joint Committee deliberate.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Mr Harry Lees  
 Philip Bradshaw  
 James H Davies  
 Rt Hon Lord MacLennan of Rogart

*Ordered*, That the Joint Committee be adjourned to Monday 16 January at 4.30 p.m.

### Monday 16 January 2012

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Dr Daniel Poulter MP
Baroness Shephard of Northwold	Laura Sandys MP
Baroness Symons of Vernham Dean	John Stevenson MP
Lord Trefgarne	John Thurso MP
Lord Trimble	
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 12 January are read.

The following witnesses are examined:

Mr Damien Welfare and Mr Daniel Zeichner, Campaign for a Democratic Upper House;

Lord Cormack and Rt Hon Paul Murphy MP, Campaign for an Effective Second Chamber;

Baroness Hayman.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

St Philips Centre  
Unlock Democracy

*Ordered*, That the Joint Committee be adjourned to Thursday 19 January at 11.00 a.m.

### Thursday 19 January 2012

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Baroness Scott of Needham Market	Mrs Eleanor Laing MP
Baroness Shephard of Northwold	Dr Daniel Poulter MP
Baroness Symons of Vernham Dean	Laura Sandys MP
Lord Trefgarne	John Stevenson MP
Lord Trimble	John Thurso MP
Lord Tyler	Malcolm Wicks MP
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 16 January are read.

The Joint Committee deliberate.

*Ordered*, That the Joint Committee be adjourned to Monday 23 January at 4.30 p.m.

**Monday 23 January 2012**

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
Lord Norton of Louth	Ann Coffey MP
Lord Rooker	Tristram Hunt MP
Baroness Scott of Needham Market	Mrs Eleanor Laing MP
Baroness Shephard of Northwold	Dr Daniel Poulter MP
Baroness Symons of Vernham Dean	John Thurso MP
Lord Trefgarne	
Lord Trimble	
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 19 January are read.

The following witnesses are examined:

Mr David Beamish, Clerk of the Parliaments;

Mr Graham Allen MP, Chair, Political and Constitutional Reform Committee;

Mr Robert Rogers, Clerk of the House, and Ms Jacqy Sharpe, Clerk of Legislation, House of Commons.

The Joint Committee deliberate.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Lord Dubs

Professor Robert Hazell and Joshua Payne

*Ordered*, That the Joint Committee be adjourned to Monday 30 January at 4.30 p.m.

**Monday 30 January 2012**

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Mrs Eleanor Laing MP
Baroness Scott of Needham Market	Dr William McCrea MP
Baroness Shephard of Northwold	Laura Sandys MP
Baroness Symons of Vernham Dean	John Stevenson MP
Lord Trimble	John Thurso MP
Lord Tyler	Malcolm Wicks MP
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 23 January are read.

The following witnesses are examined:

Lord Pannick;

Lord Cunningham of Felling;

Lord Grocott and Rt Hon David Blunkett MP.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Dr Alex Reid

*Ordered*, That the Joint Committee be adjourned to Wednesday 1 February at 10.30 a.m.

### Wednesday 1 February 2012

Present:

Lord Hennessy of Nympsfield	Gavin Barwell MP
The Lord Bishop of Leicester	Mr Tom Clarke MP
Lord Rooker	Ann Coffey MP
Baroness Scott of Needham Market	Mrs Eleanor Laing MP
Baroness Shephard of Northwold	Dr Daniel Poulter MP
Baroness Symons of Vernham Dean	John Stevenson MP
Lord Trefgarne	Malcolm Wicks MP
Lord Trimble	
Lord Tyler	

Lord Richard (*in the Chair*)

The proceedings of 30 January are read.

The Joint Committee deliberate.

*Ordered*, That the Joint Committee be adjourned to Monday 6 February at 4.30 p.m.

### Monday 6 February 2012

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Rooker	Oliver Heald MP
Baroness Scott of Needham Market	Tristram Hunt MP
Baroness Shephard of Northwold	Mrs Eleanor Laing MP
Baroness Symons of Vernham Dean	Dr Daniel Poulter MP
Lord Trefgarne	Laura Sandys MP
Lord Trimble	John Stevenson MP
Lord Tyler	Malcolm Wicks MP
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 1 February are read.

The Joint Committee deliberate.

*Ordered*, That the Joint Committee be adjourned to Monday 27 February at 4.30 p.m.

**Monday 27 February 2012**

Present:

Baroness Andrews	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Tristram Hunt MP
Baroness Scott of Needham Market	Dr William McCrea MP
Baroness Shephard of Northwold	Dr Daniel Poulter MP
Baroness Symons of Vernham Dean	Laura Sandys MP
Lord Trefgarne	John Stevenson MP
Lord Trimble	Malcolm Wicks MP
Lord Tyler	

Lord Richard (*in the Chair*)

The proceedings of 6 February are read.

The following witnesses are examined:

Rt Hon Nick Clegg MP, Deputy Prime Minister, and Mr Mark Harper MP, Minister for Political and Constitutional Reform.

The Joint Committee deliberate.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

Lord Goldsmith QC  
 Lord Pannick  
 Federation of Muslim Organisations  
 Conor Burns MP  
 Matthew Allen  
 National Assembly for Wales  
 Northern Ireland Assembly  
 Thomas Docherty MP  
 Simona Knox  
 Rt Hon Mr Frank Field MP and Lord Armstrong of Ilminster  
 Professor Austin  
 Gavin Oldham

*Ordered*, That the Joint Committee be adjourned to Monday 5 March at 4.30 p.m.

**Monday 5 March 2012**

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Tristram Hunt MP
Baroness Scott of Needham Market	Mrs Eleanor Laing MP
Baroness Shephard of Northwold	Dr Daniel Poulter MP
Baroness Symons of Vernham Dean	Laura Sandys MP
Lord Trefgarne	John Stevenson MP
Lord Trimble	John Thurso MP

Lord Tyler  
Baroness Young of Hornsey  
Malcolm Wicks MP  
Lord Richard (*in the Chair*)

The proceedings of 27 February are read.

A draft Report is presented by the Chairman.

The Joint Committee deliberate.

*Ordered*, that the following written evidence received by the Committee be published on the Committee's website:

James Moore

*Ordered*, That the Joint Committee be adjourned to Wednesday 7 March at 10.00 a.m.

### Wednesday 7 March 2012

Present:

Lord Hennessy of Nympsfield	Gavin Barwell MP
The Lord Bishop of Leicester	Mr Tom Clarke MP
Lord Norton of Louth	Ann Coffey MP
Lord Rooker	Oliver Heald MP
Baroness Scott of Needham Market	Mrs Eleanor Laing MP
Baroness Shephard of Northwold	John Thurso MP
Baroness Symons of Vernham Dean	
Lord Trefgarne	
Lord Trimble	
Lord Tyler	

Lord Richard (*in the Chair*)

The proceedings of 5 March are read.

The Joint Committee deliberate.

*Ordered*, That the Joint Committee be adjourned to Monday 12 March at 4.30 p.m.

### Monday 12 March 2012

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Tristram Hunt MP
Baroness Scott of Needham Market	Mrs Eleanor Laing MP
Baroness Symons of Vernham Dean	Laura Sandys MP
Lord Trefgarne	John Stevenson MP
Lord Trimble	
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 7 March are read.



The Joint Committee deliberate.

*Ordered*, That the Joint Committee be adjourned to Wednesday 14 March at 9.30 a.m.

### Wednesday 14 March 2012

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Mrs Eleanor Laing MP
Baroness Scott of Needham Market	Dr William McCrea MP
Baroness Symons of Vernham Dean	Laura Sandys MP
Lord Trefgarne	John Stevenson MP
Lord Trimble	John Thurso MP

Lord Richard (*in the Chair*)

The proceedings of 12 March are read.

The Joint Committee deliberate.

*Ordered*, That the Joint Committee be adjourned to Monday 19 March at 4.30 p.m.

### Monday 19 March 2012

Present:

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

Lord Richard (*in the Chair*)

The proceedings of 14 March are read.

A revised draft Report is presented by the Chairman.

The Joint Committee deliberate.

*Ordered*, That the Chairman's draft Report be considered.

Paragraphs 1 to 4 are agreed to.

Paragraph 5 is agreed to, with amendments.

Paragraphs 6 to 12 are agreed to.

Paragraphs 13 to 21 (now paragraphs 14 to 22) are postponed.

Paragraph 22 (now paragraph 23) is amended.

It is moved by Gavin Barwell in paragraph 22 (now paragraph 23) to leave out “The Committee on a majority either agrees that the reformed second chamber of legislature should be elected [or] on a majority does not agree that the reformed second chamber of legislature has to be elected” and insert “agrees that the reformed second chamber of legislature should have an electoral mandate”.

The Committee divides.

#### Content, 13

Gavin Barwell MP  
Mr Tom Clarke MP  
Ann Coffey MP  
Oliver Heald MP  
Tristram Hunt MP  
Dr Daniel Poulter MP  
Lord Richard  
Laura Sandys MP  
Baroness Scott of Needham Market  
John Stevenson MP  
John Thurso MP  
Lord Tyler  
Baroness Young of Hornsey

#### Not content, 9

Baroness Andrews  
Lord Hennessy of Nympsfield  
Mrs Eleanor Laing MP  
The Lord Bishop of Leicester  
Lord Norton of Louth  
Baroness Shephard of Northwold  
Baroness Symons of Vernham Dean  
Lord Trefgarne  
Lord Trimble

The amendment is agreed to accordingly.

Further consideration of paragraph 22 (now paragraph 23) is postponed.

Postponed paragraphs 13 to 15 (now paragraphs 14 to 16) are agreed to.

Postponed paragraphs 16 and 17 (now paragraphs 17 and 18) are agreed to, with amendments.

Postponed paragraph 18 (now paragraph 19) is agreed to.

Postponed paragraph 19 (now paragraph 20) is agreed to, with amendments.

Postponed paragraph 20 (now paragraph 21) is agreed to.

Postponed paragraph 21 (now paragraph 22) is agreed to, with amendments.

Postponed paragraph 22 (now paragraph 23) is agreed to, with amendments.

Paragraphs 23 and 24 (now paragraphs 24 and 25) are agreed to.

Paragraph 25 (now paragraph 26) is agreed to, with amendments.

Paragraph 26 (now paragraph 27) is agreed to.

Paragraphs 27 and 28 (now paragraphs 28 and 29) are agreed to, with amendments.

Paragraph 29 (now paragraph 30) is agreed to.

Paragraphs 30 to 32 (now paragraphs 31 to 33) are agreed to.

Paragraph 33 (now paragraph 34) is agreed to, with amendments.

It is moved by Lord Rooker in paragraph 34 to leave out “would enhance” and insert “would not enhance”.

The Committee divides.

Content, 12	Not content, 11
Baroness Andrews	Gavin Barwell MP
Mr Tom Clarke MP	Ann Coffey MP
Oliver Heald MP	Dr Daniel Poulter MP
Lord Hennessy of Nympsfield	Lord Richard
Tristram Hunt MP	Laura Sandys MP
Mrs Eleanor Laing MP	Baroness Scott of Needham Market
The Lord Bishop of Leicester	John Stevenson MP
Lord Norton of Louth	John Thurso MP
Lord Rooker	Lord Trefgarne
Baroness Shephard of Northwold	Lord Tyler
Baroness Symons of Vernham Dean	Baroness Young of Hornsey
Lord Trimble	

The amendment is agreed to accordingly.

Paragraph 34 is divided (now paragraphs 35 and 36) and agreed to, with further amendments.

Paragraphs 35 to 62 (now paragraphs 37 to 65) are postponed.

It is moved by Baroness Andrews in paragraph 63 (now paragraph 67) to leave out “A majority, while acknowledging that the balance of power would shift, consider that the remaining pillars on which Commons primacy rests would suffice to ensure its continuation”.

The Committee divides.

Content, 10	Not content, 12
Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
Mrs Eleanor Laing MP	Ann Coffey MP
The Lord Bishop of Leicester	Dr Daniel Poulter MP
Lord Norton of Louth	Lord Richard
Lord Rooker	Laura Sandys MP
Baroness Shephard of Northwold	Baroness Scott of Needham Market
Baroness Symons of Vernham Dean	John Stevenson MP
Lord Trefgarne	John Thurso MP
Lord Trimble	Lord Tyler
	Malcolm Wicks MP
	Baroness Young of Hornsey

The amendment is disagreed to accordingly.

It is moved by Lord Norton of Louth to leave out paragraph 63 (now paragraph 67) and insert a new paragraph —

“We received no clear evidence and reached no conclusion as to the limits of primacy. The Commons will continue to be the chamber through which the Government is elected and enjoy privilege in respect of finance. (We consider later the matter of the Parliament Acts.) Beyond that, it is difficult to reach conclusions as to the extent to which the Commons will be able to assert itself over an elected or largely elected second chamber. Even if the Parliament Acts remain in force, they are blunt weapons for determining outcomes and the regular use of their provisions would have the potential to create tension within our constitutional arrangements. The Draft Bill provides for no new arrangements for resolving disputes between the two chambers. We have not addressed how such disputes should be resolved. We consider that this will need to be addressed by Government before a Bill is introduced.”

The Committee divides.

Content, 11

Baroness Andrews  
 Oliver Heald MP  
 Lord Hennessy of Nympsfield  
 Mrs Eleanor Laing MP  
 The Lord Bishop of Leicester  
 Lord Norton of Louth  
 Lord Rooker  
 Baroness Shephard of Northwold  
 Baroness Symons of Vernham Dean  
 Lord Trefgarne  
 Lord Trimble

Not content, 12

Gavin Barwell MP  
 Mr Tom Clarke MP  
 Ann Coffey MP  
 Dr Daniel Poulter MP  
 Lord Richard  
 Laura Sandys MP  
 Baroness Scott of Needham Market  
 John Stevenson MP  
 John Thurso MP  
 Lord Tyler  
 Malcolm Wicks MP  
 Baroness Young of Hornsey

The amendment is disagreed to accordingly.

Paragraph 63 (now paragraph 67) is agreed to.

Postponed paragraphs 35 to 38 (now paragraphs 37 to 40) are agreed to.

Postponed paragraphs 39 to 41 (now paragraphs 41 to 43) are agreed to, with amendments.

Postponed paragraph 42 (now paragraph 44) is agreed to.

It is moved by Lord Rooker in postponed paragraph 43 (now paragraph 45) at the end to insert “This lack of transparency has hampered Parliamentary scrutiny of the draft Bill”.

The Committee divides.

Content, 18

Baroness Andrews  
Gavin Barwell MP  
Mr Ton Clarke MP  
Ann Coffey MP  
Oliver Heald MP  
Lord Hennessy of Nympsfield  
Tristram Hunt MP  
Mrs Eleanor Laing MP  
The Lord Bishop of Leicester  
Lord Norton of Louth  
Lord Richard  
Lord Rooker  
Laura Sandys  
Baroness Shephard of Northwold  
Baroness Symons of Vernham Dean  
John Thurso MP  
Lord Trimble  
Malcolm Wicks MP

Not content, 5

Dr Daniel Poulter MP  
Baroness Scott of Needham Market  
John Stevenson MP  
Lord Tyler  
Baroness Young of Hornsey

The amendment is agreed to accordingly.

Postponed paragraph 43 (now paragraph 45) is agreed to, with amendments.

Postponed paragraphs 44 to 47 (now paragraphs 46 to 49) are agreed to.

Postponed paragraph 48 (now paragraph 50) is agreed to, with amendments.

Postponed paragraphs 49 to 53 (now paragraphs 51 to 55) are agreed to.

Postponed paragraph 54 (now paragraph 56) is agreed to, with amendments.

Postponed paragraphs 55 and 56 (now paragraphs 57 and 58) are agreed to.

A new paragraph (now paragraph 59) is inserted.

Postponed paragraph 57 (now paragraph 60) is agreed to, with amendments.

Postponed paragraph 58 (now paragraph 61) is agreed to.

Postponed paragraphs 59 and 60 (now paragraphs 62 and 63) are agreed to, with amendments.

Postponed paragraph 61 (now paragraph 64) is agreed to.

A new paragraph (now paragraph 65) is inserted.

Postponed paragraph 62 (now paragraph 66) is agreed to, with amendments.

Paragraph 64 (now paragraph 68) is agreed to, with amendments.

Paragraphs 65 to 68 (now paragraphs 69 to 72) are agreed to.

A new paragraph (now paragraph 73) is inserted.

Paragraph 69 (now paragraph 74) is agreed to, with amendments.

Paragraphs 70 to 88 (now paragraphs 75 to 93) are postponed.

Paragraph 89 (now paragraph 94) is agreed to, with amendments.

Postponed paragraph 86 (now paragraph 91) is agreed to.

Postponed paragraphs 87 and 88 (now paragraphs 92 and 93) are agreed to, with amendments.

Postponed paragraphs 70 to 85 (now paragraphs 75 to 90) are agreed to.

*Ordered*, That the Joint Committee be adjourned to Wednesday 21 March at 9.30 a.m.

### Wednesday 21 March 2012

[morning]

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Baroness Scott of Needham Market	Tristram Hunt MP
Baroness Shephard of Northwold	Mrs Eleanor Laing MP
Baroness Symons of Vernham Dean	Laura Sandys MP
Lord Trefgarne	John Stevenson MP
Lord Trimble	John Thurso MP
Lord Tyler	Malcolm Wicks MP
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 19 March are read.

The Joint Committee deliberate.

*Ordered*, That the Chairman's draft Report be further considered.

Paragraphs 90 to 100 (now paragraphs 95 to 105) are postponed.

Paragraph 101 (now paragraph 106) is agreed to, with amendments.

It is moved by the Chairman that paragraph 102 (now paragraph 107) be agreed to.

The Committee divides.

Content, 16	Not content, 6
Gavin Barwell MP	Baroness Andrews
Ann Coffey MP	Mr Tom Clarke MP
Oliver Heald MP	Mrs Eleanor Laing MP
Lord Hennessy of Nympsfield	Lord Norton of Louth
Tristram Hunt MP	Baroness Symons of Vernham Dean
The Lord Bishop of Leicester	Lord Trimble
Dr Daniel Poulter MP	
Lord Richard	
Laura Sandys MP	
Baroness Scott of Needham Market	
John Stevenson MP	
John Thurso MP	
Lord Trefgarne	
Lord Tyler	
Malcolm Wicks MP	
Baroness Young of Hornsey	

The paragraph is agreed to accordingly.

Paragraph 103 is disagreed to.

Postponed paragraphs 90 to 100 (now paragraphs 95 to 105) are agreed to.

Paragraphs 104 to 109 (now paragraphs 108 to 113) are postponed.

Paragraph 110 (now paragraph 114) is agreed to, with amendments.

Postponed paragraphs 104 to 109 (now paragraphs 108 to 113) are agreed to.

Paragraphs 111 to 118 (now paragraphs 115 to 122) are postponed.

A new paragraph (now paragraph 123) is inserted.

Paragraph 119 (now paragraph 124) is agreed to, with amendments.

Postponed paragraphs 111 to 115 (now paragraphs 115 to 119) are agreed to.

Postponed paragraph 116 (now paragraph 120) is agreed to, with amendments.

Postponed paragraphs 117 and 118 (now paragraphs 121 and 122) are agreed to.

Paragraph 120 (now paragraph 125) is agreed to, with amendments.

Paragraphs 121 to 128 (now paragraphs 126 to 133) are agreed to.

Paragraph 129 (now paragraph 134) is agreed to, with amendments.

Paragraphs 130 to 137 (now paragraphs 135 to 142) are agreed to.

Paragraph 138 (now paragraph 143) is agreed to, with amendments.

Paragraphs 139 and 140 (now paragraphs 144 and 145) are agreed to.



Paragraph 141 (now paragraph 146) is agreed to, with amendments.

Paragraphs 142 to 147 (now paragraphs 147 to 152) are agreed to.

Paragraphs 148 and 149 (now paragraphs 153 and 154) are agreed to, with amendments.

Paragraphs 150 and 151 (now paragraphs 155 and 156) are agreed to

Paragraph 152 (now paragraph 157) is agreed to, with amendments.

Paragraph 153 (now paragraph 158) is agreed to.

Paragraph 154 (now paragraph 159) is agreed to, with amendments.

Paragraphs 155 to 158 (now paragraphs 160 to 163) are agreed to.

Paragraphs 159 and 160 (now paragraphs 164 and 165) are agreed to, with amendments.

Paragraph 161 (now paragraph 166) is agreed to.

It is moved by the Chairman in paragraph 162 (now paragraph 167) to leave out “disagree with the Government’s proposal and recommend instead the possibility of re-election for future term be available”.

The Committee divides.

Content, 12

Not content, 10

Gavin Barwell MP  
Ann Coffey MP  
Oliver Heald MP  
Dr Daniel Poulter MP  
Lord Richard  
Laura Sandys MP  
Baroness Scott of Needham Market  
John Stevenson MP  
John Thurso MP  
Lord Tyler  
Malcolm Wicks MP  
Baroness Young of Hornsey

Baroness Andrews  
Mr Tom Clarke MP  
Lord Hennessy of Nympsfield  
Mrs Eleanor Laing MP  
The Lord Bishop of Leicester  
Lord Norton of Louth  
Baroness Shephard of Northwold  
Baroness Symons of Vernham Dean  
Lord Trefgarne  
Lord Trimble

The amendment is agreed to accordingly.

Paragraph 162 (now paragraph 167), as amended, is agreed to.

Paragraphs 163 to 165 (now paragraphs 168 to 170) are agreed to.

Paragraph 166 (now paragraph 171) is agreed to, with amendments.

Paragraph 167 (now paragraph 172) is agreed to.

It is moved by the Chairman to replace paragraph 168 with “A majority of the Committee considers on balance that a 15-year term is to be preferred”.

The Committee divides.

Content, 20	Not content, 2
Baroness Andrews	Lord Trefgarne
Gavin Barwell MP	Lord Trimble
Mr Tom Clarke MP	
Ann Coffey MP	
Oliver Heald MP	
Lord Hennessy of Nympsfield	
Mrs Eleanor Laing MP	
The Lord Bishop of Leicester	
Lord Norton of Louth	
Dr Daniel Poulter MP	
Lord Richard	
Laura Sandys MP	
Baroness Scott of Needham Market	
Baroness Shephard of Northwold	
John Stevenson MP	
Baroness Symons of Vernham Dean	
John Thurso MP	
Lord Tyler	
Malcolm Wicks MP	
Baroness Young of Hornsey	

Paragraph 168 is disagreed to and the new paragraph (now paragraph 173) is inserted accordingly.

Paragraphs 169 to 175 (now paragraphs 174 to 180) are agreed to.

Paragraph 176 (now paragraph 181) is agreed to, with amendments.

Paragraphs 177 to 184 (now paragraphs 182 to 189) are agreed to.

Paragraph 185 (now paragraph 190) is agreed to, with amendments.

Paragraphs 186 to 191 (now paragraphs 191 to 196) are agreed to.

Paragraphs 192 and 193 (now paragraphs 197 and 198) are agreed to, with amendments.

Paragraphs 194 to 200 (now paragraphs 199 to 205) are agreed to.

Paragraph 201 (now paragraph 206) is agreed to, with amendments.

Paragraph 202 is disagreed to.

A new paragraph (now paragraph 207) is inserted.

*Ordered*, That the Joint Committee be adjourned to this day at 5.00 p.m.

### Wednesday 21 March 2012

[afternoon]

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Lord Rooker	Mrs Eleanor Laing MP
Baroness Scott of Needham Market	Laura Sandys MP
Baroness Shephard of Northwold	John Stevenson MP
Baroness Symons of Vernham Dean	John Thurso MP
Lord Trefgarne	Malcolm Wicks MP
Lord Trimble	
Lord Tyler	
Baroness Young of Hornsey	

Lord Richard (*in the Chair*)

The proceedings of 21 March (morning) are read.

*Ordered*, That the Chairman's draft Report be further considered.

Paragraph 203 (now paragraph 208) is agreed to, with amendments.

Paragraphs 204 to 216 (now paragraphs 209 to 221) are agreed to.

It is moved by Baroness Symons of Vernham Dean in paragraph 217 (now paragraph 222) to leave out "The Committee believes" and insert "Some members of the Committee believe".

The Committee divides.

Content, 11	Not content, 11
Baroness Andrews	Gavin Barwell MP
Mr Tom Clarke MP	Ann Coffey MP
Lord Hennessy of Nympsfield	Dr Daniel Poulter MP
Mrs Eleanor Laing MP	Lord Richard
The Lord Bishop of Leicester	Laura Sandys MP
Lord Norton of Louth	Baroness Scott of Needham Market
Lord Rooker	John Stevenson MP
Baroness Shephard of Northwold	John Thurso MP
Baroness Symons of Vernham Dean	Lord Tyler
Lord Trefgarne	Malcolm Wicks MP
Lord Trimble	Baroness Young of Hornsey

The numbers are equal, so the amendment is disagreed to in accordance with Lords Standing Order 56.

Paragraph 217 (now paragraph 222) is agreed to, with amendments.

It is moved by Baroness Symons of Vernham Dean in paragraph 218 (now paragraph 223) to leave out "Accordingly, we recommend that IPSA should make no provision for members of the reformed House to deal with personal casework, as opposed to policy work."

The Committee divides.

Content, 8

Baroness Andrews  
Mr Tom Clarke MP  
Lord Hennessy of Nympsfield  
The Lord Bishop of Leicester  
Baroness Shephard of Northwold  
Baroness Symons of Vernham Dean  
Lord Trefgarne  
Lord Trimble

Not content, 13

Gavin Barwell MP  
Ann Coffey MP  
Oliver Heald MP  
Mrs Eleanor Laing MP  
Dr Daniel Poulter MP  
Lord Richard  
Laura Sandys MP  
Baroness Scott of Needham Market  
John Stevenson MP  
John Thurso MP  
Lord Tyler  
Malcolm Wicks MP  
Baroness Young of Hornsey

The amendment is disagreed to accordingly.

Paragraph 218 (now paragraph 223) is agreed to, with amendments.

Paragraphs 219 to 237 (now paragraphs 224 to 242) are agreed to.

Paragraph 238 (now paragraph 243) is agreed to, with amendments.

Paragraphs 239 to 243 (now paragraphs 244 to 248) are agreed to.

Paragraph 244 (now paragraph 249) is agreed to, with amendments.

Paragraphs 245 to 249 (now paragraphs 250 to 254) are agreed to.

Paragraph 250 (now paragraph 255) is agreed to, with amendments.

Paragraphs 251 to 258 (now paragraphs 256 to 263) are agreed to.

Paragraph 259 (now paragraph 264) is postponed.

Paragraphs 260 and 261 (now paragraphs 265 and 266) are agreed to.

It is moved by John Stevenson MP in paragraph 262 (now paragraph 267) at the end to add “We believe that these members should have the right to sit, but not to vote, in a reformed House”.

The Committee divides.

Content, 11

Gavin Barwell MP  
Ann Coffey MP  
Mr Tom Clarke MP  
Dr Daniel Poulter MP  
Lord Rooker  
Laura Sandys MP  
Baroness Scott of Needham Market  
John Stevenson MP  
Lord Trimble  
Lord Tyler  
Malcolm Wicks MP

Not content, 10

Baroness Andrews  
Oliver Heald MP  
Lord Hennessy of Nympsfield  
Mrs Eleanor Laing MP  
The Lord Bishop of Leicester  
Lord Richard  
Baroness Shephard of Northwold  
Baroness Symons of Vernham Dean  
John Thurso  
Lord Trefgarne

The amendment is agreed to accordingly.

Paragraph 262 (now paragraph 267), as amended, is agreed to.

Postponed paragraph 259 (now paragraph 264) is agreed to, with amendments.

Paragraph 263 (now paragraph 268) is agreed to, with amendments.

Paragraphs 264 and 265 (now paragraphs 269 and 270) are agreed to.

*Ordered*, That the Joint Committee be adjourned to Monday 26 March at 4.30 p.m.

### Monday 26 March 2012

Present:

Baroness Andrews	Gavin Barwell MP
Lord Hennessy of Nympsfield	Mr Tom Clarke MP
The Lord Bishop of Leicester	Ann Coffey MP
Lord Norton of Louth	Oliver Heald MP
Baroness Scott of Needham Market	Tristram Hunt MP
Baroness Shephard of Northwold	Mrs Eleanor Laing MP
Baroness Symons of Vernham Dean	Laura Sandys MP
Lord Trefgarne	John Stevenson MP
Lord Tyler	John Thurso MP
Baroness Young of Hornsey	Malcolm Wicks MP

Lord Richard (*in the Chair*)

The proceedings of 21 March (afternoon) are read.

The Joint Committee deliberate.

*Ordered*, That the Chairman's draft Report be further considered.

Paragraphs 266 to 279 (now paragraphs 271 to 284) are agreed to.

Paragraph 280 (now paragraph 285) is agreed to, with amendments.

Paragraphs 281 to 283 (now paragraphs 286 to 288) are agreed to.

It is moved by the Chairman, in paragraph 284 (now paragraph 289), to leave out “bishops should no longer have *ex officio* seats in the reformed House of Lords.”

The Committee divides.

Content, 13	Not content, 7
Baroness Andrews	Ann Coffey MP
Gavin Barwell MP	Mr Tom Clarke MP
Oliver Heald MP	Dr Daniel Poulter MP
Mrs Eleanor Laing MP	John Stevenson MP
Lord Hennessy of Nympsfield	Lord Tyler
Tristram Hunt MP	Malcolm Wicks MP
The Lord Bishop of Leicester	Baroness Young of Hornsey
Lord Norton of Louth	
Baroness Symons of Vernham Dean	
Lord Richard	
Laura Sandys MP	
Baroness Scott of Needham Market	
Lord Trefgarne	

The amendment is agreed to accordingly.

Paragraph 284 (now paragraph 289) is agreed to, with amendments.

It is moved by Baroness Andrews, in paragraph 285 (now paragraph 290), to leave out “that the number of reserved seats ought to be reduced to seven”.

The Committee divides.

Content, 13	Not content, 5
Baroness Andrews	Ann Coffey MP
Gavin Barwell MP	Dr Daniel Poulter MP
Tom Clarke MP	Lord Richard
Oliver Heald MP	Lord Tyler
Lord Hennessy of Nympsfield	Baroness Young of Hornsey
Tristram Hunt MP	
Mrs Eleanor Laing MP	
The Lord Bishop of Leicester	
Lord Norton of Louth	
Baroness Symons of Vernham Dean	
Laura Sandys MP	
Baroness Scott of Needham Market	
Lord Trefgarne	

The amendment is agreed to accordingly.

Paragraph 285 (now paragraph 290) is agreed to, with amendments.

Paragraph 286 (now paragraph 291) is agreed to, with amendments..

Paragraphs 287 to 307 (now paragraphs 292 to 312) are agreed to.

Paragraph 308 (now paragraph 313) is agreed to, with amendments.

Paragraph 309 (now paragraph 314) is agreed to.

Paragraph 310 (now paragraph 315) is agreed to, with amendments.

Paragraph 311 (now paragraph 316) is agreed to.

Paragraphs 312 and 313 (now paragraphs 317 and 318) is agreed to, with amendments.

Paragraph 314 (now paragraph 319) is agreed to.

Paragraph 315 is disagreed to.

Paragraphs 316 to 319 (now paragraphs 320 to 323) are agreed to.

Paragraph 320 (now paragraph 324) is agreed to, with amendments.

Paragraphs 321 and 322 (now paragraphs 325 and 326) are agreed to.

Paragraphs 323 and 324 (now paragraphs 327 and 328) are agreed to, with amendments.

Paragraphs 325 and 326 (now paragraphs 329 and 330) are agreed to.

Paragraph 327 is disagreed to.

A new paragraph (now paragraph 331) is inserted.

Paragraphs 328 to 331 (now paragraphs 332 to 335) are agreed to.

Paragraph 332 (now paragraph 336) is agreed to, with amendments.

Paragraphs 333 to 353 (now paragraphs 337 to 357) are agreed to.

It is moved by Lord Trefgarne, after paragraph 353, to insert the following paragraph:

“Consideration will also need to be given to the undertaking given to hereditary peers in 1999, namely that their excepted colleagues would remain until “House of Lords reform is complete”. They may say that this means the end of the transitional period.”

The motion and paragraph are, by leave, withdrawn.

A new paragraph (now paragraph 358) is inserted.

Paragraphs 354 and 355 (now paragraphs 359 and 360) are agreed to, with amendments.

Paragraphs 356 to 361 (now paragraphs 361 to 366) are agreed to.

It is moved by Mrs Eleanor Laing MP, in paragraph 362 (now paragraph 367), to leave out “We leave the evidence of Lord Pannick and Lord Goldsmith to speak for itself”.



The Committee divides.

Content, 9

Baroness Andrews  
 Oliver Heald MP  
 Lord Hennessy of Nympsfield  
 Mrs Eleanor Laing MP  
 The Lord Bishop of Leicester  
 Lord Norton of Louth  
 Baroness Shephard of Northwold  
 Baroness Symons of Vernham Dean  
 Lord Trefgarne

Not content, 12

Gavin Barwell MP  
 Mr Tom Clarke MP  
 Ann Coffey MP  
 Dr Daniel Poulter MP  
 Lord Richard  
 Laura Sandys MP  
 Baroness Scott of Needham Market  
 John Thurso  
 Lord Tyler  
 Malcolm Wicks MP  
 Baroness Young of Hornsey

The amendment is disagreed to accordingly.

Paragraph 362 (now paragraph 367) is agreed to.

Paragraph 363 (now paragraph 368) is agreed to, with amendments.

Three new paragraphs (now paragraphs 369 to 371) are inserted.

Paragraphs 364 to 369 (now paragraphs 372 to 377) are agreed to.

Paragraph 370 (now paragraph 378) is agreed to, with amendments.

Paragraphs 371 to 375 (now paragraphs 379 to 383) are agreed to.

Paragraph 376 (now paragraph 384) postponed.

It is moved by Baroness Andrews, at the end, to add a paragraph as follows: “The Committee recommends that, in view of the significance of the constitutional change brought forward by an elected House of Lords, the Government should submit the decision to a referendum.”

The Committee divides.

Content, 13

Baroness Andrews  
 Mr Tom Clarke MP  
 Ann Coffey MP  
 Oliver Heald MP  
 Lord Hennessy of Nympsfield  
 Tristram Hunt MP  
 Mrs Eleanor Laing MP  
 The Lord Bishop of Leicester  
 Lord Norton of Louth  
 Lord Richard  
 Baroness Shephard of Northwold  
 Baroness Symons of Vernham Dean  
 Lord Trefgarne

Not content, 8

Gavin Barwell MP  
 Dr Daniel Poulter MP  
 Laura Sandys MP  
 Baroness Scott of Needham Market  
 John Thurso  
 Lord Tyler  
 Malcolm Wicks MP  
 Baroness Young of Hornsey

The paragraph (now paragraph 385) is added accordingly.

Postponed paragraph 376 (now paragraph 384) is agreed to, with amendments.

A paragraph (now paragraph 13) is inserted.

It is ordered that the Report, as amended, be the Report of the Joint Committee.

It is ordered that the letter of 8 March 2012 from the Minister for Political and Constitutional Reform and the paper on electoral systems by Dr Alan Renwick and Professor Iain McLean be appended to the Report.

It is ordered that the Report be made by the Chairman to the House of Lords and by Mr Tom Clarke to the House of Commons.

*Ordered,* That the Joint Committee be adjourned.