JOINT COMMITTEE ON THE DRAFT
HOUSE OF LORDS REFORM BILL

Below is written evidence received and accepted by the Committee as evidence for its ongoing inquiry into the Draft Lords Reform Bill

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Written evidence from Jonathan Boot (EV 01)

The White Paper is flawed in many respects it is not reforming the Lords it is abolishing it to keep the Deputy Prime Minister happy. The Government should drop the White Paper and take up Lord Steel's necessary and sensible Bill. The House of Lords works very well at present, in fact better than the House of Commons. Therefore the composition of the Lords should stay as an all appointed house and have no element of election in it, this also means the removal of the Hereditary Peers from the house. If only this Government like previous ones would realise "if it ain't broke don't fix it". A strong democracy can work well with a mixed element of elections and APPOINTMENS!!! If the Bill goes ahead and the Lords becomes a senate (an awful word), it would be more expensive to lose its experienced and professional members, become more partisan, cost more and deliver a much worse service. In addition the Government is taking the parliamentary conventions and throwing them in the bin. Think again withdraw the White Paper and Joint Committee and go ahead with the Steel Bill.

22 July 2011

Written evidence from Vernon Bogdanor (EV 02)

Vernon Bogdanor, Research Professor, Institute of Contemporary History, King's College, London.

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

- The first was that `it is expedient that provision should be made for regulating the relations between the two Houses of Parliament'. That was a justification for the Parliament Act.
- The second was that `it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot immediately be brought into operation'. That was an aspiration.
- The third was that `provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this Act for restricting the existing powers of the House of Lords'. (My emphasis) That was a consequence of the aspiration being fulfilled.

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

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

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

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

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

6. This assurance was reiterated in the House of Commons by Nick Clegg, the Deputy Prime Minister, on 17th May, col. 160. He insisted that `powers should remain the same and as long as the mandate, the electoral system and the terms of those elected in the other place are different, the basic relationship between the two Houses can remain constant'. Paragraph 7 of

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

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

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

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

(i) An elected term of 15 years.

(ii) Staggered elections.

(iii) A prohibition on re-election.

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

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

(vi) A different method of election—proportional representation rather than first past the post. There are, of course, many who believe that proportional representation yields greater legitimacy than first past the post. Paul Hayter, Clerk of the Parliaments, told the Joint Committee on *Conventions of the UK Parliament*, `it can be argued that the greater the proportion of elected members the stronger the mandate. If the Lords were elected by a proportional system they might even claim a superior mandate'.[1] It is odd

[1] HL 265-II, HC 121-ii, p. 84, para. 33.

> that the chamber to which the government is accountable will be elected by a less representative system than the chamber intended to scrutinise and revise legislation. Perhaps supporters of proportional representation will come to propose a 100% elected second chamber so that they can then call for the Commons to be abolished!

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

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

12. The *Joint Committee on the Conventions of the UK Parliament* took the view that it was not possible. It stated in para. 61 of its report, `if the Lords acquired an electoral mandate, then in our view their role as a revising chamber and their relationship with the Commons, would inevitably be called into question --- should any firm proposals come forward to change the composition of the House of Lords, the convention between the houses would have to be examined again.'[2]

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

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

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

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[2] HL 265 and HC 1212, 2006.

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

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

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

19. The preamble to the Parliament Act was inserted largely to mollify the Foreign Secretary, Sir Edward Grey, who favoured an elected selected chamber. But the Liberals seem to have regarded the Act as a final settlement of the relationship between Lords and Commons. Lord Carrington, President of the Board of Agriculture in the Liberal government, wrote in his diary in 1911 `We have won, and the battle is firmly over. I firmly believe the House of Lords as it exists is safe for another 80 years. There is no real interest in the country with regard to the Reform of the Upper House'. [3] [My emphasis] That was a perceptive verdict. Certainly the Liberal government made no attempt to fulfil the intentions of the preamble. As Halevy says, the Liberals `preferred limiting the powers of the House of Lords to altering its composition'.[4] How wise they were. For governments that have sought to reopen the issue have been compelled to grapple with a question which has no answer, namely how, in a non-federal state, the electorate is to be represented in two different ways in two different chambers.

20. In 1999 a collection of essays on second chambers, entitled *Senates*, was published. In the introduction to the essays the editors declared that second chambers are `essentially contested institutions'.[5] By this they meant that few democracies were content with their second chambers, and that many were engaged `in an apparently incessant dialogue about how they should be reformed'. Amongst the range of democracies they studied, Germany appeared to them `to be almost unique in having no campaign that seeks to reform the upper

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

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

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

house'. Germany, however, is no longer `almost unique', and there has arisen in recent years a vigorous campaign to reform the Bundesrat, the German second chamber, which, it is argued, has served to block necessary labour market and social security reforms. Indeed, one of the key proposals of the Grand Coalition, led by Angela Merkel, which ruled Germany after 2005, was to reform the Bundesrat as part of a wider reform of the German federal system.

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

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

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

24. The crisis of 1975 in Australia was of course a unique event, but, since then, the Senate, which is elected by proportional representation, has often been controlled by minor parties. The former Prime Minister of Australia, Malcolm Fraser, has argued that the Senate `is running the risk of making Australia ungovernable'.[6] Under the premiership of Kevin Rudd

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

from 2007 to 2010, the Senate blocked the government's proposals for a private health insurance rebate, and three times blocked the government's carbon pollution reduction scheme. This damaged Rudd's standing with the electorate since he was criticized for backing away from a key election commitment on climate change.

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

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

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

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

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

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

23 July 2011

Written evidence from Roger S. Fitzpatrick (EV 03)

The Governance of the United Kingdom Shall rest in a Parliament of two houses, of which the House of Commons shall provide a Government, and the House of Lords an Administration.

Neither house shall determine the proceedings of the other nor duplicate its acts. Differences between the two houses outstanding after sixty days shall be subject on pain of Crown dissolution to plebiscite of the electorates of both, funded equally. Dissolved house business may be continued at Crown discretion pending election.

The membership of each house shall be by secret ballot of the qualifying population of the United Kingdom determined by each at intervals not greater than five years to the number of one member representing not less than one hundred thousand voters. The ballot for each house shall not be held nearer than five hundred days to, nor cause delay to, the ballot for the other.

The House of Commons shall determine and govern by Royal consent the constitution and affairs of state of the United Kingdom representing the people: shall attend the Crown, shall provide for the Defence of the Realm, conduct Foreign Relationships, determine the Law of the Land, provide for National and border security, Customs and excise, Police and Local Government, shall provide Courts of Justice and Prisons, and shall operate and audit by Civil Service such other governmental function as it determines from time to time may most efficaciously be carried out by national enterprise. The acts of the House of Commons shall be funded by the Exchequer form such direct and indirect taxes on the person and enterprises of the United Kingdom as it deems fit.

The House of Lords shall determine and administer under Royal consent and on behalf of the people the national services of the United Kingdom: shall provide a Health service, social service, Probation service, Pension service, Care service, Hospice service, mail, Information and Broadcasting services, Census and Housing services, Transport, Industrial , Planning and Local services and shall administer and audit by Civil Staffing such other national services as it determines from time to time may most efficaciously be carried out by national enterprise. The activities of the House of Lords shall be funded by Revenue from such direct and indirect levies in national insurance on the persons and enterprises of the United Kingdom as it deems fit.

26 July 2011

Written evidence from Christopher Hartigan (EV 04)

Introduction

31. I am a member of the public with an interest in constitutional matters and Lords Reform in particular. I hope that my views will be considered by the committee and be found useful.

Representation of the people

32. In a modern democracy it is important that those who make the laws of the land should be the best people for the job. The principle that those who exercise power over our lives must be directly elected, some say, is a good principle. However I think such things should be taken case by case. Elected Mayor, Judges, police commissioners and now elected peers! Ministers of the Crown are not directly elected to exercise power but can still claim legitimacy and peers can also have that status without being directly elected.

33. The House of Lords performs its work well because of its makeup and independence but the government says it lacks sufficient elective democratic authority. The House of Lords and its existing members have served the country with distinction. Reform of the House of Lords has been on the agenda for more than 100 years it is said. But, considerable progress has been made in that time and nothing better has been found to replace it which remains true. The Government should be committed to cooperating with progress on these issues so that the House of Lords may be strengthened and may better serve and reflect the wider nation as a whole.

Elected/Appointed Peers / Patronage

34. I have watched with interest recent debates in the Lords on the purpose and reform of the House of Lords and it became clear that direct elections would destroy the foundations and valued functions of the House and that there was nothing better being proposed that could effectively take over its functions. An elected Senate is a very different institution and would probably need its function to be codified, a task which many believe would be almost impossible. Evolutionary reform allows the house and its functioning to continue to work. An elected house would cost many millions of pounds and would not produce the quality of service we receive from our present arrangements. I and many other people believe that an elected or partially elected House of Lords is not the best way to serve the British people or our Constitution.

35. Appointed peers allow a degree of party representation and a working availability together with a treasure of expertise and experience to be at the service of the nation. Threat of appointment of peers was used to force the 1911 Parliament act through. Today the government is appointing large numbers of peers under the name of rebalancing party numbers making the house more party centred. Such numbers are exacerbating the need for reform and it is more likely to cause the capsize rather than the rebalancing of the house. Patronage is seen by many as the executive influencing the legislature. It is already a part of the systems we have to live with. A person who even stands for election is subject to it. It is a concern in an appointed House. Most of it is clear and above board. The situation may be improved and safeguarded by such measures as Lord Steele's much needed proposal for the creation of a statutory appointments commission.

Complementing the House of Commons

36. The House of Lords works and makes an essential contribution to our way of life. Continuity and change are the hallmarks of the successful elements of the British Constitution.

37. The House of Commons is rightly the primary chamber because it is directly elected. The Queens ministers in a Government are not elected but are legitimate when supported numerically by the elected House Commons. This Might Change if there were two elected houses. Others hold power and are legitimate by appointment by proper authority like judges and peers etc. To increase peers legitimacy without challenging the primary authority it is necessary only to make them better reflect the will of the people expressed at the general election. Peers and MPs have differing functions and should complement each other not be in conflict. The House of Lords works well and should be enhanced not be abolished in favour untried and unbalancing theories. I do not believe that an elected or partially elected House of Lords is in the best interests of our British Constitution or the British people. It is also clear that this is the view of 80% (approx} of members of that house.

Effects of Draft Lords Reform Bill

38. This, in reality, is a draft bill for abolition of the House of Lords and its replacement by a Senate and this does not reflect the will of either House or the people and will only happen by party whipping and the use of the Parliament act of 1911. Is this really how the mother of parliaments should act? Major reform has not been successful in the past because it may well destroy the effectiveness of the House of Lords and make it a party political house subject the pressures that are already on the members of the Commons. The 'Possible Implications of House of Lords Reform' were accurately set out in Lords Library Note of 25th June 2010.

39. The draft bill will change the House of Lords from a place where it was desired that no one party will have a majority to one that is dominated by party politics as is the commons and where whips hold sway. Directly elected Senators would rightly claim direct representation from the people and rightly demand proportionate power. They might well be elected upon a manifesto the same as the commons, if so how can they freely scrutinise and revise what they have been elected on. If not their mandate puts them in legitimate opposition to commons members in overlapping constituencies. This is a recipe for conflict or subservience. Senators would have constituents to represent. (to whom they will not accountable by the ballot box) This put them in conflict with MP's who also represent them and are accountable. It might be argued that this conflict has not happened with MEP's but who know who they are or what they do! Constituencies for Senators are merely a convenience to elect individuals using PR and has no other real practical value but has many drawbacks.

Who would Senators be?

40. Who would new Senators be? It is thought second rate professional politicians, possibly with ambitions to go to the commons or wanting to make a name for themselves but very different from current peers. Most current peers are ideal for their scrutiny and revising role, even those who were professional politicians before already have a track record of valued public service. These are not people who are seeking career opportunities or people who can be manipulated by the powers that be but those with wisdom and experience that are already highly valued. Very few would want to start a new career as a, 'greasy pole', Senator. These people would be lost to the nation and our constitution badly damaged.

Accountability

41. One of the reasons put forward for having an elected house is accountability. With a single fifteen year term they will never face the electorate again. Senators would not be accountable at all except perhaps to the much more powerful whips and the various enticements they use to get there business through in an increasingly party focused house. Were electoral terms to be changed there remains the problem of how they would remain independent of party electoral influences and how they could be really be accountable to the people in such enormous constituencies etc.

Why a Draft Lords Reform Bill

42. There are those in the past who on principal wanted to see the Lords Abolished like Michael Foot and those who didn't want any change like Enoch Powel who together talked out reform in the commons in the 1970's and as in the past, have prevented radical reform. However this draft bill is the product of political expedience by those with a, reform for reform sake, agenda and have a desperate PR political agenda too. These proposals will not improve, in fact it, will worsen the quality of law making in our parliament. These reforms are also said to be a part of the 'clean up politics' agenda, but are, in fact, a desperate attempt to be seen to be doing something, a blatant attempt to find grounds for actions that are groundless. One would probably not invent what we have but it is ours and it has evolved to fit us and can continue to do. Why would we want to change it for a nice sounding, ill fitting, political 'spirit of the age' proposal that will destroy our constitutional heritage of checks and balances and cannot work in the way that has been fruitful for us.

No Call for Lords Reform

43. This Draft bill, in this form, will not pass without using the Parliament Act 1911 and to use it would be supreme folly. I fear that the Salisbury Convention would not hold either.

44. However very valuable evolutionary change has already take place. Today there is no real clamour for Lords reform. In past decades the lords has become quite popular because of its stance of individual freedom and its wisdom in rejecting knee jerk reactions, political dogma and expedience. It is esteemed and thought to do a good job by parliamentarians and the people. The government are afraid even to let the lords own self reform bill pass, the Steele bill, as the fig leaf of their reforms demand would probably blow away.

Manifestos

45. 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. The Conservative proposal being the weakest of the three. There is no valid argument for an elected House of Lord from the manifestoes. 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.

Steele Bill

46. A majority of Lords recognise that there does need to be evolutionary reform even though they may each have a varying view of what might be done. The House of Lords has also tried to implement reforms itself as in the instance of Lord Steele bill, currently before the house, but government has not fully cooperated as might have been expected

47. The motion passed by the House of Lords in June 2010 should proceed full reform or at least be integrated into it: The motion that the House to approve or disapprove-

(a) a scheme to enable Members of the House to retire,

(b) the abolition of by-elections for hereditary Peers,

(c) the removal of Members convicted of serious criminal offices, and

(d) the creation of a statutory appointments commission.

Aim of Draft Bill

48. What is it that the Government draft bill seeks to achieve; continued stable conventions and working relationship between both houses? An electoral legitimate relationship that has proportional relationship with electors, a smaller house, a younger membership and possibly the retention of the wisdom and knowledge for which the house is rightly renowned. Lastly a house that works at least as well as the present one. This draft bill, as it stands, is not a vehicle that can deliver this and it needs fundamental revision of its first principle if it is to deliver any of these aims.

49. Below is my own view of what needs to be in the bill for a revitalised ongoing House of Lords that delivers most of the outcomes desired by the government. It does genuinely keep the relationship with commons unchanged. It gives voting power to 300 existing peers, The concept of voting and non-voting peers is not new it was passed by the House of Lords in the seventies with regard to hereditary peers though opposed from the commons famously by the combined efforts of Michael Foot and Enoch Powel. This proposal allows all others life peers to remain and influence by speaking thus crossbencher expertise would remain unaltered. It uses the votes cast at ongoing General Elections for the Commons to be translated into a proportionally representative House of Lords reflecting all registered voters nationwide. This does not challenge or alter the relationship with the directly elected commons. With crossbench representation, it should fulfil the desire that no one party will dominate the House of Lords. It does not interfere in the relationship of MP's to their constituents. It increases the constitutional principle on the 'Separation of Powers'. It modernise the chamber placing electoral legislative power in a smaller representative body of relatively younger life peers. It produces a voting body made up exclusively of Legislators while maintaining its lack of party pressures in the house. It maintains the existing working relationship between the two chambers and even reduce the overall cost of the second chamber.

50. This genuinely enhances electoral legitimacy that the government say the house must have. Such a proposal taken as a whole can deliver most of what the government wants without destroying our constitutional checks and balances. I believe it is a better way forward as it gives the government almost all that it wants and stands a better chance of forming the consensus than the existing proposal. But the government can't have it and direct elections too they are incompatible as are the draft bills aims with direct elections.

Summary of the proposals

Name

51. No change

Size

52. A reformed House of Lords should have 300 (400 might work better) voting members— The draft Bill allows for remaining non-voting life peers as well as 12 Bishops and Government Ministers sitting as (speaking only/and possibly time only) members. The remaining hereditary peers will no longer sit in the House or be speaking only if the Steele formula is followed.

Functions

53. The reformed House of Lords would have the same functions as the current House. It would continue to scrutinise and revise legislation, hold the Government to account and conduct investigations.

Powers

54. No change to the constitutional powers and privileges of the House once it is reformed,

55. 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.

Electoral system

56. The 300 voting members of the house shall be selected from existing members who are Life Peers, under the retiring age for voting peers and are not ministers of the Crown or bishops or be hereditary peers. Each party or group may submit a list of candidates for election in order of preference. Once selected a member may not be removed from the list or the position on it except by change of proportion of peers through a general election, voluntary resignation, reaching the retirement age, becoming a minister of the crown, failure to carry out duties by censure of the whole House. Should these events happen the next peer on the appropriate list should take their place by party or group?

Separation of Powers

57. It is important to be able to bring people into office by membership of the House of Lords while in Government and for the house to be able to hold the government to account. However the separation of powers is a desirable principle for a sound constitution and therefore government ministers should not be voting members and may be time in office members only if not already a peer. The Law Lords (Supreme Court Judges) should have right to speak in the House while in office but should be none voting only.

Proportional Elections

58. Elections will take place through the General Elections to the House of Commons. It will use the total number of votes cast for all members of the House of Commons nationwide. The votes shall be proportionally distributed among the parties and groups. The resultant proportion shall determine the number of voting peers from each list of eligible peers. The resulting number of peers will reflect the registered voters who voted as a proportion of all

register to vote. The resulting distribution of votes will give the number of peers elected representing the proportion of voters according to party or group who voted.

59. The number of registered voters who voted shall then be subtracted from the number registered of all voters and the resulting number shall determine the proportion of voting Crossbench Peers and bring the number of voting peers to 300. Crossbencher peers would represent those registered to vote but did not vote thus completing the proportional picture.

60. This electoral process will give a reflection of the whole nation and reflect the political party strengths in the General Election and allow continuing proportional representation at each subsequent General Election. It will also be a safeguard that no single party shall have a majority in the House of Lords.

Retirement

61. An age limit might be set for voting peers to allow for younger peers to reflect better a modern outlook. All other non-voting peers might follow the recently passed House of Lords motion upon retirement.

Church of England Bishops

62. There would be up to 12 non-voting places for representative bishops of the Church of England.

63. And 12 mixed religious leaders of all faiths according UK population if a formula can be found that satisfies those groups.

Salary and Allowances

64. 300 (full time) voting peers) would receive a bounty and allowances. Members would also be entitled to receive a pension and the pension fund would be administered by the Independent Parliamentary Standards Authority

65. (IPSA).

66. All other peers would receive expenses as at present but will no longer be eligible upon reaching the age when a voting peer must retire, except in exceptional circumstances or due to special responsibilities.

Tax status

67. Members of the House of Lords would continue to be deemed resident, ordinarily resident and domiciled (ROD) for tax purposes.

Disqualification

68. Members of the reformed House of Lords would be subject to a disqualification regime modelled on that in the House of Commons.

Sovereign

69. I would want to make one further point which is that 'The Queen in Parliament' must not be undermined in any way as this is at the heart of our constitution. The rights and traditions of the Sovereign in the House of Lords are to be respected.

Conclusion

70. It is my hope that the Joint committee will make wide ranging proposals that are in the best interest of the nation. The government may well insist upon the democratic facade without true regard for the best interests of the people. May I suggest that at least two proposals be made by the joint committee based upon direct and indirect elections and the people be allowed to choose between them by referendum? That is building in a truly democratic choice. This is an important Constitutional matter, unlike FPP V AV; It is a proper use of referendum. The pressure of government whips should have no part in our constitutional formation. If a bill is to be introduced it must also proceed on a free vote in both houses and not subject to the balance of power of the day. It must be a work of Parliament not Government.

71. The current Draft Lords Reform Bill proposals would be a revolution tantamount to abolition in favour of new constitutional arrangements, nothing less, despite transitional arrangements, while the British way is evolution. Reform must not be driven by knee jerk reactions, political expedience or dogmatic despotism if the purpose and functions of the House of Lords are to work for the good of the people in the future. I hope that all members of Parliament of both Houses will not allow the executive to force its will upon them to the detriment of the Mother of Parliaments and the British people.

8 August 2011

Written evidence from John F H Smith (EV 05)

A Reformed House of Lords: appointed or elected?

A response to Mark Harper MP, Minister for Constitutional Reform on the *Church* Times article, *Create a House of Talents*, 13 May 2011 and the Electoral Reform Society seminar on the reform of the House of Lords, 15 June, 2011.

Summary

This paper examines the case for an elected House of Lords, and the claims it could cause constitutional conflict between the upper and lower chambers; could create a House of professional politicians; could deter suitable candidates and political parties from choosing them; and could politicise the House. It concludes that election is not suitable and proposes an appointed chamber with appointments being made by specialist electoral colleges under the umbrella of an Appointments Commission with a wider remit. In doing this, it addresses Lord Wakeham's reservations in this area. The proposed procedures will be relatively simple to establish and will remove the whiff of political and prime ministerial patronage from selection and appointment. They will produce a House that is expert and reflective of the nation's expertise and skills, and is more fairly representative.

1. Background

1.1 You recently responded, via my constituency MP, Nick Boles, to my *Church Times* article, *Create a House of Talents*, on the reform of the House of Lords; and on 15 June addressed the Electoral Reform Society seminar at the House of Lords, at which I was present. I should like to comment upon some of the interesting points you made in both.

1.2 At the Electoral Reform Society seminar you restated the government's commitment in the draft bill to the strategy of a largely or fully elected upper chamber. However, towards the end of the afternoon Lord Lowe asked a most pertinent question. He thought you had constructed a fairly 'firm box' round the government's proposals, but noted a general perception of flagging on the question of reform. He therefore asked if the proposed Joint Committee might accept some thinking 'outside the box'. Your reply, though not unequivocal, gave some hope in that direction. I should like to follow up along this line of thinking.

1.3 I suggest that in the very specific circumstance of selection for the House of Lords, election might not be the best method; others may be more suitable. Of course, no one would disagree with your statement that 'in a modern democracy it is important that those who pass legislation should be chosen by those to whom the legislation applies', but detailed examination and experience shows in some specific instances general statements may not present the whole picture. The concept of election has achieved such an elevated status that anyone who even wishes to examine it objectively, is looked at askance. But I feel this is exactly what we need to do in this case. That all three major parties supported the principle of an elected House of Lords in their manifestos does not automatically mean that rigorous thought or examination was given to the evolution of the statements, or even that it is right and appropriate for the situation.

1.4 I should therefore like to examine the case for election in this particular circumstance, and suggest an alternative as to how we might build on current practice to yield a result that is perhaps fairer and more democratic and representative.

2. The function and composition of the House.

2.1 The function of the House and the method of selecting its members cannot be separated. The House is a revising chamber, scrutinising – sometimes hastily prepared – bills coming up from the Commons. It is therefore a house of experts representing the skills and talents of the nation. Identifying such experts to carry out these tasks should be the foundation upon which the method of selecting members should be based. This is in stark contrast to the primary legislative chamber, the House of Commons, which, as you say, must 'be chosen by those to whom the legislation applies.' Scrutiny is a fulltime job for members and members should not be distracted by other concerns, such as constituency duties.

2.2 Equally important are the limitations placed on a revising chamber so that it does not challenge the supremacy of the elected lower chamber. In practice these limitations have arisen historically, and largely as a result of the House of Lords being an unelected chamber. They have led to the evolution of a series of control mechanisms that have gradually defined and refined the relationship between the two houses; the most important over the last century being the Parliament Act of 1911 (1949), and the Salisbury Convention.

2.3 The Lords has an important role in moderating the actions of the Commons if it is perceived to be getting out of step with the feeling of the nation. Considering that the House is unelected, this function is quite intangible, but the House seems to do it very well. During the 1980s it was seen as the only opposition to Mrs Thatcher's Conservative governments and their large Commons' majorities, and after 1997 was not afraid to stand up to Tony Blair's huge Labour majority, even when under virtual sentence of death. Despite the calls for reform, the function of the House remains sound; it is the composition that needs revising.

2.4 At the beginning of the second decade of the 21st century a Damoclean sword still hangs over the House and no one would claim the situation is satisfactory. Yet, while the hereditary peers have been removed, an equally unfair system of appointment seems to have crept in unnoticed over the last ten years. An increasing number of peers have been created largely through Prime Ministerial patronage – 117 in less than a year since May 2010 – and this 'has had negative effects on the functioning of the chamber.'[1] Yet, it can still be claimed that the House of Lords has 'more expertise in more fields than any other legislature in the world' and its debates 'less adversarial, better tempered and often better informed than in the Commons."[2]

[1] *House Full: Time to get a grip on Lords appointments,* M Russell, (UCL, The Constitution Unit, April 2011), p. 3.

[2] *Westminster, Does Parliament Work?* John Garrett, 1992, p. 168.

2.5 This is the complexion we need to retain and we need a house that is 'broadly representative of British society'.[3] Lord Wakeham (10.3) admirably defined the sort of people we need to fill the House: breadth of expertise and experience; an ability to bring philosophical, moral or spiritual perspectives to bear; personal distinction; freedom from party domination; a non-polemical style; and the ability to take the long view. But we have to ask: –

3. How will an elected House fulfil these requirements?

3.1 I should like to consider this matter under the following headings; whether election would:

3.2 cause potential constitutional conflict between two houses of equal authority;

3.3 create a House of professional politicians;

3.4 deter suitable candidates;

3.5 politicise the House and deter parties from choosing suitable people as candidates;

3.6 cause distortions and unintended consequences by trying to squeeze in certain requirements.

3.2 Concern has been expressed over the potential conflict, even constitutional crises, that might be caused between the two houses if election conferred equal authority on them. All are agreed this would be an undesirable situation (e.g. Wakeham, 11.6) and it has led to various proposals to diminish the risk: staggering elections; using a different electoral system for the House of Lords; appointing a percentage of members. It is claimed that staggered terms 'would mean that the second chamber could never claim an electoral mandate which was as contemporary as that of the House of Commons' (Wakeham 11.7); while using the Single Transferable Vote (STV) for elections 'would distinguish it from the more decisive political contest for the House of Commons'(Wakeham 11.7).This is mere wriggling in the face of one insurmountable obstacle: whatever the voting method or the timing of elections, it does not overcome the fact that each house will have the authority of its electorate, and if the electorate is the same, then so will be its authority. Staggered elections could also bring additional problems. Experience from the Commons has shown that when holding mid-term elections, the country tends to react against the party in power. Staggered elections therefore could easily produce an upper house antipathetic to the lower, with the risk of direct conflict between two houses of equal authority. (Conversely, holding elections at the same time would tend to produce an upper house of the same political complexion as the lower; the very thing we wish to avoid – the House of Lords being a pale reflection of the House of Commons, with the undermining of its vital role of standing up to the Commons when necessary.) Also, grave doubts were expressed at the ERS seminar that in the light of the result of the AV referendum, the chances of introducing STV for the upper chamber elections would be severely reduced. A

[3] *A House for the Future, the Report of the Royal Commission on the Reform of the House of Lords,* (hereafter *Wakeham*), Cm 4534, 2000, Recommendation 62.

partially elected house brings its own problems, for as Wakeham concluded (11.7), 'There would be a tendency for observers to attribute greater political weight to the views and votes of the elected members than to those of non-elected members.' These problems would be circumvented if election were put aside and another method of selecting members chosen.

3.3 The theory of election is fine, even noble, and certainly democratic; but practice does not always live up to theory. Because of strong party dominance in the Lower Chamber – the beginnings of which can be traced back to the mid-17th century – the House has evolved into one of professional politicians. With the moves towards universal suffrage this tendency has increased dramatically during the 19th and 20th centuries. This is no bad thing, for decisive government could not be carried on without it, but it does have an effect upon how elections are conducted. Elective practice has reflected the greater party control whereby the party machine chooses the candidate, and is often done by small party committees behind closed doors. Candidates tend to come from a fairly narrow spectrum of society, even narrower today with the relative decline of the trades unions, resulting in a House of professional politicians, with a preponderance of lawyers. We may vote democratically, but we are voting on a very restricted choice. We wish to avoid the House of Lords becoming a 'home for professional politicians', and Wakeham (Executive Summary 11; Chptrs. 3.14; 11.8) also points out its dangers.

3.4 It is agreed that the sort of member the upper chamber is seeking is expert, non-adversarial, not bound by party politics or simple popular messages (e.g. Wakeham: Recommendations 63-68), but it is this very sort of person who will be deterred by the elective process we know today. It needs a certain sort of person to enter the political ring to stand for election. Elections can be tough competitive free-for-all bouts favouring the combative, aggressive and politically ambitious over the quieter non-adversarial person. While we are seeking a wide range of skills in the Lords, these do not necessarily encompass political brawling. The hurly burly of the hustings will almost certainly be a deterrent to the sort of person the Lords is seeking, as will having to speak along party lines or simplify complex questions for media sound-bites – the very opposite of the qualities we need. Wakeham (12.7) went as far as wishing to 'discourage the politically ambitious from seeking a place in the second chamber.' Current electoral practice is therefore a deterrent to attaining the desired composition of the Upper Chamber.

3.5 It is almost inevitable that election will cause the House of Lords to become more politicised, for political parties will dominate and elections will be fought on a party political basis.[4] Subsequently, party discipline will have a much greater hold over members than at present. The consequence will be that not only suitable people be deterred from standing by the procedures they will have to undergo to get elected, but political parties will be biased against choosing them. They know such candidates will fare badly against experienced political opponents and are not going to risk losing seats in this way. The existence of safe seats allows the Commons to get round this problem, and this system would almost certainly

[4] *Wakeham* (11.8) admits as much: 'Elections can only be fought effectively by organised political parties.'

be utilised for the Lords. However, it will decrease the number of seats available to 'suitable' candidates, and members will be still subject to more party discipline than otherwise. One may justifiably ask, why build such a weakness into the system if we are thinking reform afresh?

3.6.1 There have been a number of proposals as to how elections might take place for the Upper Chamber, but with each there come unintended consequences. For example, in an elected house candidates will have to stand in constituencies, and constituencies will bring constituency duties. Apart from setting up a potential field of conflict with the constituency work of MPs, this work will be a distraction from the fulltime job of scrutiny that is the Lords' main purpose. Constituency work is an important part of an elected member's duties and a good record plays a significant role in re-election campaigning. It is to prevent such considerations getting in the way of their real job that has led to the current proposal to limit members of the upper house to non-renewable single term 15 year appointments. Therefore, because of election we are at risk of losing valuable members from the upper house at the end of 15 years. Party Lists, using the whole country as a single constituency would solve this, but while overcoming the constituency problem it would detach the elected members from their voters. Also, after the bitter experience of the AV referendum, there is little hope the country would stomach such an innovation. The problem would not arise at all if another method of selection were chosen.

3.6.2 Retaining the Anglican bishops in a completely elected House will be an anomalous blip and distort the situation. In an 80% elected House it will also stand out as a point of difference and have an influence on the size and, perhaps, the composition of the rest of the 20% appointed members – and that is not considering the problem of whether the bishops are to be part of the 20% or in addition to it. This sort of contortion in submission to outside pressure is allowing one small part of the system to unbalance the whole, rather than letting the parts flow logically from the whole. In the system proposed later in this paper Faith and the Anglican bishops will be an integral part of the system, rather than a distortion and extraneous blip.

3.7 Unfortunately we are left with the conclusion that election is a mantra, conferring no advantage, but introducing a number of complications that will alter the nature of the house and have long term consequences. It will deter the very people we wish to attract, and the system will be biased against choosing such people. Wakeham (11.6) actually states, 'Very few independents, if any, would secure election, even using a highly proportional system such as Single Transferable Vote (STV).' Politicising of the House will detract from its expertise and therefore weaken its function. Already, and as noted above[1], the large number of political appointees over the last ten years, which has dramatically increased during the last year, is having an effect on the quality of debate in the House.

3.8 The proposals in the second half of this paper set out a system that avoids the danger of politicising the House; maintains, even strengthens, its primary function of scrutiny and examination, and also maintains its position as a chamber that ultimately has to defer to the directly elected House of Commons.

4. How we might achieve a fairly selected House

4.1 Notwithstanding its shortcomings, we have today a house of experts that, despite party affiliations, is remarkably non-partisan and able to carry out its specialised functions of scrutiny and revision. We need to continue this and above all maintain a House fit for purpose. Our tradition in Britain – in politics, history and philosophy – has been one of pragmatism and empiricism: gradual evolution rather than revolutionary change. We tend to build on what we have, feeling that reform should remedy existing defects, rather than risk losing current virtues or introducing unforeseen consequences. For the reasons set out above, these are exactly the risks we face in creating a wholly or largely elected Upper Chamber. Tweaking the existing system and purging its faults seems a way forward that avoids these complications.

4.2 For centuries the composition of the House was by hereditary entitlement and appointment is a fairly recent phenomenon, after 1958 in fact. Therefore, arguments for appointment are not based on tradition and mere resistance to change, but on fitness for purpose. There is perhaps not so much opposition to an appointed House as may be imagined. Given the presumption for election, it is amazing that in 2003, upon a series of free votes, 43% of MPs in the House of Commons voted for a fully appointed Upper Chamber[5]; and this was under a Labour government! (And the 75% majority for it in the Lords should not merely be dismissed as interest.) Even Professor Iain McLean, the speaker at the morning session, and seemingly no friend of appointment, admitted on questioning that 'an unelected house might provide greater expertise than an elected one'.

4.3 In my submission to the Wakeham Commission[6] and in my *Church Times* article I take the position that if we want expertise and a broadly representative assembly, we should go to the experts. I proposed the idea of a House of Lords appointed via a number of specialist expert electoral colleges, and two general colleges. You make the point in your letter to Nick Boles that Lord Wakeham noted the 'practical difficulties' of a such systems 'based upon the representation of various organisations and professional bodies' but, with respect, I must point out that in my submission I had already dealt with most of Lord Wakeham's objections before he made them.

4.4 In my proposal the electoral colleges might represent science, the arts, faith, academia and education, industry, agriculture and the countryside, finance, law, medicine, culture, the media, trade unions and so on; and two further colleges would allow the appointment of politicians (with the patronage of the Prime Minister severely restricted) and persons from any walk of life, who may or may not come under the aegis of a specialist college. I was not being prescriptive, but suggested 16 specialist colleges, plus the two general ones (each double the size of a specialist college), that between them could appoint a 300, 450, 600 member

[5] *The House of Lords: Reform*, (Cm 7027, 2007), p. 17.

[6] Published in *Wakeham* as submission 1377.

House, or a House of any size. However, there is no reason why the colleges should be of the number and size I suggested. For example, the two general colleges, that I have called the Parliamentary College and the General College, could be of different sizes, and the specialist colleges could vary in size, reflecting the size or importance of their particular field in the community.

4.5 My main point was that each specialist college should represent a whole field, in which the various disciplines within that field cooperated to form the college. Every field of activity by its nature is wide ranging and the sheer variety within it would be a guard against the overweening influence of any one section. For example, in a health and medicine college, the interests of consultants would be balanced by the interests of the GPs, in turn balanced by the nursing professions, balanced by healthcare workers, balanced by the specialist medical disciplines, balanced by the health managers, and so on; and in, say, agriculture, the disciples of agri-chemical farming would be balanced by the organic farming groups and other bodies looking after the welfare of the countryside. Such variety could not be a 100% defence against sectionalism, but it would provide a huge tempering and be much better than the mechanisms we have under the present system. Additionally, the large number of colleges, made up of independently minded people, would be a further balance against vested interest that got through in any particular college. My proposal left details to the colleges themselves, on the premise that the goal of appointing nominees to the House of Lords would be a great incentive to the various institutions within any field to participate and cooperate with each other. And in many areas the bodies from which the colleges would be drawn have years, in some cases centuries, of experience behind them. The creation of such electoral colleges would be well within their competence. Procedures within the various colleges for making appointments could, again, be left to each college, and could range from the relatively informal to the extremely formal. The safeguard is the scale and diversity of the system. The necessity for expert bodies within each field to communicate and co-operate with each other to establish and operate their respective electoral colleges could well have the positive spin-off of better communication within their fields, which can only be of general benefit. The costs of such a system would not be great, for once the system was established and the initial spurt of appointments over, the pressure for colleges to meet frequently would diminish, and therefore administrative costs would fall. There is no reason why these should not be largely borne by the participating bodies themselves; again the assurance of representation in national government being an incentive.

4.6 As pointed out in 3.6.2, the Church of England bishops are an example of compromise in the present government proposals, and it looks as if some, at least, will remain in the Lords. But in the system I propose, faith representation would be integral to the system and could perhaps become the model for the future. There is a case for having a college devoted to appointing faith representatives on the same terms as the other specialist colleges, so that religious leaders could continue to widen debate by bringing moral and philosophical perspectives to stand alongside the political, economic and financial judgments of other groups. I suggested that over half the college should comprise Church of England representatives (bishops, clergy or lay), and the rest made up from other Christian denominations and other faiths, e.g. Roman Catholics, Non-Conformists, Jews, Muslims,

Hindus, Buddhists, etc. in proportion to their numbers in society. I suggested a larger representation for the Church of England on the grounds that it is the historic and Established Church in England; that the numbers of Anglicans are grossly underestimated if only judged by electoral rolls and regular attendance, while ignoring the large numbers who use the Church for the significant events in their lives; and that CoE representation will already be experiencing a reduction. As we are already half way there in the current proposal in keeping the Anglican bishops in the reformed House, the Faith (i.e. interfaith) College could become a test piece to set the ball rolling.

4.6.1 Professor Iain McLean pointed out at the ERS seminar that three Christian denominations (I believe the Roman Catholics, Church of Scotland and Baptists) indicated they would decline to take up any offer of an interfaith college; the Roman Catholics on the grounds that their ordained clergy were forbidden to sit in any legislature. The Roman Catholic case, at least, is easily answered, for a Church does not consist merely of its ordained members.

4.7 I did not favour separate colleges for appointing members from racial minorities, disability groups, the old or similar, for in this respect they are members of the wider community and should be appointed from the already existing colleges. However, it would be of positive benefit for the *Appointments Commission* (described below) to let it be known there was an expectation that members of such groups would be appointed in proportion to their numbers in society at large. Special interest groups, which range from the all embracing, such as the Green Movement, to the extremely specific, present a difficult problem, but I do not think they could each merit a separate specialist college. Such interests could be represented, either via the General College or come up through the Parliamentary College.

4.8 The two colleges I have termed the 'Parliamentary College' and 'General College' would work somewhat differently. At present many retiring MPs are elevated to the Lords, and while this system has been abused over the last ten years, there is no reason to discontinue it. Indeed, there is every reason to commend it, (as long as the politicians do not dominate the House) so the country can continue to benefit from the wide experience of these politicians. However, I would support any move to widen the selection process, via an electoral college, to remove the dominating patronage of a current prime Minister. I take no strong stand on ministerial representation in the upper chamber and would be happy with membership that was coterminous with office, or non-membership with a right of presentation or audience.

4.9 With the relatively large number of specialist colleges there would be a need for coordination and I suggested an overseeing body with a wide ranging role: issuing general guidelines on composition, elections and appointments, and making recommendations on, say, representation of minorities, regional representation, special interest lobbies, etc. It would also keep a general eye on the whole process, for example, advising a college that the House was short of a particular specialism. One important function would be to act as a forum of appeal for the colleges or individuals within them. A major long term part of its

remit would be to advise on the creation, expansion, reduction of colleges to keep up with changes in society. It is inevitable we shall not get the process absolutely right in one go; therefore, the provision allowing the overseeing body to tweak the system when up and running will be most important. I now feel that this body and the General College should be one and the same, so it would be a coordinating and overseeing body as well as the equivalent of an *Appointments Commission*.

4.10 There are large numbers of ordinary people who have much to contribute to national life that may not belong to a professional or academic body, or a trade union; and to cater for them I suggested the establishment of a General College (called in my Wakeham submission, the People's College). This college should, I now suggest, be the same as the coordinating body for the specialist colleges; but its method of making appointments would be different. I suggested that the names of suitable people, nominated by anyone, would be dealt with regionally by the Lords Lieutenant of the counties and forwarded to the General College/*Appointments Commission*, who would judge, select and then appoint. The forwarding process would be similar to that used in the honours system.

4.10.1 It may or may not be desirable to have separate branches of this college in Wales, Scotland and Northern Ireland to ensure the appointment of numbers proportionate to their populations. (The specialist colleges, with the members of their constituent bodies spread throughout the country would naturally also represent the regions in their appointments.) Hereditary peers should qualify for appointment to the reformed House of Lords via the General College on the same basis as anyone else.

4.10.2 It should therefore be possible for any suitable person in the country to be appointed to the new House of Lords, either through the college which represents their specialism or the General College. This would seem to be more democratic than the current practices of selecting candidates for election to the House of Commons, via small party committees behind closed doors.

4.11 To form the specialist electoral colleges at the beginning of the process I envisage areas of expertise within a particular field coming together to apply to establish an electoral college. Each proposal would be scrutinised by the *Overseeing Body/Appointments Commission* to ensure composition accurately reflected its field, and its proposed method of selecting members was fair and representative. The *Appointments Commission* would also be charged with the task of identifying disciplines or fields that hadn't spontaneously assembled themselves into proto-electoral colleges. The composition of this *Appointments Commission* would be crucial. In the first instance, it might be appointed for a limited period in the same way a *Royal Commission* is appointed. When the system was established, membership would lapse (but with no bar to reappointment) and the *Commission* reappointed, so that the electoral colleges themselves could have an input into membership.

4.11.1 Wakeham (11.20) in discussing a similar body felt it would have 'a difficult and unenviable task', but here I think he was answering possibly less thought-out schemes.

Defining the remit of the *Appointments Commission* more closely, i.e. its acting as the General Electoral College, a coordinating/overseeing body, and an advisory body for the colleges with the power to tweak the system and keep it up to date with the changes in society, would make its establishment a positive and exciting challenge.

4.12 Wakeham was 'sympathetic to the aims behind such proposals [i.e. for electoral colleges] ... these people could be expected to have a range of expertise and experience from outside the world of politics and be broadly representative of British society in its various manifestations' (11.18). He also felt they 'could reasonably claim a considerable degree of democratic legitimacy and authority.' However, he finally rejected the concept as a method of 'indirect election', and detailed his objections (11.17-25)

4.13 What deterred Wakeham as much as anything was choosing from the huge range of expertise and specialist bodies that exist, and seeing the vast differences in practice within them? However, persuading the various disciplines to come together in the way I suggest largely overcomes his fears, and also his anxieties about undemocratic internal processes and unrepresentative cliques grabbing power; while the General College answers his disquiet over 'disenfranchising those people, often the relatively disadvantaged, who do not belong to a recognised professional or vocational group (11.23).' Wakeham's most fundamental objection (11.24), that people shouldn't be considered 'merely the sum of their "interests"', and that 'no system of vocational or interest group representation is able to accommodate this fundamental fact', is surely a misunderstanding and turns the whole case on its head. The electoral colleges proposed here will be composed of some of the most learned and intelligent people in the country, and it is this very sort of person who tends to have the widest of interests; Wakeham himself admitted that they were 'broadly representative of British society in its various manifestations'. Such people, as well as speaking for their professional expertise, will therefore be able to speak equally authoritatively on family life, football, DIY, gardening, travel and charity work (just to quote Wakeham's examples). Surely, this is a strength rather than a weakness.

4.14 I am not being prescriptive about the proposals I have put forward, for there are others that put the function of the House of Lords at the core; e.g. Phillip Blond, Director of ResPublica, who suggests a tripartite House, one third each nominated, appointed and elected[7]; or Martin Wright, former Director of the Howard League for Penal Reform, who suggests a series of electoral colleges nominating candidates who are then put out to election.[8] My aim is to stimulate thinking to avoid sleepwalking into reform because we can see no further than the dictum that election is the only democratic means. It is also to ask for an objective examination of the whole matter of reform so that election and its ramifications can be examined critically as any other concept.

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[7] http://www.bbc.co.uk/news/uk-politics-11994302

[8] Published in *Wakeham* as submission 1591.

4.15 I advocate an appointed Upper Chamber only because of its function as an expert revising chamber, where the presence of a cross section of the country's skills and expertise is essential in reviewing proposed legislation. I consider that election will not result in a House that will fulfil this function best. Ironically, I feel my selection proposals for the upper chamber to be much fairer and democratic than the current politically dominated selection processes used for the House of Commons. They will certainly produce a selection of candidates from a much wider spectrum of society.

4.16 Because election is seen as the only way forward, I suspect that current policy is to make it fit at all costs, with the consequence that awkward provisions, such as 15 year single term appointments, have inevitably crept in. The proposals described in this paper will circumvent most of the problems introduced with an elected House. Naturally, I should not propose them as a system for the primary legislative Lower Chamber, and I am not advocating undoing the 1911 (1949) Parliament Act (which, incidentally, could easily unravel itself if an elected House were introduced).

5. I should welcome your response to the more detailed proposals set out here, and also request that a copy of this paper is forwarded to the Joint Parliamentary Committee set up to examine the proposals for Lords' reform. I am willing to appear before the Committee to explain the ideas put forward here in greater detail.

19 August 2011

Written evidence from Michael Keatinge OBE (EV 06)

PROPOSED REFORM OF THE HOUSE OF LORDS

The order of thinking should be:

1. Agree what are the purpose and functions of the second chamber.

2. Consider what are the personal qualities, expertise and experience in members of the second chamber which will best meet those functions.

3. Establish a means of selection and appointment which will provide those people.

4. Fine-tune the process so as to achieve public confidence and respect for the resulting chamber.

It would appear that the process currently set in train has started with stage 4 and given scant concern to Stage 1. It is therefore entirely back-to-front. Scrutiny of the draft bill needs to put this straight.

Supporting comment is as follows:

1. Agree what are the purpose and functions of the second chamber.

1.1 The primary purpose of the second chamber is to scrutinise legislation, deploying expertise and experience so that the wider effects of the legislation and, particularly, undesirable side-effects, may be recognised.

1.2 A secondary purpose is to provide a counterbalance when the House of Commons gives undue precedence to short-term considerations, passing fashions or party priorities. The second chamber should be entitled to question draft legislation if the content has not received proper public consideration, either in an election campaign (but recognising that some lesser matters are slipped into a manifesto with little public discussion) or by other consultation.

2. Consider what are the personal qualities, expertise and experience in members of the second chamber which will best meet those functions.

2.1 Members who will fulfil these functions must have, corporately, a mix of genuine expertise which will cover the great majority of the issues to be considered; and also a wide experience of life outside politics. They should be in a position to deploy their expertise and experience free of party-political or other partial loyalties.

2.2 It is unlikely that anyone under the age of 30 would have the required wide experience and maturity. The minimum age should therefore be set high.

2.3 Since the task requires current expertise, members should be encouraged to continue with active engagement in their professional occupations, rather than becoming full-time politicians.

3. Establish a means of selection and appointment which will provide those people.

3.1 Experience with public appointments shows that few of the people whom we really want for such tasks will stand for election. They have already proved themselves in life and have no need to prove them again. They need to be asked to serve. In the past there was a pattern in which a man (and it was generally a man) would make his mark in commercial or professional life, then stand for Parliament relatively late in life. But in current practice, those who stand for election are generally using this, at least in part, as a means of making their mark. Such a pattern will not produce the people whom we need in the second chamber.

3.2 A member of the second chamber needs to be free, as far as possible, of party pressure. This will always be difficult, as the management of the business of the chamber will probably mean some degree of party organisation, but we must not use a form of appointment which will emphasise party loyalty. The draft bill attempts to encourage independence by means of a single 15-year term, eliminating the need to campaign for re-election. However, the proposed mechanism of enormous multi-seat constituencies would mean that effective candidacy would require substantial funding. This will probably come either from large personal resources or, more likely, from party support. Most elected members would therefore have, from the beginning, a loyalty to the party which had provided the means of getting elected.

3.3 It is a fundamental aspect of the House of Commons that a Member of Parliament has a commitment to his or her constituency, is known to the voters, and often builds up considerable personal support. This was a feature of the 2010 election, where the personal vote of a sitting MP saved seats which one might expect to have been lost. But in the second chamber, a member will be acting more on his own experience than as a representative of a constituency. There is therefore no need to replicate that personal responsibility in the second chamber; indeed it will be impossible with the size of constituency that is proposed. But without the personal representation, most people will vote for the party rather than for the individual candidate.

3.4 All the indications are, therefore, that most elected members of a second chamber would basically be party members. We do not want this.

4. Fine-tune the process so as to achieve public confidence and respect for the resulting chamber.

4.1 The ethos behind the draft bill assumes that election by the wider public is the only valid means of providing public confidence. This assumption does not stand up to examination. We may note that, while there is often criticism of a decision on the grounds that: “It is not democratic,” there is equally frequent criticism on the grounds that:”It is not independent.” We should seek to develop different strengths from the two chambers, rather than making one a pale reflection of the other. There is a strong case that, with one chamber emphatically “democratic,” the other should be “independent.”

4.2 Democratic accountability can be achieved at a second degree. If an Appointments Commission commands public respect and confidence, then the appointment itself commands the same respect.

4.3 It is important for public confidence that members of the second chamber should be seen to be contributing actively. As noted above, members should not become full-time politicians, but should be encouraged to continue active involvement in their professions. However, they should make a significant contribution to debates and committee work, not just to listening and voting. 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.

4.4 This should in itself limit the size of the chamber without a formal cap, though the Appointments Commission probably needs to be given a target range of numbers.

The main reason for the current excessive size of the Lords lies in the rash of new appointments to rebalance the parties after each change of government. But if the Appointments Commission does its job effectively, there will always be a political balance in the chamber. Therefore there should be no need for a large influx after each General Election.

Conclusions:

- There is no compelling benefit from adopting election to the second chamber;
- There are a number of reasons why an elected chamber will not give us the results we require;
- Reform should be limited to removing those who do not now actively contribute to the business of the chamber; and to measures to ensure the credibility of the Appointments Commission.

24 August 2011

Written evidence from Simon Gazeley (EV 07)

Introduction

The issues the Committee has to consider are many and various, but there is one in particular on which I feel strongly and am qualified to comment. My submission is based on an interest extending over forty years in political and constitutional questions and on thirty-five years of membership of the Electoral Reform Society. I have served on the ERS Council and on its Technical Committee and have had several papers published in its technical journal. What appears below, however, represents my views only and is not necessarily the corporate view of the ERS.

Elections to the House of Lords

The White Paper confirms the Government's intention that the functions of the House of Lords and the way it interacts with the Commons should remain unchanged. The Government also intends that, in order not to replicate the Commons, the Lords should very seldom or never contain an absolute majority of members of one party. This implies that elected members are expected to exercise their own judgement; defiance of the party whip, while not perhaps being routine, would be expected to be a more frequent occurrence in the Lords than in the Commons.

Given these aspirations, it follows that elections to the Lords should be by proportional representation. Although the White Paper prescribes elections using the single transferable vote (STV), I have heard suggestions in the debates in the Lords and the Commons that some kind of party list system might be used instead. This would be wholly inappropriate; all party list systems of which I am aware have the defect that the voter can vote for only one party and has little or no influence over which of that party's candidates are elected. Under most list systems, most or all candidates are elected in the order in which they appear on the party list, regardless of the support that they may have as individuals; this gives the party machines an unjustifiable influence over the outcome. All list systems deny the voter the opportunity to support more than one candidate and therefore do not indicate the degree of support that the candidates have.

On the other hand, STV requires votes to be cast for candidates, not parties, and the voter is invited to indicate preferences for as many or as few candidates as he or she may wish. No doubt party considerations would play a large part in most voters' choices, but they need not do so, and in any event preferences are cast within as well as between parties. A candidate elected under STV has a personal mandate from the voters whose votes contributed to their election. A House elected by STV would therefore be more demonstrably representative of the opinions of the voters than one elected on a list system.

I therefore urge the Committee to stand firm for STV. Anything else would weaken the quality and the independence of the elected members.

15 August 2011

Written evidence from Lord Ralph Lucas (EV 08)

1. I think that the House of Lords is in need of reform, at least along the lines of the Steel Bill, and I suspect that the Draft Bill is the only one which is likely to pass Parliament before the next election. However, I think that the present Draft Bill would result in a much weakened House of Lords, or one engaged in political combat with the House of Commons – with such a radical change it is not possible to predict the outcome.

2 This submission explores the scope for amending the Draft Bill to produce an elected House of Lords which would retain the virtues of the present house, and would be unlikely to challenge the Commons.

3. My proposed amendments to the bill are:

> 3.1 Membership of the new House should be (say) 600 part-time members rather than 300 full-time. This has a radical effect on the character of those likely to seek membership, requiring in effect that they have reached a point in their careers where they have command of their time. Lord Tyler waxed eloquent at our last debate on this subject, and I support everything that he said then:
>
> > "Parliament as a whole benefits from having a proportion of Members who retain an active involvement in other walks of life...
> >
> > Given the relatively long but one-term limited service, it would be difficult to recruit candidates who were prepared to be full-time parliamentarians while they were not able to take part in other activities and go back to another career.
> >
> > [In a house of 300 full time members] it will be quite difficult to get diversity-indeed, even gender balance-in the membership of this House. If only 80 Members are elected in each tranche there will be relatively small multi-Member seats and it will be quite difficult to get the sort of diversity and gender balance that I know many Members of your Lordships' House wish to have."
>
> 3.2 At a general election any political party wanting to gain seats in the upper house should publish an ordered list of people whom it would intend to appoint, and their curriculum vitae.

3. Together, I think that those two changes to the Draft Bill would produce a house that could reasonably be called elected, would have a composition close to the current house with a reasonable chance of preserving its virtues, and that would be most unlikely to challenge the Commons for supremacy.

4. The magnitude of the change overall would be small enough for us to be reasonably certain of how the House would behave, and how well it would perform its functions.

5. Once these changes had bedded in, moves to more direct election methods could be made gradually and incrementally, without the dangers of catharsis that the Draft Bill courts.

6. I have a number of other suggestions which I think would you add to the effectiveness of the above proposals.

6.1 Electors should be able to tick a box for the party that they supported for the upper house election on the basis of the published candidate lists, rather than their preference being inferred from their choice of MP.

6.2 Each party should have one list for the entire UK – this makes it much easier to produce the balanced lists that Lord Tyler talks about, and removes all formal geographical links, making campaigning impossible (and thus not off-putting to good candidates) and removing the threat (to MPs) of double representation. The implied (by the mechanics of regional elections in the Draft Bill) threshold of ~10% of votes cast to achieve any seats in the upper house should be made explicit. Parties that only field candidates in a restricted region of the UK should be able to elect for the 10% hurdle to be calculated in respect of that region only.

6.3 The potential blow to a candidate's esteem resulting from allowing their name to go forward and then they're not being elected should be softened. The likelihood of rebuff could be reduced by allowing parties only to put forward names for a proportion of the seats that they were likely to be awarded (on the basis of the votes at the previous general election) (say two thirds or a half); this would also allow space for unannounced senior appointments after an election.

6.4 New members would not all join the upper house immediately, but their appointments would be spread throughout the period of the parliament. This is not an essential feature of my scheme but it allows resignations, deaths and ministerial appointments to be dealt with more smoothly than the proposals in the Draft Bill. It avoids a hiatus in the spirit and behaviour of the house resulting from a sudden influx of new members, which would provide a quinquennial opportunity for the house to decide to challenge the Commons, and I think that it works better with part-time members as it allows some of them time to rearrange their lives to accommodate membership of the house.

6.5 In a five-year Parliament, 20% of new members would join in each year. If a party member resigned or died, he would be replaced by a member sitting for the remainder of the retiring member's term, if this was over eight years, or 15 years plus the remainder of the retiring members term if eight years or less. If a crossbench member resigned or died they would just be replaced by a new member sitting for a 15 year term – the crossbenches do not have the same incentive to game the system as parties, and it is not of great consequence if the number of crossbench peers to be appointed varies from year to year.

6.6 Inclusion of a candidate in a party list at the previous general election should be all that is required by way of quality control of membership, but if a party wishes to appoint someone who was not on such a list, and for all crossbench appointments, the Appointments Commission should certify that the candidate is of suitable quality.

6.7 Part time should not mean 'when I feel like it'. There should be a clear job specification including an attendance requirement, with resignation the default course of action if it could not be complied with.

6.8 Members should be paid. The rate of pay should be determined by the SSRB. As part-time members I see no justification for catering for second homes, indeed members from outside London should be encouraged to spend time away from the capital. Expenses should be limited to reimbursement of vouchered travel and accommodation costs within a specified limit and evidenced by invoices. We should avoid IPSA.

6.9 Members' pay should incorporate an allowance for staff of, say, half a man year. Actual staff costs would be a matter between the member and the Inland Revenue. It might be appropriate for the house to run an internship scheme, providing young people with a basic income and experience of working in Parliament, and making such interns available to members in exchange for reimbursement of salary costs.

6.10 Transition arrangements should immediately reduce the size of the house to the agreed limit, and provide for existing members to retire evenly over the next 15 years. I suggest that this is done by the voting system used in the 1999 hereditary peers election. I would also encourage peers not to put themselves down at all for the new house by offering those do not the possibility of converting their life peerage into a hereditary peerage.

6.11 I see no objection to the possibility of reappointment for a second term. There will be little enough of it. What party leader, faced with a chance to appoint someone to the upper house, will not most naturally turn to someone fresh and new, of his own choosing, rather than an old warrior with fifteen years accumulated bad habits? It will only happen in cases of great merit.

5 September 2011

Written evidence from Alice Onwordi (EV 09)

Here are my views on the Lords Reform Bill:

- The House of Lords should be wholly elected. It is the most democratic solution and everyone who has an influence in the upper house should be democratically accountable.
- It should be pared down to 300 at the first stage, otherwise it will just lead to lots of delays and wrangling at each stage.
- There should be no privileged place for bishops or other faith groups. If they want to have a seat in the reformed house they should stand for election.
- Bishops should not be exempt from the discipline in the House. They should be subject to the same standing orders which can expel or suspend other peers.
- The peers in the reformed house should maintain the same responsibilities. Primarily to review legislation. They should not be allowed to vote on Commons legislation as they should be in position where they are removed from it. How can they reflect on Commons legislation with impartiality if they have voted on it?
- The Lords should get rid of the ermine robes etc. It just makes the Lords look more remote. It should look like a reformed house.
- All candidates standing for election should contest a constituency.
- A reformed House of Lords should remove the hereditary peers at the earliest opportunity. At the first stage. That will be the biggest signal that things will change.

5 September 2011

Written evidence from Lord Lipsey (EV 10)

The government's plans for an elected House of Lords might be expected to cost £433m in the 2015-2020 parliament alone. This is the equivalent of 80,000 hip replacements[1] or the salary for 21,000 nurses for a year.[2]

In the first year of the change alone, the Exchequer will face an additional bill of some £177 million**.**

Details of Lord Lipsey's calculations are attached. They are based on the policy outlined in the government's White Paper "House of Lords Reform Draft Bill" Cm 8077, published in May, and on official sources. Costing these proposals requires additional assumptions, not included in the White Paper. However where such assumptions have been made they are explained in the notes.

Cost of Lords Reform:

	Year 1 (£millions)	**Parliament 2015-2020** (£millions)
1. Cost of salaries and pensions for elected peers	8	40
2. Cost of salaries and pensions for transitional peers	44	220
3. LESS saving on existing Lords expenses	19	95
SUBTOTAL:	33	165
4. Office staff costs for peers	31	155
5. Cost of election for new peers	113	113
TOTAL:	**£177 million**	**£433 million**

Notes

1 & 2. Salaries are calculated as half-way between current MP and MSP salaries (£65,738[3] and £57,520[4] respectively) as provided by Cm8077, Paragraph111: "the level of salary for a member of the reformed House of Lords should be lower than that of a member of the House of Commons but

[1] Average cost to the NHS of a hip replacement is £5,500. Source: http://www.bbc.co.uk/health/physical_health/conditions/artificialhips1.shtml, accessed 20-6-2011.

[2] Based on pay guidelines published by the NHS. Source:

http://www.nhscareers.nhs.uk/details/Default.aspx?Id=766, accessed 20-6-2011.

[3] Source: House of Commons Library Note, Members' Pay from April 2011 (30 March 2011, SN/PC/05837, http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-05837.pdf)

[4]Source: Scottish Parliament, Frequently Asked Questions, "How much are MSPs paid and what are their allowances?", accessed 13 June 2011, http://www.scottish.parliament.uk/vli/publicinfo/faq/category4.htm

higher than those of members of the devolved legislatures and assemblies". Pensions based on present cost of Commons pensions reduced *pro rata* for lower Lords salaries.[5]

3. Based on expenses and daily allowance claims in the House of Lords for the latest available quarter (1st October – 31st December 2010) and under the new system of allowances.[6] An average cost per-member-per sitting of the House in the quarter is used to calculate the expenses of the House in an average year (the last full year had 142[7] sittings) and for the current 828 members.[8]

4. This is based on the assumption that each elected peer has staff and other costs of two-thirds of what the average current member of the House of Commons claims and that transitional peers will incur only one-quarter[9] of MPs' expenses for staff etc.[10]

5. The mid-point of the Government's latest estimated cost for the AV referendum in May 2011.[11] This does not include the possible outlay for the electronic voting system under STV, which has been estimated at £90-130 million.[12]

These calculations are based on published data, and on the assumptions set out in these footnotes. All figures are rounded to the nearest £1m. Some of the calculations rely on historic data, and must therefore be taken to be the best available approximations. Estimates are mostly cautious: eg no allowance is made for the extra costs of setting up new offices for new and existing peers (estimated by IPSA at £6000[13]) or for any transitional arrangements which may be made for existing appointed peers when they leave the Lords.

8 September 2011

[5] Source: House of Commons Library Note, Parliamentary Contributory Pension Fund (28 September 2010, SN/BT/1844)

[6] Source: http://www.parliament.uk/documents/lords-finance-office/2010/members-financial-support-201011-Q3-v1.pdf (accessed, 17-6-11)

[7] Source: http://www.parliament.uk/mps-lords-and-offices/members-allowances/house-of-lords/holallowances/hol-explanatory-note-200910/ (accessed, 17-6-11)

[8] Source: http://www.parliament.uk/mps-lords-and-offices/lords/ (accessed, 17-6-11)

[9] One-quarter is a conservative estimate for Members' costs. It amount to approximately £38,000 which is in the range of the yearly salary for a Personal Assistant Secretary in London which is from £33,000 to £52,000 depending on age and experience (source: http://www.mysalary.co.uk/average-salary/Personal_Assistant_Secretary_8948, accessed 20-6-2011).

[10] Source: http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomm/685/685.pdf (pg 40, accessed 17-6-11). MP expenses calculated as per head average of total expenses spending in 2009-2010.

[11] In a question in the House of Lords, the cost was placed between £106m and £120m. Source: Hansard, Col WA338, 18 May 2011.

[12] Source: 'No to AV' campaign literature, http://votemay5th.notoav.org/documents/the-cost-of-AV.pdf , pg 2 (accessed 17-6-11).

[13] Source: House of Commons Library Note, Members' Allowances from April 2011 (15 April 2011, SN/PC/05938, http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-05938.pdf)

Further written evidence from Lord Lipsey (EV 10A)

1. The purpose of the House of Lords is to scrutinise legislation, especially legislation which the Commons has not had the time properly to scrutinise; to hold the Executive to account from a less partisan perspective than exists in the Commons; to create and sustain a core of men and women of knowledge and experience with a duty to contribute to public debate in Parliament and outside; and to act as an ultimate backstop to prevent a temporary Commons majority riding roughshod over Britain's constitution and its people's liberties. It is emphatically not the purpose of the House of Lords, in all normal circumstances, to usurp the authority of the Commons and the government it sustains.

2. The positive functions listed are likely best to be discharged by an essentially appointed and not a largely elected house. An appointed house can also be relied on not to pursue a challenge to the elected house too far, too often.

11 October 2011

Further written evidence from Lord Lipsey (EV 10B)

The electoral system for the House of Lords

As I argued in my first memorandum to the committee, to introduce election to the House of Lords would be wildly expensive; and as I argued in my second memorandum, it would be a bad idea anyway. This memorandum however addresses a third and discrete point on which I suspect the Committee will receive less evidence. If there is to be election to the second chamber, should the electoral system used be, as CM8077 "on balance" proposes, the Single Transferable Vote (STV)? My qualification to opine on this subject is that I was a member of the Jenkins Committee on electoral reform, and have retained an interest in matters psephological ever since.

STV is a system which dates back to John Stuart Mill and the electoral reformers of the 19th century. More recently, it had the support of the Electoral Reform Society in its days under Enid Lakeman, La Passionara of STV,and, in more muted form, since she departed for the Great Constituency in the Sky. Its central purpose was to ensure that elections were decided by the qualities of individuals rather than by the selections of parties, and that is not a negligible consideration in its favour in appropriate circumstances. In the days when the Lib Dems were the party of people in sandals, that party too was converted to STV. The choice of STV in the white paper is a sop to the Lib Dems in the coalition.

STV does fulfil one important criterion for the electoral system for the second chamber: that it should ensure a house whose membership is more proportional to the strength of the parties in the country than is the membership of the House of Commons. However, a number of other electoral systems similarly satisfy that criterion. Is STV the right one to go for?

Most students of electoral systems would now agree that the choice of the appropriate system depends on the functions of the body to whom elections are being made and not just on the abstract virtues and vices of the systems themselves. For this reason, there have emerged in the UK a variety of systems. So, for example, first-past-the-post, endorsed in May's referendum, provides geographically based representation, which also maximises the (nevertheless diminishing) chances of a single party controlling the Commons. London's mayor, where an individual has to emerge who has wide support, uses SV. STV is the emerging system for Scottish local government, where the aim is to get responsive local representatives. Top-up additional member systems are used for the Scottish and Welsh assemblies, to reflect their more plural politics. Regional lists are used for Europe.

Why not STV for the Lords? The simplest answer is to study what happens in the Republic of Ireland in elections for the Dail. The most significant contest is often not that between the parties, since a number of each party's candidates will be returned in any case. The real contest is between individual candidates from each party, who compete with each other to demonstrate that they would provide the best service to their electors.

Such competition may or may not be a good thing for an assembly such as the Dail. Competition- in these cases between elected and list members- has been a bone of contention in both Scotland and Wales. But just because elected members do not like does not mean it is bad for constituents who can shop around with their complaints and demands just as they can shop in Tesco or Sainsbury's.

However it would not be a good thing for an assembly such as the House of Lords. For how would the various candidates for election compete between themselves? Well of course by offering individual constituents and groups of constituents boons whereby they could distinguish themselves from, and show themselves superior to, other candidates. There will be Labour (stop-the-housing-development) candidates competing with Labour (stop-the-hospital-closure candidates) competing with Labour (free-parking-for-all) candidates.

In a toxic paradox, the choice of STV combines ill with the 15-year term limit. In the run-up to their election, would-be peers will be incentivised to prioritise constituency work, hold surgeries, and court local voters. In all this of course they will be competing with local Commons members for voter attention. However, once elected they will have no further incentive to serve local voters as they cannot run for election again. Some, will no doubt find that they have other pressing and urgent tasks to fulfil than those that they promised their voters they would fulfil, Others, thinking that it would be immoral to promise voters one thing and deliver another, will continue to try to offer a full constituency service.

This effect of STV would lead to increased competition between MPs and members of the second chamber. It will lead to peers focussing on tasks they are not being elected to fulfil – social work for constituents – and so neglecting tasks they are being asked to fulfil, as members of a more reflective chamber and one with the essential task of legislative scrutiny.

So what instead? Top up lists is a possibility, but it would mean half or more of the members of the second chamber would have geographically defined constituencies with demands for the social work function too. Regional or national lists are another possibility, though they perhaps should be semi-open lists which give voters the chance to amend the order of preference of candidates suggested by the parties.

More radically it could be decided that, even with elections, the present balance of the two houses should be retained. One House, the Commons, should have a representation which continues to be based in geography. The second chamber should have a representation on a different basis. One clear contender for this would be election, perhaps indirect election, of members from particular civil society institutions: from business, from medicine, academia, the arts and the law. If this were adopted, and it is beyond the scope of this memorandum, to explore the pluses and minuses in more detail, we should at least retain one important virtue of the current second chamber: that its members are chosen on a completely different basis from members of the Commons and one that does not tempt them too frontally to challenge the Commons' ultimate authority.

But, since we already have a second chamber chosen on a basis distinct from that of the House of Commons and one which avoids competition in geographical areas, might a more robust way forward not be simply to drop the idea of elections for the second chamber altogether?

11 October 2011

Written evidence from Craig Whittaker MP (EV 11)

I am opposed to the draft Bill for the following reasons:

1. Function of the Reformed House of Lords

Every other Government reform has started with the core premise and function. This one does not. There has been no fundamental review of the function of a reformed House of Lords. How can this be a true reform if the prime purpose has not been decided or even looked at?

2. STV

The Government has recently spent in the order of £100m, on a referendum on whether people of the UK want to use the AV voting system. The result of which was an overwhelming 70% said 'NO'. Not content with this, the government proposals totally ignore the wishes of the general population, at a cost of £100m, and totally defy their wishes to bring in STV. I accept that we have forms of election other than FPTP in the UK, however to suggest STV so soon after the referendum smacks of a government not listening.

3. Salary and Expenses

The draft Bill recommends that an elected person to the reformed House of Lords would have less salary and not much need for expenses than those of an MP. Currently because of no geographical location, it is fair to say that the work load from a Constituency basis currently for a Lord is 'zero to very few'. My experience shows that in my 10 months (Full financial year) of Parliament as an MP, my office dealt with over 39,400 pieces of communication (c24, 000 emails, 9,600 letters, and 4,800 telephone calls) as well as 2,183 Constituents cases. This being the case, there is no reason to suggest why an elected member from the House of Lords would not deal with similar amounts of workload as the reforms would allocate them geographical locations—or constituents. This being the case, the cost of the 'Reforms' would far exceed those anticipated.

4. Numbers

The proposals would suggest a number of 300 There seems to be no evidence to suggest that this number would adequately be able to carry out the would adequately be able to carry out the work of the House of Lords. On the basis that the Lords will continue with the same function as they currently do a well as take on the responsibility of constituents; this number seems too low and without clear evidence to suggest otherwise, this figure seems too plucked out of the air. On the basis of approximately 300 currently carry out the work on a daily basis there is no movement to account for loss of 'specialists' in the House nor the huge increase in constituency work. A figure closer to 450 seems to b more realistic. On this basis, the cost massively increases from the current cost.

5. % of House Elected

The premise that having an elected House is democratic, why 80%? Why not 51%, 60%, 70% or 75%? On the basis that 80% is democratic (which is where the draft starts from) where is the evidence to suggest that the proposed percentage of elected members is correct.

15 September 2011

6. Ministers

Currently the Prime Minister or Shadow Leader of the house can appoint Ministers from the current membership. Under the proposals, only the Prime Minister can appoint 'Limited amounts of Ministers', to the House as an addiction to those elected. There are no limits on this proposal which would appear to be un-democratic.

15 September 2011

Written evidence from James Hand (EV 12)

Introduction

72. This submission is made in response to the Joint Committee on the Draft House of Lords Reform Bill's call for written evidence on the terms of the White Paper and draft Bill (Cm 8077). The White Paper holds that the reformed House should have the same functions and same powers (paras 6-7) as the existing House of Lords, while having injected into it the 'fundamental democratic principle' that it should be wholly or mainly elected (para 13); this being, in the words used in the Foreword, a "unique opportunity for our country to instill greater democracy into our institutions". The Draft Bill aims to do this through a series of convoluted provisions and transitional arrangements. The principal suggestion in this submission is that rather than setting out a package of proposals representing radical "incremental reform" (para 1), the government's aim of maintaining the status quo in terms of function and power, while addressing the desire for a more democratic house, could better and more simply be met through an evolutionary, yet swifter, reform.

73. In posing a choice between a wholly or mainly elected House of Lords (para 22), they are posing a potentially false choice. As outlined in House of Lords Reform: Many Anniversaries and a False Dichotomy? [2009] 4 Web JCLI, election and appointment are no more mutually exclusive states than election and hereditament. The successful 'Weatherill hereditaries' concept could be replicated with Life Peers (but with the proportion of cross-benchers fixed and the numbers of party peers changing according to, for example, either general or local election results). This could provide a combination of the benefits of election and appointment while mitigating some of the problems with both. A relatively minor evolutionary change to the membership of the House would be better attuned to maintaining the current position as to role and powers than a revolutionary one (which risks unintended, if not unforeseen, consequences from which clause 2 may prove little protection; a great advantage and weakness of conventions being that they can be subject to change and reinterpretation).

Size, Composition, Term and remuneration

74. While there is an argument for a salaried and full-time house to be smaller (not least to keep the costs down), the White Paper does not appear to address the value of full-time, as opposed to potentially part-time, members (beyond the statement in para 12 that "[t]he Government expects members of the reformed House to be full-time Parliamentarians") nor does it address, in any depth, the current attendance.

75. In the era of the fostering of the Big Society, it seems somewhat perverse to professionalise and severely narrow down a body of highly talented, experienced and cost-effective volunteers, with members not receiving the honour of a peerage but nigh-on £900,000 (at today's prices) in salary over their likely 15 year term (one term expected to be 3 x 5 year Parliaments with a salary greater than that received by members of devolved legislatures; paras 24 and 111).

76. A House allowing part-time members would not need to be salaried, would allow the members to retain their active links with the real world and better prepare them should they leave the House after a number of years (a 15 year hiatus in any career could be problematic unless members are expected to enter new careers, e.g. lobbying, after service).

77. A focus on average attendance, as in para 12, ignores the breadth of experience that the House has within it and the nature of averages. "300 full-time members" could conceivably be able to "fulfil the same range of duties as the current average daily attendance of 388" but they would not have the same experiences (both past and current) as, and are unlikely to be able to fulfil those duties to the same level as, a greater number of part-time members who attend when their expertise and interest are most of use. Based on the 2009/2010 attendance figures (and excluding those peers who died or were introduced in the period) the average peer attended 57% of the sessions (or 60% if those who did not attend at all are excluded). The average daily attendance of 388 must thus comprise very different people on different days and constraining the House to 300 full-timers excludes many more regular attendees than the juxtaposition of 300 and 388 suggests.

78. Under the evolutionary system suggested above (whereby life peers are elected by their fellows, with a fixed number of cross benchers and the parties' numbers varying according to election results, i.e. Weatherill (as amended) Life Peers), the virtues of part-time membership could be retained, the remuneration costs would not be increased and the size of the House could be capped at a higher level providing a greater range of representation. If a cut-off was placed at 300 based on the 2009/10 figures it would see peers who attended 73% of the time excluded whereas 500 would take the attendance down to 44% (of course there would be no cut-off as such as the life peers would be elected but it is an approximation of the lost experience at various sizes). Some form of cap on the size of the House is necessary for practical reasons and this system would provide for this – obviating the problem demonstrated by Hazell and Seyd (in 'Reforming the Lords: the numbers' [2008] *Public Law* 378 at 383) of keeping a House of Life Peers proportional through new creations.

Electoral System

79. The Weatherill (as amended) Life Peers system would meet the Coalition Agreement's commitment to a system of proportional representation for the reformed House of Lords as the number of party members would change proportionately to the election result used (e.g. most likely general election but could alternatively be local or European elections).

80. The Government's proposal to have STV elections on the same day as the general election risks confusion (as with the Scottish elections) and, while cheaper than holding the elections on a separate date, is unnecessarily expensive to meet the aim of proportionality which could be achieved far more cheaply by the method above. Furthermore, the above method is much simpler than the creation of further constituencies which will be almost but not fully co-extensive with the European regions (para 43).

Transition

81. The Weatherill (as amended) Life Peers system would not require any transitional arrangements; it could be implemented swiftly and could even be introduced as an amendment to Lord Steel's Bill (akin to the 1999 Weatherill amendment). The Government's three options have a shorter transition than that in the first option in the previous administration's last White Paper but it is nonetheless still a lengthy period. Option 2, as the White Paper notes, risks creating an even more unmanageable House than the current one and Option 3, given the desire to have a House of 300, seems a rather brutal cut (but not as brutal as the 1999 reform). Option 1 would seem the better option balancing the smooth running of the House with a wealth of continued experience but a larger, potentially part-time, voluntarily House would avoid such an elongated transition.

Ministers

82. The Government proposes that Ministers should only be drawn from the elected and transitional members, presumably because the appointed element are independent. However, in order to provide the flexibility of appointing ministers (which has been used to notably good – and less good – effect in recent years) they then propose that there will be ad hoc members who will have membership only for the duration of their ministerial appointment. A Weatherill (as amended) Life Peers system would not need such an ungainly provision as a similarly small number of peers could be created during a Parliament and then face election among their peers in what would be the usual way. Nor would it, as the Government's proposal appears to do, preclude the albeit rare possibility of independents acting as Ministers.

Conclusion

83. The Draft Bill arguably transforms the House of Lords into a democratically legitimate second chamber but does so at an unnecessarily high cost (both financial and experiential) and level of complexity. The Government could meet their stated aims through a simpler and faster change which could see many of the recognized virtues of the current House maintained, the fundamental democratic principle satisfied , the problem of a growing House solved and reform completed, not just under way, by 2015 (and quite possibly well before).

21 September 2011

Written evidence from Lord Jenkin of Roding (EV 13)

1. This evidence addresses one issue only, namely, the different behaviour and characteristics of the two Houses when dealing with legislation.

2. Much of my work on legislation in the House of Lords has depended on working with outside bodies—local government, the professions, charities, NGOs and others. These bodies tell me that their representations to Parliament seem to be much more effective in the Lords than in the Commons. When I ask whether an issue was raised in the Commons, I have been told that it was raised but without much effect: when the issue came to a vote the whipping in the Commons ensured that the Government got its way. I was even told by one community group that they had tried to interest their local MPs only to be told that none of them, all Government Back Benchers, was prepared to table an amendment to the Bill.

3. When these bodies come to Peers they find that there are far fewer such inhibitions. Issues are pursued, either directly with Ministers, or in Grand Committee, or on the floor of the House; many Peers have no hesitation in speaking and voting against their Party Whips if they feel sufficiently strongly about that the issue.

4. Initially, I found this apparent distinction a little hard to believe; it did not accord with my own experience in the Commons (1964-87). But when I pressed the question I am told that, whatever it may have been like in my day, the discipline of the Whips in the House of Commons is now so tight and so pervasive that they find their representations, while certainly listened to with sympathy, too often do not result in amendments being passed.

5. I see two main reasons:-

a) In the Commons, the Government effectively controls the House. This control is exercised through the Government Whips who appear to have become increasingly powerful so that only the most determined, or maverick MP dares to fall out of line. MPs owe their election almost entirely to their Party affiliation and Party support; many Backbenchers are in Parliament hoping for office in the Government they support; so the temptation always to conform to the Party line when voting is strong. Moreover, elected Members have constituents to whom they are ultimately accountable and if they wish to retain their seats they need to secure their continued support.

b) By contrast, though there is a whipping system in the Lords it is much less compelling—there are no sanctions for ignoring the advice of the Whips. The great majority of Peers are not seeking office, but see their role as using their "seat, voice and place" as effectively as they can. The Government does not control the House of Lords and there is now a clear convention that no political party shall have an overall majority of seats in the Lords. Peers are therefore much readier to take up issues put to them by outside bodies and to speak and vote in support of those representations. For these reasons Governments—all Governments—suffer defeat in the lobbies, so requiring the other House to "think again". Peers do not have constituents to whom they owe their seats and

therefore seem more disposed to take what one might describe as a national view of issues

6. An elected 'Senate' would quite quickly erode this valuable characteristic of the present Chamber; it would soon start behaving more like the elected House of Commons. Even if there were a bar on re-election after say 10 or 15 years, it is to my mind 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. While a fixed term might appear to remove the temptation to toe the Party line, it is my view that it would do no more than reduce the temptation; it would not eliminate it.

7. For these reasons I believe that abolishing the present House of Lords and replacing it with an elected Senate would destroy what is one of the most valued and constitutionally important roles of the present appointed House, which is its independence, its expertise and its relative freedom from Party control. As such the present appointed Upper House is an essential counter-balance to the power of the elected House of Commons which of course must always have the final word.

8. Unless and until the House of Commons is reformed so as substantially to reduce its control by the Administration, the provisions of the Bill as drafted would have damaging consequences for the country.

22 September 2011

Written evidence from Simon Hix and Iain McLean (EV 14)

1. We are responding to your call for evidence on the White Paper and Draft Bill, Cm 8077. We are academics with a long-standing interest in this area. We co-authored, with R.J. Johnston, a 2010 report published by the British Academy Policy Centre on electoral systems. IM assisted the Cabinet Office Bill team on the sections of the draft bill that deal with the electoral system and constituency boundaries. He is the author, most recently, of *What's Wrong with the British Constitution?* (Oxford 2010) which proposed a scheme very similar to that embodied in the draft bill. SH is an expert on comparative democratic constitutions, has won several prizes for his research on electoral systems, and was recently appointed to the American Political Science Association's Task Force on Electoral Systems. We are both Fellows of the British Academy.

2. We address a number of the headings in your Call for Evidence. We tackle the first four together, and then add comments on size, electoral system, Bishops, and Ministers.

Background

3. Proposals for a predominantly elected Upper House were in the 2010 election manifestoes of all three large parties, and in the Coalition's Programme for Government. The Liberal Democrats and their predecessors have favoured one since they wrote the Preamble to the Parliament Act 1911. The Conservatives appointed a party committee on the subject chaired by Lord Mackay of Clashfern. Its Report of 1999 produced a scheme which is the direct precursor of the scheme in the draft bill. The Labour Party committed itself to an elected upper house in its 2010 manifesto. Numerous unofficial and official committees of legislators have refined the scheme that now appears in the draft Bill. The elected house of Parliament voted in 2007 in favour of either an 80% elected or a 100% elected upper House. The House of Lords itself has always voted to remain unelected.

4. This is the first occasion on which there has been a cross-party consensus in favour of Upper House reform. The reforms of 1911 were achieved only after two General Elections and the threat of creating peers. The last attempt at comprehensive reform, in 1969, failed through lack of cross-party support.

5. Nevertheless, a number of concerns have been raised, notably in the initial debates in both Houses on the presentation of this draft Bill. Some of these concerns raised doubts about the very idea of an elected Upper House. However, as everybody who voted for any major party in 2010 voted for a manifesto commitment to the principle of an elected upper house, the mandate of the Government to introduce this Bill is unquestionable. We therefore proceed to consider whether the proposals in the draft Bill meet the objections of those who favour an elected upper house in principle but have anxieties signalled by your questions for discussion.

The political make up of an elected house

6. The electoral system proposed in the bill, of regional districts with no greater than 7 members elected in each district, and single-transferable-vote, is likely to lead to a broadly proportional translation of party vote-shares to seat-shares in each region.

7. But, given voting patterns in recent British elections—where there has been a decline in the combined vote-shares of the Conservatives and Labour in recent elections to the Commons, as well as significantly lower combined vote-shares for the two main parties in non-Commons elections (such as elections to the European Parliament, Scottish Parliament, and Welsh and London Assemblies) than in Commons elections—it is highly unlikely that any party would win a majority of seats in an elected House of Lords under the electoral system proposed in the bill.

8. Proportional representation in relatively small districts will make it difficult for small parties or independents to gain any seats. In a district with 5 seats to be elected, for example, a party would need to win at least 1/6th of the votes in the district (almost 17%) to win 1 seat. The Green Party and UKIP may be able to achieve this in some constituencies, but it is unlikely that the BNP will be able to achieve this.

9. There are, nevertheless, two uncertainties in the way elections to the House of Lords might work, as set out in the draft Bill. First, the single-transferable-vote is a strongly 'candidate-centric' electoral system, which will encourage candidates to campaign directly to voters, and will favour candidates who have name recognition (e.g. are prominent in the media) or who can raise and spend a significant amount of money in a campaign. In Ireland, for example, STV has allowed many independents to win seats in the Dail (although independent candidates have been less successful in the Australian Senate, which also uses STV).

10. The second source of uncertainty arises from the fact that an election for the House of Lords will be held at the same time as an election for the Commons, which raises the question of what proportion of votes will vote for two different parties in the two elections (which in the US is known as 'split-ticket' voting). The proportion of split-ticket voters is likely to be low in the first election, as votes would not have learned yet how they could use their two votes to influence outcomes. In subsequent elections, the proportion of split-ticket voters is likely to rise, and could reach as high as 20%, which is the estimated proportion of voters who changed their votes vote for a two different parties in the 2009 European Parliament election and the 2005 Commons election. One possible consequence of a large proportion of split-ticket voters is a decline in support for the Conservatives and Labour and an increase in support for the Liberal Democrats, UKIP, the Green Party, other smaller parties, and independent candidates.

11. In general, though, the electoral system should ensure that an elected House of Lords is a reasonably pluralist chamber, with a good representation of all the major political

views in different parties of the country. Another virtue of the electoral system is that all the major parties are likely to win seats in all regions in the country, which is not the case in the first-past-the-post elections for the House of Commons.

How independent would the Lords be from the Commons?

12. Two opposite concerns have been raised here. One is that, in the lapidary words of Lord Howe of Aberavon (in *Prospect,* May 2004), an elected house would comprise 'clones of the clowns in the Commons'. The other, implied in your second and fourth questions for discussion, is that an elected House would destroy the balance between the Houses; imperil the conventions that govern their relationships; and threaten the primacy of the Commons.

13. An elected house would in fact be less likely than the present House to be a clone of the Commons. The present House contains 199 ex-MPs, out of its total membership of 827; they tend to be among the more active members. Recent voting patterns in the existing house have been quite partisan Recent research by Meg Russell, at UCL, suggests that 'party voting' in the current House is surprisingly high, and considerably higher than it was before the hereditary Peers were removed. A single 15-year term for an elected Lords, combined with a preferential electoral system (either STV or open-list PR) is likely to ensure that the members of an elected House will be more independently minded than many of the current members.
14. Also, some parties with significant support in recent elections are not represented in the present House—such as UKIP, the Green Party, and the Scottish National Party.

15. The long fixed term and "quarantine" (members who have completed their term ineligible to be elected immediately to the Commons) proposed in the Draft Bill mean that elected members, although no doubt mostly elected on a party ticket, will feel less beholden to their party, and particularly to its Whips, than their equivalents in the Commons. As all would-be candidates will know that these are the rules, election is likely to attract people interested in the scrutiny role that is generally regarded as the jewel in the present House's crown.

16. As to the opposite concern—that an elected Upper House would threaten the primacy of the Commons—we note, first, that the staggered terms in the Draft Bill mean that the mandate of the Commons will always more recent than that of the upper house—two-thirds of whom will have been elected more than five years ago.

17. A successor to the non-statutory "Salisbury convention" is urgently needed. That convention in its most recent form derives from the 1945 agreement between Lord Cranborne (later the 5th Marquess of Salisbury) and Lord Addison, respectively leaders of the Conservative and Labour groups in the House at the time.

18. As stated in a Lords speech by Lord Cranborne in 1945, the convention, or doctrine, states that "it would be constitutionally wrong, when the country has so recently

expressed its view, for this House to oppose proposals which have been definitely put before the electorate."

19. However, the Liberal Democrats in the present Lords have stated that they were not parties to the agreement in 1945, and do not feel bound by it. Also, the Lords debates on the Parliamentary Voting System and Constituencies Act 2011 show that numerous (especially Labour) members of the existing House no longer feel bound by it either.

20. Finally, the convention did not envisage a coalition government. Which of the present Coalition's proposals can be deemed to have been "definitely put before the electorate?" One possible answer is "All of them", but that answer raises as many problems as it solves.

21. Therefore, somebody needs to work on a revised convention to cover the extent to which, and the time within which, Government business must get priority in the Lords. This work is needed whether or not the Draft Bill makes progress.

22. A possible body would be a Joint Committee of both houses, perhaps under the sponsorship of their Speakers. But as the public has an interest in the outcome, it should be open to extensive public consultation.

23. Once both houses have accepted the recommendations of such a body, they should continue to bind an elected upper house.

The size of the proposed House and the ratio of elected to non-elected Members

24. The proposed size of 300, namely half the size of the Commons as it will be after 2015, seems to us to be in the normal and reasonable range for upper houses. However, we would also be relaxed about a House of up to 450 members.

25. An 80% elected house would find it easier to ensure that all the expertise required to scrutinise legislation was available to it than would a 100% elected house.

26. If the house is 80% elected, we support the proposals in the White Paper for a statutory Appointments Commission.

The electoral term

27. We support the 15-year term as proposed in the White Paper, as this would in our view help to recruit the sort of people likely to be able to help the house with its work.

28. Concerns have been expressed about the length of this term. We would be comfortable with its being reduced to, say, 12 or 10 years, but not lower, as that would defeat the purpose of the scheme.

The electoral system

29. Either an STV or an open list system for electing members is acceptable.

30. However, STV becomes unwieldy in a district of more than about 6 seats. Therefore if STV is adopted, it will be important that electoral districts are of this size. How big they have to be will be a function of the decisions on overall House size and the proportion of elected to appointed members. The number of seats to fill at each election could thus range from 80 to perhaps 150.

31. If an open list system is adopted, then the option of using the 12 European Parliament Constituencies—which are also the UK's "NUTS1" standard regions—as the electoral districts becomes feasible.

32. It will be important to preserve the floor of three seats to be filled in any election in Northern Ireland.

33. Completing the unexpired term of a Member who has resigned or died is easier under open-list (where the seat would normally be filled until the next election by the highest-placed unsuccessful candidate of the same party) than under STV, but we regard this as a secondary issue. Given the purposes of the House, it might be acceptable to leave casual vacancies unfilled until the next election.

Bishops, Ministers, and hereditary peers

34. The position of Bishops in an elected house is anomalous, whether that house is 100% or 80% elected.

35. If it is 100% elected, then there cannot be a role for any non-elected members. The White Paper implies at paragraph 92 that the Government accepts this.

36. If it is 80% elected, the proposed 12 seats for Church of England bishops (all male, under the church's current arrangements) would make them by far the largest interest group among the non-elected members. It would be impossible for the Appointment Commission to apply any diversity or range criteria with only perhaps 20 non-Bishops to appoint at each election.

37. There should therefore be no ex-officio religious representatives in an elected house. The Appointments Commission could be charged with ensuring that the House maintains a representative range of religious and non-religious opinion.

38. As to Ministers, we agree with the proposals in paragraphs 67–8 of the White Paper.

39. We agree with the proposals for hereditary peers in the White Paper at paragraphs 87–91. We suggest that all members of the present House, including its hereditary members, should be offered club rights for life.

23 September 2011

Written evidence from Ken Batty (EV 15)

Further to the request for written evidence to the Joint Committee on the Draft House of Lords Reform Bill I provide my views below. My interest is that I have a degree in politics, and follow political matters but I am not active politically.

I believe the House of Lords, as currently constituted, has two specific advantages lost in any attempt to make it elected to any degree. Firstly, being unelected it does not have the legitimacy of the House of Commons. An elected Lords would, when on a collision course with the Commons, claim a greater legitimacy than the current House and be more inclined to oppose rather than simply delay legislation. Secondly, because it is appointed, the membership of the Lords has a higher degree of expertise on many matters, is less filled with career politicians who have no other experience, and this provides insight and perspective not open either to the Commons or an elected Lords.

I believe the Bill as constituted has three major problems. Firstly, the use of a proportional representation system, such as STV, will inevitably lead to members claiming they are more representative of the will of the electorate than the Commons, elected by first past the post. Furthermore, the electorate recently expressed their satisfaction with the current electoral system and this seems like an attempt to introduce an unwanted system by a different route. Secondly, the link to a geographic constituency will undoubtedly lead to confusion among people as to whom they should take their grievances. At worst it risks one member being used as an appeal process to decisions given to the member in the other House - having secured no satisfaction with one representative the aggrieved constituent makes a fresh approach to the other. Thirdly, the idea that a reformed House should still have appointed Bishops is bizarre. If the Government believes that the Lord's should be reformed by allowing for election then the position of the Bishops is an anomaly. Furthermore, with church attendance so low, the Bishops are not an appropriate group to be appointed. . If the Government wishes to appoint people who are representative of what the people care about then they should consider members of the Premier League and the Retail Association. I am sure such a proposal is viewed as preposterous – but I would argue if the Bishops were not already in the House a proposal to add them would be treated with a similar degree of incredulity.

The Lords does need reform. The proposals from Lord Steel fix most of the issues. The Governments proposals merely create a whole host of new issues. There is no great demand for change and Government would be better served focusing its efforts on what the electorate cares about.

23 September 2011

Written Evidence from Lord Wright of Richmond (EV 16)

The Lord Wright of Richmond, G.C.M.G.

Tel: 020 8876 4176

The Rt.Hon.the Lord Richard, QC

15 September 2011

As Chairman of an informal group of Independent Cross-Bench Peers, and in response to your invitation for written evidence, I enclose a submission for your Joint Committee on House of Lords Reform. This is an updated version of a paper which we sent to the Deputy Prime Minister on 4 June last year, for the information of his Coalition Committee on Lords Reform.

Wright of Richmond

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House of Lords Reform

A. Introduction.

1. This memorandum is written in response to the Joint Committee's invitation for written evidence on reform of the House of Lords.

2 (a). We are eleven Independent Crossbench Peers who take a particular interest in the issue of Lords Reform. While formally we speak only for ourselves, we have no doubt that the views we express in this Submission are shared by the substantial majority of our fellow Independents.

(b) We use the term "Independents" to mean those Cross Benchers who are wholly unconnected to any political party and who are not, and have not in recent years been, a member of any such party or donor to, or a public supporter of, any such party. Thus it excludes, for example:

i) members or supporters of any of the minor political parties;

ii) Bishops;

iii) serving Law Lords and holders of high judicial office;

iv) those who sit on the Crossbenches because of the particular office or post which they hold.

B. Scope.

3. This Submission deals only with the proposals currently being considered for a second Chamber which is either wholly, or partially, elected. Thus it does not enter into the arguments for a wholly appointed Chamber, or one with a substantial proportion of appointed members. It is limited to the issue of the proper representation of Independents in a Chamber thus reformed, and does not touch on the many other issues which will arise in the Joint Committee's deliberations.

C. Assumption.

4. a) We take it as recognised and accepted that

i) In a wholly elected House there would be no, or virtually no, Independent members because

a) few if any Independent Crossbenchers would have the resources, ... financial or organisational, to conduct an election campaign; and the Independents as a group certainly could not mount or fund a general campaign such as would be necessary to give any prospect of the election of independent members.

b) few of the type of people who make effective Independent peers would be willing to enter into a contested election, and they are unlikely to be the sort of people who have a widespread image among the general voting public.

c) only very rarely, and in unusual circumstances, has anyone independent of a political party been elected to the House of Commons.

ii) Currently Independent Crossbenchers make a very considerable contribution to the work of the House, both on the floor of the Chamber and in the various Committees of the House.

b) If, for any reason, one or other of these points is not accepted as self-evident, we hope that we will be informed, so that we can put forward the evidence and the arguments to support them.

5. a) For the first of the reasons in 4 above, a 100% elected house is wholly incompatible with the presence of any, or virtually any, Independent Crossbench Peers.

b) We therefore concentrate on the example of an 80% elected House, and we do so solely in relation to its direct effect on Independent Peers, without taking into consideration the general consequences of switching to a Second Chamber which is largely elected.

D. An 80% elected Second Chamber.

6. a) All discussions of the composition of a reformed House have so far been founded upon the premise that there would be "at least 20%" Independents (as defined above).

b) We calculate that there are at present 183 Crossbenchers who come within the definition of Independent; this is 25% of the present House of 787 members .

c) Clearly, if 80% of a reformed House is to consist of elected Peers, this is changed into "at most 20%" Independents.

d) Provided that the whole of the 20% non-elected element was to consist of Independent Crossbenchers, it would mean that for defining the Independent element

i) all members of political parties, including minor parties, would be elected members;

ii) there could be no prime ministerial appointments, or automatic appointments such as ex-Speakers, ex-Senior Public Servants, or retired Law Lords, although, no doubt, if such persons were willing to take active participation, many of them might well be suitable candidates for consideration by the Statutory Appointments Commission.

iii) Bishops (and other religious representatives) would be dealt with outside the system presently under discussion, hi other words, the 100% under debate consists wholly of "Lords Temporal".

e) The entire 20% non-elected would be chosen by a Statutory Appointments Commission according to defined criteria.

7. a) In order to preserve the continued independence of these appointed persons, it will be very important to ensure that they have nothing to fear, and nothing to hope, from any current, or future, Government or any other outside influence. To this end they should be appointed for a single, fixed, long-term, non-renewable term, for example, 15/12 years.

b) To preserve a full effective quota, members should be able to retire, or to be deemed to have retired.

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c) The Statutory Commission should be required to make new appointments (if there were any vacancies) at intervals of, say, 6 months.

15 September 2011

Written evidence from Sir Stuart Bell MP (EV 17)

1. *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.*

In constitutional law the term convention has been accepted to describe an obligation, whether it derives from custom, agreement, expedience or practice rather than arising from a formal agreement.

By their very nature conventions cannot be codified; if they were, they would no longer be conventions but codes. Such codes would become as statute law and any custom, agreement, expedience or practice which followed would require a change in the codes. Thus conventions that exist at the moment may evolve and are expected to evolve.

Lord Strathclyde, the Chancellor of the Duchy of Lancaster, in a debate in the Lords 17 May 2011, declared that 'the only basis for having an elected House would be to give this House greater authority to use its powers more assertively and effectively.' In the same debate, Lord Cunningham of Felling referred to a report entitled *Conventions of the UK Parliament*, a report unanimously approved by a House of Lords committee, unanimously approved by the House of Lords itself, and unanimously approved by the House of Commons. The report said, inter alia, that 'if this House, or part of it, were to be elected, and people had a mandate, it would be bound to call into question the relationship and the conventions operating between the two Houses'.

Indeed, the report went further and said in Paragraph 61:

> '*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.*'

Lord Cunningham went on to look at the relationship between the House of Representatives and the Senate in the United States of America and between the Japan Diet's House of Representatives and House of Councillors. They moved to change their powers in the relationships, just as the Upper House in the United Kingdom with an elected mandate would seek to do, but with the most profound consequences for the governance and the constitution of their countries.

Lord Howarth of Newport pointed out 22 June 2011 that when the United States Federal Senate became directly elected, its Members serving longer terms – though not fifteen-year terms - the Senate became the senior House. He added that 'the United States legislature is characterised by permanent conflict and impasse, with the Executive unable to secure their preferred legislation'. This was dramatically shown this year when the Senate and Congress could not agree on measures to

raise the debt ceiling of the Federal government until the last moment, troubling the financial markets and the entire global economy, and lowering the prestige of the United States in the world.

Lord Strathclyde declared 17 May 2011 that he fully expected the conventions and agreements between the House of Lords and House of Commons to change, to evolve and to adapt to different circumstances. He thought it would be very strange if they did not do so. Lord Strathclyde also thought that both Houses would be able to develop a mature relationship so as to retain the best of what exists now. It would mean a more assertive House of Lords with the authority of the people and an elected mandate. Lord Strathclyde did not say what he thought that mandate would be. Would candidates run on personal or party manifestoes? Would these manifestoes mirror those of candidates for the Commons?

Would they commit themselves to upholding the Parliament Acts?

Baroness D'Souza, speaking in the same debate 17 May 2011, declared as a cross-bencher that in her view the outcome of an elected House would be to give it more political power than it currently has. That would be the inevitable result of an elected House, or even a partly-elected House. Baroness D'Souza thought this would eventually result in the power of veto creeping into the Lords; otherwise what would be the reason for undertaking such radical change?

Baroness D'Souza declared:

> *'Power is, as we all know, a tricky area and will have to be thoroughly addressed and resolved by the proposed pre-legislative committee. The issue of powers is so fundamental and this is so radical a proposed change that it may be justifiable to rephrase the question of reform to one of whether the House of Lords is in fact necessary at all...I cannot be convinced that an elected House would do its work better than the present House'.*

When the debate was resumed 21 June 2011, Baroness Lady Royall of Blaisdon, speaking on behalf of Her Majesty's Opposition, declared that the changes to the House of Lords as currently constituted, and its replacement by 'an elected Senate', will automatically affect the primacy of the House of Commons. This was supported by Baroness Taylor of Bolton on 22 June 2011, who declared in the same debate that the power of the Lords would increase and the power of the Common diminish in the event of the present Lords being replaced by an elected Chamber.

Lord Davies of Oldham acknowledged that the greatest weakness of the Draft Bill was its 'complete failure to identify the issue of powers'.

Lord Ashdown of Norton-sub-Hamdon declared that an elected Chamber would 'change the balance between us and the other Chamber. It will not challenge the primacy of the other Chamber, but it will challenge the absolute supremacy of the other Chamber – that is called check and balance'. There may be a contradiction in terms, or perhaps Lord Ashdown does not think them mutually exclusive, between challenging *primacy* or *supremacy*, but the important words are *change* and *challenge*. And when Lord Ashdown talks of check and balance he overlooks that it is the role of the Commons to hold the Executive to account. This would appear to be a further additional constitutional role of an elected Second Chamber, should this come about, in accordance with the Ashdown doctrine.

Concerns were expressed in the Commons when the House of Lords Reform Draft Bill was presented 17 May 2011 by the Deputy Prime Minister, Mr Nick Clegg. Mrs Eleanor Laing raised the question of the balance between the two elected Chambers. She asked how that balance of power would change. Mr David Blunkett asked whether a mandate given to the Second Chamber would reduce the mandate of the House of Commons.

Mr Sadiq Khan, on behalf of Her Majesty's Opposition, asked how the government proposed to deal with conventions. He specifically asked whether these conventions should be codified. Mr Khan returned to this on 27 June 2011 when he declared the inadequacy of Clause Two of the Draft Bill which simply referred to the primacy of the Commons. He referred to the Joint Committee on Conventions chaired by Lord Cunningham. He declared that Clause Two was 'inadequate and ignores the work done on rules and conventions by previous Committees'. Mr Khan further declared the new Joint Committee would have to recognise this fact and 'seek to open up the issue of powers and conventions; otherwise the reform process runs the risk of being fatally flawed'.

Mr Frank Dobson declared 17 May 2011:

> *'Surely, if it is to be elected, any self-respecting elected Members of the Upper House will not feel themselves bound by the customs and practice that have applied to an unelected Chamber – and we will thus get conflict between this Chamber and the Upper Chamber'.*

In fact, it is because the Second Chamber is not elected that the conventions exist in order to avoid conflict between the elected and unelected Chambers.

Thus it is a perfectly reasonable convention that the unelected Chamber shall not hold up the legislation introduced by the government and emanating from the elected Chamber, even where such legislation was not proposed in a manifesto. The need for conventions would not survive if both Chambers were elected and they would need to be codified in a set of strict rules. If reform has been held up

for a hundred years, as government spokespersons state, it was precisely because this conundrum could not be resolved.

The Deputy Prime Minister, in his responses 17 May 2011, referred to powers remaining the same as they reside in the Parliament Acts, but did not address the issue of conventions. Indeed, he sidestepped the issue by referring to the different methods of election and to composition, as if this resolved rather than enhanced the difficulties likely to arise with conventions. The Deputy Prime Minister further sidestepped the issue on 27 June 2011when again he fell back on a description of election and composition. He prayed in aid Baroness Quinn in the Lords who declared that Second Chambers 'generally live within their powers'. Neither Baroness Quinn nor the Deputy Prime Minister differentiated between powers as laid down by statute and those conventions which arise out of customs, agreements, expedience or practice.

This issue, however, must be resolved.

In his contribution on the floor of the House 27 June 2011, the Deputy Prime Minister declared that the reason why he supported the single transferable vote for elections to the Second Chamber is that it would provide this Chamber with greater independence from party control. This would equally challenge the control of the Executive to get its legislation through. The Liberal Democratic MP, Mr Tim Farron, is on record as declaring that Members elected in a different Chamber by the single transferable vote will have greater legitimacy than those elected to the Commons on a system of first-past-the post. The concept of conflict between two elected Chambers is clearly building up. Legitimacy and accountability go to the heart of any future struggle between an elected House of Commons and an elected Upper Chamber.

It shall have serious constitutional consequences if not addressed.

Mr Clegg made much of accountability on 17 May 2011, but where is the accountability when a Member elected to the Second Chamber is elected for fifteen years and cannot stand again? Governments are accountable because they face re-election at the time of a General Election. Members of Parliament elected for five years are similarly accountable. There can be no accountability when there are no plans for the elected Member to the Second Chamber to confront the electorate a Second time. The only accountability of an elected Member to the Second Chamber would be popular whim, powerful gusts of public opinion pushed by a frenzied media which belie all that a Second Chamber stands for, that is a period of reflection.

The Second Chamber would become the opposite of what it is now.

Long-standing opposition to an elected Second Chamber goes back to the early 1900s when a Liberal leader, Campbell-Bannerman, declared that 'to set up an elective Second Chamber would be to destroy the unique character of the House of Commons and introduce a new dissension into the heart of the constitution.' Jim Callaghan, who became Prime Minister, declared in a Tribune interview 20 June 1980, that an elected assembly would challenge the elected Commons. Constitutional law has long held that a reformed House of Lords based on the elective principle would inevitably come into conflict with the House of Commons: *Wade and Phillips; Constitutional Law; Sixth Edition.* Labour leaders Michael Foot and Tony Blair both believed an elected Second Chamber would come into conflict with the Commons.

This has held up any progress towards an elected Second Chamber for a century.

The present relations between both Houses of Parliament

The present relationship between the two Houses of Parliament is governed by statute and convention.

This is made clear in the House of Lords Reform Draft Bill. The statute consists of the Parliament Acts of 1911 and 1949 that provide the basic underpinning of the Parliamentary relationship. This reflects the supremacy of the Commons over the Lords. The statute provides that in certain circumstances legislation may be passed without the agreement of the House of Lords. It may be delayed for thirteen months. It is not intended that these statutes be amended in the event of their being an elected Second Chamber. There is an additional statutory bar on the Lords in that it has no powers over money bills. In the words of Nick Clegg, the Commons has the decisive right over supply.

The Summary of Proposals to the Draft Bill refers to the series of conventions which have grown up over a period of time and which govern the relationships between the two Houses on a day-to-day basis. These include that the House of Lords should pass the legislative programme of the government which commands the confidence of the House of Commons. Lord Ashdown of Norton-sub-Hamdon, however, put paid to this convention in his speech on 21 June 2011:

> *'(the Lords) does small things well, but is it constructed in a way that would prevent a Government with an overwhelming majority in the other place taking this country to an unwise and, as we now know, probably illegal war? No it would not because it did not. I cannot imagine that the decision to introduce the poll tax and the decision to take this country to war would have got through a Chamber elected on a different mandate and in a different period, or if there had been a different set of political weights in this Chamber from the one down to the other end.'*

More modern-day parallels might have been cited, such as objection to tuition fees, reforms to the National Health Service, and the proposed introduction of elected Police Commissioners. How would an elected Second Chamber deal with these in the light of the Ashdown doctrine, supported by the Minister of State, Ministry of Justice, Lord McNally, who declared that an elected Second Chamber would have the right to say No to the Commons?

Lord McNally wished that the Lords had voted on the Iraq war. With two elected Chambers, would the will of the Commons be subverted? Would its will prevail? Would legislation be delayed? Would the government of the day get its way, not only in the Commons where it had a majority, but in an elected Second Chamber where Members have been elected on proportional representation, who declare they have a mandate from their electorate and feel accountable to them?

If an elected Second Chamber were to pursue the Ashdown doctrine, the second convention referred to in the Summary of Proposals would also be upended, that is the convention that whether or not a Bill has been included in an election Manifesto, the Second Chamber should think very carefully about rejecting a Bill of which the Commons has approved. There is a third convention, already mentioned, that the Second Chamber will consider government bills in reasonable time and a further convention which supports the financial privileges of the House of Commons. The Summary of Proposals makes it clear that it does not wish to codify these conventions but to leave them as they are, as defined in Clause Two of the Draft Bill.

2. *The means of ensuring continued primacy of the House of Commons under the new arrangements*

It is proposed to introduce for elections to the Second Chamber proportional representation. The stated aim is to introduce into the Second Chamber a diffuse number of elected representatives, not representing a government majority in the Commons nor subject to party control, as the Deputy Prime Minister has said. But on the basis of the Ashdown doctrine there would be inculcated into the heart of our constitution a conflict of wills between the two Parliamentary institutions. The paradox of this is that existing conventions would not only have to be ratified but strengthened. They would have to be codified.

The essential aim is that the will of the Commons continues to enjoy primacy.

Given what would be a clear intention of an elected Second Chamber to challenge the conventions, in not authorising military action with which it might not agree, or with a poll tax which it did not agree, if this did not fall within the purview of the financial privileges of the Commons, the Commons would be required to assert itself through new powers:

- That a public bill originating in the House of Commons on which there was disagreement between the two Houses should be capable of being presented for Royal Assent at the end of a period of six calendar months from the date of disagreement provided that a resolution directing that it should be presented had been passed in the House of Commons.

- For this purpose, disagreement would be defined so as to cover the situation where a bill sent up from the Commons is rejected by the Second Chamber, where a motion that it should be read at any stage or passed is rejected or amended, or where the Second Chamber insist on an amendment which is not acceptable to the Commons.

- That the Second Chamber would have a period of sixty Parliamentary days in which to consider a public bill. If its consideration of a bill on which there was subsequent disagreement exceeded this period, the excess would count as part of the period of six months' delay following disagreement.

- Since it would be theoretically possible for the Second Chamber to destroy a disputed bill by postponing any overt disagreement until the end of the session, the bill should also be treated as disagreed to if after the sixty Parliamentary days the Second Chamber rejected a motion necessary to its progress or, in the last resort, if the Commons resolved that the bill should be so treated. A suitable period of notice would have to be given in the latter case.

- A bill would be capable of being presented for Royal Assent at the end of the period of delay, notwithstanding that this ran over a prorogation of Parliament and into a new session. Similarly, in the case of a dissolution, any bill which had been passed by the House of Commons and to which the Second Chamber had disagreed could be presented for Royal Assent in the new Parliament after the period of six months' delay had elapsed from the date of the disagreement.

- Where Royal Assent was to be given in the following session of Parliament, it would be necessary for the bill to be submitted within thirty Parliamentary days from the end of the period of delay after disagreement.

- Since there is little likelihood of conflict between a government and the Second Chamber on private bills and bills to confirm provisional orders, and since the quasi-judicial procedures on such bills would make it inappropriate to apply the Parliament Acts procedure to them, it is proposed to make no change in the present powers of the Second Chamber on private legislation.

- As regards secondary legislation, that is instruments which require approval by each House of Parliament as a condition of coming into force or continuing in force, if the Second Chamber rejects a motion for the approval of an instrument which had previously been approved by the Commons, and the Commons thereafter confirm their approval, the instrument shall be treated as approved by both Houses.

- The existing provision in Section 2 of the Parliament Act 1911 which excludes from the application of the Act any bill to extend the duration of a Parliament would be continued in relation to the new powers of the Second Chamber.

In order to be sure before the event that there can be no conflict between an elected Commons and an elected Second Chamber, in accordance with the Ashdown doctrine, present conventions would have to be codified into a new Parliament Act further limiting the delaying powers of the Lords to avoid a conflict with the Commons. Since the government has declared it is not its intention to codify conventions, such an Act would be required on the statute book before the Bill to reform the Lords is enacted.

Otherwise Parliament would be writing conflict and crisis into the heart of its constitution.

3. *Addressing the so-called democratic deficit*

Much is made of a so-called democratic deficit.

It is said that because the Commons is elected so, too, there should be an elected Second Chamber, and that without election the Second Chamber lacks legitimacy and accountability. Lord Ashdown in his speech to the Lords 21 June 2011 declared:

> *'the fact that we do not have democratic legitimacy undermines our capacity to act as a check and balance on the excessive power of the Executive backed by an excessive majority in the House of Commons'.*

It is clear that, in accordance with the Ashdown doctrine, the reduction of the so-called democratic deficit and the extension of supposed democratic legitimacy amount to the creation of conflict and crisis within the heart of our constitution.

The role of the Second Chamber is as a revising Chamber, a Chamber that provides for informed debate, and by its delaying powers may lay a hand on the shoulder of any government, or seek to correct legislation that may be hastily prepared and introduced and ill-considered in the House of Commons. These are the correctives to the so-called 'excessive power backed by an excessive majority' in the House of Commons. In the view of Lord Howarth, there is democratic

legitimacy in elections to the Commons. Where can there be a democratic deficit where the House of Lords defers to the democratic authority of the Commons? He declared that we have an advisory House of Lords and an elected House of Commons: asymmetrical bicameralism.

As Lord Lawson of Blaby pointed out in the debate on 21 June 2011, there is no lack of legitimacy in the fact that Members of the Bank of England's Monetary Policy are not elected, or Members of the judiciary. It might be added that the Police Commissioner for London is not elected.

The constitution of the United Kingdom consists of the Monarch, the Lords and Commons. If one is to say there is a democratic deficit in relation to a non-elected Second Chamber, and if one prays in aid bicameral Parliaments elsewhere that are elected, even though under Federal systems, why should the Monarchy not be abolished and replaced with a President, where in other countries Presidents are also elected? They might be executive or ceremonial but they are elected all the same.

No one suggests for a moment that the democratic deficit should extend to the Monarchy, but then why should it extend to the House of Lords which has accomplished its role as a revising Chamber, a delaying Chamber, a focus for well-informed debate, and an initiator of government legislation in order to speed up the legislative process, and where the Lords has already been subjected to reform with the introduction of life peerages and the removal of hereditary peers? Further reforms have been put forward by Lord Steel of Aikwood, some incorporated in the House of Lords Reform Draft Bill: a statutory Appointments Commission, ending by-elections for hereditary peers, permanent leave of absence and dealing with those convicted of serious criminal offences. All intended to improve the workings of the Second Chamber without dismantlement amounting to abolition.
It is said that all three major parties advocated a wholly-elected Second Chamber in their 2010 manifestoes. The Labour Party manifesto declared:

> *'We will ensure that the hereditary principle is removed from the House of Lords. Further democratic reform to create a fully elected Second Chamber will then be achieved in stages. We will consult widely on these principles, and on an open-list proportional representation electoral system for the Second Chamber, before putting them to the people in a referendum'.*

The Labour Party in opposition has accepted that the cross-party Lords Reform Working Group did not have a substantive discussion on the powers of a reformed House of Lords, or how to deal with the conventions that currently govern the relationships between the two Chambers, and whether these should be codified. The Opposition has declared how the government planned to approach this important matter would be critical in determining any progress on the Draft Bill. The Labour Opposition wishes that a reformed House of Lords be based on clear

principles so that a new Second Chamber can command public support as part of a renewed Parliament. Presumably, till further notice, the Opposition stands by its election commitment that *there be a referendum on this.*

For any major constitutional change, such as replacement of the House of Lords by an elected Second Chamber, elected either wholly or partially, a referendum would be required. It should not be overlooked that the Monarch is the third strand of our Parliament. Prior to the introduction of the Parliament Act 1911, the Monarch of the day invited the Prime Minister of the day to provide legitimacy for the Act by holding and winning a General Election. This the Prime Minister did. It would be within this spirit for so major a change not to be endorsed in the modern era by a General Election but certainly by a referendum. And whilst the Monarch acts upon the advice of her Ministers, the Monarch is able equally to give advice.

4. *An Eighty Percent Elected Chamber*

The Coalition government supports a wholly-elected Second Chamber but leaves open the option for a Second Chamber eighty percent elected. In an eighty percent elected Second Chamber, the appointed independent Members would be nominated by a statutory Appointments Commission and recommended by the Prime Minister for appointment by the Queen. Twenty Members would be appointed at the time of each election to the Second Chamber with the same term as elected Members. In an elected Second Chamber, the government proposes that there be up to twelve places for representatives of the Church of England.

The Lords is able at present in any debate on legislation, or in any general debate, to call upon an array of expert knowledge that is perhaps unique in any Second Chamber anywhere in the world. Lord Howe of Aberavon pointed out in the Lords debate 21 June 2011 that in a debate on the National Health Service in November 2001, nineteen speakers included two former deans of university medical schools, a practising dentist, a consultant obstetrician, a consultant paediatrician, a former GP, a former professor of nursing, a former director of Age Concern, and the President of Mencap. Lord Howe wondered what wider complement of expertise and analysis would a Second Chamber get if it were exposed to election.

The Church of England is by law established and twenty-six Lords Spiritual sit in the Lords by ancient usage and statute. The bishops hold their seats in the Lords till they resign their episcopal office. The Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester have the right to a seat in the Lords. The remaining twenty-one are the other twenty-one diocesan bishops having seniority of date of appointment. When such a bishop dies or resigns his place in the House of Lords is taken not by his successor but by the other diocesan bishops. In 1847 on the creation of the Bishopric of Manchester it was enacted that the number of bishops sitting in Parliament should not be increased in

consequence. Similar provision has been made on the creation of subsequent new bishoprics, for example the Bishoprics of Southwark and Birmingham, created by Act of Parliament in 1904.
The Monarch is head of both Church and State.

Bishops sitting in the House of Lords are part of the Church-State relationship. Any abolition of bishops sitting in the Lords shall weaken that relationship. The bishops represent the fabric of society in the Lords; they represent some seventy thousand parishes throughout the land of England. They are often more in touch with the people than elected representatives. As Second Church Estates Commissioner, Mr Tony Baldry MP, has said the two Archbishops and ten senior diocesan bishops would bring 'considerable wisdom and expertise' to a reformed Second Chamber. 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.

A wholly-elected Second Chamber shall lead to the removal of expertise from the Lords which shall deprive the Second Chamber of wisdom based upon experience.

5. *Election on a System of Proportional Representation*

The Summary of Proposals to the House of Lords Reform Draft Bill indicate that the Coalition Agreement set out the government's commitment to a system of proportional representation for the elected Second Chamber. The system is designed to ensure the proportion of available seats won by a given party corresponds closely to the proportion of votes cast for that party at the election. Thus thirty per cent of the votes cast should win as close as possible to thirty per cent of seats available.

The declared intention of proportional representation is to create a result where no party shall have an overall majority in the elected Second Chamber. In the words of Mr Clegg, the Deputy Prime Minister, this would loosen party control of Members elected to the Second Chamber. As Mr Clegg stated on the floor of the House of Commons 17 May 2011, Members to the Second Chamber would be elected according to a different voting system with a mandate entirely different from Members of the House of Commons.

There would appear to be two reasons why proportional representation is being espoused for elections to a Second Chamber:

- No overall majority is likely, thus loosening party control ;

- The system of election must be different to differentiate this from elections to the Commons.

The Coalition Agreement was entered into prior to a referendum on whether the electorate wanted to change the voting system to the House of Commons to the alternative vote from first-past-the-post. That referendum was resoundingly lost. The electorate voted against a change to the voting system. However, a change is now being proposed that goes to the heart of the unwritten constitution and places an elected Second Chamber in certain confrontation with an elected Commons where the two election systems are different.

The Deputy Prime Minister has said 27 June 2011 that there are already an array of different electoral systems that all co-exist: elections to the European Parliament, that used in London, and those used in devolved Assemblies. However, none of these have been tested in a referendum, as has the alternative vote, and none are at the heart of the constitution. And none bring a Second Chamber into conflict with the Commons. As Mr Sadiq Khan has said 17 May 2011:

> '*bearing in mind that the country comprehensively rejected the AV system two weeks ago, is the Deputy Prime Minister seriously suggesting that he should impose a system of proportional representation for the Second Chamber without consulting the electorate?*'

Nor is it imaginary to state that two Chambers elected on two different voting systems will come into conflict.

It is worth repeating that the President of the Liberal Democratic Party, Tim Farron MP, has declared that those Members elected by proportional representation will have greater legitimacy than those elected to the Commons under first-past-the-post. This indeed is the tenor of statements from all leading Liberal Democrats, not surprisingly since on a system of proportional representation the party would have more seats and therefore more power in an elected Second Chamber that they are now able to muster in the Commons under first-past-the-post.

Conclusions

1. The perception of conflict between two elected Chambers, each vying for supremacy, is the reason why reform of the Lords as now proposed has never come about in the last century.
2. The House of Lords has been subject to reform and can be reformed again without being elected whilst maintaining its essential as a revising Chamber and debating Chamber and a Chamber where primary legislation may originate.
3. The House of Lords Reform Draft Bill as it stands shall create perpetual conflict and crisis in the event a Second Chamber is elected by way of proportional representation where the Commons is elected by first-past-the-post.
4. The Reform Bill introduced by Lord Steel and partially incorporated in the Reform Draft Bill would meet the need for Lords reform without disturbing the

inherent balance within the constitution, that of Monarch, Lords and Commons, together with the place of the Established Church within that constitution.

5. A reformed Lords along the lines of the Steel Bill shall not introduce potential crisis and conflict into the heart of the constitution, addressing a so-called democratic deficit that might lead in future years to the role of the Monarchy coming into question, and whether a democratic deficit should be addressed here too.
6. A Second Chamber duly elected could only come into existence where all those conventions that now exist between Lords and Commons are codified, in an Act of Parliament that amends the Parliament Acts 1911-49, this to prevent conflict and crisis, and confirm the supremacy of the elected Commons.
7. And not only must conventions be codified but they must be modified along the lines suggested in Section Three of this submission in order to ensure definitive supremacy or primacy of the House of Commons over the Second Chamber.
8. If such codification did not take place the government's reasonable reliance on the convention that its legislation will not be held up in the Second Chamber would come into serious jeopardy where the government of the day was proposing unpopular but necessary measures, or measures that had not appeared in its manifesto.
9. This would result in more falling back upon the Parliament Acts than hitherto.

10. In any event, such a major change to our constitution, could only come about following a referendum:

    - Whether the electorate wishes the House of Lords to be replaced by a Second Chamber wholly-elected ;
    - Whether the electorate wishes the House of Lords to be replaced by a Second Chamber partially elected ;
    - Whether it wishes an election by first-past-the-post or proportional representation?

11. That a wholly-elected Second Chamber shall deprive this Chamber of expertise and experience now available to the present Lords and which makes the Chamber the finest debating House in the world with its concomitant impact upon legislation being subject to review and amendment.
12. That reform of the Lords may be achieved by adopting the Bill introduced by Lord Steel and other such streamlining reforms without disturbing the constitutional balance between Lords and Commons.

1st October 2011

Written evidence from the Council of the Law Society of Scotland (EV 18)

GENERAL COMMENTS

The Council of the Law Society of Scotland is the statutory regulator of solicitors in Scotland. In terms of section 1 of the Solicitors (Scotland) Act 1980 the Council has the objects of the promotion of the Solicitors' profession in Scotland and the promotion of the interests of the public in relation to that profession. Accordingly the Council is concerned to contribute to the process of legal and constitutional change and to monitor legal developments.

The Council has considered the White Paper entitled "House of Lords Reform Draft Bill". The Council has the following comments to make:-

INTRODUCTION

The Council takes the view that many aspects of the reform of Parliament and in particular reform of the composition, role and powers of the House of Lords are political issues on which Council cannot have a view.

However there are some considerations which ought to be taken into account when proposing reform of the House of Lords. In particular, there are many aspects of the work of the House which should be preserved and not affected by reform.

THE BASIC MODEL

The Council is of the view that the present bicameral system works reasonably well. It ensures that the unwritten UK constitution is provided with a system of checks and balances.

The White Paper "House of Lords Reform" (Cmnd 3799) published in 1968 stated there were seven functions of the House:

a) its appellate role (abolished by the Constitutional Reform Act 2005);
b) its role a forum for debate;
c) its revising role in relation to Commons' bills;
d) its initiating role in relation to legislation;
e) dealing with subordinate legislation;
f) scrutiny of the executive; and
g) the scrutiny of private legislation.

Reform of the House has been debated recently through a number of White Papers and consultations and legislative debate.

The White Paper "Modernising Parliament – Reforming the House of Lords" (Cm 4183) analysed the role of the House of Lords as being legislative, deliberative, interrogative and judicial.

The Royal Commission Report, *A House for the Future* (Cm. 4534) published in January 2000, proposed that the House should basically be a revising and advisory chamber intended to complement but not to undermine the House of Commons. It proposed that the House should be a majority appointed House, with a statutory Appointments Commission answerable to the House; and responsible for nominating all appointed members of the House, including those from the political parties.

The Government White Paper, *The House of Lords – Completing the Reform*, (Cm 5291) published in November 2001. The White Paper endorses the Royal Commission's vision of the role and importance of second chamber and accepts broad framework on membership. In particular, it accepts that the House should continue to be 80% appointed and that the Appointments Commission should be moved on to a statutory basis.

Furthermore, the House of Lords Act 1999 provided for the removal of the sitting and voting rights of the majority of hereditary Peers and established a mechanism for retaining 90 hereditary Peers through a process of election. In May 2006, the Government supported the establishment of a Joint Committee to examine the conventions governing the relationship between the two Houses of Parliament. The then Government also set up cross-party talks on House of Lords reform. The consensus reached in these talks was reflected in the White Paper published in February 2007 [*The House of Lords: Reform. The Stationery Office. (2007) (Cm 7027)].*

Although other legislatures in the context particularly of written constitutions can operate within a unicameral framework and fulfil many of these functions other structures and procedures are invariably constructed around the single chamber in such constitutions such as presidents or heads of state with powers to reject legislation and constitutional courts with extensive powers to nullify legislation. Single chamber legislatures may also need far reaching pre-legislative consultation procedures.

The arrangements under the Scotland Act 1998 and the Constitutional Reform Act 2003, giving a role to the United Kingdom Supreme Court and under the Scottish Parliamentary procedures for a consultative and investigative role for Parliamentary Committees reflect the need to supplement a unicameral legislature by creating processes to ensure adequate scrutiny of legislative proposals and enacted legislation.

Given that there would be a need for alternative structures in any case the Council takes the view that the existing bicameral nature of Parliament should remain.

The Council is of the view that the House of Lords fulfils a useful function in assisting the House of Commons to hold the Executive to account. The House of Lords given its non elected basis is necessarily the subordinate partner in this enterprise. That does not imply that the House does not have an important role to play. The very fact that the House is not subject to the same political pressures which apply in the House of Commons means that a more dispassionate view can be taken of the actions of the Executive. Time can be allowed for the raising of issues which could be lost in a House of Commons setting and the expertise of Peers can be directed into areas of the Executive's activity which may not receive similar scrutiny in the House of Commons.

The Council notes that the Government intends to retain the name "House of Lords" at least for pre-legislative purposes.

In the Council's view there is no particular concern about the name of any reformed chamber. Suggestions such as "Senate" or "Legislative Council" are well known but carry certain historical and constitutional inferences which may not be entirely appropriate for the reformed chamber. "Second Chamber" or " Upper House" may be more reflective of the nature of the reformed body. On the other hand, some may consider that the retention of the existing name emphasises historical continuity and signifies elements of the development of the constitution and democracy in this country.

ROLES AND FUNCTIONS

Legislation

The House of Lords is a valuable revising chamber but there are factors which inhibit its capabilities. Some of these relate to its composition, others stem from the constraints put on the House and the provisions of the Parliament Acts. It is these latter issues on which the Council to concentrate.

The Council has had many experiences with legislation which has been substantially amended during the course of its passage through the House of Lords. Sometimes amendments proposed by the Opposition or by Cross bench Peers have had success in the House of Lords which they did not enjoy in the House of Commons. Frequently the Government takes advantage of the opportunity presented by the passage of the bill in the House of Lords to make changes either as a result of further consultation or political reassessment. The locus poenitentiae, or chance to think again, which the House of Lords provides in relation to legislation should not be underestimated. It is very useful for all parties.

When bills are introduced in the House of Lords they frequently undergo a process of debate and examination which is informed and productive. Improving amendments especially to law reform bills are a feature of Lords scrutiny. The Council has been involved in many such measures by suggesting amendments and commenting on bills. Even if amendments are not achieved in the House, Ministerial statements which could be employed for the purposes of interpreting legislation in terms of Pepper v Hart [1993] A.C. 593 can be extracted in debate. This can be as useful as securing amendments.

However Peers are hampered in this work by a general lack of resources. Inadequate, crowded accommodation and insufficient support, barely offset by helpful library staff, restrict the ability of Peers to contribute to debates. The efficiency of the chamber would be dramatically improved if more resources including adequate meeting rooms, up-to-date communications facilities, such as e-mail and internet access and improved secretarial facilities were more widely available. In this connection, Clause 59 of the draft bill makes provision for the House of Lords allowances scheme. If properly established and funded this will enhance the ability of

peers to contribute to the work of the House. However, if the current limitations continue to impair the House's efficiency in an environment where not all Peers who are entitled to attend do so, the problem will only be exacerbated in a reformed chamber where attendance is increased.

The Parliament Acts constrain the powers of the House of Lords. Under this legislation the Lords must pass without amendment any bill certified by the Speaker as a money bill within one month of its being sent to the Lords. Money bills are those which seek to raise taxes, impose charges on the Consolidated Fund, supply, deal with appropriation, receipt, custody, issue or audit of public accounts, or the raising or guarantee of loans. Money bills do not include those relating to local taxation. The Lords only has power to delay other bills except those to which the Parliament Acts do not apply, for example a bill to extend the maximum duration of Parliament beyond five years, local and private legislation and public bills which confirm provisional orders. The Parliament Act procedures have only been used sparingly since their enactment principally because the Lords accept the democratic mandate which the House of Commons hold.

The Council is of the view that the role of the House of Lords in relation to primary legislation is a necessary aspect of parliamentary scrutiny.

In relation to secondary legislation the Council is of the view that an enhanced role for the House could include operating as a clearing house for Orders in Council, regulations and other forms of delegated legislation. It should be possible to amend secondary legislation. At present secondary legislation cannot be amended, it can only be approved or rejected. Due to constraints imposed by convention rejection is very rare and there is consequently little that can be done to change subordinate legislation once it is introduced. The creation of procedures to allow the amendment of subordinate legislation should be considered.

Scrutiny

The Council is of the view that the House's role in scrutiny of the Executive is a most important one. The substantial expertise of Peers ensures that the debates in the House are of high quality and recognised authority. Any change in the functions of the House should preserve this quality. For example, the work done by House of Lords Select Committees or Joint Committees is distinct from that carried out by House of Commons Committees. Because House of Lords Committees are not identified with the work of particular Government departments these committees can take more strategic overviews and comment on strategic issues.

The House plays a substantial part in holding Ministers to account. The Council supports the existing framework where Government departments are represented in the House and where Ministers can be questioned both in the Chamber and in Committee. If the existing procedures continue there would be no need for Ministers in the House of Commons to be able or to be required to attend to answer questions.

The revised chamber could take a more active role in dealing with EU policy and legislation. A structure which could allow liaison between the House and the EU Commission and EU officials would be particularly useful especially given the need for early representations to be made if EU proposals are to be affected. This is especially important following the Treaty on European Union's role for national legislatures. A liaison group between the House and MEPs would also serve to maximise the contribution of the revised chamber. The Council does not believe however that a structure which would give MEPs a specific role in the revised chamber would be appropriate.

The revised chamber could also enter into bilateral or multilateral relations with the Upper Chambers of other EU Member States. The pooling of common experience and the resultant exchange of views could improve the efficiency of the House especially in relation to EU law and policy.

The revised chamber could also enhance its role in relation to other aspects of international law. Special attention could be given to World Trade Organisation matters or to proposed treaties which could result in new international obligations for the UK.

Finally, the revised chamber could assume a liaison with the structures of devolved government to ensure the free flow of information between Westminster and the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

It should not be forgotten that the United Kingdom Parliament still has important legislative functions in relation to Scotland in the context of UK legislation on reserved areas under the Scotland Act 1998 (and will continue to do so in the context of the current Scotland Bill). The revised chamber will therefore have to continue to be aware of developments in Scotland and will have to take account of Scottish interests when legislating on reserved areas. Adequate arrangements will be needed to ensure that there are sufficient Peers from Scotland in attendance in the House. Consideration will also have to be given to the proper resourcing of these Peers (see the comments at Clause 59 of the draft Bill above).

Powers

The Council is of the view that any change to the House should have as one of its aims legislation which is clear and which gives prominence to the House of Commons as the elected chamber. 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. It may be that reducing the time by which the second chamber can delay primary legislation under the Parliament Acts would be sufficient to signify the prominence of the House of Commons. However extending the advantages of the Parliament Acts to government bills which have begun in the Lords could convey the impression that such measures are of equal importance to the government of the day as those which are introduced in the Commons. This could be a recipe for confrontation between the Houses.

Composition

The issue of composition of the House of Lords is essentially a political matter. However it is possible to agree with the broad range of characteristics which members of the reformed chamber could exhibit as follows:-

- greater democratic legitimacy, but not to the extent that the Chamber could challenge the pre-eminence of the House of Commons;
- a greater degree of independence of the Executive and of political parties than the House of Commons;
- a non-partisan approach;
- recognised expertise in a range of areas;
- breadth of experience, involving at least a proportion of people who are not professional politicians;
- a long-term perspective;
- being representative of the nations and regions of the UK;
- having access to knowledge and experience of the EU;
- legal knowledge;
- being representative of a range of faith communities;
- being more representative of society as a whole than the present House of Lords.

DETAILED COMMENTS ON THE DRAFT HOUSE OF LORDS REFORM BILL

Part 1 – Composition of the House of Lords

The Council has no comment to make on this point as the balance between elected, appointed, spiritual, ministerial and transitional members of the House is a political issue.

Part 2 – Elected Members

The Council is of the view that the term for elected members in Clause 6 may be too long. A ten year term may be more appropriate.

Part 3 – Appointed Members – term

The Council is of the view that the term for appointed members in Clause 19 may be too long. A ten year term may be more appropriate.

Clause 16 – The House of Lords Appointment Commission

The Commission's membership should reflect the nations and regions of the UK. A former member of the Commission should not be appointed and should not seek election to the House of Lords until five years have elapsed, since he or she was a member of the Commission.

Part 4 – Lords Spiritual

The Council is of the view that provision should be made to ensure the representation of other faiths as well as the Church of England – otherwise the Council has no comment to make.

Part 5 – Ministerial Members

Clause 34 – Ministerial members

Clause 34(7)(e) provides the Prime Minister with the power to make an order concerning the disqualification of persons who are or have been ministerial members from being members of the House of Lords under another description. This should not be a matter for subordinate legislation but should be included in the Bill.

Part 6 – Transitional Members

The Council has no comment to make.

Part 7 – Disqualification

Clause 36 – Disqualification from being an elected member

Clause 36(1) details the disqualification conditions. The conditions are broad but do not include conditions relating to mental Health detentions or Guardianship Orders. The Council is of the view that the conditions should be re-examined from this perspective. Clause 36(f) provides that disqualification follows if a person has been committed of a serious offence which is defined in Clause 47. There is a mismatch between the offence disqualification for membership of the Appointments Commission and this provision which should be resolved.

Clause 38 – Disqualification from being an appointed member

Clause 38(1) details the disqualification conditions. The conditions are broad but do not include conditions relating to mental Health detentions or Guardianship Orders. The Council is of the view that the conditions should be re-examined from this perspective. Clause 38(f) provides that disqualification follows if a person has been committed of a serious offence which is defined in Clause 47. There is a mismatch between the offence disqualification for membership of the Appointments Commission and this provision which should be resolved.

Clause 46 – Meaning of "insolvency order" etc

The Council has no comment to make.

Clause 47 – Serious offence condition

The Council has no comment to make.

Clause 50 – Relief from disqualification: serious offence condition

The Council does not agree with this clause. 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.

Clause 53 – Members of the House of Lords disqualified from being MPs

The Council agrees with this clause.

Part 8 – General provision about Membership
Clause 56 – Expulsion and suspension

The Council is of the view that it should be a specific offence for a person to refer to him or herself as member of the House of Lords when he or she is not a member.

Clause 60 – Tax status of members
The Council is of the view that this clause should take into account the prospective provisions relating to the Scottish rate of income tax contained in Clauses 28 – 32 of the Scotland Bill.

CONCLUSION

The House of Lords fulfils many useful functions in the United Kingdom's constitution. The process of reform will need to take account of the need for enhanced democratic accountability, the desire for greater efficiency and the changing constitutional structure of the United Kingdom.

4 October 2011

Written evidence from Rt. Hon Lord Foulkes of Cumnock PC (EV 19)

I fear, like most previous reviews, this one will fall into the trap of principally considering the nature of the membership of the Second Chamber and how they become Members.

In my submission this is a misguided and narrow interpretation of the nature of the fundamental review is needed.

The review must be undertaken in a wider context, particularly in relation to its functions and how it relates to the House of Commons, but also in the context of constitutional changes which have taken place or are proposed.

It should also look at a process of reform and not just a one-off fix to satisfy the ambitions of a Deputy Prime Minister with no experience of the Second Chamber and, indeed, scant of the first.

In doing so I believe the Committee should consider both the long term ideal and the immediate changes which can help move smoothly towards that ideal.

I accept that in a democracy the legislature should be elected and, if there are two chambers, both should be elected.

There is a strong argument in favour of a uni-cameral system to avoid gridlock between the two chambers of a bicameral legislature. But there is also an argument that a second chamber can provide a democratic check on a first chamber controlled by a powerful executive.

In the UK we cannot afford not to consider what might be ideal, even if such exists, but must, like the man lost in Ireland searching for the route to Dublin, start from where we are.

We currently have a revising Second Chamber which, through Conventions, accepts the primacy of the House of Commons should ultimately prevail and so a form of appointment is not considered to be outrageous, although our form of appointment, without a ceiling and with relatively little scrutiny does stretch legitimacy and credibility to the boundary.

If the Second Chamber is to be elected it will take more powers upon itself and to deny this is to misunderstand elected politics.

However, my view is that we should agree a long term aim of an elected Second Chamber, but before that is put into legislation we need further detailed consideration of:

a) The relative roles and functions of the two chambers

b) The machinery for resolving disputes between them

c) The method of election to both chambers

None of this can be properly considered before the next election.

In considering their long term proposals the Committee should look in detail at other countries to see the relationship between the two houses and not rely on hearsay or polemic from those arguing for change.

Meantime the Committee should consider what short term proposals would improve the present position and not pre-empt its consideration of longer term reform. This should include:

a) Ending all rights of Hereditary peers to sit in the second chamber of the legislature

b) The agreement of a ceiling in the number of members

c) Arrangement for the retirement of members i) who attend infrequently ii) who volunteer to do so and iii) who attain the age of 80 during a session of Parliament

d) A statutory Appointments Committee and a more transparent system of nomination for membership

e) A system of remuneration for secretarial support for those agreeing to take no outside public or private appointments

This arrangement would be agreed for this and the next Parliament on the understanding that longer term proposals for election would then be considered by this, or a successor Committee.

They could be introduced either through the Bill introduced by Lord Steel of Aikwood, currently before Parliament or by separate government legislation.

Member of the House of Commons 1979 – 2005

Member of the House of Lords 2005 - present

3 October 2011

Written evidence from Jim Riley—United States Citizen (EV 20)

There is no reason that the electoral districts elect the same number of members at each election. Since the House of Lords is envisioned as having a continuing membership, each electoral district could be represented by its proportionate share of members, even though it had more or less than that share at any particular election.

It is analogous to the election of the US Senate, where each State has 2 senators, but only elects one senator in 2 out of 3 elections.

Let's say that an area is entitled to 13/240 of the elected members. This is 4.33/80 of the members chosen at any election. Rather than electing 4 members every election, and thus having a total of 12 members, and being permanently underrepresented, it could as easily elect 4, 5, and 4 members at successive elections, and have 13 members, its proportionate share.

This also avoids the need to tinker with electoral district boundaries. Rather than adjusting the boundaries so that an area has 12/240 or 15/240 of the total electorate simply to permit election of the same number of members at each election, the district could remain fixed, with the numbers elected varied to reflect the actual share of the population.

Imagine an area entitled to 12.6/240 of the elected members, or 4.2/80 of the members chosen at any election. That is to say, they should have 4 members elected at most elections, but a fifth member elected every fifth election. This would be calculated in the following manner:

Election	Entitlement	Elects	Error
1st	4.2	4	0.2
2nd	4.4	4	0.4
3rd	4.6	5	-0.4
4th	3.8	4	-0.2
5th	4.0	4	0.0
6th	4.2	4	0.2

The entitlement at any election is the number of members based on the proportionate share of electorate plus any residual apportionment error carried forward from the previous election. The number of members is the entitlement rounded to the nearest integer. The residual error is the difference between the entitlement and the number elected.

Over 25 years, or 5 elections, the electoral district would have 13 members for 15 years, and 12 members for the other 10, or an average of 12.6 members.

The calculation could be made based on the electorate prior to each election. If the relative share of the electorate was increasing, the election of a fifth member would become more frequent. If the relative share declined, then the election of a fifth member would become less frequent.

While independent rounding would result in each electoral district maintaining its share of the whole elected body, it would cause a small variation in the overall size of the body. So that instead of 240 elected members, there might be 241 or 237. I don't see this as a problem. 240 was likely not chosen because it was the perfect number, but seemed a reasonable number and was politically viable.

If it was determined to be of importance that precisely 80 members be elected, then the number elected in each district could be calculated using the Sainte-Laguë method. If a district that was entitled to 4.6 members, failed to secure a fifth member, then it would have a residual error of 0.6 carried forward to the next election. If a district that was entitled to 5.4 members were to secure a sixth member, then it would have a residual error of -0.6 carried forward.

Some electoral districts may have an entitlement of less than 9 members (3 per election). This would be the case if Northern Ireland were an electoral district. This can be handled by first apportioning the minimum number of electors to Northern Ireland, and then apportioning the other 77 members based on the other electoral districts share of the Great Britain electorate. If there are other small electoral districts, a similar adjustment would be made.

There might be a concern that a district that regularly elected two of four members for a larger party, may still only elect two members in elections where the electoral district elects five members total. But this is an artefact of STV. If there are 4 members elected, a party with 35% popular support can only elect 25% or 50% of the total. If they elect 2 of 4 they are somewhat overrepresented. If they elect 2 of 5, or 40%, this is much closer to their popular support.

Vacancies can also be handled by a system of variable apportionment. Rather than using a complicated system of recounting ballots, or awarding a seat to a best loser, simply let the seat remain vacant. Each electoral district would have a minimum of 9 members, so a vacancy or two would hardly leave the voters unrepresented on a body intended to be a scrutinizing and revising body, rather than a governing body.

And then compensate the electoral district for the period of the vacancy. For example, if there were a vacancy two years into a 15-year term, an additional 13/15 would be added to the residual error. At the next regular election, this would generally result in election of an additional member for a full 15-year term, filling the 10 remaining years of the vacancy, the 3 years where the seat was vacant, and 2 years based on the districts electorate.

If a vacancy occurred in the last year of a 15-year term, then 1/15 would be added to the residual error. Typically, this would not result in additional representation, but would eventually result in compensation due to an extra member being elected sooner rather than later.

3 October 2011

Written evidence from Lord Goodhart, QC (EV 21)

ELECTION OF MEMBERS

Those who object to the election of members to the House of Lords – whether 100 per cent, 80 per cent or some other figure – face a problem which has hardly been mentioned in debates, let alone argued. This problem is the allocation of seats to political parties.

The allocation of seats is, and for a long time has been, a matter for the Queen, acting on the recommendation of the Prime Minister. Until 1997, this was very much under the control of the Prime Minister. Mrs. Thatcher was notorious for her reluctance to appoint anyone other than Conservatives.

On winning the election in 1997, Tony Blair announced that the two main parties should have broadly equal numbers of members of the Lords, while the third party should have a "proportionate" share (a statement of some uncertainty). That principle has been accepted by the subsequent prime ministers, but there is absolutely nothing to prevent a future prime minister from going back to pre-1997 practices and giving priority to the appointment of members of the government party. This will be more tempting because of the increase in the political activity of the House since the House of Lords Act 1999 was enacted.

I believe, therefore, that it would be unacceptable to continue with the present system.

This does not, however, mean that all or any of the political members of the Lords must be elected. It would be possible to link the allocation of new political seats to the voting (*not* to the number of seats won) at the previous general election, either in the UK as a whole or, preferably, in each of the regions used for Euro elections. The allocation would therefore be determined by voting by the people, but the choice of the individual new members would be decided by the separate political parties, not by the people.

This seems to me to be a reasonable alternative to the system proposed in the draft Reform Bill, and one which will be more acceptable to the present membership of the Lords. It also reduces the argument that the Lords will become a challenge to the Commons, since the individual members will not have been elected by the voters.

TERMINATION OF SERVICE

It has long been my belief that membership of the Lords should have a time limit. A term of 15 years seems reasonable. The present right to life membership is a hold-over from the time of hereditary peers, who were entitled as of right to membership, and there is now no constitutional reason why life membership should be retained. Time limits are desirable for a number of reasons. These include:

(i) Membership of the Lords is usually awarded to men and women who have either finished, or are well-advanced in their main careers. This gives them valuable knowledge and experience, but these have "use by" dates, and have reduced value as time goes on.

(ii) By contrast, membership of the Lords is occasionally awarded to younger people. As matters now stand, a person aged 35 at the date of appointment could remain for 50 years or more, which is excessive.

(iii) The need for reducing the membership of the Lords makes it desirable to reduce this length of service.

There is, of course, the question of limit to the service of present members. Serving members were, of course, removed in 1999 in large quantities. I do not think existing members should retain office for life, but I think that existing members should be entitled to remain until they have achieved 15 years of service, and probably longer in a few cases. (The actual date of departure should be the end of the session in which 15 years is reached).

I see no reason for the limitation of service of members appointed under Clause 21 of the Bill to less than 15 years in full. Why not allow replacement appointments to continue for 15 years, irrespective of general elections?

BISHOPS

The Church of England is of course the established church of England, though not of Scotland, Wales or Northern Ireland. But why on earth should establishment give Anglican Bishops and Archbishops a special right to vote in the House of Lords? Religious faith should not give members of any particular faith a right which is not extended to other people. If there continue to be appointments of cross-benchers, appointments could continue to allow individuals who are, or have been, office-holders in major faiths to be nominated for service in the House of Lords.

15 September 2011

Written evidence from Mark Ryan (EV 22)

1. My name is Mark Ryan and I am a Senior Lecturer in Constitutional and Administrative Law. I have a particular interest in matters of constitutional reform with a specialism in the reform of the House of Lords. My submission represents my personal view on the 2011 House of Lords Reform Draft Bill and in no way represents the view of my employer Coventry University.

2. The Draft Bill. The House of Lords Reform Draft Bill 2011 is to be welcomed as all major constitutional measures should be subject to pre-legislative scrutiny as a matter of standard legislative practice. The period of approximately eight months for the Joint Committee to undertake its investigation appears to be appropriate and this is in direct contrast to the limited time allocated to the Joint Committee on the Draft Constitutional Renewal Bill in 2008.

3. The House of Lords Reform Bill, if enacted, will have profound implications for our uncodified constitution (after all, the constitution cannot be altered in isolation without having secondary effects reverberating elsewhere). In view of this, it is proposed that legislation should be passed for a United Kingdom-wide referendum be held to approve (or reject) the changes proposed by the House of Lords Reform Bill either before it is introduced into Parliament as a fully-fledged Bill or as a post legislative referendum with the Act containing a sunrise provision making its activation subject to public endorsement. It appears inconsistent that it was deemed constitutionally appropriate for a referendum to take place in 2011 on a change in the electoral system for the House of Commons, but seemingly not for one on an issue which is arguably more significant, that of introducing the *principle* of election into the second chamber. There is clearly, however, no appetite from the Coalition Government for a referendum on this issue.

4. A second justification for a referendum is based on the concern that in the United Kingdom, constitutional reform has been far too Parliamentary–centric and introspective without any real reference to engaging the wider public (in this sense the establishment of this Joint Committee is to be warmly welcomed). In point of fact, in September 2011 the author lodged an e-petition on the HM Government website calling for a referendum to take place on the House of Lords Reform Draft Bill as to whether the reformed upper House should be fully or largely elected.

5. Powers and primacy. The Draft Bill does not propose to alter the powers of the second chamber and instead assumes that the legal and political powers which currently govern the relationship between the two chambers will be transposed to the context of a reformed House. In terms of legal powers, there is an argument to be had that the 'democratisation' of the second chamber should result in it being granted additional legal powers. The House of Commons should retain primacy as the dominant chamber owing to the fact that the Government is largely drawn from it and that it also grants Supply. There is clearly a case, however, for amending the Parliament Acts and increasing the period for which the newly reformed (elected) second chamber could delay legislation in order to reflect its new found

democratic and legitimate status. In any event, the House should retain its power to veto Bills extending the life of Parliament, but given that one of the chamber's roles is to act as the guardian of the constitution, this veto should also be applied to major constitutional Bills. The author readily concedes that in some cases this may be a fine judgement, but one which is not insurmountable.

6. In terms of the political relationship between the two Houses, given that constitutional conventions rely on the self-restraint of members and historically relate to the context of an unelected House, it is contended that newly elected members in a reformed chamber will not necessarily feel constrained to abide by them. Instead, it seems clear that these new elected members will in practice be more aggressive and assertive in their dealings with the Commons than members of the House of Lords are at present. The reality is that today, in practice, both Houses ultimately work collaboratively together (as demonstrated recently in the compromise agreed in respect of the post legislative scrutiny arrangements of the Fixed-term Parliaments Act 2011). It is not fanciful however to suggest that newly elected members, emboldened by their democratic credentials (but lacking any corresponding additional legal powers), could prove to be practically and strategically obstructive in terms of the arrangement of parliamentary business sought by the Government of the day.

7. Role. There is a general consensus surrounding the role and functions of the second chamber. As noted above, however, its particular role in protecting the constitution should be enhanced by extending the ambit of the Parliament Acts to empower the House to veto major constitutional Bills which it considered contrary to the principles underpinning the constitution.

8. Size. The size of the House is clearly a matter of political judgement and assessment, although the figure of 300 members as proposed by the Bill does appear to be somewhat low. The overriding considerations regarding size are twofold: Firstly, the second chamber should be smaller than the lower House (in common with international experience). Secondly, the number finally agreed upon must be capable of performing all the tasks and functions required of the second chamber. In particular its ability to scrutinise legislation effectively and serve on committees must not be compromised by insufficient members.

9. Ratio. In terms of the elected members, the Bill provides two options of 100 per cent elected and 80 per cent elected and these correspond with the 2007 votes (although of course they ignore entirely the corresponding votes in the Lords). In reality the ratio between the elected and appointed members (i.e., for example, whether the chamber should be 60 or 80 per cent elected) is relatively insignificant compared with the principle of whether the House should be hybrid or wholly elected. In short, the difference between a fully elected and a hybrid chamber is not a question of degree, but instead fundamentally one of kind. For example, a hybrid chamber raises issues of dual and competing membership and also whether a mixed House is an inherently unstable settlement (i.e. whether over time it would lead inexorably to a fully elected chamber). It is not surprising therefore that the Coalition Government and the Draft Bill have not resolved the issue as to whether the House should be wholly or largely elected. As noted above, the author has lodged an e-petition on the HM Government website

calling for a referendum on this precise issue. After all, the mandate theory is problematic here given that the two parties in the Coalition had different manifesto commitments on the issue (the Conservatives pledged a hybrid House whilst the Liberal Democrats advocated a wholly elected chamber).

10. Appointments Commission. If there is to be an appointed element then an independent statutory Appointments Commission will be necessary and it is constitutionally apposite, as proposed in the Bill, that it be accountable to Parliament and not the executive. In this context, it may be useful to draw upon the experience and debate that has surrounded the various incarnations of Lord Steel's House of Lords Reform Bill.

11. Term. The electoral term of 15 years appears to be an excessive period (amounting to three Parliaments under the Fixed-term Parliaments Act 2011). There is clearly an issue of democratic accountability with such a long term, as accountability ultimately of course, only comes with *re-election*. In any event, with such a long term there must be some provision for the recall of members by the electorate. Elections must also be staggered in cycles.

12. Electoral system. The issue of the electoral system is clearly very contentious and it is something which cannot be divorced from the electoral arrangements pertaining in the Commons. On the assumption that, as a result of the 2011 referendum, the first past the post system will continue to operate in the Commons for the foreseeable future, it follows that this system cannot sensibly be used for the second chamber. In order to make the second chamber more representative and prevent one party from dominating it, it would appear that the most appropriate electoral system to use would be a form of proportional representation.

13. Transition. The transition to a fully reformed chamber will be problematic and the issue has hardly been helped by successive governments which, whilst advocating reform of the chamber, have simultaneously bloated the House by adding life peers at regular intervals. As a result, it is suggested that no more appointments be made until the shape and form of a fully reformed House is agreed upon. It is inevitable that the transition will be a lengthy process. Two issues arise in particular: Firstly, the Bill does not specify how those members who will leave the chamber will be selected. It seems sensible to leave these arrangements to the House to decide. Secondly, there is clearly an argument to be had that as life peers have been appointed for their lifetime, these individuals have a constitutional legitimate expectation of remaining in the House until they die (unless they choose to retire under the Bill). Indeed, there may be some constitutional indignity in the spectacle of removing 'reluctant' life peers from the chamber when they were appointed on the expectation that it was for their lifetime.

14. The hereditary peers have always been scheduled to be removed at Stage Two of Lords reform as a result of the compromise agreed in 1999, however there may be some debate as to whether this should occur at the beginning of Stage 2 (i.e. May 2015 with the first elections) or at the end (i.e. 2025 with the last tranche of elected members).

15. Ministers. There is an argument that there should be no minsters in the second chamber in order to secure a purer separation of powers between the executive and the legislature (or at least one half of it) and to make the House distinctive. In practice, however, it appears necessary that ministers should continue to be drawn from the second chamber in order to pilot Government Bills and also provide direct accountability of the Government to Parliament.

16. Nomenclature. The name of the reformed chamber would appear to be merely of symbolic value only, and therefore the term Senate and Senators would appear apposite.

17. International comparisons. The lack of a codified document and higher fundamental constitutional law make comparisons with the constitutions of other countries somewhat difficult. In fact in one way this makes the point that it is even more important that the Parliamentary arrangements for passing legislation - and holding the executive to account - are robust and efficacious given that, unlike other countries, our courts (other than in the context of the European Union) are unable to challenge legislation passed by Parliament (which of course is typically controlled by the Government of the day).

27th September 2011.

Written evidence from Sir John Baker QC, FBA (EV 23)

1. I am most grateful for the opportunity to submit these observations on the Government's proposals for reform of the House of Lords. I am presuming to write at some length because I believe the future of the House of Lords is the most important constitutional question of the present age. If it is resolved badly there may be little left of a British constitution at all. I begin from an assumption which I hope is uncontroversial even in the case of an unwritten constitution. The purpose of any constitution is to serve three fundamental purposes. It defines the way in which power is to be lawfully exercised by the Government of the day. It imposes limits on that power, so as to prevent absolutism and preserve basic values. And it provides some means of holding governments to account for the exercise of their power. Those in office, especially when supported by a clear majority, very easily fall into the habit of assuming that they have been given an absolute power by the electorate, and recently this has come to include the power to change the constitution as a matter of routine, sometimes without any joined-up thinking about the whole machinery and sometimes even with open contempt for the rule of law. It is easy to see how this has come about, because the unwritten British constitution provides no special procedure for constitutional reform. But it threatens to undermine the constitution itself. If it were to result in a form of Parliament which meekly enacted whatever the Government laid before it, without demur, we would be very close to absolutism. Our only safeguard then would be the right to a general election. And we cannot any longer be sure how safe that is. It would only need the pretext of a convenient emergency to remove it.

2. In recent decades one of the strongest safeguards against absolutism and careless government has been the House of Lords. This may seem a strange twist of history, but history does not always run in straight lines. As we all know, since the introduction of life peerages in 1958, and the removal of most of the hereditary peers in 1999, the House has gained a new confidence and an enhanced role in checking, controlling and improving legislation. Moreover, as Lord Simon of Glaisdale said as long ago as 1993, the House of Lords has become 'effectively the only place in which the legislature can curb the power of the executive'. These have been welcome indeed essential - developments, given the inability of the Commons to carry out those constitutional functions. It is plain to see why the Lords have managed to achieve what the 'democratic' Commons cannot. The main reason, obviously, is that peers are less beholden to party control and therefore more independent of Government. This can be readily demonstrated by the House's record over the last ten years. And if we seek an explanation for this independence, the answer is equally obvious, namely that peers have tenure and that many of them are not career politicians. These are advantages generally recognised even by those who propose an 2 elected House, save perhaps by those in Government who secretly do not want the second chamber to show independence.

3. The principal objections to the present House of Lords are not to its independence of spirit but to its size, and to the system of selection by the Prime Minister. Although the majority of peers are well-chosen from persons of distinction in various walks of life, peerages are also honours, and they have been used by Prime Ministers to reward second-rate or even (in a few cases) distinctly unsavoury politicians who, far from bringing special distinction to the upper House, have rather tended to bring it into disrepute. There seems to be little disagreement

that these are the principal issues in need of resolution. Assuming that they are, I submit that election is far from being the best solution and would, in practice, carry us further towards unchecked absolutism.

4. The issue of size is dependent on the nature of the House and should not be addressed in isolation. The optimum size of the Lords cannot be determined in the abstract merely by making a direct comparison with the Commons, or with other legislatures, or by measuring the available bench-space. It depends upon whether it is thought appropriate, as at present, for the House to include essentially part-time members, or persons whose membership is seen as purely honorific and who are not expected to participate in its work. Those are two separate categories, because the latter element could be removed without altering the character of the House, whereas the former could not. Whatever view is taken of this, it is a secondary question, to be addressed only when the method of selection has been settled.

5. The more serious problem, arising from unsuitable appointments, could be resolved without abandoning the breadth of experience and expertise which is a strong and unique characteristic of the present House. The simplest solution would be to remove ministers from the selection process and transfer the power of selection exclusively to an appointments commission. The Prime Minister could if necessary continue to recommend names to the Queen, in accordance with the advice of the commission, but would not have the power to do so without the sanction of the latter. He would have to continue in this intermediary role if peerages were conferred on all persons appointed to the Upper House. The Government seems to be against this, though there is a strong case for the appointed members to be made peers, and for the House to retain its present name. If so desired, sitting peers could be distinguished by some such title as Lords of Parliament. This would be perfectly compatible with continuing to confer other peerages purely as honours, since a distinction between sitting and non-sitting peers has already come about through the removal from Parliament of the hereditary element. But, whatever the formal role of the Prime Minister might be in advising the Queen, the selection problem would be solved merely by transferring the selection of names to an independent commission. This was, broadly speaking, the conclusion reached after very careful thought by the distinguished members of the Royal Commission of 2000 on the Reform of the House of Lords (Cm 4534). An appointments commission would, of course, become a very important body, but there is already a precedent for that in the new system for selecting judges. It would be expected to develop a detailed and systematic knowledge of the field of suitable persons for appointment, liaising with professional and other relevant bodies.

6. Although almost everyone is agreed on the merits of the broadly constituted House of Lords that we have at present - leaving aside the inappropriate political 3 appointments and (for some) the remaining hereditary element - the leaders of the three principal political parties have decided that those advantages must be abandoned because an unelected House lacks 'democratic legitimacy'. They therefore favour election, not as a solution to any perceived problems but as an end in itself. A cynical observer might explain this remarkable cross-party accord by saying that the concept of 'democratic legitimacy' is in reality a self-serving doctrine calculated to ensure that only full-time politicians could gain entry to either House. Whether or not that is an unfair jibe, it can hardly be doubted that the result would be

just that. Few candidates other than career politicians would be likely to stand for election for a position which would require electoral campaigning and would also require them, if successful, to give up their ordinary careers. Campaigning for such elections would be a process in which the political parties would inevitably wield exactly the same kind of influence as they do in elections for the Commons, since only the extremely wealthy could finance their own campaigns. Most of the selecting of candidates would therefore be carried out by the political parties who fund the campaigns, not by the people who vote, and the selecting would be carried out on party lines without the professional expertise that an appointments commission would develop. The politicians elected after such a process, if not already committed party activists, would most likely feel some obligation to the party which had propelled them into their paid positions. Even if they were released from strict subservience to the whip by the grant of limited tenure, they would be likely to submit to party discipline either out of gratitude or habit, or in the hope of preferment. In other words, it is reasonably predictable that an elected (or mostly elected) House of Lords would acquire in a substantial degree all the defects of the House of Commons while losing most of its present advantages.

7. A very strong argument would be needed to justify moving to such a system. But no such argument has been made by those who propose it. It seems that the magic word 'democracy', like the magic phrase 'separation of powers', has but to be uttered and argument becomes superfluous. I venture to suggest that, however important those concepts may be, the mere incantation of their names ought not to stifle serious thought. It is not sensible to insist on an avowedly undesirable result, which would in all probability destroy the usefulness of the second chamber, on the sole ground that it is the inexorable requirement of a vague theory of' democratic legitimacy' .

8. It has not been explained by anyone, so far as I can discover, why the House of Lords ought to be a 'democratic' body, in the sense of being elected. It cannot force legislation on the Commons but can only delay and improve. It does this most importantly in protecting the people against infringements of human rights and the rule of law, a role which the elected Commons has shown itself unable to perform; but it has also achieved a significant role in scrutinising and improving legislation, which is increasingly introduced with little care or thought by ministers hungry for headlines. Time and again, when the previous Administration refused to modify proposals which seriously threatened the rule of law or constitutional proprieties, it was the House of Lords which came to the rescue. It is rightly accepted, and is enshrined in the 'Salisbury Convention', that a Government is entitled to have Parliament pass into statute the principal measures which were outlined in its party manifesto before a general election. But that does not mean, and democracy does not require, that they are entitled to enact those measures in a manner contrary to our traditions of justice, fairness and clarity. It cannot be supposed, without evidence, that the electorate voted for that. Even if there were such evidence, there are some 4 values which ought to be protected against sudden change even by majority vote, most obviously the protection of minorities, but also the rule of law itself. Most other civilised nations in the world have written constitutions which prevent elected governments from enacting whatever measures they wish in whatever manner they wish. They would be very shocked to be told that they

were not 'democratic' countries. So long as we do not have a written constitution, that work has to be done either by Parliament, which means in reality the House of Lords, or by the superior courts.

9. The increasing boldness of the courts in the wake of the Human Rights Act 1998 is a mixed blessing and not universally admired. But even the strongest advocates of judicial activism would have to admit that it is only needed where Parliament fails. It is far more desirable for imperfect legislation to be put right before it is enacted than challenged in the courts afterwards. Most ordinary citizens do not have the means or the time to launch proceedings for judicial review, and in any case the available armoury is imprecise and can cause all the collateral damage of a blunderbuss. But we must have one or the other. I suggest that it is wrong to consider introducing an elected House of Lords without simultaneously addressing the question of a written constitution. The two should be inseparably connected, for a very simple reason: if we have a British constitution at all, it must be enforced either by checks within the parliamentary system or by checks from without. Since electing members of the Lords would remove or seriously weaken the last internal check, the only practical alternative would be a judicial check. I do not recall this being mentioned, let alone discussed, by this Government or its predecessor. I should explain that I am not advocating a written constitution as things are at present, since I think it would have disadvantages; but it could be forced upon us by the Government's proposals.

10. It is true that some politicians profess not to see the need for 'checks and balances'. It is sometimes suggested that the very existence of a body which may delay or even frustrate legislation proposed by a Government is somehow undemocratic. But, even if this were a valid objection, the difficulty would not obviously be avoided by introducing an elected House of Lords. An elected House which was of the same political complexion as the Commons would be unlikely to upset the latter. It would probably not act at all. It would be more or less superfluous in any area of contention. On the other hand, an elected House which happened to be of a different political complexion from the Commons might feel a greater confidence than the present House in opposing and frustrating the intentions of a Government, and might even be emboldened to do so on party-political grounds. It would be supported by a 'democratic legitimacy' equivalent to that possessed by the Commons, and it may be supposed that electors who have an equal say in the choice of both Houses of Parliament will not readily grasp why one house should not have the same authority to act on their behalf as the other. The Government propose to solve this problem through legal magic by declaring that the Commons would continue to have the superiority accorded to it by the Parliament Acts. But that would flatly contradict the theory behind the proposed change, and a legal declaration of something contrary to general perception would be fragile. Indeed, if the 'democratic legitimacy' theory means anything other than enhancing the career prospects of party politicians, it is difficult to see any justification for retaining the Parliament Acts or the Salisbury Convention were the Lords to become an elected body. Regular conflict would be the full and logical price to pay for the new philosophy.

11. It has been widely assumed by those in power, including those now in opposition, that any difference between the Commons and Lords over this question, if it still exists, must be resolved by the Commons. This shows a disappointing unawareness of the first principles of a

constitution. Although the Commons has the undoubted primacy in most ordinary affairs, it cannot be the business of the Commons to tamper with the only effective check on their power - that is, on the otherwise absolute power of the Government which they support - especially when there is no evidence of any general popular mandate for such interference. It could never happen in a country with a written constitution. And it would be plainly wrong to suppose that the principle behind the Salisbury Convention should apply in a constitutional matter such as this. If there were a clear body of opinion in the country supporting a particular constitutional change, that might be another matter, although even then it would be necessary to ponder very carefully the consequential effects of introducing such a major change. There are few parts of the constitution, if any, which do not impinge on others - the future of the Lords, as I have suggested, should not be separated from the issue of a judicially-enforced written constitution. In the case of Lords reform, however, there is at present no indication whatever of public opinion. The voters at the last general election were given no choice, because the major political parties decided not to contest the issue and there was no campaigning on it.

12. It is a matter of deep concern to me and others that, in the absence of debate between the political parties, no reasoned case for election was advanced in the recent White Paper, certainly nothing to challenge the detailed reasoning in the report of the Wakeham Commission. The White Paper more or less assumes that the House should be elected. But this is too fundamental an issue to be treated so dismissively, and I urge all politicians to accept that, on this matter if no other, they have a supreme duty to lay aside the career interests of their profession in the public interest. The objective of parliamentary reform should not be an abstract concept of 'democratic legitimacy' which would in practice promote elective dictatorship. It should be the prevention, by the best available means, of the accrual of arbitrary, arrogant, and absolute power. A step in the opposite direction might suit any Government very well in the short term; but it would, I fear, be an irreversible disaster in the longer term.

30 September 2011

Written evidence from Professor Hugh Bochel, Dr Andrew Defty, Jane Kirkpatrick (EV 24)

This paper sets out our views, as individuals, on a number of the themes on which the Committee has invited evidence. It draws, in part, upon the findings of, and other information gleaned from, two research projects undertaken by us over the past eight years, which so far have involved face-to-face interviews with around 110 MPs and 120 Peers.

1. Size, composition and the electoral system – the argument in the White Paper that 300 full-time members would be able to fulfil the same duties as the current average daily attendance of 388 has a clear logic to it and may be tenable. The proposal that only one-third of seats will be contested at each election, also has some logic and is comparable with other second chambers. However, particularly given the proposed length of terms, this is also likely to raise issues of legitimacy – would members of the upper House elected 10 years ago have the same claim to democratic legitimacy as those elected today?

   Depending upon the electoral system, it also seems inevitable that elected members of the House of Lords would develop some form of 'constituency' ties and work, even if this is of a different nature from that of MPs. Moreover, in the event of STV being adopted, to achieve multi-member constituencies for the House of Lords, constituencies would be very large by traditional standards in the UK. The nature and demands of such work may therefore be quite different from that which MPs are used to. Similarly, a reformed Chamber may become even more open to the types of pressures with which MPs are familiar, with greater attention from pressure groups, other organised interests and the media, as well as demands for 'outreach' type activities. Whether 300 members could adequately fulfil all of those roles may perhaps be questionable.

2. Women in Parliament - given the apparent desire to increase the number of women in Parliament, the government might also wish to bear in mind that evidence appears to suggest that larger multi-member constituencies (five or more members) are of greater benefit in enabling the election of women and people from minority ethnic groups than are smaller constituencies (the use of STV in Scottish local government elections, for example, appears so far to have led to no improvement in the level of representation of women (Bochel and Denver, 2007)), and a floor of three seats may be inadequate for this. On the other hand there are consequent risks that the constituency link becomes much weaker in larger areas.

3. Ministers – the White Paper does not make clear whether there will be any limits, upper or lower, on the number of ministers who could be drawn from the House of Lords. The number of parliamentarians holding government positions, the so called payroll vote, has increased in recent years, and a number of bodies, including the

Public Administration Select Committee (2011) and the Conservative Party's Commission to Strengthen Parliament (2000), have recommended a cap on the number of Ministers and Parliamentary Private Secretaries. While the number of members of the House of Lords in Government posts has always been considerably fewer than in the House of Commons, the size of the payroll vote in the House of Lords has increased in recent years and there are now more Peers in Government posts than in the past (24 compared to 20 in 1979). Even without any increase this would represent a significantly larger proportion of a smaller House, but with the creation of an elected Chamber, and the increased opportunities for political patronage through the payroll vote that might involve, future Governments might be tempted to increase the number of Government posts in the House of Lords. If there were to be a significant number of Ministers drawn from the House, that might impact both upon the independence of the House and its ability to undertake its scrutiny functions.

4. Appointed members – the purpose of retaining an appointed element in a reformed House of Lords is not clear, and appears to be inconsistent with the overall rationale for reform. The statement in paragraph 13 that proposals for a wholly or mainly elected second chamber 'is the fundamental democratic principle' seems inconsistent. Presumably only a wholly elected chamber would be fully democratic?

   The subsequent arguments about the role of appointed members reflect the main arguments for the existing House of Lords, which have been those associated with claims for the expertise and experience of its members and their independence. We have argued elsewhere that despite frequent claims that the expertise of its members is one of the distinctive features of the current House of Lords, that expertise is 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. We would also question the assumption that elected members necessarily bring less expertise to the House than appointed members. Our research indicated that the greater access to resources, and the considerable research and case work of some members of the House of Commons, meant that in some important policy areas the elected members of the Commons had greater expertise than members of the appointed House of Lords (Bochel and Defty, 2010a).

   Even if one were to accept the proposition that the expertise of the House is enhanced by the appointment of a significant number of crossbench Peers it is hard to see how the retention of sixty appointed members would ensure the presence of sufficient expertise and of the right type to make an effective contribution to the work of the House. Rather than relying on the creation of a body of expertise within the chamber through appointment, it might be appropriate to consider the provision of resources to enable elected members to develop expertise within the House, and a more

systematic and widespread use of external expert advice and evidence, in order to support the work of elected members and committees.

5. Representation - the White Paper has little to say on the subject of representation. The notion that reform should make the House of Lords 'more representative' has, however, been a consistent feature of the various proposals for reform since 1997, although what exactly is meant by representation has not always been clear and the basis for improving the broad representative base of the chamber has altered over time, from the use of appointments to create a chamber which is representative of British society as a whole, or more representative of gender, ethnic minorities and other faiths, to one in which representation is based upon elections (Bochel and Defty, forthcoming). Other than the Church of England Bishops, the current proposals place the emphasis firmly on elections as the basis for representation. The White Paper does suggest that the use of proportional representation may facilitate the election of more women and we have commented on that above. However, the proposals do not say anything about improving the representation of other groups, such as ethnic minorities. Similarly, while earlier proposals for reform recommended the representation of a wider range of faiths, the White Paper refers only to the retention of Church of England Bishops. It is unclear to us why the Church of England should retain up to 12 places. The other established churches would have none, and other faiths would have none. In the contemporary world, including where there are significant questions of representation and fairness, it appears hard to defend such a proposition. 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. Perhaps most importantly, if the intention is to introduce lasting reform, some further consideration of the nature of representation desired in the reformed House would be likely to be advantageous.

6. Resources: Changes to the composition of the House of Lords will also have implications for costs, and for the resources available to members of the House. These appear to be somewhat under-explored in the White Paper. It is not clear what the cost implications of reform are, but it does perhaps imply that the creation of a smaller House and the shift from a system of non-taxable allowances to a taxable salary will have a relatively benign impact on expenditure. This needs more careful consideration and explanation. It is far from clear that the salary costs of 300 full-time members will represent a saving on the allowances which are currently paid, largely on the basis of attendance, to the 388 members who attend regularly. It is also suggested that salaries for members of the House of Lords would be set at a lower level than for members of the House of Commons, on the basis that they would not have constituency duties, yet as noted above, members of an elected House would indeed have constituencies, and these would be larger and present new demands on members. There are also considerable resource implications involved in the movement to a House of 300 full-time members. At present there is considerable disparity between resources, such as office space and staff, made available to members

of the House of Commons and the House of Lords, with many Peers relying on resources available to them through their personal and professional life outside the House. While a reduction in the size of the House of Lords is likely to result in some savings in terms of allowances and space in the parliamentary estate, the cost implications of providing support, presumably at least comparable with that available to members of the House of Commons, for 300 full-time members, is likely to be considerable. It is not our view that reform of the House of Lords should be viewed as a cost-cutting measure; indeed the House of Lords has arguably been under-resourced for many years, and a well funded parliament with extensive staffing and research facilities is vital to a healthy democracy. Therefore, the cost implications of reform require clearer explanation and should not be presented or implied to involve savings on the current system.

7. Transition – why have a transitional period, other than to reduce dissatisfaction among members of the existing House? If the system needs replacing, it should arguably be replaced as one, particularly given the at best erratic nature of House of Lords reform over the last one hundred years. It is pertinent to note that following the removal of the bulk of the hereditary Peers in 1999, the current House of Lords is already a transitional House. Consideration should also be given to a number of implications of the proposals for transition. For example, should the White Paper's option 2 for a transitional period be accepted the number of members would be very large. A transitional system might also lead to different 'classes' of member – those who have been elected, and those who have not. The former would be able to claim democratic legitimacy, while the latter would not.

8. Vacancies – the notion of substitutes for vacancies, rather than by-elections, does appear to have some underpinning logic. However, 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. There are so many factors that might militate against this happening successfully (people might move area, change jobs, might be unwilling to leave work for a relatively short period in the House of Lords, and so on) that it would seem to be an inappropriate stance to take. Indeed, given the electoral sophistication of political parties, in many instances it will be clear that they are unlikely to win more than, say, two out of five seats in a constituency, so that they might restrict themselves to only two candidates (see, for example, what happened in local elections in Scotland in 2007, where only in one ward did any party put forward a full slate of candidates). The idea of substitutes would mean that parties would almost be required to put forward candidates with no chance of them being elected, simply to have a substitute available should a successful candidate leave the House, for whatever reason.

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6 October 2011

Written evidence from the British Humanist Association (EV 25)

1. The British Humanist Association (BHA) welcomes the opportunity to give evidence to the Joint Committee scrutinising the White Paper and Draft House of Lords Reform Bill. Our remarks in this submission are limited to the issue of the place of Bishops in the House of Lords and we make particular comment on the specific proposals set out in the White Paper and Draft Bill. We have attached as an appendix to this submission a comprehensive briefing *Religious Representatives in the House of Lords*, which we commend to the Joint Committee and request that it is accepted as supporting evidence to this submission.

2. The BHA believes that the best constitutional system is one that is secular, that is one where state institutions and religious institutions are separate and the state is neutral on matters of religion or belief. We believe that such a state is the best way to guarantee individual human rights, to ensure everyone is equal before the law, and to protect against privilege or discrimination on grounds of religion or belief. The BHA does not take a position on what a reformed House of Lords should look like, whether it should be elected or partially elected. However, it is our position that there should be no reserved places for Bishops of the Church of England, or for any other religious representatives, in Parliament.

3. We have long argued for the removal of the right of Bishops to sit in the House of Lords, especially since the prospects for reform became (slightly) greater in 2002, and the public are strongly on our side in wanting to remove this religious privilege. Last year the BHA worked with Power 2010 on an initiative which saw thousands of people write directly to the Bishops in the House of Lords, calling on them to engage positively with democratic renewal.

4. An ICM survey conducted on behalf of the Joseph Rowntree Reform Trust in March 2010 found that 74% of the British public – including 70% of Christians – believe it is wrong that Bishops have an automatic right to a seat in the House of Lords[1]. Many parliamentarians from across Parties and Peers in the crossbenches would share that view, and both the Labour Party and the Liberal Democrats have policy positions on Lords Reform which would mean an end to reserved seats for the Bishops[2].

5. We are extremely disappointed that the White Paper and Draft Bill ignores the strength of feeling amongst people and organisations, both religious and non-religious alike, who want to see an end to the privileged place for the Church of England in

[1] ICM Research, Lords Survey, March 10-11 2010 http://www.ekklesia.co.uk/content/survey_on_bishops_icm.pdf

[2] The Labour Party's policy is for a wholly elected House of Lords, as set out in its 2010 election manifesto http://www.labour.org.uk/uploads/TheLabourPartyManifesto-2010.pdf, and the Liberal Democrat's longstanding policy is also for a wholly elected House of Lords and they reaffirmed at their 2011 annual conference that even in a partially appointed chamber, there should be no reserved seats for Bishops.

Parliament through having reserved places for its Bishops in the House of Lords. However, we welcome the statement in the White Paper that the Joint Committee will 'consider options including a wholly elected House' (p12). We could not urge the Joint Committee more strongly to look again at the issue of the Lords Spiritual and to recommend that there are no automatic, reserved places in any reformed chamber.

The proposals

6. The White Paper and Draft Bill propose to retain reserved places in Parliament for the established Church[3]. The UK is the only democratic state to do this, and this is in spite of the fact that the Church of England commands little public support, with only 23% of the population professing to be affiliated to the Church of England, according to the 2010 British Social Attitudes survey (and of this number, half never attend church).

7. The presence of the Church of England in the House of Lords entrenches a privileged position for one particular branch of one particular religion that cannot be justified in today's society, which is not only multi-faith but increasingly non-religious. It is at odds with the aspiration of a more legitimate and representative second chamber and with recognition of a plural society. Moreover, by virtue of their position as Bishops of the Church of England, the proposals effectively reserve seats in the House of Lords for heterosexual men, or celibate gay men, of the same denomination. This unabashed discrimination has no place in a modern Parliament.

8. The proposals do not simply maintain the status quo but create a new, independent and largely unaccountable bloc for the Church of England in Parliament.

9. The House of Lords Reform Draft Bill and White Paper propose to retain the right of Bishops to sit in Parliament but with a reduced number of 12 Bishops (from 26) sitting as ex-officio members 'in line with proposals for a reduction in the size of the second chamber' (p8). However, in a smaller chamber of 300 Peers, that would represent a proportional increase from 3% to 4%. We cannot see any good reason to maintain the reserved seats for Bishops and certainly can see no legitimate justification for increasing their proportional place in the chamber. We recommend that the Joint Committee rejects this proposal.

10. The White Paper and Draft Bill also propose that the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester will continue to be members of the House of Lords, and to give the Church of England new powers to decide which of the remaining 7 of the 12 Bishops will sit in the chamber. If there are

[3] Although it is important to note that there is no constitutional link between establishment and having reserved places for Bishops in Parliament. See Appendix, *5) Wouldn't removal of the Bishops mean disestablishment of the Church of England?* for details.

to be reserved seats for Bishops of any number, we cannot see any reason why the Church should be permitted more say than at present over who takes those places in the House of Lords.

11. Although they would have the same speaking and voting rights as other members of the reformed House of Lords, the Bishops would continue to sit in Parliament on a different basis from other members. Following transition periods, in a fully reformed chamber, the Government proposes that (p23):
    - Bishops would not be entitled to a salary or pension in the reformed House of Lords;
    - Bishops would be exempt from the tax deeming provision;
    - Bishops would be entitled to claim allowances under the scheme administered by the IPSA for members of the reformed House of Lords;
    - They would be subject to the disqualification provision;
    - They would not be subject to the serious offence provision and those on expulsion and suspension as it is anticipated that such members would be subject to the disciplinary procedures established by the Church of England.

12. Through maintaining a special status for Bishops in a reformed chamber where they will not receive a wage (although they would be entitled to other benefits), they will not be accountable to Parliament in the same way as other members. More important, arguably, is their exemption from the serious offence provision and those on expulsion and suspension. These provisions ensure that on the most serious matters, Bishops in the House of Lords will be accountable to the Church of England and not to Parliament.

13. We believe that these proposals are counter to the aims of creating a more democratic and accountable chamber, and as such cannot be justified. Indeed, no justification is provided in the White Paper for creating an essentially new position for Bishops in a reformed chamber, over which the Church of England has far more control and say than at present.

14. If there are to be reserved seats for Church of England Bishops in the House of Lords (which we strongly oppose) there are a number of ways that the Draft Bill could be amended so as to ensure that Parliament, and not a religious institution, has authority over those who sit in Parliament and we urge the Joint Committee to examine the proposals with a view to amending them in line with the cross-Party commitment to creating a more democratic chamber.

About the BHA

15. The BHA is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. Founded in

1896, we have over 28,000 members and supporters and over 90 local and special interest affiliates.

7 October 2011

Written evidence from Liam Finn (EV 26)

INTRODUCTION

1. I am a law undergraduate at the University of Cambridge. I take a significant interest in constitutional issues and wrote and published my first book, S*acking the Monarch – Why Britain must become a republic*, in 2010. My interest is rooted purely from a belief in the importance of constantly improving our democracy.

2. I have worked as an assistant chaplain at St. Mary's Sixth-Form College, Middlesbrough, and as a musician, playing in various bands and orchestras in both amateur and professional capacities. In the past, I have been heavily involved in charity and community work, particularly with regard to international development and immigration issues.

3. Though acknowledging my limited knowledge in these matters in comparison to professional commentators and academics, I wish to provide the committee and Parliament with some thoughts. Some of these ideas stem exclusively from my own long-held views and beliefs; others are from relatively-detailed research conducted over the past few months using the limited resources I have at hand. I sincerely apologise that a significant amount of the material gathered is unoriginal, perhaps even superfluous: it has been included to ensure that the full debate is covered to an adequate extent. I have quoted extensively from several sources and have sought to reference the provenance of each. I have aimed to provide a balanced and respectful account as far as I have seen possible.

4. It is important to consider two issues at the outset. The first of these is the fallacy that House of Lords reform is unimportant or that other "more important" issues should be prioritised. A cursory glance through the Commons and Lords debates on the draft reform bill demonstrates how frequently such an argument is propagated.[1] In response, it is valuable to note that it is by no means evidence of contempt for democracy to say that governance of a country is far more than just dealing with the issues raised by constituents on the doorstep.[2]

5. Frankly, the "priorities" claim is the last refuge of opponents of constitutional reform of any sort. It is an admittance that things can be done and, frequently, that things *should* be done, but forms an attempt to deflect attention for whatever reason, legitimate or intransigent. It is disingenuous to suggest that addressing the country's democratic deficit prevents the government or parliament from also addressing the budget deficit. We will always have economic, educational and environmental issues on our agenda; we need not have issues about our constitutional set-up constantly on the periphery. If House of Lords reform is so unimportant then why are the same people who criticise it as such so vociferous in their opposition, not only

1 See, eg. HC *Hansard*, 27 June 2011, col. 646; and HL *Hansard*. 21 June 2011. Col. 1155.

2 If government were restricted to issues raised by the electorate on the doorstep then my own experience of canvassing for a political party would dictate that the state's range of activities should extend no further than matters of immigration and the public execution of MPs.

Andrew Griffiths said that by participating in the Commons debate on the draft bill he was breaking a pledge he had made to himself that he "would limit [himself] to those debates concerning a particular constituency issue, or where [his] constituents were particularly concerned." (HC *Hansard*. 27 June 2011. Col 672.) It is suggested to Mr Griffiths, with genuine respect, that he is not properly addressing his duties as a legislator in the UK Parliament by restricting his ability to participate in a range of debates. It is also submitted that he is mistaken if he believes that constitutional issues of such importance as the role and composition of the second chamber are not directly important to his constituents.

In addition, Mr Griffiths states that "Not one e-mail, either pro or anti, not one telephone call, not one letter and not one person attending my surgeries has brought the burning issue of Lords reform to my attention." Contrary to this no doubt honest claim, it should be observed that several campaigns over many decades have campaigned in favour of a reformed second chamber, not least the tens of thousands of people involved in Unlock Democracy, Power2010, STV Action, the Electoral Reform Society, Republic, the British Humanist Association and – in opposition to an elected upper house – The Campaign for an Effective Second Chamber.

to the government's proposals but to the mere idea of an elected? An improved constitution will give us a better framework for dealing with health, defence and justice issues. A reformed second chamber is part of a better constitution.

6. The second crucial point to make is to attack the accepted wisdom that reform of the House of Lords is an almost impossible task.[3][4] According to this pessimistic theory, the only achievable reforms are small changes; big ideas are bound to fail. I do not accept this and I would encourage the joint committee to reject such cynicism. What has happened in the past is history. We now have an opportunity to deal properly and fully with the task of reform. I believe that the House of Lords Draft Reform Bill and this joint committee offer an invaluable opportunity to improve the UK constitution and our democracy. I beg the committee and the current Parliament not to jeopardise or jettison this remarkable chance for democratic renewal. Be bold!

7. Professor Vernon Bogdanor has said that "To achieve a 'popular' upper house will tax to the full the ingenuity of reformers."[5] Whilst I would not be so foolishly arrogant to pretend that the ideas in this memorandum are in any shape or form "ingenious", I hope that they contain some of the originality and imagination which Professor Bogdanor considers necessary. I certainly believe that the proposals address the major concerns of opponents to reform whilst achieving the democratic and efficient second chamber that this country deserves, more than 100 years since it was pledged.

EXECUTIVE SUMMARY

Recommendation as to the name of the reformed House of Lords:

1) The second chamber should be renamed the "House of Senators" and its members referred to as "senators".

Recommendations as to the role of the House of Senators

1) The primary role of the chamber should remain to scrutinise and revise legislation.
2) Ministers and other members of the government should not sit in the House of Senators.
3) Senators should have the ability to introduce private members' bills.
4) In the absence of ministers, the sponsor of bills in the House of Senators which have originated in the House of Commons could be nominated by MPs. If the Commons chooses not to exercise this prerogative, any senator could nominate himself. In the event of multiple nominations, the senator who belongs to the corresponding party to the sponsoring MP should become the bill's sponsor.
5) Committees composed of Parliamentary and extra-Parliamentary experts should be established for the scrutiny of each bill. The sponsor of a bill in the House of Senators should give a "statement of compatibility" at the third reading, stating that the revised bill meets the recommendations of the committee or a recommendation that the chamber does not follow particular recommendations.

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3 Nick Clegg said in the House of Commons that "… history teaches us that completing the unfinished business of Lords reform is not without challenges. Our proposals are careful and balanced. They represent evolution, not revolution, and are a typically British change." (HC *Hansard*. 17 May 2011. Col. 157.)
4 Meg Russell has said "The reforms which have succeeded are the small reforms which were seen as relatively trivial at the time." Lord Hennessey of Nympsfield has commented: "There's only one certainty in any of this: that those who tamper with the House of Lords do so at their peril. It's like the Bermuda Triangle of the British constitutional system: people go into it and never come out again". (Interviews broadcast in: *Peer Pressure*. BBC Parliament. London. 22 May 2011.)
5 Bogdanor, Vernon. *The New British Constitution*. (Oxford: Hart Publishing, 2009.) P 172.

6) The party whips should be abolished in the House of Senators.

Recommendations as to procedural matters in the House of Senators and measures to retain the primacy of the House of Commons:

1) S2(1)(b) of the Draft House of Lords Reform Bill stating that nothing in the bill "affects the primacy of the House of Commons" should be included in the final bill.
2) The power of the House of Commons to terminate a government's term of office through a vote of confidence should be codified in statute, with a declaration that only the House of Commons, and not the House of Senators, has such authority.
3) The Parliament Acts 1911-49 should be amended so as to also apply to legislation originating in the House of Senators.
4) The Salisbury-Addison/Manifesto Bill Doctrine should be codified in statute.
5) The House of Commons' privileges with regard to money bills and bills of aids and supplies should be retained but that they should be subject to the scrutiny of a House of Senators committee.
6) The monarch's royal assent prerogative should be abolished and Acts of Parliament should be certified by the Speaker of the House of Commons.
7) The monarch's ceremonial duties in the upper house should be abolished.

Recommendations as to the committees of the House of Senators

1) A committee should be established for each field of state policy.
2) A committee should be established to consider each bill after its passage through its second reading.
3) Committees should have the power to call ministers and civil servants to give evidence.
4) Committees should have the authority to make miscellaneous recommendations and reports to the House of Senators.
5) An appointments committee should be established to nominate members of other committees, with the House of Senators approving or vetoing the nominations.
6) The Grand Committee and the Committee of the Whole House could be abolished.
7) The House of Commons could consider cooperating with or participating in the House of Senators' committees.

Recommendation as to the proposed retention of the Lords Spiritual.

1) There should be no reserved places for Church of England bishops – or any other religious figures – in the House of Senators.

Recommendation as to the composition of the House of Senators:

1) All members of the House of Senators should be elected.

Recommendations as to the electoral system employed

1) There are sensible arguments in favour and against using staggered elections. I do not wish to make any recommendation as to this proposal.
2) The UK should be divided into areas as numerous as the number of seats in the House of Senators.

3) Open primary elections should be held for each party standing for election in those areas.
4) The party should then rank these candidates on an open list.
5) An election will then take place nationwide, treating the UK as one constituency.
6) Seats should be allocated to parties in direct proportion to the percentage of the vote each has won.

Recommendations as to the term of office

1) If it is decided that all seats in the House of Senators are vacant for election at the same time, elections should take place at the midway point of a Parliament.
2) If it is decided that staggered elections should take place to the House of Senators, one round of elections should take place at the same time as elections to the House of Commons, with the second round of elections occurring at the midway point of the Parliament. In practice, this will mean that elections occur two years and six months after the most recent election to the House of Commons. With the proposed introduction of fixed-term Parliaments, this is likely to mean that senators are elected to serve for five years.
3) There should be no bar on seeking re-election to the House of Senators.
4) There should be no disqualification of former members of the House of Senators from standing for election as MPs at the next general election.

Recommendations as to the necessity of holding a referendum.

1) The proposals for an elected House of Senators should only take effect if they are accepted by the people in a referendum.
2) A state-funded public education scheme should be launched prior to the referendum.
3) There must be no turnout threshold requirement ensuring the binding nature of the referendum.

Recommendations as to the cost of the reformed upper house:

1) It is not yet possible to calculate the cost of the House of Senators.
2) Though concern must be shown to ensure that the reformed chamber is as inexpensive as possible, the issue must not be used for matters of political expediency.

NB The above recommendations are based upon the retention of the primacy of the House of Commons. I am in a very small minority of people in that I do not wish for Commons' primacy. The constitutional set-up I would prefer is this:

- A directly-elected prime minister as head of state. The prime minister would be elected using a run-off system similar to the procedure used for the election of the French president: an initial round of voting would be held with a second round between the two highest-scoring candidates following, should no single candidate achieve more than 50% of the popular vote at the first stage.
- The prime minister would nominate secretaries of state and ministers for the departments of government. These individuals would require the necessary expertise for their respective field. Parliament would then either confirm or veto the appointment.
- The prime minister and other government ministers would face questioning in the House of Senators on a weekly-basis but would not have voting rights in Parliament.

- Parliament would be bicameral and consist of the House of Senators (the upper house) and the House of Commons (the lower house). The House of Senators would be elected using a pure system of proportional representation or the single transferrable vote system.[6] The House of Commons would be elected using the alternative vote system.
- The House of Senators would be the primary legislative chamber and would introduce government legislation; the House of Commons would return to its original role as a chamber of constituency representatives. The Commons, however, would retain legislative powers comparable to those now possessed by the House of Lords.

It is fully realised, however, that such revolutionary changed is unlikely to occur for many decades and as such, the proposals in this memorandum are based on the current constitutional framework of the United Kingdom, particularly with regard to the almost unanimous desire to retain the primacy of the House of Commons.

NAME OF THE CHAMBER

Summary:

1) The second chamber should be renamed the "House of Senators" and its members referred to as "senators".

1. I recommend that the House of Lords be renamed "the House of Senators" and its members "senators". As such, I will refer to the future chamber and its members using these names in the course of this memorandum.

2. This would reflect the reality of a reformed second chamber. The word "senate" has its origins in the Latin terms for "council of elders" and "old man". The idea of a second chamber is generally to provide the careful thought and consideration traditionally associated with such a council, hence the reason why the upper houses of various national legislatures around the world, including those of the USA, France, Australia, Belgium, Brazil, Canada, Czech Republic, Ireland, Italy, The Netherlands, Russia and Spain, *inter alia*, are named "Senate".

3. The case against continuing to refer to the UK second chamber as the "House of Lords" and continuing to confer upon its members titles such as "Lord", "Baroness", "Earl", etc. is based on history and a belief in democratic notions, including principles of equality inherent in such notions. Such titles derive from ideas of superiority through patronage or conquest and the resulting suffering of the main populous at the hands of these historical figures.[7] If we wish to reflect the modern-day reality of elected officials and those in public office working for the benefit of the people, then we should dispense with terms which are so immersed in notions of feudalism and servitude.

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[6] Considered in further detail in chapter VIII.

7 See, eg, Pike, Luke Owen. *A Constitutional History of the House of Lords*. (London: Macmillan and Co., 1894) (Available at http://www.archive.org/stream/constitutionalhi00pikerich#page/n5/mode/2up Accessed 14 September 2011) for a detailed discussion of the history of the House of Lords, including the origins of its members and their titles.

ROLE OF THE CHAMBER

Summary:

1) The primary role of the chamber should remain to scrutinise and revise legislation.
2) Ministers and other members of the government should not sit in the House of Senators.
3) Senators should have the ability to introduce private members' bills.
4) In the absence of ministers, the sponsor of bills in the House of Senators which have originated in the House of Commons could be nominated by MPs. If the Commons chooses not to exercise this prerogative, any senator could nominate himself. In the event of multiple nominations, the senator who belongs to the corresponding party to the sponsoring MP should become the bill's sponsor.
5) Committees composed of Parliamentary and extra-Parliamentary experts should be established for the scrutiny of each bill. The sponsor of a bill in the House of Senators should give a "statement of compatibility" at the third reading, stating that the revised bill meets the recommendations of the committee or a recommendation that the chamber does not follow particular recommendations.
6) The party whips should be abolished in the House of Senators.
7) S2(1)(b) of the Draft House of Lords Reform Bill stating that nothing in the bill "affects the primacy of the House of Commons" should be included in the final bill.
8) The power of the House of Commons to terminate a government's term of office through a vote of confidence should be codified in statute, with a declaration that only the House of Commons, and not the House of Senators, has such authority.
9) The Parliament Acts 1911-49 should be amended so as to also apply to legislation originating in the House of Senators.
10) The Salisbury-Addison/Manifesto Bill Doctrine should be codified in statute.
11) The House of Commons' privileges with regard to money bills and bills of aids and supplies should be retained but that they should be subject to the scrutiny of a House of Senators committee.
12) The monarch's royal assent prerogative should be abolished and Acts of Parliament should be certified by the Speaker of the House of Commons.
13) The monarch's ceremonial duties in the upper house should be abolished.

Scrutiny and revision

1. In the debates on reform of the House of Lords, the fact that the upper house retains the power to initiate the creation of legislation has been largely ignored. Whilst it cannot be denied that one of the chamber's primary functions is to scrutinise bills originating in the House of Commons, such an important role should not be presented as its sole duty or its exclusive territory (after all, the Commons also scrutinises bills). It is submitted that the House of Senators should continue to have the power to initiate private members' bills and to scrutinise bills that have started in the Commons.

No ministers[8]

2. Ideally, there should be a complete separation between membership of either House of Parliament and participation in the executive branch of government. Parliamentary scrutiny of the executive is limited – not enhanced – whilst members of the latter are able to vote in the former. Scrutiny can be usurped in the event of members of the government voting in a close-run division: two memorable examples of controversial measures being passed with the aid of cabinet members' votes were the passage of the 42 days' detention without charge measure in the Counter-Terrorism Bill 2007-8 – passed by nine votes in the Commons –[9] and the introduction of "top-up fees" for university students in England in the Higher Education Bill 2004 – passed by a mere five votes.[10] (The promised reduction in the number of MPs to 600[11] will further increase the proportion of sitting MPs who are members of the government,[12] therefore reducing parliamentary control of the executive further).

3. From the point of view of efficiency, it seems unreasonable to expect someone initially elected for the purposes of representing a constituency and acting as a legislator having the additional burdens of acting as a member of the executive – perhaps even prime minister! I have previously advocated the introduction of a technocratic cabinet whereby ministers and secretaries-of-state should have expertise in the area in which they will manage.[13] To take one example, why should Alan Johnson – no matter how many talents he may possess – be in charge of the education system in the country when his professional expertise is that of a former postal worker and trade unionist? To use a somewhat crass analogy, how many people would advocate the local butcher becoming manager of Manchester United?

4. It is acknowledged that there is currently little political appetite to preclude members of Parliament from becoming ministers and secretaries of state. Despite this, the current consideration of House of Lords reform offers the opportunity to remedy such an anomalous position. Senators should be full-time parliamentarians in order to dedicate themselves properly to their task. Prohibiting their inclusion in the executive would be one measure towards enhancing parliamentary scrutiny and independence.

Private members' bills

5. One of the great strengths of the UK Parliament is the ability of members of both houses to initiate private members' bills, largely because this means that the executive's control over proposals for legislation is not absolute. With this in mind, the first few weeks and months of a parliamentary year, whilst the House of Senators has fewer Commons-initiated bills to consider, should be predominantly dedicated to the introduction of private members' bills by senators.

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8 Robert Hazell has suggested that the absence of ministers in the second chamber would be a further factor in retaining the primacy of the House of Commons. Found in Hazell, Robert. *Commentary on the white paper: The House of Lords – Completing the Reform*. Constitution Unit (January 2002), p 9. (Noted in Cruse, Ian, *Possible Implications of House of Lords Reform*, (House of Lords Library Note: LLN 2010/014, 25 June 2010), pp 6-7.)

9 *Brown wins 42-day detention vote by a whisker.* The Independent. 11 June 2008. http://www.independent.co.uk/news/uk/politics/brown-wins-42day-detention-vote-by-a-whisker-844954.html Accessed 14 September 2011.

10 *Blair wins key top-up fees vote.* BBC News. 27 January 2004. Available at: http://news.bbc.co.uk/1/hi/uk_politics/3434329.stm Accessed 14 September 2011.

11 Parliamentary Voting System and Constituencies Act 2011, Sch 2(1).

12 The number of government ministers sitting in the House of Commons is statutorily limited by the House of Commons Disqualification Act 1975, S2 and the Ministerial and Other Salaries Act 1975. Noted by Public Administration Committee, *Too Many Ministers?* 9th Report of 2009-10 (March 2010), HC 457-I, para. 6. Available at: http://www.publications.parliament.uk/pa/cm200910/cmselect/cmpubadm/457/45703.htm Accessed 14 September 2011.

13 Finn, Liam, *Sacking the Monarch – Why Britain must become a republic.* (Middlesbrough: Soft Lad Publications, June 2010), pp 77-8.

Sponsorship of bills

6. (This section applies only to bills initiated in the House of Commons, as private members' bills commencing in the House of Senators will already have a sponsor.)

7. In the absence of ministerial senators, a sponsor for a bill may not be apparent. Therefore, it is proposed that the following procedure be followed:

- The House of Senators should be notified of the passage of a bill in the House of Commons by the Speaker of the Commons.
- The House of Commons could request that a particular senator sponsored the bill.
- If the Commons chooses not to exercise such a prerogative, any senator could then volunteer to sponsor the bill.
- If more than one senator nominates himself to sponsor the bill, the primary sponsor should be the senator who belongs to the corresponding party to the sponsoring member of the House of Commons.
- If more than one senator from any party nominates himself, it should be the senator who is highest on the party list who becomes the principal sponsor.

8. The failure of a bill to attract sponsorship from any senator should be regarded as an acceptance of the bill by the House of Senators in the form in which it was passed by the House of Commons. This measure is proposed to avoid the House using a failure to sponsor the bill as a veto and thus serves to further preserve the primacy of the House of Commons.[14] If such an event occurred more than twice in any Parliament, the first senator on the largest party's list would be required to sponsor a future bill. Otherwise, there would be a risk of the House of Senators abdicating its responsibilities to act as the second chamber in a bicameral parliament.

Committees

9. It is recommended that a series of committees be established at the beginning of each Parliamentary session and following the second reading of a bill. These committees would have the authority to call ministers and civil servants to give evidence and to make miscellaneous recommendations and reports from time-to-time to the House of Senators. Members would be experts in the committee's respective field of consideration and would be selected using a nomination and election process specified in chapter V.

Statement of compatibility

10. In order to ensure an appropriate level of adherence to the expertise introduced into Parliament through the committee ideas noted above, it is suggested that the sponsoring senator make a "statement of compatibility" when introducing the bill for its third reading in the House of Senators, similar to the statement of compatibility with the UK's ECHR obligations made by the sponsoring minister under S19 of

14 This situation arose during the passage of the "Maclean Bill": Rosenbaum, Martin. *Maclean Bill lacks a Lords sponsor*. BBC News. 14 June 2007. Available at: http://www.bbc.co.uk/blogs/opensecrets/2007/06/maclean_bill_lacks_a_lords_spo.html Accessed 14 September 2011.

HRA.[15]

11. This would involve the senator announcing the recommendations of the committee charged with considering the bill. These recommendations will have been inserted into an amended bill by the committee. He would then announce whether he believes that the House should agree to adopt each of these recommendations or give reasons why he believes the House should refuse the adoption of such measures.

12. Of course, the sponsoring senator and his colleagues will be entirely at liberty to disregard the recommendations of the committee: it is the senators who are democratically-elected and accountable; not the non-senatorial members of the committee. This mechanism is recommended purely in order for the work and expertise of the committee to be given proper consideration and an explanation why the House would wish to ignore such expertise. Such a mechanism should place the senator under some pressure to comply with the recommendations but this pressure should not in any way be used to coerce the House and it would have no legal force whatsoever.

Whips

13. One of the alleged qualities of the House of Lords is its members' independence from party politics. Although this is not necessarily reflected in practice, it is hoped that the members of the House of Senators would be able to exercise the same, if not greater, independence from central party control. This is most easily achieved through the abolition of the party whips in the second chamber. No member should be compelled to vote in any manner, other than through a political expectation that he will vote in accordance with the manifesto upon which he was elected. Such a measure would probably increase the government's difficulty in ensuring an easy passage of some legislation but such a situation is a necessary consequence of proper parliamentary control of the executive: there should be proper parliamentary scrutiny of Bills, not extreme efficiency at the expense of democracy and beneficial scrutiny. Professor Adam Tomkins has expressed such a need with great persuasion:

"It has been customary to see the principal dynamic in Parliament, and particularly in the House of Commons, as being that between the two front benches, that is to say, as being that between government and opposition. But important as it undoubtedly is, there is a deeper dynamic at work in the constitutional understanding of Parliament than the relationship of government to opposition. This is the dynamic between Crown and Parliament, between front bench and back, or between minister and parliamentarian."[16]

PROCEDURAL MATTERS/MEASURES TO RETAIN THE PRIMACY OF THE HOUSE OF COMMONS

14. Throughout the many years of debate on the issue of House of Lords reform, the potential loss of primacy for the House of Commons has been perhaps the greatest fear of opponents of reform. However, reform of the second chamber actually allows the opportunity to aggrandise the Commons in its relationship with the Lords, through the codification and enhancement of current procedures.

15 Human Rights Act 1998, S19.

16 Tomkins, Adam, *Our Republican Constitution*, (Oxford: Hart Publishing, 2005), p 137.

Primacy clause

15. S2(1)(b) of the draft reform bill states that nothing in the bill "affects the primacy of the House of Commons".[17] The shadow Lord Chancellor and justice secretary, Sadiq Khan, argued "That is inadequate".[18] Mr Khan would be correct in his analysis if the clause were the only measure preserving the Commons' ascendancy. Alas, the clause is not the only factor in retaining the primacy of the House of Commons, as noted below. The symbolic importance of S2(1)(b) in any future debates over the authority of either House should not be underestimated: it will serve as a constant reminder alongside the substantive mechanisms detailed below.

Vote of confidence codification

16. The Deputy Prime Minister, Nick Clegg, advocated "the Government's need to retain the confidence of MPs in order to remain in office" as one of the measures to preserve Commons' primacy.[19] Whilst the overwhelming political pressure upon a government to resign in the event of a loss of confidence in the House of Commons is the most overwhelming argument against statutorily-codifying the rule, there is a strong case to be made against statutorily-excluding such a power from the competence of the House of Senators, in order to further enhance the superiority of the House of Commons.

Enhancement of the Parliament Act procedure

17. As has been argued – primarily by the Deputy Prime Minister –[20] the primacy of the House of Commons will be assured first and foremost by the Parliament Acts 1911-49. Under S1, the House of Commons has the right to present a money bill, (certified as such by the Speaker),[21] for royal assent if it is not passed by the House of Lords without amendment one month after it is sent up to that House. Under S2(1), a Public Bill originating in the House of Commons, which has been rejected by the House of Lords in two consecutive sessions, will become an Act of Parliament.[22]

18. Graham Stringer, in the Commons debate on the draft bill, raised the issue that the Parliament Act procedure does not apply to legislation which starts in the House of Lords or to secondary legislation.[23] As Sir Menzies Campbell correctly responded,[24] a desire to address what may be considered an anomaly will by easily achieved through the insertion of amendments to the Parliament Acts in the draft bill.

19. NB There should be no question as to the constitutionality of using the Parliament Act procedure either to amend the statutes themselves or to ensure the passage of the House of Lords Reform Bill. Despite debate as to the legality of using such a procedure for constitutional change, the House of Lords (acting in its then judicial capacity with its Appellate Committee) unanimously held in the case of *Jackson v Attorney*

17 *House of Lords Reform: Draft Bill*, S2(1)(b), Cm 8077, (May 2011).

18 HC *Hansard*, 27 June 2011, col. 656.

19 *Ibid*. Col. 646.
20 *Ibid*.
21 Parliament Act 1911, S1(2).
22 *Ibid*. S2(1), as amended by Parliament Act 1949, S1.

23 *Ibid*. No. 18. Col. 650.
24 *Ibid*.

General[25] that the Parliament Acts could be used for any constitutional change, other than to prolong the duration of a Parliament (which is specifically excluded from the procedure in S2(1)). Ultimately, the Parliament Act was passed in the full knowledge that it would be used to deliver home rule to Ireland in the face of Unionist opposition in the second chamber,[26] and in the hope by some Liberal ministers, including Winston Churchill, (though not the Prime Minister, Herbert Henry Asquith) that it would be used to affect change to, or the abolition of, the House of Lords.[27] Such an intention is prevalent in the introductory text to the 1911 Act: "And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation".[28]

Codification of Salisbury-Addison/Manifesto Bill doctrine

20. The Salisbury-Addison Doctrine should be codified in statute to enhance the primacy of the House of Commons.

21. The Joint Committee on Conventions declared that the doctrine's provisions are that:

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.[29]

22. The issue of conventions in constitutional law is very controversial, not least the question of when a convention actually exists and the extent of its parameters.[30] In this instance, there is doubt as to the continuing existence of the Salisbury-Addison Convention in modern Westminster politics and to whom the Convention applies, if it does exist. Some commentators have argued that the Convention does not possess the same validity in an era when a government may lay claim to little more than 36% of the popular vote, as opposed to the 49.7% of the vote won by the Labour Party in 1945[31] (when Viscount Cranborne declared that

25 *R (Jackson and Others) v Attorney General [2005] UKHL 56.*

26 Home Rule was granted through the Government of Ireland Act 1914. The Liberal Government was forced to pass the legislation due to its Parliamentary majority stemming, in part, from the support of the Irish Nationalists.

27 Jenkins, Roy. *Churchill.* (London: Pan Macmillan, 2002). pp 167-8.

28 *Ibid*. No. 21, Introduction.

29 Joint Committee on Conventions. *Conventions of the UK Parliament*, Report of 2005-06 (November 2006), HL 265-I, p 4. http://www.publications.parliament.uk/pa/jt/jtconv.htm Accessed 15 September 2011.

30 The most famous test for the existence of a convention comes from three questions given by Sir Ivor Jennings: "… first, what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule?" (Jennings, Ivor, *The Law and the Constitution* (5th ed., London 1959), p. 136.)
This test is widely criticised, however. See, eg, Jaconelli, Joseph. *Do constitutional conventions bind?* (Cambridge: Cambridge University Press, 2005). CLJUK 149, pp 149-50.

31 Baroness Jay of Paddington, former Lord Privy Seal and Leader of the House of Lords, said "…the Salisbury/Addison Convention has nothing to do with the strength of the parties in either House of Parliament and everything to do with the relationship between the two Houses……it must remain the case that it would be constitutionally wrong, when the country has expressed its view, for this House to oppose proposals that have been definitely put before the electorate." (HL *Hansard*. 15 December 1999, Vol 608, col 214.) Noted *ibid*. No. 23. Para 70.
On the other hand, Lord McNally, the Leader of the Liberal Democrats in the Lords, argued that "to resurrect a 60 year-old convention that was offered by a Conservative-dominated hereditary House to a Labour government with 48 per cent of the vote, and then to say that that should still apply to a Labour Party

the House of Lords would not veto any bill passed by the House of Commons which had originated in the government's election manifesto.)[32] There are arguments that the greater "legitimacy" of the current House of Lords, with considerably fewer hereditary peers and life peers (who, of course, were not introduced into the House of Lords until 13 years after Cranborne's declaration),[33] reduces the necessity for the Convention.[34] Other commentators – particularly Liberal Democrat politicians and supporters – argue that the Convention has only ever applied to the Conservative and Labour Parties, and that other parties need not adhere to it. Perhaps most convincingly, the nature of coalition government, with the necessity for compromise and concession, means that it is even more difficult to determine whether the doctrine applies: the Coalition Agreement is a different document to a party manifesto.

23. The most difficult issue concerning the Convention is the lack of accepted definition of what constitutes a "manifesto bill". This is even more complex in the era of coalition government, though, as stated above, the difficulty is not exclusive to joint governance. The Wakeham Commission reported that:

"… there are substantial theoretical and practical obstacles to putting any formal weight on manifesto commitments. Only a tiny minority of the electorate ever reads party manifestos; and as it is most unlikely that any voter will agree with every sentence of any manifesto, it is rarely possible to interpret a general election result as evidence of clear public support for any specific policy."[35]

24. This is a perfectly legitimate observation. However, as is discussed in chapter IX, it is a voter's obligation to determine what a party or a candidate's policies are before he votes for them. If a party has stated an objective explicitly in its manifesto and is then elected, it is right, within reason, to claim that it has a mandate to follow such a programme.

25. The 2006 Joint Committee on Conventions was objected to the statutory codification of existing arrangements.[36] Importantly, however, it stressed that:

"[its] conclusions apply only to present circumstances. If the Lords acquired an electoral mandate, then in [the Joint Committee's] 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."[37]

26. The time has now come to reconsider this objection. As Bradley and Ewing have said:

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that is now the largest party in this House, but is a government with 36 per cent of the vote, is stretching the limits of the convention." (HL *Hansard*, 6 June 2005, Vol 672, col 759.) Noted *ibid*. Para 80.

32 HL *Hansard.* 16th August 1945, vol. 137, col. 47. Noted in Dymond, Glenn and Deadman, Hugo. *The Salisbury Doctrine.* House of Lords Library Note. LLN 2006/006, 30 June 2006, p.22.

33 Life Peerages Act 1958

34 Professor Rodney Brazier claims the doctrine ceased to exist post-1999. Noted *ibid.* No. 8. P 12.

35 Royal Commission on the Reform of the House of Lords. *A House for the Future.* Cm 4534, January 2000. Para 4.23.

36 *Ibid*. No. 20. pp 4-5.

37 *Ibid*. P 76, para 2.

"The authority that an elected House of Lords would draw from a mandate may also render implausible the proposal that the relationship between the two Houses can continue to operate without clear rules (whether statutory or otherwise), particularly if support for more formal constitutional arrangements were to gather strength."[38]

27. It is argued, therefore, that the Salisbury-Addison Convention be codified by inserting into the draft bill a clause stating that:

- A manifesto bill is accorded a second reading in the House of Senators;
- The bill is not subject to "wrecking amendments" which change the Government's manifesto intention as proposed in the Bill;
- The bill is passed by the House of Senators within 12 months of its initial introduction to the House and sent or returned to the House of Commons, so that MPs may have the opportunity to consider the Bill or any amendments the Senators may wish to propose.[39]

28. With the above proposal that government bills should be initiated in the House of Commons, it is not necessary for such a provision to apply to bills originating in the House of Senators.

29. The Joint Committee on Conventions did "not recommend any attempt to define a manifesto Bill." The Committee did not "consider that the difficulties in identifying a manifesto Bill are so substantial that they would prevent Parliament from articulating a convention concerning the House of Lords' practice in relation to manifesto Bills." Despite this, the conversion of the Salisbury-Addison doctrine from convention to statutory rule means that it would no longer be appropriate to rely on common sense when determining what constitutes a manifesto bill. Such a reliance would be an invitation to senators wishing to increase the authority of the House of Senators by challenging the view that they are dealing with a manifesto bill. As such, it is proposed that provisions in bills are certified as manifesto provisions by the Speaker of the House of Commons, just as he certifies money bills under S1(2) Parliament Act 1911.[40] (It is appreciated that a substantial number of budgets have not been certified as money bills by the speaker over the passing century. It cannot be argued that it would be democratic for the House of Commons to demand such deference from an elected House of Senators if an impartial Speaker does not consider the government to have an explicit mandate differentiating such a bill).

30. In the event of conflict between the two Houses using such a procedure, it is argued that provision be made for the establishment of a joint committee – with the majority of its constituent members coming from the House of Commons – which would have the power to adjudicate on the matter.

<u>Money bills/bills of aids and supplies</u>

31. Another means of preserving the House of Commons' supremacy is to retain its current financial

38 Bradley, A W and Ewing, K D. *Constitutional & Administrative Law*. 15th Edition. (Essex: Pearson Education Limited), p 198.

39 It is not recommended that the draftsmen use these words *verbatim*!

40 *Ibid*. No. 21, S1(2).

privileges, including over money bills and bills of aids and supplies.[41] However, it is suggested that the necessity for bills to be subject to a committee stage proposed in this memorandum should be extended to financial bills. This is primarily to deal with a problem raised by the Constitution Committee:

"The fact that money bills are certified only upon completion of all their Commons' stages means that there is likely to be a minimal length of time between such certification and introduction of a bill into this House. There is therefore a risk that a certification which was not anticipated by Members of the Commons or Lords may give rise to concerns that a bill may not, as a result, receive appropriate parliamentary scrutiny. For example, MPs scrutinising a bill in the Commons might select some aspects on which to concentrate in the expectation that Members of the Lords would focus on others."[42]

32. The Commons' absolute veto on amendments and the time limits stipulated in the Parliament Act 1911, referred to above, would be maintained.

Abolition of the royal assent prerogative

33. The current focus on the legislative process gives the joint committee the opportunity to recommend the abolition of the most futile element of the process: the royal assent. Such a power in the hands of the Sovereign is both illegitimate and pointless. Instead, a bill which has been passed by both Houses of Parliament should be certified as an Act of Parliament by the Speaker of the House of Commons.

34. The issue boils down to two questions: if the power to refuse assent is never going to be used (at least without precipitating the near-immediate termination of the monarchy) then what reason is there for keeping it? Conversely, if it were used it would present the greatest affront to democracy in the UK since the rejection of the 1909 budget by the House of Lords: it would involve an individual who owes her position to nothing more than her DNA unilaterally overriding the will of the elected legislature.

35. There are arguments that the monarch could refuse assent on the advice of ministers, as Queen Anne did for the Scotch Militia Bill 1706 (the last time the royal assent was refused to a Bill). This, however, would result in a constitutional crisis of great magnitude with the unelected executive vetoing Parliament. In all likelihood, this would result in a government losing a voting of confidence in the House of Commons which, convention dictates, would lead to its resignation. Robert Blackburn has argued that a future monarch (perhaps "King Charles", who has already declared his intention to be a political king, in complete defiance of convention)[43] could exercise his right to freedom of thought, conscience and religion by refusing assent to a bill to which he was philosophically opposed.[44] As always, it is better to prevent the occurrence of such a hypothetical scenario than to deal with its consequences should it happen.

Abolition of the Sovereign's ceremonial "duties"

41 These privileges are detailed in: Select Committee on the Constitution. *Money Bills and Commons Financial Privilege*. 10th Report of 2010-11 (February 2011), HL 97 Available at: http://www.publications.parliament.uk/pa/ld201011/ldselect/ldconst/97/97.pdf Accessed 15 September 2011.

42 Ibid. P 6, para 18.

43 English, Rebecca. *"Presidential" Prince Charles to break with tradition and speak out on political issues when he is King.* Mail Online. 17 November 2008. Available at: http://www.dailymail.co.uk/news/article-1086268/Presidential-Prince-Charles-break-tradition-speak-political-issues-King.html Accessed 15 September 2011.

44 Blackburn, Robert. *The Royal Assent to legislation and a monarch's fundamental human rights.* Public Law, (Sweet & Maxwell, 2003). PL205.

36. On a final note, it is recommended that the monarch is relieved of her duties to open Parliament and deliver the speech detailing the programme of "her" government. There is something quite offensive about an unelected individual whose position in the constitution is guaranteed on account of the fact that she was born of one particular womb undertaking such roles. Instead, the roles should be conducted by those involved in the democratic process, in government or in Parliament (if the roles are needed at all). The only tradition being honoured in continuing such a charade is the British tradition of subservience of the masses and suspension of democracy in favour of a person whose superiority in law and the constitution is based on eugenic grounds. It is quite something that people can argue that there is not enough parliamentary time to consider issues such as House of Lords reform but that there is sufficient time to hold a fancy dress party (described by Meg Russell as a "pantomime")[45] in honour of a plastic autocrat.

COMMITTEES

Summary:

1) A committee should be established for each field of state policy.
2) A committee should be established to consider each bill after its passage through its second reading.
3) Committees should have the power to call ministers and civil servants to give evidence.
4) Committees should have the authority to make miscellaneous recommendations and reports to the House of Senators.
5) An appointments committee should be established to nominate members of other committees, with the House of Senators approving or vetoing the nominations.
6) The Grand Committee and the Committee of the Whole House could be abolished.
7) The House of Commons could consider cooperating with or participating in the House of Senators' committees.

Establishment of committees

1. The House of Senators should establish a committee for each field of state policy: for example, an education committee, a finance committee, a defence committee, etc. The minimum number of members for each committee should vary according to the needs of the committee and should be fixed by the House at the beginning of each parliamentary year.[46]

2. There should continue to be a committee established to consider each bill after its passage through its second reading.

Powers of committees

3. The committees should continue to have the authority to call ministers and civil servants to give evidence.

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[45] Russell, Meg. *Ditch the Pantomime*. The Guardian. 6 November 2007. Available at: http://www.guardian.co.uk/commentisfree/2007/nov/06/ditchthepantomime Accessed 25 September 2011.

46 Flexibility may be desirable: the minimum number of 11 members for House of Commons select committees may be excessive or restrictive.

4. The committees should also have the authority to make miscellaneous recommendations and reports to the House of Senators, though there seems to be no reason why such recommendations should be subject to the proposed statement of compatibility.

Criteria for membership of a committee and the appointments committee

5. It is sensible to suggest that senators should not be precluded from serving on committees if they wish to participate and provided that they have adequate expertise in the respective field of consideration. However, committees should primarily be used as a means of retaining and enhancing the role of experts in the second chamber whilst refraining from affording such individuals the right to vote on legislation in Parliament without an electoral mandate.

6. Members of a committee would be nominated from any one of a number of sources:

- The government;
- An MP;
- A senator;
- An incumbent committee member;
- Any three people working in the same field as the individual (this could include the nominee himself: there should be no reason why individuals should not volunteer their services to a committee).

7. These nominations would then be considered by a commission of appointment. This would be a body similar to the commission proposed by Lord Steel for appointments to the House of Lords in his 2010 private member's bill. With significant reference to Lord Steel's bill, it is recommended that:

- The Commission of Appointment shall consist of nine members.[47]
- At least four of the members shall be independent of any registered political party (see below).[48] (S2(5))
- The members of the Commission, including the Chairman, shall be nominated by senators.
- If more than nine individuals are nominated, elections will take place, with regard being paid to the statutory necessity of four independent members.

8. The criteria for political party independence are:[49]

- that the individual has not at any time in the preceding two years:

1. been a member of a registered political party;
2. given public support, by way of public speaking or appearance, to a registered political party; or
3. made a financial donation to any registered political party.

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[47] Based on House of Lords Reform Bill [HL] 2010-11, S2(1).

[48] *Ibid*. S2(5)

49 *Ibid*. S2(8).

9. Following a positive vetting process by the appointments commission, nominees would have to receive the support of the House of Senators. This would be most effectively achieved using a process similar to the negative resolution procedure employed for some delegated legislation:

- A list of nominees would be placed before the House of Senators.
- Senators would be given a fourteen-day period in which any member of the House could challenge the nomination of any of the candidates.
- Provision would then be made for debate and division on the matter.

10. The accountability of members of committees would be maintained by allowing any senator to call a vote of confidence in an incumbent member. Should the House vote express a lack of confidence in the member, his membership would be terminated and another member would be selected, using the aforementioned procedure.

11. To determine suitability for membership of a committee, regard should be paid to:

- The individual's level of expertise;
- The individual's professional achievements;
- The relevance of such expertise and achievements to the committee's work; and
- His ability to contribute to the committee.

Statement of compatibility

12. In order to ensure an appropriate level of adherence to the expertise introduced into Parliament through the above recommendations, it is recommended that the sponsoring senator make a "statement of compatibility" when introducing the bill for its third reading in the House of Senators. This procedure is considered in detail in chapter IV.

Abolition of the Grand Committee and Committee of the Whole House

13. Should the above recommendations be implemented, there seems to be little need for the retention of the Grand Committee and Committee of the Whole House procedures.

House of Commons' committees

14. If desired, the House of Commons could submit itself to cooperating with or participating in these committees by merging the two Houses' committees.

BISHOPS

Summary:

1) There should be no reserved places for Church of England bishops – or any other religious figures – in the House of Senators.

This is because:

1) The House of Senators should be fully-elected and thus afford no seats to those without an electoral mandate, either clergy or laity;
2) Many Anglicans do not consider the bishops to be truly representative of their views;
3) It is patently false to suggest that Anglican bishops can act as representatives of other faiths;
4) Although the removal of bishops from the second chamber would not necessitate the disestablishment of the Church of England, the Church should be disestablished for the tangible benefit of both Church and State;
5) There should be no discriminatory or preferential grounds based on religion, class, sex, (etc.) barring individuals from seeking election to the second chamber;
6) The current presence of bishops in the second chamber is, for all intents and purposes, indefensible on grounds of logic or (more importantly) principle and offers no apparent benefit which could not exist in a fully-elected second chamber;
7) An attempt to address the preferential bias given to the Church of England in the second chamber through the appointment of other religious representatives (or representatives of the secular and humanist communities) would not only be undemocratic and unrepresentative but also impractical due legal restrictions and organisational and hierarchical difficulties within the faith communities of the UK;
8) There are arguments to be made that the preferential treatment afforded to Church of England bishops and the consequent discrimination against other religious and non-religious communities conflicts with the UK's domestic and international human rights obligations;
9) There appears to be substantial opposition to the retention of the Bishops amongst the electorate.

1. Before I begin a detailed analysis of the question of the continued presence of the Lords Spiritual in the House of Senators, I must make it clear that my objection to such a continuation is based on reasoned argument, a respect for the institutions of both the Church and Parliament and democratic principles. I cannot be dismissed as a "usual suspect" or anti-religious. I have very strong objections to elements of religion and both recognise and abhor its ability to be manipulated for malicious purposes. However, I am a practicing Roman Catholic and worked as a chaplain for a year at the sixth-form college at which I had previously studied. I sincerely believe that, used properly, religion can bring immeasurable benefit to the world.

"The House of Senators should be fully-elected and thus afford no seats those without an electoral mandate, either clergy or laity"

2. This argument is addressed in chapter VII.

"Many Anglicans do not consider the bishops to be truly representative of their views"

3. As the British Humanist Association has noted:

"Bishops may not necessarily even represent the views of Anglicans. The views of the bishops may in fact be controversial and rejected by a clear majority of people in the UK with equally sincerely held convictions – even by a majority of those who define themselves as Protestants. A pertinent example is the recent vote on

the Assisted Dying for the Terminally Ill Bill, where polls show that 81% of protestants 'think that a person who is suffering unbearably from a terminal illness should be allowed by law to receive medical help to die, if that is what they want' but the bishops opposed the Bill."[50]

4. It is widely-known that there are many differences in the Anglican Communion over issues such as homosexuality, female clergy and other theological issues such as the importance of the Eucharist. These are not necessarily vertical splits between clergy and laity; they exist across the spectrum and hierarchy of the Church of England. But this is to be expected and is mirrored in other religions. Plurality in human opinion should not be treated with surprise or as if it is a secret. In fact, it should be welcomed. However, it must be taken into account when describing the bishops as representative of any body, whether Anglican or wider.

5. Moreover, it has been demonstrated that the Bishops will not necessarily adhere to the letter of Church law when participating in Parliament:

"[The bishops] replied unanimously that they were strictly "independent" and were present in the Lords in their own right. That independence, even from the Church itself, was clearly demonstrated by one bishop who replied: "I have no difficulty voting against some official Church of England line in the Lords if I think it is right, and indeed I sometimes think it is my duty to do so in order to indicate that there is not one single view."[51]

6. In the interests of fairness, it is worth quoting the remainder of the paragraph:

> "However, though the bishops are not subjected to any formal restraints, they did not suggest that they never took guidance when contributing in the Lords; one declared that it would be "extremely foolish" to disregard advice, particularly if it came from Lambeth Palace."[52]

"It is patently false to suggest that Anglican bishops can act as representatives of other faiths"

7. I am committed to demonstrating the common bonds between the different religions. These include teachings of love, charity, devotion, respect and forgiveness. The Abrahamic religions of Judaism, Christianity and Islam are particularly closely-related due to their monotheistic nature. We must celebrate our common values whilst respecting, instead of resenting, our differences. But despite the critical need to highlight the joint values inherent in all religions, it is a rather desperate defence of the bishops' privileges to claim that they can act as representatives of all faith communities in the UK, however much narrowly one wishes to construe the adjective "representative". There are too many differing philosophies and views amongst the various religions, particularly over moral and social issues, for one to argue that the Bishop of Oxford is a religious representative of an inner-city Muslim, for want of a better example.

8. Anna Harlow's study into the bishops' own views of their role in Parliament indicated that they considered themselves to be representatives of all the UK faiths:

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50 *Religious Representatives in the House of Lords*, British Humanist Association, Available at: http://www.humanism.org.uk/_uploads/documents/1bha-briefing-bishops-in-the-lords-2011-final.pdf Accessed 15 September 2011.

51 Harlow, Anna; Cranmer, Frank; and Doe, Norman. *Bishops in the House of Lords: a critical analysis,* Public Law, (Sweet & Maxwell, 2008) P 502.

52 *Ibid.*

"Our respondents were unanimous that other religious groups relied on them to "represent the interests of religions" in Parliament, as "a voice of faith". Two said that other religious groups welcomed "the spiritual and moral views which they express" and valued "a representative voice in the legislature". These views do more than describe expectations of religious groups--they suggest that other faiths endorse the formal representation of the Church of England in the Lords.

Eight spoke of frequent interaction with other religious groups and leaders in the course of both their diocesan and national work."[53]

9. However, even this study questioned the validity of the multi-faith representation argument:

"...though the bishops were clear that they were expected to represent other religions, it was not at all clear how they went about this--and their vagueness on the matter suggests that they were not entirely confident in their ability to act as representatives of a religiously-plural society.

... six said that they had very little contact, if any, with other religions. One stated that such contact as he had only "very occasionally" affected his work in the Lords. The others stated unequivocally that they did not interact with other religious traditions--certainly not enough for it to have any effect on their work in the Lords."

"Although the removal of bishops from the second chamber would not necessitate the disestablishment of the Church of England, the Church should be disestablished for the tangible benefit of both Church and State"

10. The removal of the Church of England's statutory right to representation in the second chamber in the form of twenty-six bishops[54] will not necessitate the disestablishment of the Church. The Lords Spiritual sat in Parliament for many centuries before the Reformation and establishment of the Anglican Church.[55]

11. Ultimately, "there is no single definition of establishment".[56] As Dr Olivia has noted, in the Australian case of AG (Victoria) ex rel Black v Commonwealth[57] it was said that "establishment has at least four meanings:

- to confer on a religion or religious body the status of a state religion or a State Church (the most commonly used definition);
- to protect a religious body by law;

53 *Ibid.* P. 499.

54 Guaranteed through the Bishropic of Manchester Act 1847, S5. The Clergy Act 1661 restored the Lords Spiritual to the Upper House. This Act was repealed by the Statute Law Revision Act 1863.

55 See, eg, Pike, Luke Owen, *A Constitutional History of the House of Lords*, (London: Macmillan and Co., 1894) for a detailed discussion of the history of the House of Lords. Available at http://www.archive.org/stream/constitutionalhi00pikerich#page/n5/mode/2up Accessed 14 September 2011.

Also, Lowell, Abbott Lawrence. *The Government of England*. (New York: The Macmillan Company, 1912), Chapter 21, available at http://www.questia.com/PM.qst?a=o&d=61511564 Accessed 15 September 2011.

56 Olivia, Javier Garcia. *Church, state and establishment in the United Kingdom in the 21st century: anachronism or idiosyncrasy?* Public Law, (Sweet & Maxwell, 2010), p 484.

57 Attorney General (Victoria) ex rel Black v Commonwealth (1981) 146 C.L.R. 559, 595-7, per Gibbs J. Noted ibid.

- to support a Church in the observance of its ordinances and doctrines;
- and to set up a new religion."

12. The Wakeham Commission itself admitted that "there is no direct or logical connection between the establishment of the Church of England and the presence of Church of England bishops in the second chamber". In a footnote, it supports this statement by adding that "The Church of Scotland is also established but has no representation in the House of Lords and the Church in Wales was disestablished in 1919 with no observable ill-effects." Admittedly, the Commission's report then goes on to say that the bishops' "removal would be likely to raise the whole question of the relationship between Church, State and Monarchy, with unpredictable consequences"[58] but there is no reason why these questions should not be asked. Indeed, they are already the subject of much debate.

13. In the UK, it can be argued that the Church of England's establishment is evident in the following ways, *inter alia:*

- The monarch is the supreme governor of the Church;[59]
- The monarch is the "*Fidei Defenso* " or "Defender of the Faith";[60]
- The declaration made, subscribed and audibly repeated by the monarch at her Coronation, declaring her commitment to the Protestant faith and her oath to "secure the Protestant succession to the Throne of [his] Realm";[61]
- The presence of the Lords Spiritual in the House of Lords;
- The presence of the Second Church Estates Commissioner in the House of Commons;
- The ability of Church Measures to amend or repeal Acts of Parliament[62] and the necessity for Measures to receive the approval of both Houses of Parliament before receiving Royal Assent;[63]
- The Prime Minister's role in advising the Sovereign with regard to the prerogative power of appointing Diocesan and Suffragan Bishops, 28 Cathedral Deans, some Cathedral Canons, 200 parish priests and several other post-holders;[64]
- The statutory requirement that every prison in England have a chaplain who is a member of the Anglican clergy;[65]
- The Church's privileged position in the Standing Advisory Committee on Religious Education of local education authorities.[66]

14. All of these examples of establishment can be maintained (if desired) in the event of the removal of the

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58 Royal Commission on the Reform of the House of Lords. *A House for the Future*. Cm 4534, January 2000, p 152, para 15.8.

59 Parliament originally recognised the monarch as "supreme head" of *Anglicana Ecclesia* in the Act of Supremacy 1534 and restored the sovereign as "supreme governor" in the Act of Supremacy 1558.

60 Conferred on Henry VIII by Pope Leo X in 1521 and by Parliament in 1544.

61 Accession Declaration Act 1910, Schedule.

62 Church of England Assembly (Powers) Act 1919, S3(6). Noted *ibid,* No. 56, p 490.

63 Church of England Assembly (Powers) Act 1919, S4. Noted *ibid,* p 491.

64 *The Governance of Britain.* Cm. 7170, July 2007. pp 6, 25-7. Available at http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf Accessed 15 September 2011.

65 Prison Act 1952, S7(1). Noted *ibid.* No. 56, p 495.

66 Education Act 1996, noted *ibid.*

Lords Spiritual from the House of Senators.

15. The monarch can still remain the Supreme Governor of the Church. This is in spite of the fact that we should have an elected head of state who has the same freedom of religion guaranteed to any other citizen under article 9 of the European Convention on Human Rights (ECHR), as incorporated into the domestic law of the UK by the Human Rights Act 1998 (HRA). From a purely personal point of view, and whilst acknowledging my Roman Catholic background, it seems to be a far more appropriate approach to leadership of a Church that the leader be not only a practicing adherent but somebody actively working in the Church, ideally as a senior member of the clergy.

16. Likewise, there is no need for the Church's relationship with Parliament to end with regard to its commissioners or its measures. There are many people who oppose religious involvement with education and even the prison service[67] but the Church's position with regard to these would not be affected by the absence of bishops in the Upper House.

17. It should be noted that Gordon Brown raised the issue of his participation in the appointment of clergy to certain offices in the Anglican Church very early in his premiership.[68] However, no change was made in the prime minister's role. (Yet such a prerogative power is ludicrous and has been the subject of controversy in modern times: Margaret Thatcher refused to recommend James Lawton Thompson's appointment as Bishop of Birmingham due to his allegedly liberal and left-leaning views.)[69]

18. There appears to be little justification for such political interference in Church matters. As Colin Buchanan, the former Bishop of Woolwich has said:

"The CofE alone is state-owned and state-controlled. Large numbers of Anglicans - and a sprinkling of our masters in parliament - seem to like it that way.

But this form of captivity of a dependent institution to a sovereign and secular parliament is not partnership but control. It is exercised from a distance, sometimes benevolently, so many Anglicans think they are free, or at least well-off. But that's simply part of the fantasy by which CofE leaders love to live. Away with the fantasy - let's truly be answerable to God, not Mrs T or Mr B."[70]

"There should be no discriminatory or preferential grounds, based on religion, class, sex, (etc.) barring individuals from seeking election to the second chamber"

19. Prima facie, this appears to be subject to little debate. However, there have been several attempts and calls for appointments to be made to the upper chamber (as well as to the House of Commons) with a bias

67 The National Secular Society and the British Humanist Association being two of the most vociferous campaigning groups on these issues.

68 Elliot, Francis; Gibb, Frances; and Gledhill, Ruth. *Brown gives up control over church and judicial posts.* The Times. 4 July 2007. http://www.timesonline.co.uk/tol/news/politics/article2023035.ece accessed 16 September 2011.

69 *The Rt Revd James Lawton Thompson.* Church Times. Available at: http://www.churchtimes.co.uk/content.asp?id=26422&print=1 Accessed 16 Spetember 2011.

70 Modood, Tariq and Buchanan, Colin, *Should the Church of England be disestablished?* The Guardian. Available at: http://www.guardian.co.uk/theguardian/2000/apr/15/debate.anglicanism Accessed 16 September 2011.

towards under-represented minorities.[71]

20. Let there be no confusion: it is essential that all groups in society are represented to a sufficient level, not only for Parliament to be truly representative in its nature and to give a voice to all parts of society (and thus pass better legislation), but also so that every person in society is instilled with the belief that they can achieve the highest offices in the country if they work hard enough, regardless of false handicaps such as gender or race.

21. Clearly, Parliament is not sufficiently representative.[72] However, a concerted effort to redress such a damning imbalance should not take the form of a statute or appointment criteria: these will provide nothing more than a superficial cure. It is a societal problem that needs to be solved and efforts to address this should take the form of societal initiatives, specific focuses and, of course, education.

"*The current presence of bishops in the second chamber is, for all intents and purposes, indefensible on grounds of logic or (more importantly) principle and offers no apparent benefit which could not exist in a fully-elected second chamber*"

22. Quite simply, there seems to be little gained by either Parliament or the Church from the presence of the Lords Spiritual in the House of Lords which could not be achieved without them sitting in the House.

23. Harlow's research indicates that the bishops see themselves as providing a range of qualities to the House of Lords, including:

- Spiritual leadership;
- Having a responsibility to oversee and address the spiritual interests of citizens as a whole;
- Speaking from "the tendencies of sound Christian, ethical and spiritual values";
- Aiding and improving "the efficiency and quality" of the legislative process;
- Regional representation, as representatives of their individual dioceses;
- Acting as a voice for "all the faith communities within [their] diocese";
- Giving a "moral stance irrespective of party interest";
- "[B]eing forthright on current issues";
- "[C]asting votes on close-run matters";
- "[T]aking part in robust questioning";
- Giving "expression to the historic Christian character of the constitution";
- "[K]eeping faith on the agenda".[73]

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71 One example of such a pledge is found in the 2002 White Paper, *The House of Lords – Completing the Reform,* Cm 5291 (November 2001) which stated that "There should be increased representation of women and those from ethnic minority backgrounds" (para 11). (Available at: http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/constitution/holref/holreform.htm Accessed 16 September 2011).

With regard to the composition of the House of Commons, the Conservative Party has made efforts to introduce shortlists for constituencies with the intention of increasing the representation of ethnic minorities in Parliament and the Party, whilst the Labour Party has introduced "all-women" shortlists.

72 For example, in 2005, only 20% of MPs were women and only 2.3% of members were non-white, compared to 8% of the general population at the time of the 2001 census. (*Social background of MPs*, House of Commons Library Standard Note 1528, 17 November 2005, p 5. http://www.parliament.uk/documents/commons/lib/research/notes/snsg-01528.pdf Accessed 16 September 2011.)

73 *Ibid*. No. 51. P498.

24. It is worth considering whether any of these alleged qualities could not be provided without the bishops having full audience and voting rights, contrary to the Government's proposals.

25. Spiritual leadership and addressing the spiritual interests of citizens can be provided both in a private context through the Church's own activities and in a public context with public pronouncements and debates. This will undoubtedly take the form of speaking from "the tendencies of sound Christian... values". There is no democratic reason why the bishops should not be forthright on current issues, as stated above. However, none of this requires the bishops to sit in the House of Senators.

26. The claim that the bishops "aid and improve the efficiency and quality" is entirely subjective, as is the argument that they take part "in robust questioning". Even if the bishops were the greatest orators and interrogators in the world, it still would not automatically entitle them to sit in a legislature without a mandate.

27. The argument that bishops consider themselves to be regional representatives may be valid but to a questionable degree. Regional representation, as I have stated in chapter VIII, should be the primary responsibility of MPs in the House of Commons. The representation provided by bishops is enormously restricted: Scottish, Welsh and Northern Irish dioceses are not represented, as are 17 of the 43 dioceses in England.[74] Even in England, diocesan representation is biased, with the Archbishops of Canterbury and York and the Bishops of Durham, London and Winchester permanently holding a seat whilst the remaining 21 seats on the Bishops' Bench are distributed in order of duration of tenure.

28. It appears that much opposition to the privileged position of the Church in Parliament stems from the oft-quoted argument that the bishops add a great deal of morality to debates and decisions.[75] Although I do not share some of their views concerning the merits of religion, I sympathise with commentators such as Johann Hari,[76] Polly Toynbee[77] and Catherine Bennett[78] who argue that it is offensive to claim that elected individuals will be in some way "less moral" than bishops. The idea that morality cannot be expressed through party political views is strange; the idea that party politicians are so wedded to their respective dogma that they cannot act morally is narrow-minded and ignores the tendency for moral issues to be voted on in Parliament using free votes, including on issues of abortion and the death penalty.

29. The suggestion that the bishops are keen on voting on "close-run matters" is the most disconcerting argument in this list of their apparent qualities. It is wrong that any individual should have a direct vote on legislation in Parliament without a mandate. It is even more concerning that an individual should have a

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74 *Dioceses*. Church of England. Available at: http://www.churchofengland.org/about-us/dioceses.aspx Accessed 16 September 2011.

75 A striking example is found in comments made by the Archbishop of Canterbury in 2007: Petre, Jonathan. *Archbishop attacks 'erosion of Christian values'*. The Telegraph. 24 April 2007. Available at: http://www.telegraph.co.uk/news/uknews/1549503/Archbishop-attacks-erosion-of-Christian-values.html Accessed 16 September 2011.

76 Hari, Johann. *Get bishops out of our law-making*. The Independent. 18 February 2011. Available at: http://www.independent.co.uk/opinion/commentators/johann-hari/johann-hari-get-bishops-out-of-our-lawmaking-2218130.html Accessed 16 September 2011.

77 Toynbee, Polly. *Goodbye to the bishops*. The Guardian. 14 March 2010. Available at: http://www.guardian.co.uk/commentisfree/belief/2010/mar/14/lords-reform-bishops-reserved-benches Accessed 16 September 2011.

78 Bennett, Catherine. *It's time to kick the clerics off the moral high ground*. The Observer. 19 June 2011. Available at: http://www.guardian.co.uk/commentisfree/2011/jun/19/rowan-williams-terry-pratchett-assisted-death Accessed 16 September 2011.

direct vote (and perhaps decisive vote) on legislation in Parliament when they don't owe their position to alleged "expertise" (thus attracting an appointment in the Lords), but when they owe their position to their office.

30. (Having said this, the influence of the bishops on votes in the House of Lords "only rarely makes a difference to legislative outcomes":

"Of our 806 divisions this occurred only four times. Once in 2004 on an amendment to the Pensions Bill where the government won by two votes, but without the support of two Bishops voting the result would have been a tie. On two occasions, in 2000 and 2003, the government was defeated by one vote, with the vote of one bishop making the difference between this and a tied vote. Only once, on the Nationality, Immigration and Asylum Bill in 2003, was the government defeated thanks to the votes of bishops, when otherwise it would have won.")[79]

31. The two most questionable claims are those of giving "expression to the historic Christian character of the constitution" and "keeping faith on the agenda". These seem to be largely rhetorical.

32. What exactly is the "historic Christian character of the constitution"? It is something that has been raised as an argument on a number of occasions. For example, the Labour Government in its 2008 White Paper *"An Elected Second Chamber – Further Reform of the House of Lords"* claimed that:

"The relationship between the Church and State is a core part of our constitutional framework that has evolved over centuries. The presence of Bishops in the House of Lords signals successive Governments' commitment to this fundamental constitutional principle and to an expression of the relationship between the Crown, Parliament and the Church that underpins the fabric of our nation."[80]

33. With respect, this is a rather vacuous statement. The relationship between the Church and State cannot be described as a "core" part of our constitution; it is largely peripheral. The presence of the bishops in the Lords signals not successive governments' commitment to the principle but successive governments' negligence and apathy towards the issue of the second chamber. There should be no relationship between the Crown, Parliament and the Church: the Crown should not exist; and Parliament and the Church should be separate to comply with modern, democratic principles and for the mutual benefit of the two important institutions.

34. It may seem a clichéd argument but it must be asked why countries such as France, Spain, Italy, Germany and the USA all have a similar or greater level of religious adherence than the UK despite having no clergy sitting in their legislatures *ex officio*.

35. To argue that the retention of the Lords Spiritual is necessary for the retention of religious voices in Parliament is also false. To quote from Ekklesia:

"Previous analysis by Ekklesia has shown that the number of MPs who are members of the Conservative

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79 Russell, Meg and Sciara, Maria. *Why does the Government get defeated in the House of Lords? The Liberal Democrats as a Pivotal Group.* Constitution Unit, University College London. (September 2006). P 12. Available at: http://www.epop06.com/papers/Why%20does%20the%20Government%20get%20defeated%20in%20the%20House%20of%20Lords%20The%20Lib%20Dems%20as%20a%20Pivotal%20Group%20epop.pdf Accessed 16 September 2011.

80 *An Elected Second Chamber – Further reform to the House of Lords*. Cm. 7438. (July 2008). P 54, para 6.45. Available at: http://www.official-documents.gov.uk/document/cm74/7438/7438.pdf Accessed 16 September 2011.

Christian Fellowship, the Liberal Democrat Christian Forum, and the Christian Socialist Movement make up between 15-20% of the House. This number includes numerous Members who list active participation in church activities in their biographies, but is far more than the church-going population.

The simple fact that so many Parliamentarians have a religious faith that amounts to far more than a cultural veneer, and that this number is being added to, clearly calls into question the claims by some Bishops and Church leaders that Christianity is being marginalised in public life."[81]

36. The belief of some of the bishops that they represent all faith communities in their respective dioceses is discussed below.

37. None of these benefits would be unattainable were the bishops excluded from sitting in the House of Senators. In fact, there are arguments that they could be better achieved:

- The bishops' attendance in the House of Lords is somewhat sporadic;
- The bishops should – and do – prioritise their diocesan duties and so are unable to fully contribute to the House of Lords;
- If desired, a bishop or another individual can still introduce the parliamentary day with prayer;
- The bishops can sit in the aforementioned expertise committees, thus utilising their skills and abilities properly for the subjects which are of most interest to them.

38. As Max Atkinson's analysis of attendance statistics has shown:

"A quick survey of published details about the [sic.] 23 bishops who attended the House of Lords in the year ending March 2008 shows that they put in an average of 22.4 days each.

"The keenest five were the bishops of Southwark (83), Chester (46), Manchester (45) Southwell (44) and Liverpool (38).

"The lowest attendances were clocked up by the bishops of Chichester (3), Truro (5), Canterbury, Archbishop (7) Carlisle (9) and Durham (9)."[82]

39. It is worth quoting a few paragraphs from Harlow, Cranmer and Doe's article:

"As we have seen, the bishops asserted that their diocesan and other ecclesiastical functions significantly affected the extent to which they were able to attend Parliament. The majority believed that their diocesan role had to take priority and that, inevitably, they would sometimes be unable to contribute to the business of the House. The recent study by Partington and Bickley demonstrates how variable the attendance of bishops

81 *Cardinal Cormac Murphy O'Connor's appointment to the House of Lords*. Ekklesia. Available at: http://www.ekklesia.co.uk/comment/cardinal_lords_270209 Accessed 16 September 2011.

82 Atkinson, Max. *Bishops' attendance rates and allowances in the House of Lords*. Max Atkinson's Blog. 25 May 2009. Available at: http://maxatkinson.blogspot.com/2009/05/bishops-attendance-rates-and-allowances.html Accessed 16 September 2011.

Based on statistics from: *House of Lords Members' Expenses 1 April 2007-31 March 2008*. Version 1 – December 2008. Available at http://www.parliament.uk/documents/lords-finance-office/holallowances0708.pdf accessed 16 September 2011.

in the House of Lords has been in recent years: for example, in Session 2004-05 the Bishop of Sheffield made no appearance at all, while the Bishop of Southwark made 40 (over 60 per cent of sitting days) and the Bishop of Oxford 27 (over 55 per cent). In Session1996-97 only 11 per cent of Lords Spiritual attended more than one-third of sittings, compared with 56 per cent of life peers. However, while on average a bishop was in attendance for 12 per cent of sittings during the period 1979 to 1987, this had increased to 18 per cent in Session 2004-05. All the evidence suggests that the attendance of bishops is relatively low; Meg Russell estimates that the average turnout of bishops for government-whipped divisions is less than one. But this is understandable: the focus of canon law is on the diocesan work of bishops, while their own understanding of their role is that the diocese must take priority. Moreover, not every issue of importance to the government or to the House will necessarily be regarded as important by the bishops."[83]

40. The Labour Government commented that:

"The Government has always recognised that the nature of diocesan Bishops' work means that it is very difficult for many of them to attend the House of Lords with regularity... [O]f the Lords Spiritual between April 2005 and March 2006, 11 attended more than 25 times (out of a possible total of 134). 12 attended fewer than 20 times. 42% of the total number of attendances was accounted for by just 5 of the Bishops and the top 16 Bishops accounted for 89% of total attendances."[84]

41. This indicates that the contribution of the Lords Spiritual to the House is somewhat exaggerated. I am not suggesting that the bishops are in any way "lazy"; I am suggesting that it is unrealistic to expect that they can provide adequate service to the House of Senators at the expense of their diocesan duties.

42. It is in the interests of fairness to return once again to the above article:

"For one [bishop], Lords debates influenced "dramatically" his contribution in the diocese. Another said that his position in the Lords gave him "greater awareness of issues in the media world on which the Church may/should have a view".... Two suggested that the contacts that they were able to make through their positions in Parliament improved the quality of their diocesan work."[85]

43. Despite this reference to the benefit a (small) number of responding bishops attributed to their presence in the Lords,

"… all 14 made one point absolutely clear: their diocesan role had to take priority--for some, "absolute priority"--over the Lords."[86]

44. Although many people advocate members of the legislature having other interests outside Parliament, it can certainly be argued that for the work of a legislator to be properly undertaken, he must fully commit

83 *Ibid.* No. 51. P 505.

84 Office of the Leader of the House, The House of Lords: Reform, February 2007, p28.

Noted in: Maer, Lucinda and Makwana, Chintan. *Religious representation in the House of Lords*. House of Commons Library Standard Note. (October 2009). P 14. Available at: http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-05172.pdf Accessed 16 September 2011.

85 *Ibid*. No. 50. P 501.

86 *Ibid.*

himself to the task. The bishops clearly do not have the time or logistical framework with which to achieve this, with their many other important duties. Also, the argument that politicians should have other jobs so as to connect with "the real world" is a fallacy: politicians should have the capacity to deal with "real people" (a grotesque, superficial label if there ever were one) through correspondence, campaigning, constituency surgeries and other constituency duties and activities far better than someone who is forced to dedicate a substantial amount of their time to just one other professional activity. (No one is questioning the necessity for Parliament to be representative of all sorts of different backgrounds; what is questioned is the popular belief that this should be achieved artificially rather than by allowing the people to choose their representatives from a wide pool of applicants).

" An attempt to address the preferential bias given to the Church of England in the second chamber through the appointment of other religious representatives (or representatives of the secular and humanist communities) would not only be undemocratic and unrepresentative but also impractical due legal restrictions and organisational and hierarchical difficulties within the faith communities of the UK"

45. There have been calls for representatives of different faith communities to be given seats in the House of Senators. However, as stated above, there would appear to be little justification for reserving seats in a house of Parliament for people who meet certain social criteria: this is undemocratic and artificial.

46. If the various UK religions were to be given equal representation it would result in some religions being over-represented in proportion to their number of adherents. This would indicate that it would be preferable for the number of representatives of the religions to be determined in proportion to their respective sizes. However, this would no doubt raise the need to review the "quota" allocated to each religion at a fixed interval. Of course, this would be possible, for example, at the same time as the election of new senators, but it seems to require a great deal of work for little return.

47. Even disregarding the undemocratic nature of the idea of reserving places for religious representatives, there are huge logistical and legal difficulties in trying to fulfil such an objective. As has been widely-observed, not all religions have the same hierarchical establishment found in the Church of England, making it difficult to determine who will act as a representative of the religious community:

- The Network of Buddhist Organisations has noted that "... there are many different traditions represented in the UK, both ancient ones and more modern Western forms of Buddhism, and there is at present no formal means whereby a choice could be made as to who might fill such a role."[87]
- The Board of Deputies of British Jews has commented that "Within the British Jewish community there are several different strands of practice and interpretation of [Judaism]... Not all sections of the community recognise the religious authority of the Chief Rabbi and several groups have their own Rabbinic Authority."[88] Most damningly, the Board has argued that "to attempt to appoint official representatives from the faith communities could be divisive within the communities and cause more harm than good."[89]

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87 The Network of Buddhist Organisations. Available at: http://www.dca.gov.uk/consult/holref/responses/hl161.pdf
Noted in: *Ibid*. No. 80. P15.

88 Board of Deputies of British Jews, http://www.dca.gov.uk/consult/holref/responses/hl026.pdf
Noted in: *Ibid*.

89 *Ibid*.

- Hinduism does not have a centrally-trained and ordained priesthood.[90]
- There is no central organisation in Islam, "but the Islamic Cultural Centre (which is the London Central Mosque) and the Imams and Mosques Council are influential bodies. There are many other Muslim organisations in Britain."[91]
- "[W]hile the Church of Scotland is a National Church… it is also a Church which asserts its spiritual independence of the State, an independence which, moreover, the State recognises and guarantees by statute."[92]

48. There are legal issues concerning the involvement of Roman Catholic bishops in parliamentary activities. The Canon of the Catholic Church states that "Clerics are forbidden to assume public offices which entail a participation in the exercise of civil power."[93] This is one of the reasons cited by Cardinal Cormac Murphy O'Connor when he declined the offer of a peerage.[94] However, English law now allows clergy other than the Lords Spiritual[95] to stand for election to the House of Commons.[96]

49. The problem is further complicated by the argument that representatives of the secularist and humanist communities would have to be given seats in order to achieve religious equality. Otherwise, it would be justifiably argued that religion was being given preferential treatment in the face of widespread opposition and equality grounds. But, again, how would it be possible to identify such representatives? Would seats be offered to the President of the British Humanist Association, Polly Toynbee (who is a strong advocate of a fully-elected second chamber) or the President of the National Secular Society, Terry Sanderson?

"There are arguments to be made that the preferential treatment afforded to Church of England bishops and the consequent discrimination against other religious and non-religious communities conflicts with the UK's domestic and international human rights obligations"

50. The UK is under a legal obligation to observe principles of religious freedom under article 9 ECHR and to avoid religious discrimination under article 2 of the Universal Declaration of Human Rights, inter alia.

51. In the face of court decisions and legal commentary, it is difficult to lodge a strong argument that the UK is in contravention of these obligations through affording the Church of England such a privileged position

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90 Lewis-Jones, Janet. *Reforming the Lords: The Role of the Bishops*. The Constitution Unit, University College London. P 10, para 33. Available at: http://www.ucl.ac.uk/spp/publications/unit-publications/41.pdf Accessed 16 September 2011.

91 *Ibid.*

92 Evidence received by the British Humanist Association from the Church of Scotland.

Noted in: *Ibid*. No. 1.P8.

93 *Canon 285,* §3. *Code of Canon Law – Chapter III: The Obligations and Rights of Clerics.* Available at: http://www.vatican.va/archive/ENG1104/__PY.HTM accessed 16 September 2011.

94 Wynne-Jones, Jonathan. *Cardinal Cormac Murphy-O'Connor turns down peerage following Catholic row*. The Telegraph. 6 December 2009. http://www.telegraph.co.uk/news/religion/6736484/Cardinal-Cormac-Murphy-OConnor-turns-down-peerage-following-Catholic-row.html Accessed 16 September 2011.

Thomspon, Damian. *Pope 'personally blocked' Cardinal Murphy-O'Connor from joining House of Lords.* The Telegraph. 15

December 2009. Available at: http://blogs.telegraph.co.uk/news/damianthompson/100019928/pope-personally-blocked-cardinal-murphy-oconnor-from-joining-house-of-lords/ Accessed 16 September 2011.

95 House of Commons (Removal of Clergy Disqualification) Act 2001, S1(2).

96 *Ibid*. S1(1).

in Parliament, whilst not sharing such "benefits" with other religions. However, such a state of affairs does conflict with the spirit of our human rights observance, at the very least.

52. The European Union has declared that it

"… respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The European Union equally respects the status of philosophical and non-confessional organizations."[97]

53. The EU has also said that:

"It is not actually within the European Commission's power to define – either on a national or European level – the relationship between the State and churches, religious communities and philosophical and non-confessional organisations."[98]

54. Some commentators have argued that the Council of Europe, through the European Court of Human Rights (ECtHR), has determined that religious establishment does not contravene the European Convention. These include Ahdar and Leigh who "argue that establishment –at least in its contemporary, milder form – is not antithetical to religious freedom. Religious liberty, properly understood, can co-exist with religious establishment."[99]

55. As noted by Garcia,

"... this is also the view of the European Court of Human Rights, which held that the Swedish model of establishment [prior to the disestablishment of the Church of Sweden in 2000] was compatible with the principle of religious freedom[100]."[101]
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56. Garcia's article does, however, demonstrate that the ECtHR has also:

"....emphasised the significance of impartiality of public authorities towards religious faiths in *Refah Partisi v Turkey*[102]"

57. In paragraph 91 of the court's judgment, it was stated that:

"The Court has frequently emphasized the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. It also considers that the State's duty of neutrality and impartiality is

97 Treaty on the Functioning of the European Union, Article 17.
98 Dialogue with religions, churches and communities of conviction. Available at: http://ec.europa.eu/dgs/policy_advisers/activities/dialogues_religions/index_en.htm Accessed 16 September 2011.
99 R. Ahdar and I. Leigh, *Religious Freedom in the Liberal State* (Oxford: Oxford University Press, 2005), p.127.
Noted in: *ibid.* No. 56.
100 *Darby v Sweden* (A/187) (1991) 13 E.H.R.R. 774 ECtHR at [45]
Noted in: Ibid. No. 56.
101 *Ibid*. No. 56.
102 *Refah Partisi (Welfare Party) v Turkey* (41340/98) (No.2) (2003) 37 E.H.R.R. 1 ECtHR
Noted in: *ibid.* Footnote 141.

incompatible with any power on the State's part to assess the legitimacy of religious beliefs and that it requires the State to ensure mutual tolerance between opposing groups"."[103]

58. The constitutional set-up of the UK hardly seems to comply with these ECtHR requirements.

59. Ultimately, it must be queried as to whether the rights conferred upon one religious body yet denied to others, in the face of the multi-faith nature of our society, is anything other than discriminatory.

"There appears to be substantial opposition to the retention of the Bishops amongst the electorate"

60. This is not an argument that should be employed without the support of the above claims. There should be deep scepticism towards polling data because they offer such an opportunity for manipulation of the public mood.

61. However, recent polls have been relatively clear in demonstrating the (apparent) level of public opposition to the retention of the bishops in the House of Senators. In an ICM Poll commissioned by Power2010, it was found that 74% of those questioned thought that unelected bishops should have no place in the legislature, with only 21% believing that they should. According to the same poll, 70% of Christians were against the continued presence of the Bishops in the second chamber, with only 26% in favour of keeping them.[104]

62. In addition to this, it cannot be denied that the number of people identifying themselves as religious or as belonging to a particular religious community in the UK is declining. The British Humanist Association has collected some data on this issue:

"In a poll conducted by YouGov in March 2011 on behalf of the BHA, when asked the census question 'What is your religion?' 61% of people in England and Wales ticked a religious box (53.48% Christian and 7.22% other) while 39% ticked 'No religion'.

63. When the same sample was asked the follow-up question 'Are you religious?', only 29% of the same people said 'Yes' while 65% said 'No', meaning over half of those whom the census would count as having a religion said they were not religious."[105]

"The Anglican Church claims only 1,650,000 members in the UK and its Sunday services are attended by only about 1.9% of the adult population. Only 12% of the adult population are members of any church. Many polls have provided evidence of high levels of unbelief in the UK". [106]

64. Harlow *et al* note that:

> "… in 2002 the House of Commons Public Administration Committee called for the abolition of the automatic right of bishops to sit in the Lords, arguing that political support for a second chamber big

103 *Ibid*. No. 56, para 91.
104 *Lords Survey*. ICM. pp12-13. Available at http://www.ekklesia.co.uk/content/survey_on_bishops_icm.pdf accessed 16 September 2011. Noted *ibid*. No. 77.
105 *Ibid*. No. 50. P22.
106 *Ibid.* P6.

enough to accommodate the bishops had diminished."[107]

65. Remarkably, there is opposition to the presence of the bishops in the second chamber amongst the Lords Spiritual themselves:

"Two of the fourteen [bishops] who responded were against bishops in the Lords: Interestingly, the remaining two bishops were actually opposed to being in the Lords at all. One said that the presence of bishops was "more decorative than [they] like to think" and that bishops represent the essential conservatism of the British with regard to the constitution "far too willingly". This is slightly disconcerting: if some of the bishops themselves are not persuaded of their own value to the House of Lords, why should the government, other faiths and the wider public be so persuaded?"[108]

66. Although I am strongly opposed to arguments about the separation of religion and politics and believe that those who approach politics with a religious view should not be prohibited from engaging in debate, these statistics only further serve to demonstrate that the privileged position of religion, or, more appropriately, the Church of England, in Parliament is lacking credible grounds of support.

WHY THE HOUSE OF SENATORS MUST BE ELECTED

Summary:

1) All members of the House of Senators should be elected.

This is because:

- *An elected House of Senators would not challenge the primacy of the House of Commons.*
- *An elected House of Senators would not lead to a loss of the long-term thinking of current peers in place of short-termism.*
- *An elected House of Senators would not result in more professional politicians and a loss of the current expertise in the House of Lords.*
- *Continuing to have an unelected upper house leads to the real potential for hypocrisy in foreign policy and the tradition of democratic progress in the UK.*
- *An elected House of Senators could encourage greater involvement on the part of the public with politics.*
- *It is a basic human right for the people to elect their representatives.*
- *The UK is almost unique in having an entirely unelected second chamber.*

1. Perhaps it is valuable to begin a chapter on the question of whether the House of Senators should be elected by quoting from Baroness Boothroyd's speech in the Lords debate on the draft bill. With genuine

107 *Ibid*. No. 51. P496.
108 *Ibid*. P503.

respect and admiration for the noble lady, some of the passages of this speech are quite hysterical:

"There can be no misunderstanding of what is at stake. This is not reform of the House of Lords, as [the government] would have us believe. They are set on abolishing this House. If this draft Bill becomes law in any shape or form, it will wreck this place as a deliberative assembly and tear up the roots that make it the most effective revising Chamber in the world. Worse still, the balance between our two Houses, which has already been touched on by many of your Lordships, on which our democracy and the rule of law depends, will be lost forever.

Why is this? Is it because the Government's muddled thinking stems from the argument that both Chambers must be elected in order to be legitimate? That is the only reason offered. No other reason is on offer....

So what is the problem? I refer again to the foreword, which claims that we lack "sufficient democratic authority" – nothing more. According to Mr Clegg, our fatal flaw is that we are not directly accountable to the British people. That is absolutely true, but nor are the monarchy, the judiciary, the chiefs of the armed services, the Prime Minister, his deputy Mr Clegg or-let us face it-the Cabinet directly accountable. We in this House must be resolute in our determination and ready to resist, come what may from that government Front Bench....

I again ask in the simplest and most mundane terms that I can command: in what way would the nation benefit and parliamentary proceedings be enhanced by the abolition of this House of experts and experience, and its replacement by a senate of paid politicians? I am an optimist. I live in hope of an answer...".[109]

2. It is sincerely hoped that this memorandum will serve as an answer to the Baroness' question and have the effect of soothing her fears:

- It is possible to retain and enhance the deliberative nature of the second chamber and the balance between the two Houses of Parliament through the measures listed in chapter IV.
- Some officials should not be elected: the judiciary and the chiefs of the armed services should not be elected for the natural (and, in the case of the judiciary, statutory)[110] need to maintain these individuals' independence. It is arguable that ministers and secretaries-of-state should be appointed as technocrats rather than normally selected as parliamentarians (and be accountable to parliament through other means).[111] The head of state and prime minister should be directly chosen by the people, however.
- This chapter and chapters IV and V tackle the question of retaining expertise in Parliament in detail.
- It is somewhat hypocritical of the Baroness to decry the value of "paid politicians" when she was one for 27 years between 1973-2000 and has been an unpaid politician for the eleven years since the turn of the millennium.
- It is also hoped that this chapter will persuade her, and others, of the need for a wholly-elected second chamber.

3. In decades to come, when the House of Lords is reformed – and the popular belief that it will not

109 HL *Hansard*. 21 June 2011. Col. 1173.

110 Constitutional Reform Act 2005, S3.

111 See, eg. Finn, Liam, *Sacking the Monarch – Why Britain must become a republic*, (Middlesbrough: Soft Lad Publications, June 2010).

happen in this Parliament will most likely be premature – the arguments given by Baroness Boothroyd and others will be considered reactionary.

"An elected House of Senators would not challenge the primacy of the House of Commons."

4. Without doubt, an elected House of Senators would be a stronger chamber. As David Miliband has said, this is to be welcomed.[112] Parliament should be strengthened, particularly in its scrutiny of the executive.

5. However, a stronger upper house would not make it an inevitable rival to the Commons for primacy. The government has proposed several mechanisms for retaining the primacy of the Commons:

- A long term for members of three normal Parliaments;
- A single non-renewable term;
- An appointed element (in an 80% elected House of Lords); and
- A different voting system for elections to the reformed House of Lords from that used for elections to the House of Commons.[113]

6. The only one of these mechanisms that would realistically serve to preserve the Commons' pre-eminence is the proposal to retain an appointed element. This is because it would affect the democratic legitimacy of the House of Senators. However, as this chapter illustrates, the chamber should be 100% elected. An acknowledgement on the part of the government that legislators must be elected in order to attain proper legitimacy is welcome. But if such an acknowledgment has been made, all members must be accountable. If not, two kinds of members will exist: legitimate, elected members and "illegitimate", appointed members!

7. It is not recommended that senators should serve a single, non-renewable and long term, as is explained in chapter IX. Furthermore, a House of Senators elected using a proportional system would claim greater democratic legitimacy than the Commons.[114] It would add to the distinctiveness of the second chamber but it would not be a solution to the alleged problem of competing primacy. As such, these two proposals should not be considered in this argument.

8. That is not to say that there are not statutory means for maintaining the Commons' primacy. It is correct to say that the clause in the draft Bill stating that the Commons remains predominant is not sufficient (although this is an important gesture to be referred to in the highly unlikely event of a conflict). But this is not the only indicator of the Commons' supremacy: the retention and enhancement of the Parliament Act procedure, the codification of the Salisbury-Addison/Manifesto Bill Doctrine and the Commons' money bill privileges, excluding votes of confidence in the government from the competence of the House of Senators, together with clear, statutory codification of the powers of the House of Senators shall ensure that the House of Commons remains the primary chamber in Parliament. In the event of these statutory mechanisms, a belligerent House of Senators would not be able to rely on its greater democratic legitimacy to get its way: the Commons would be able to use the aforementioned procedural means of ensuring that its will was done in the end.

112 HC *Hansard*. 27 June 2011. Col. 662.
113 *House of Lords Reform: Draft Bill*, Cm 8077, (May 2011), p9
114 Observed by Lord Cormack. *Ibid.* No. 1. Col 1166.

"An elected House of Senators would not lead to a loss of the long-term thinking of current peers in place of short-termism."

9. The argument that elections lead to a loss of long-term thinking is entirely subjective. It is considered in depth in chapter IX.

"An elected House of Senators would not result in more professional politicians and a loss of the current expertise in the House of Lords."

10. It is true to say that the House will include more professional politicians. But to argue against professional politicians is to argue against democracy.

11. How can it be argued that current peers are not politicians? They sit in a legislature and engage in all the activities that come with the legislative process and business. Technically (and perhaps pedantically), they are "amateur" politicians as they are not paid (though they can claim for generous expenses).[115] We realised a century ago that it was necessary to pay members of Parliament a salary in order to enable people from all social and economic backgrounds to have the means to stand for Parliament.[116] Are we suggesting that those elected to serve in Parliament should not be paid – with the potential consequence of preventing candidates from standing – purely because they would be unable to afford it?

12. Admittedly, the term "professional politician" has come to represent a narrow caricature of a white, middle-class public school and Oxbridge graduate whose only occupation before landing a safe seat is to work as a low-paid party researcher.[117] But such caricatures are not representative of the reality of the composition of the House of Commons.[118] Moreover, with the recommendation that candidates for the House of Senators are initially selected in primary elections at a local level, the potential for such individuals to secure the backing of the party leadership is reduced.

13. This populist mantra is damaging for politics. Whilst the blatant disengagement on the part of (some) MPs and peers with regard to issues such as expenses has rightly been admitted, it is time that politicians began to publicly demonstrate that political office is a noble public service. Whilst politicians themselves continue to denigrate the political profession, there is little chance that the widespread public perception of them as greedy, aloof and self-serving individuals will alter.

14. The most effective rebuttal of this somewhat knee-jerk rejection of elected politicians is to consider the true composition of the current House of Lords. Contrary to its popular representation as an almost politician-free zone full of "experts", the House is highly-populated with former MPs, failed parliamentary candidates, hereditary peers, Church of England bishops, former councillors and political party workers:

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115 *House of Lords Members' Expenses 1 April 2007-31 March 2008*. Version 1 – December 2008. Available at http://www.parliament.uk/documents/lords-finance-office/holallowances0708.pdf Accessed 16 September 2011.

116 Payment of MPs Act 1911

117 See, eg. *Posh and Posher: Why Public School Boys Run Britain.* BBC2. 26 January 2011.

118 *Social background of MPs*, House of Commons Library Standard Note 1528, 17 November 2005. Available at: http://www.parliament.uk/documents/commons/lib/research/notes/snsg-01528.pdf Accessed 16 September 2011

TYPE	NUMBER	PERCENTAGE
Former MPs	204	24.67
Former Parliamentary candidates (excluding former MPs)	66	6.98
Total number of "politicians"	*270*	*32.65*
Hereditary peers (excluding former MPs and former Parliamentary candidates)	88	11.12
Lords Spiritual	26	3.14
"Non-experts" (including former MPs, parliamentary candidates, hereditary peers and Lords Spiritual)	*384*	*46.43*
Remaining peers/"Experts"	*443*	*53.57*

[119]

15. These statistics are very revealing. Contrary to the argument that members of the House of Lords are people who would generally not seek election, nearly a third of its members have stood, successfully or not, for election. Many others have been local councillors or have worked for political parties. In addition, the number of members of the House of Lords who owe their peerage solely to their expertise (ie those who are not included in the admittedly poorly-labelled "non-experts" category in the above table) is lower than one may expect, amounting to just over half of all peers.

16. It is also insulting and naïve to suggest that "political" figures in the House of Lords, House of Commons and prospective candidates to both chambers cannot be "experts". As demonstrated, both Houses of Parliament attract and will continue to attract people from various backgrounds. Each of these individuals will bring their own expertise and experience to Parliament.

17. It is an often-repeated claim that the House of Lords is resident to experts from various fields. The sheer variety of expertise is palpable and heartening when looking through the CVs of individual peers.[120] Of course, it is entirely desirable that Parliament will wish to draw upon the knowledge of current peers, particularly those of high standing in science, business, law, medicine, academia, etc. This is achievable through the establishment of the committees described in chapter V and through the statement of compatibility procedure proposed.

18. What it is not acceptable to argue is that a certain level of expertise entitles one to vote directly on

119 From my own research, July 2011, using data from *Lists of Members of the House of Lords.* Available at: http://www.parliament.uk/mps-lords-and-offices/lords/ Accessed 16 September 2011. A (very small) margin of error should be employed. These figures do not exclude peers on leave of absence.

120 Available at: *Ibid*.

legislation in Parliament. Such an argument is elitist and anti-democratic:

"The idea, though, that an expert embryologist or eminent constitutional academic should be given the automatic right to vote on immigration, education, transport, and every other area of public policy is palpably ludicrous."[121]

19. The Conservative leader of Richmond LBC, Lord True, has expanded upon the inherent elitism of the anti-election argument:

"I question the prevailing assumption – as did the noble and learned Lord, Lord Lloyd of Berwick – that a committee of seven or nine people, chosen from the ranks of the great and good, should be charged by statute for all time with controlling the peopling of a whole House of Parliament. I cannot accept as readily as some that it is axiomatically wrong that 40 million people should have a say in who might come to this House, while it is right that seven people should determine in secret who comes and why." [122]

20. It may seem flippant to express so, but the logical extension of "the expertise argument" is that Parliament should consist exclusively of *Mensa* members or Oxbridge graduates. To expose the folly of the argument further, why not consider introducing an intelligence threshold before granting suffrage to the electorate? Perhaps the threshold should be that every voter must have 5 GCSEs at A*-C?

21. As such, the question should not be "do we want more politicians?" but "do we want unelected or elected politicians?" Whilst acknowledging (and making no apology for the fact) that such arguments are based purely on dogma, those who make statutes must be accountable. The only sufficient accountability for legislators is that they are elected. When those in legislative office are accountable to the people they must respond to the needs of the public; when they are not accountable to the people, it is only their benevolence that requires them to do so. This is not sufficient. Just as justice must be seen to be done, so democracy must be visible and enhanced to the most sensible and workable degree.

22. Tony Benn has expressed the criteria for democracy the most eloquently:

- What power have you got?
- Where did you get it from?
- In whose interests do you use it?
- To whom are you accountable?
- How do we get rid of you?[123]

23. The first of these questions can be laid out properly in statute for the first time. The answer to the next

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121 Steel, David and Tyler, Paul. *House of Lords reform: on the right track?* The Guardian.18 May 2011. http://www.guardian.co.uk/commentisfree/2011/may/18/house-of-lords-reform Accessed 16 September 2011.

122 HL *Hansard*. 22 June 2011. Col. 1350.

Noted in: Tyler, Paul. *Lord Tyler writes: Don't listen to the doomsayers.* Liberal Democrat Voice. 1 July 2011. Available at: http://www.libdemvoice.org/lord-tyler-writes-dont-listen-to-the-doomsayers-24600.html Accessed 16 September 2011.

123 Younge, Gary. *The stirrer*. The Guardian. 20 July 2002. Available at: http://www.guardian.co.uk/politics/2002/jul/20/interviews.labour Accessed 16 September 2011.

three will be "the people". The fifth question will be answered by the foremost democratic ritual: an election.

24. A further criterion should be added to this list: "Why are you seeking office?" The answer to this question should be "to make the world a better place."

25. As a result of these proposals, it is possible to retain and enhance the expertise available to Parliament from both inside and outside the legislature whilst securing proper accountability for those who sit in the House of Senators.

"Continuing to have an unelected upper house leads to the real potential for hypocrisy in foreign policy and the tradition of democratic progress in the UK."

26. It has long been a fundamental aim of UK foreign policy to spread and enhance democracy and oppose autocracy around the world. We continue to do this, particularly through our military involvement in Libya.

27. Whilst it would be quite ridiculous to compare the situation of UK democracy to that of Libya or Syria or Egypt, there is a clear disparity between those who would celebrate the need for democracy in countries such as Zimbabwe, China and Iran, yet would oppose a wholly-elected House of Senators.

28. Again, Lord Tyler has expressed this dichotomy with great eloquence:

"Westminster is such an Alice in Wonderland place that many parliamentarians are asking why reform of the House of Lords is necessary at all. They are so absorbed by self-serving assumptions that they forget a simple principle: legislators should be elected by the people whose lives they affect. Everyone seems rightly determined that this should hold true in north Africa and the Middle East, yet so many are willing to eschew it for our own parliament.

The irony would be amusing if it were not so arrogant, and so frustrating."[124]

29. There are many peers, such as Lord Steel, and even academics, such as Professor Bogdanor, who would find any accusation that they have anti-democratic sympathies plain offensive. This is clearly not the intention of this argument. However, it cannot be denied that such positions are illogical. Considerations about efficiency and expertise do not compare to considerations about democracy, particularly when the proposals in this memorandum address those concerns whilst leaving adequate space for proper democracy.

30. The history of the United Kingdom, and the histories of its constituent nations prior to its creation, is an almost-linear tale of democratic progress and development, from Magna Carta to the de Montfort Parliament, the Civil War and the Levellers to the Glorious Revolution, the Great Reform Act of 1832 to the Representation of the People Act 1918. It is time for us to honour that rich history once more and have all members of our legislature chosen by, and accountable to, the public.

124 *Ibid*. No. 121.

"An elected House of Senators could encourage greater involvement on the part of the public with politics."

31. In no way would an elected second chamber be the antidote to public disengagement. It is unlikely that elections to the House of Senators would command as high a turnout of voters as elections to the House of Commons, as most people are under the illusion that in voting in Commons elections they are directly voting for a prime minister or government.

32. Despite this, giving people the ability – and the belief in such an ability – to affect the way in which the decisions which govern their lives are made is always a preferable means of attempting to encourage involvement than by reducing their ability to do so. As I wrote in my book *Sacking the Monarch – Why Britain must become a republic*:

"I think people's boredom with politics is that they feel uninvolved, separated from a political class which does not represent them. I can only speak for myself and the people I know (and that is all I am doing) but I believe that people feel as if they can't change anything and therefore ask what point there is in trying to do so. There is a difference between politics spelt with a lower-case "p" and Politics spelt with a capital letter: the former concerns the issues that dictate our everyday lives; the latter is the elitist sport played in Whitehall and Westminster.

So why don't we create a democracy where people do feel involved? Why not create a democracy where politicians truly are representative of the electorate? Why not create a democracy where those who have been elected feel the most intense pressure imaginable to work solely in the interests of the people, living under constant fear of losing their jobs? As Jonathan Freedland demonstrated in his book *Bring Home the Revolution*, we need to live in a culture where politicians are the employees of the people and answer to their employers – the voters....

… It is not good enough simply to write something off because it is hard to achieve. Becoming a proper democracy may or may not reignite the public's political interest, but it is unlikely that it will make it any worse. So many people complain that they feel they can't change anything and are consequently uninterested. What's the best way to combat this? I believe it's to empower people..."[125]

"It is a basic human right for the people to elect their representatives."

33. This has been recognised for over a century. We began to recognise the principle during the English Civil War when the authority of Parliament over the Crown was affirmed (although no person could rationally argue that what followed was "democracy"). The principle began to take hold in western thinking during the Enlightenment. Most famously, the United States of America was founded upon the principle of popular sovereignty and a doctrine that government should be conducted "of the people, by the people and for the people".[126] (Admittedly, the US Senate did not become directly-elected until 1913.)[127]

125 *Ibid*. No. 111. P9.

126 *Abraham Lincoln*. The White House. http://www.whitehouse.gov/about/presidents/abrahamlincoln accessed 16 September 2011.

127 *Senate Chronology*. United States Senate. http://www.senate.gov/pagelayout/history/one_item_and_teasers/chronology.htm Accessed 16 September 2011.

34. As Susan Jones has noted,[128] Article 21 of the Universal Declaration of Human Rights declares:

"The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."[129]

35. The second chamber is a fundamental part of the governance of this country. It is only right that it should be directly accountable to the people.

"The UK is almost unique in having an entirely unelected second chamber."

36. Whilst acknowledging that it may appear to be an argumentum ad populum, the UK is almost unique worldwide in having an entirely unelected second chamber in its legislature. Whilst recognising that several other second chambers include a mixture of (directly or indirectly) elected and appointed members, such as those of Germany and Italy, "The only other wholly unelected second chamber in a major democracy is the appointed senate of Canada"[130] which is based upon the UK House of Lords and which is itself likely to become elected in the near future. Whilst it should never be argued that we should change our constitutional set-up simply because it differs to most other countries,[131] the sheer isolation of the UK in continuing to retain such an archaic form of government is quite palpably bizarre.

ELECTORAL SYSTEM

Summary:

1) There are sensible arguments in favour and against using staggered elections. I do not wish to make any recommendation as to this proposal.
2) The UK should be divided into areas as numerous as the number of seats in the House of Senators.
3) Open primary elections should be held for each party standing for election in those areas.
4) The party should then rank these candidates on an open list.
5) An election will then take place nationwide, treating the UK as one constituency.
6) Seats should be allocated to parties in direct proportion to the percentage of the vote each has won.

1. It is often argued that the composition and electoral system of the second chamber can only be determined when the role of the chamber is certain. The ideas below are given on the basis of the recommendations for the role of the House of Senators in chapter IV.

128 *Ibid*. No. 112. Col. 671.

129 Universal Declaration of Human Rights, Article 21(3).

130 Russell, M. (2011). *Judging the White Paper against International Practice of Bicameralism*. In Fitzpatrick, A. (ed.), *The End of the Peer Show? Responses to the Draft Bill on Lords Reform*. London: CentreForum.

Available at: http://www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords/tabs/Judging_the_White_Paper.pdf Accessed 16 September 2011.

131 This was cynically argued by the "No2AV" campaign which propagated as one of its main arguments that only Australia, Fiji and Papa New Guinea used AV in general elections. See, eg. *Why our current system is better than AV*. No2AV. http://www.no2av.org/why-vote-no/current-system/ Accessed 16 September 2011.

Number of senators

2. The Government has proposed that there should be 300 members of the reformed second chamber. If the senators are to have constituency duties then there should be at least 300 members, otherwise the number of constituents for each senator will be extortionate. However, this memorandum does not recommend that senators have constituency responsibilities. Instead, the number of senators could well be considerably lower. The joint committee is in a better position to consider this figure than me.

Not constituency representatives

3. Members of the House of Senators should not act as formal constituency representatives. The chamber should be dedicated primarily to legislation and holding the executive to account. It is the role of MPs to represent constituencies in Parliament.

4. Of course, particular areas are represented by different individuals: MPs, MEPs, local councillors, mayors, etc. However, these representatives have distinctive functions and represent the constituencies in different bodies. There is no need for a constituency to be represented twice in Parliament. Indeed, this has the potential to create conflict between an MP and a senator whose constituencies may overlap.

5. Another problem caused by the possibility of constituency representation is that certain areas will have greater, direct influence over the election of certain individuals. This is unfair in a national legislative chamber where these constituency representatives have authority over legislation affecting the whole country.

Staggered elections?

6. The Government has advocated the use of staggered elections, with a third of the reformed chamber's membership changing at each election. It argues that "This would ensure that members of the reformed House of Lords would never collectively have a more recent mandate than MPs."[132] It also states that "Staggered elections would... make it less likely that one particular party would gain an overall majority."[133]

7. Both of these claims are sensible arguments in favour of holding staggered elections. A strong reservation is that the more recently-elected members of the House of Senators would be considered to be, in some sense, "more legitimate" than those members whose mandate was acquired before. However, it may thought that the two benefits stated above may ultimately warrant staggered elections.

Proposed system of election

8. The Government has recommended that the Single Transferable Vote (STV) system is used for elections to the House of Senators. STV is an excellent system of election and is favoured by the vast majority of those who campaign for electoral reform, including the Electoral Reform Society.[134] The use of a proportional representation (PR) electoral system should not even be open to debate: majoritarian systems

132 *House of Lords Draft Reform Bill*, Cm. 8077. (May 2011). Para 25, p13.

133 *Ibid*.

134 Electoral Reform Society. *Our Mission*. Available at: http://www.electoral-reform.org.uk/our-mission/ Accessed 21 September 2011.

produce utterly distorted, undemocratic results for national legislatures. However, with STV being used on a regional basis, it would lead to a very slight loss of proportionality. Instead, this memorandum proposes that elections to the House of Senators take place in the following manner:

- The country is divided into 300 areas.[135]
- Open primary elections are held for each party standing for election in those areas.
- The party ranks these candidates on an open list, using whichever method it wishes.
- An election then takes place nationwide – treating the whole of the UK as one constituency, as happens in the Israeli Knesset and the lower chamber of the Netherlands legislature[136] – and seats will be allocated to parties in direct proportion to the percentage of the vote each has won.

9. This system has many flaws:

- The usage of primary elections is a strange concept in British elections, being more heavily used in Europe and the USA. Of course, this is by no means a disadvantage in itself.
- The proposals do run contrary to the statement made above that allowing certain localities greater influence over the selection of candidates than others is inherently unfair.
- It may be thought improper to allow supporters of other parties the chance to participate in the selection of candidates for other parties through the open primary system.
- Ultimately, the party itself (most probably those in the upper echelons of its hierarchy) has the final choice over candidates. This may still encourage some blind loyalty on the part of candidates.
- Most unfortunately, the system would make it almost impossible for candidates independent of political parties to be elected to the House of Senators.

10. Despite this, it is submitted that the many merits of the system outweigh the disadvantages listed above:

- Holding primary elections is a way of at least limiting party control over the selection of candidates.
- It also allows candidates to have some experience of local issues which can benefit their work in the House of Senators, if elected, even though they will not have official constituency duties.
- Although localised primaries grant a certain area greater influence over the selection of a candidate than others, it would be a virtual impossibility in a logistical sense to hold a primary election for each party's 300 candidates on a nationwide basis.
- Central party control over the selection of candidates, even with the retention of control over the party list, is much reduced.
- The ability of anyone to vote for a party's candidate in the primary election will force candidates to appeal to a greater number of people than would be necessary if they were forced to pander to a particular minority. It is unlikely that turnout will be significant for such elections, but primaries do offer another practical avenue for the people to directly participate in the governance of the country.
- The almost-total obstructions preventing the election of independents are not so significant:

135 The 300 figure is based on the proposed number of members in the draft reform bill (*Ibid*. No.1).

136 Munro, Colin R. *Studies in Constitutional Law*. (Oxford: Oxford University Press, 2005). P 109.

independents may still be elected to the House of Commons where they will have the opportunity of exercising greater influence. The reduction in their number (or, more likely, their total absence), reduces the disproportionate influence that minority groups may sometimes exercise on the body as a whole, for example in close votes. Political parties are an unfortunate reality of the constitutional set-up of the UK and have been for the past 150 years. The realistic nature of the House of Senators as a legislative body rather than a constituency-representative institution demands the recognition of the importance of political parties.

11. Without a doubt, many problems will still exist. But a perfect electoral system is a non-existent entity. Democracy itself is a deeply-flawed system of governance. It is the job of reformers to seek the most democratic means of ensuring efficient governance. This system provides this.

TERMS

Summary:

1) If it is decided that all seats in the House of Senators are vacant for election at the same time, elections should take place at the midway point of a Parliament.
2) If it is decided that staggered elections should take place to the House of Senators, one round of elections should take place at the same time as elections to the House of Commons, with the second round of elections occurring at the midway point of the Parliament. In practice, this will mean that elections occur two years and six months after the most recent election to the House of Commons. With the proposed introduction of fixed-term Parliaments, this is likely to mean that senators are elected to serve for five years.
3) There should be no bar on seeking re-election to the House of Senators.
4) There should be no disqualification of former members of the House of Senators from standing for election as MPs at the next general election.

1. The Government's White Paper states that members of the House of Senators will serve "A single non-renewable membership term of three normal election cycles – in practice (given 5 year fixed term Parliaments) that is likely to be 15 years."[137]

2. (Evidently, this leaves open the possibility for terms to be much shorter, should a dissolution of Parliament occur before the normal statutory date).

3. A number of arguments have been made in favour of such a lengthy term:

- A long term could encourage a greater mind-set of independence in the senators, from both their own political party's interests and the whim of the electorate;
- It would serve to further the distinction between the House of Senators and the House of Commons, whose members enjoy a shorter term of office.[138]
- It will provide a sense of continuity and encourage a longer-term perspective on the part of senators in their decision-making.

137 *House of Lords Draft Reform Bill*, Cm. 8077. (May 2011) P 7, Para 24. S6(1) of the Draft Bill.

138 The term of an MP is now fixed at five years by S1(3) of the Fixed Term Parliaments Act 2011.

4. However, these arguments do seem to be substantially outweighed by the arguments against a term of such length:

- The mandate would be obtained against the backdrop of a potentially radically-different world;
- Those involved in the governance of the country must listen and respond to the electorate and be held accountable, if necessary, upon failure to do so;
- The duration of the term is excessive in comparison to terms in foreign senates;

5. Furthermore, should the clause in the draft bill prohibiting standing for re-election be removed (addressed below):

- Individuals could potentially be deterred from seeking re-election due to the duration of their life spent in the chamber.

6. Instead, this memorandum shall recommend that elections to the House of Senators take place at the midway-point of the Parliament. In practice, this will mean that elections occur two years and six months after the most recent election to the House of Commons. With the introduction of fixed-term Parliaments,[139] this will most likely mean that senators are elected to serve for five-year terms. (If the government's proposals for staggered elections are adopted, half of the seats should be contested at the same time as elections to the House of Commons, with the remaining half contested at the midway point of the Parliament).

7. The government's recommendations and its merits and disadvantages will now be considered.

MERITS OF THE PROPOSALS

"A long term could encourage a greater mind-set of independence in senators, from both their own political party's interests and the whim of the electorate"

8. In his Commentary on the 2001 White Paper, *The House of Lords—Completing the Reform*, Robert Hazell says:

"Wakeham was right to argue for a longer term, to try to ensure that members of the Lords (as now) are beholden to no one and devoid of further ambition."[140]

9. There are few people who would object to members of either House of Parliament who currently take a party whip having a greater level of independence from their respective parties. This would no doubt strengthen parliamentary oversight of the executive and potentially be more reflective of the will of the electorate.

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139 *Ibid*.

140 Hazell, Robert. *Commentary on the White Paper: The House of Lords – Completing the Reform.* The Constitution Unit, UCL. (January 2002). p14.

10. Likewise, there is a real need for those in public office to "do the right thing" rather than slavishly follow the often-changing and somewhat-erratic mood of the public (regrettably fed by our occasionally-reckless press). However, the independence that could potentially be realised through such a length of term is substantially outweighed by the real loss of accountability that would result.

"It would serve to further the distinction between the House of Senators and the House of Commons, whose members enjoy a shorter term of office"

11. Hazell comments:

"It would be an extraordinary departure from the Wakeham proposals to allow the term go as low as 5 years. This would not only threaten the independence of members of the upper house, but would also increasingly put them in conflict for legitimacy with members of the Commons."[141]

12. Again, this would be a legitimate argument in favour of a maximum fifteen-year term of office were it not for the provisions suggested in previous chapters to preserve the Commons' primacy. A long term would serve as another factor in distinguishing between the mandates and roles of the two chambers and their compositions but is not necessary in light of the aforementioned proposals.

13. The Deputy Prime Minister's claims were founded on largely disingenuous and cynical grounds:

"The longer non-renewable terms ensure that serving in the other place is entirely different from holding office here, separate from the twists and turns of our electoral cycle and more attractive to the kinds of people whom we wish to see in the other place—people who are drawn more to public service than party politics and who are not slavishly focused on their eventual re-election."[142]

14. Regrettably, this is another example of a leading politician tarring his profession with sweeping statements about him and his colleagues being "slavishly focused on their eventual re-election" and, by his implication, being unable to devote themselves to public service.

15. The Wakeham Report argued:

> "Electoral accountability should, in our view, be the province of the House of Commons and be the justification for that House's supremacy.""

16. This is one argument that I cannot accept because of my dogmatic belief that the chamber must be elected. The House of Commons' supremacy can be maintained without the loss of electoral accountability in the second chamber.

"It will provide a sense of continuity and encourage a longer-term perspective on the part of senators in their decision-making"

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141 *Ibid*.

142 HC *Hansard*. 27 June 2011. Col. 651.

17. The Wakeham Commission in its 2000 report stated that:

"To promote continuity and a longer-term perspective, all members... should serve for three electoral cycles or 15-year terms".[143]

18. This argument is weaker than the previous two potential advantages of the lengthy term. Although long-term thinking is to be encouraged and is absolutely essential for good legislating and governance, it seems difficult to objectively determine how the fifteen-year term will achieve this. When one considers the reality of human nature, senators serving a long term of office are likely to react to urgent or grave situations with the same emotions and responses as those who would serve a short term. It is hard to believe that the lack of an imminent election will necessarily have a drastic impact upon senators' decision-making, if their reputations will suffer in a similar way to those whose mandates are due to expire.

19. With regard to continuity, what exactly is it that we wish to "continue"? Is it right to desire continuity for the sake of continuity? Few would celebrate continually high fuel prices! Often, continuity can be counterproductive and prevents progress.

DISADVANTAGES OF THE PROPOSALS

"The mandate would be obtained against the backdrop of a potentially radically-different world"

20. To underline the maximum length of the term that would be served, it is valuable to consider the extent to which both the political and extra-political world can change over fifteen years. If we imagine that the proposed system is already in operation and that senators elected under it are retiring in the summer of 2011, it is possible that those individuals would have been elected in 1996. In other words, they would have been elected at a time when:

- John Major was Prime Minister;
- Bill Clinton had not yet completed his first term in office as President of the United States;
- Terry Venables was the manager of the England football team and the European Football Championships were held in England;
- The first Spice Girls single was released (unfortunately);
- I had just started primary school!

21. A senator elected in 1996 would have held office, without the possibility of losing his seat at the hands of the electorate, despite the enormous political, economic and social changes that have occurred during what would have been his term, including:

- Tony Blair, Gordon Brown and David Cameron becoming Prime Minister;
- A 13-year period of Labour governments and the first peace-time coalition since the 1930s;
- The death of Princess Diana;
- The development of, and increased access to, the internet;

[143] Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000, P9, para 37.

- The terrorist attacks on the USA on 9/11;
- The introduction of the European single currency;
- Wars in Kosovo, Sri Lanka, Iraq and Afghanistan;
- Significant demographic changes;
- The 2008-11 global financial crises and their consequences;
- The first Afro-American US president.

22. Fifteen years is an extortionately-long period of time to exercise a mandate without the possibility of removal from office.

"Those involved in the governance of the country must listen and respond to the electorate and be held accountable, if necessary, upon failure to do so"

23. Hazell's comment that the independence to be gained from long terms is important so that senators are "beholden to no one"[144] is frankly contrary to basic democratic principles of accountability.

24. The lack of accountability was not denied by Wakeham:

"One possible criticism is that terms of this length would make it hard... to hold members of the reformed second chamber to account."[145]

25. Whilst populist politics are to be frowned upon and have the potential to be disadvantageous, "bandwagon jumping" should not be equated to listening and responding to the people's concerns and mood. Ultimately, the general will of the people must be reflected by those who serve them. That is the *raison d'être* of democracy.

"The duration of the term is excessive in comparison to terms in foreign senates"

26. Many contributors to this debate have drawn upon the other countries' experiences of second chambers. Whilst it should be remembered that this decision is exclusively for the United Kingdom to make and that we should not restrict our options purely because they may differ to foreign institutions, it is sensible to analyse other examples for benefits and disadvantages.

27. With this in mind, it is difficult to find any comparable country whose senators serve a term of anything like the proposed maximum length of fifteen years for the UK.

- US Senators serve terms of six years;[146]
- Canadian senators are appointed to serve an unlimited term, but the federal government has unveiled plans for a nine-year limit;[147]

144 *Ibid*. No. 140.

145 *Ibid*. No. 143. P. 119, Para. 12.16.

146 Article I, S3 US Constitution, as amended by the 17th Amendment.

147 *Senate Reform Bill 2011*. Bill C-7. Available at: http://www.parl.gc.ca/HousePublications/Publication.aspx?Docid=5101177&file=4 Accessed 21 September 2011.

- French senators serve terms of six years (the previous limit of nine years was reduced in 2004);[148]
- Spanish senators serve terms of four years; those appointed by regional legislatures may be recalled at any point during their term;[149]
- The elected members of the Italian senate serve for five years;[150]
- Australian senators are elected to serve a six-year term, although this can be reduced with a double dissolution of Parliament.[151]

28. As it is clear to observe, the 15-year term is extortionately long compared to overseas examples. This should not be considered a destructive argument against the proposed length of term but, coupled with other arguments against, it does suggest that the proposal should be seriously reconsidered.

"Individuals could potentially be deterred from seeking re-election due to the duration of their life spent in the chamber"

29. Restricting a senator's ability to serve just one term is counterproductive. "The Government considers that serving a single term, with no prospect of re-election would enhance the independence of members of the reformed House of Lords."[152] Though this is purely speculative, it is a legitimate argument: if senators are aware that they face no prospect of being reselected, they are less likely to act in an unswervingly loyal (or, alternatively, sycophantic) manner towards their party.

30. However, the potential benefits the limit brings are outweighed by other considerations. Total independence is unachievable; partial independence is best achieved through the abolition of the whips in the second chamber (see chapter IV) and the use of primary elections in order to decentralise some control of selection for party lists (see chapter VIII).

31. Moreover, the limit of one term would result in a loss of accountability: if senators face no prospect of losing their job at the hands of the electorate, against their will, there is insufficient pressure upon the senators to work in the public interest. Yes, the electorate's control of the composition of the House is increased from its current state, but not to a sufficient degree.

32. It also seems counterproductive to create procedural obstructions for the most able candidates to seek re-election. Restricting a senator to serving just one term means that Parliament will be prevented from continuing to benefit from the most exceptional candidates. It is for this reason that the government should not pursue its policy of disqualifying previous Senators from seeking election to the House of Commons. The people should have the opportunity to elect the most talented candidates possible.

33. There is a real risk that the length of the term could actually deter – rather than encourage – candidates for election. It is likely that a significant number of individuals who would otherwise be willing to

148 *The French Senate*. Sénat. Available at: http://www.senat.fr/senatsdumonde/english/france.html Accessed 21 September 2011.

149 Spanish Constitution, S69(6).

150 Constitution of the Italian Republic, Art 60.

151 Commonwealth of Australia Constitution Act 1900, Chapter I, Part II – The Senate, S7.

152 *Ibid*. No. 1. P13, Para 24.

offer their services to Parliament would choose to refrain from doing so. Fifteen years is around half of the period of a person's career and it is difficult to envisage the type of candidate sought by the government volunteering to spend such an extensive period of their working life in a chamber which will have fewer powers and privileges than the House of Commons.

REFERENDUM

Summary:

1) The proposals for an elected House of Senators should only take effect if they are accepted by the people in a referendum.
2) A state-funded public education scheme should be launched prior to the referendum.
3) There must be no turnout threshold requirement ensuring the binding nature of the referendum.

1. The plans for an elected House of Senators should only take effect if they are accepted by the people in a referendum.

The political necessity for holding a referendum

2. There are some decisions which legally require a referendum to be held before they are taken:[153]

- The Northern Ireland Act 1998 provided that Northern Ireland cannot cease to be a part of the UK without the consent of a majority of those voting in a referendum.[154]
- The European Union Act 2011 requires a referendum to approve amendments or replacements of the Treaty on European Union or the Treaty on the Functioning of the European Union.[155]
- The Government of Wales Act 2006 provided for a referendum to be held about whether the Welsh Assembly should have full primary legislative powers, within the restrictions of its competence.[156]

3. Other than these examples, there is no legal necessity to hold a referendum on any issue. Parliament has the right to legislate on any other issue, subject to the restrictions in the European Communities Act 1972 and the Human Rights Act 1998. The fact that we don't know whether we need a referendum goes to show the lunacy of having an uncodified constitution.

4. However, there is an (often ignored) difference between legal and political realities. Although the situation is far from clear – and would be substantially remedied by the desperately-needed codification of the constitution – it is submitted that it is easier to argue in favour of holding a referendum on this particular issue than it is against.

5. There is certainly no clear precedent obliging the government to hold a referendum. The argument that

153 Bogdanor, Vernon. *The New British Constitution*. (Oxford: Hart Publishing, 2009.) P 178.

154 Northern Ireland Act 1998, S1(1).

155 European Union Act 2011, S2 (and S4).

156 Government of Wales Act 2006, S103.

the December 1910 general election has any influence on the matter is false. (The election was called to determine the level of popular support for the limitation of the Lords' powers.) A general election should never be equated to a referendum. There is actually a far stronger case for arguing that the 2010 general election is a more legitimate indicator of popular support for this issue than the election of a century before because of the greatly-increased suffrage. Likewise, there are strong arguments that the 1975 European Communities and 2011 Alternative Vote referenda were held for political reasons:

6. Having said this, the holding of referenda on proposals for the creation of new legislative bodies could be considered persuasive on this matter. Referenda have been held on the question of the establishment of Welsh and Scottish legislatures, as well as a regional assembly for the North-East of England. Is there a substantial difference between these bodies and the renewal of the second chamber?

7. As many witnesses to the Select Committee on the Constitution in 2009-10 stated, constitutional issues *per se* are not necessarily important enough to warrant a referendum.[157] The situations when referenda should probably be held are considered below.

Referenda can be conducted "wrongly" with people voting for reasons other than the merits of the referendum's subject matter and wild claims being made by those in favour or against

8. However, such arguments seem to disregard the democratic imperative of requiring a direct mandate for major issues and do not give sufficient weight to the potential use of public information programmes. This is considered in greater detail below with regard to the 2011 AV referendum.

Mandate theory

9. Professor Bogdanor has attacked the "mandate theory" which propagates that a measure has the necessary popular support if it is contained a government's manifesto or the manifestos of parties who have secured a combined majority of the popular vote. He demonstrates this "fallacy" using the example of the Welsh devolution referendum in 1979, where the Government's proposals were rejected by a four-to-one majority despite the parties supporting the measures gaining 76% of the Welsh vote in the October 1974 general election.[158] A more recent example can be found in the AV referendum where 56% of voters supported parties who pledged a change to the Westminster voting system (Labour, the Liberal Democrats, the Green Party, UKIP and Plaid Cymru)[159] but the system was rejected by 67.9% to 32.1%.[160]

10. These examples are entirely valid. However, the theory should not be dismissed prima facie. Whilst no one would argue that it is anything other than highly unlikely that a voter agrees with the entirety of a party's programme when supporting their candidate at an election, he is giving his formal endorsement to the manifesto. It is also not sufficient to argue that there is not a necessary mandate for major policies because a

157 Select Committee on the Constitution. *Referendums in the United Kingdom*. 12th Report of 2009-10 (April 2010). HL 99. Available at: http://www.publications.parliament.uk/pa/ld200910/ldselect/ldconst/99/99.pdf Accessed 22 September 2011. See, eg, submissions by Caroline Morris and Peter Kellner.

158 *Ibid.* No. 153. P. 183.

159 Finn, Liam. *Yes to AV*. (2011).

160 Vote 2011: UK rejects alternative vote. BBC News. 7 May 2011. Available at: http://www.bbc.co.uk/news/uk-politics-13297573 Accessed 22 September 2011.

voter rarely reads a party's manifesto, either in brief or in whole: voters should be encouraged to discover a party's policies before voting.

Referenda are necessary for fundamental constitutional changes

11. It is not within the remit of this memorandum to start writing a referendum section of a future codified constitution; it is merely the purpose to determine whether it is necessary for a referendum to be held on reform of the House of Lords with such significant plans. To attempt the former would be difficult with the lack of resources and time at my disposal, as well as being completely superfluous with regard to the needs of the joint committee.

12. However, as a general rule of thumb, Peter Browning's argument that "If the structure and rules of politics are to be changed, then the people rather than the political players should decide on those changes" is as good a rule of thumb as any previously given.

13. The joint committee's attention should be drawn to some of the examples given in evidence to the Select Committee on the Constitution in their report, Referendums in the United Kingdom, which relate to the question of whether a referendum is necessary on the government's proposals. Respondents suggested that decisions that required a referendum before being taken included:

- "Fundamental questions concerning sovereignty or a major constitutional settlement, especially if they concern steps that would be completely or virtually irreversible once enacted" (Professor Gallagher, p 121).
- "Truly major issues of democratic principle—change that alters fundamentally the nature of the state" (Institute of Welsh Affairs, p 126).
- "Topics ... which directly affect the constitutional make-up and powers of a state" (Caroline Morris, p 128).
- "Changes to the sovereign powers of a state" (Caroline Morris, p 128).
- "Those which concern the fundamental structure of politics and government" (Peter Browning, p 113).
- "Those which implicate the sovereign relations between the people and government" (Navraj Singh Ghaleigh, p 139).
- "Anything that changed the power balances within our democratic system ... anything that in any way redistributed power in a significant sense" (Baroness Kennedy of the Shaws, Q 64).
- "Legislative proposals which provide for a radical alteration in the machinery by which the laws are made" (Professor Bogdanor, p 46).
- Issues concerning "the very identity of a sovereign people ... when issues of the highest constitutional principle are at stake regarding the nature of the state or the constitution" (Professor Tierney, p 49, Q 74).
- "Significant, encompassing and lasting change in the formal and general rules and rights which locate political authority" (Professor Saward, p 15).
- "Anything that changes the dynamic and the relationship between the people and those who are elected" (Professor Graham Smith, Q 22).
- "A significant change to the contract between the individual and the state" (Peter Facey, Q 41).
- Issues that are "so fundamental ... to our constitutional arrangements ... that they merit

consideration on their own" (Michael Wills MP, Q 210).[161]

14. Reform of the House of Lords concerns all of these issues.

15. Furthermore, "Changes to Parliament (including the abolition of the House of Lords)" was recognised as one of the grounds requiring a referendum.[162]

Any prospective referendum must be conducted in a more dignified and intelligent manner than the 2011 Alternative Vote referendum.

16. At the outset I must declare a vested interest: I have campaigned for electoral reform for several years and supported the "Yes to Fairer Votes" campaign in the Alternative Vote referendum this year, both through debates and small-scale canvassing.

17. In spite of this, it is fully justified and of no degree of hyperbole to argue that the conduct of the referendum, on both sides, was frequently deplorable. The Yes campaign was disingenuous in its arguments but the "No2AV" campaign, in my honestly-held opinion, often resorted to tactics[163] and claims[164] that amounted to nothing short of an abuse of freedom of expression.

18. Setting aside bias – not an easy task in this regard – perhaps the most dangerous aspect of the campaign was the incessant media and No2AV propaganda that "nobody was interested" in the referendum and that it was unimportant.[165] Of course, it is undeniable that constitutional issues are rarely amongst voters' priorities. Even still, there was unprecedented interest and demand for a referendum and change to the voting system during the 2010 general election campaign. Various campaigns were established before the election campaign calling for electoral reform, including Take Back Parliament, Power 2010 and the continuing role played by

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161 *Ibid*. No. 157.

162 *Ibid*.

163 Tactics included linking the issue of electoral reform to Nick Clegg's broken promises on public spending costs and tuition fee rises and arguing that the (falsified) cost of the change in voting system would jeopardise the life of a sick baby. See, eg, Baxter, Steve. *No to AV's new campaign is beyond parody*. New Statesman. 22 February 2011. Available at: http://www.newstatesman.com/blogs/steven-baxter/2011/02/voting-system-baby-gets Accessed 22 September 2011.

164 Including suggesting that the "One person, one vote" basis of first-past-the-post amounted to equality of votes; suggesting that the British National Party would benefit from the change; and suggesting that the fact that only Australia, Fiji and Papa New Guinea use preferential voting for general elections is a sound basis for rejecting the system. It remains to be seen whether a campaign against an elected House of Lords would highlight how many countries have unelected second chambers!

165 See, eg,

How apathy over AV vote threatens Britain's democracy. Daily Mail. 19 April 2011. Available at: http://www.dailymail.co.uk/debate/article-1378302/AV-referendum-How-apathy-vote-threatens-UK-democracy.html Accessed 22 September 2011.

Utley, Tom. *Voting reform? Dry your tears of boredom. The Coalition's betrayal of voters is the best argument against AV I can think of*. Daily Mail. 19 March 2011. Available at: http://www.dailymail.co.uk/debate/article-1367425/Voting-reform-The-Coalitions-betrayal-best-argument-AV.html Accessed 22 September 2011.

O'Neill, Brendan. *The Today programme and AV: John Harris plays the annoying, trendy schoolteacher*. The Telegraph. 4 May 2011. Available at: http://blogs.telegraph.co.uk/news/brendanoneill2/100086324/the-today-programme-and-av-john-harris-plays-the-annoying-trendy-schoolteacher/ Accessed 22 September 2011.

Hughes, David. *Whatever happened to the AV referendum campaign? All those luvvies are goigng to waste*. The Telegraph. 24 March 2011. Available at: http://blogs.telegraph.co.uk/news/davidhughes/100081247/whatever-happened-to-the-av-referendum-campaign-all-those-luvvies-are-going-to-waste/ Accessed 22 September 2011.

the Electoral Reform Society. During the coalition negotiations, highly-visible demonstrations took place demanding constitutional reform.[166]

19. The question on the ballot paper mattered significantly, yet the electorate was repeatedly told that it wasn't. (It is a quite beautiful irony that papers such as the Daily Mail, who frequently repeated the "boring" mantra were at the same time running many scare-stories, including an obscene editorial on the day of the vote which screamed: "Vote No today to stand up for our democracy".[167] The No2AV campaign itself attempted to downplay the importance of the vote by resorting to abhorrent tactics such as presenting the referendum as a choice between a baby's life and a new voting system).[168] To an extent, the barrage of comment downplaying the referendum's importance became a self-fulfilling prophecy, with little interest shown amongst the wider public. However, such claims stood in stark contrast to the approach of the No campaign, which resorted to quite desperate efforts to win the referendum.

20. This is damaging to our democracy. The media must not present the issue of House of Lords reform as equally unimportant, whilst running similar scare stories.

21. I am prepared to predict the headlines against House of Lords reform will focus along the lines of people not wanting more politicians, why we would be stupid to lose experts from Parliament, and other classics such as "The Lib Dems want it, therefore it's bad" or "We don't want more elections, we want to get out of the EU instead".

22. One way in which the influence of propaganda inherent in political campaigning can be diluted is through neutral, state-funded public education schemes. The Select Committee on the Constitution has stressed the value of such schemes in increasing participation and interest and several of its witnesses have "pointed to the provision of public information... for the New Zealand electoral reform referendums of 1992-93 as examples of excellence."[169] This recommendation must be adopted for any referendum on House of Lords reform.

23. All sides must strive to underline the importance of the issues at stake in a sensible and intelligent manner in a referendum on the second chamber. Only then can democracy operate properly. I am a democrat and trust the people to make a decision like this. My reservation is that I am not sure whether I trust the media and politicians enough to give the people an adequate six-month education course on the matter.

There must be no turnout threshold requirement to ensure the binding nature of the referendum

24. This is straightforward. Proponents of a threshold argue that a low turnout invalidates the legitimacy of the result. This is a false argument and is entirely subjective: what is a "low" turnout? Is it below 40% or below 70%? Of course, it is clear that if only 30% of the electorate votes it would be difficult to argue that there had

166 See, eg, Couzens, Jo. *London Demo: Protesters Want 'Fair Votes Now'*. Sky News Online. 8 May 2010. Available at: http://news.sky.com/home/uk-news/article/15628183 accessed 22 September 2011.

167 *Vote No today to stand up for our democracy*. Daily Mail. 5 May 2011. Available at: http://www.dailymail.co.uk/debate/article-1383700/AV-referendum-Vote-No-today-stand-democracy.html Accessed 23 September 2011.

168 *Ibid.* No. 163.

169 *Ibid*. No. 157. P 39.

been an overwhelming expression of involvement on the part of voters. There is also no doubt that a high turnout is preferable as it demonstrates that the people have engaged in the democratic process. But why should some people's failure to bother to vote override the efforts of others who have sought to take responsibility for the governance of the country?

25. Philosophically, the greatest objection to a threshold requirement is that abstaining from voting in such a poll is effectively an abdication of a citizen's democratic responsibility. Voting should not be compulsory in any election or referendum held by the state: voting is an expression of the liberty inherent in a democracy; compelling individuals to vote would involve a reduction of that liberty. However, people should be encouraged to participate in democracy, primarily through voting, in the knowledge that failure to do so abdicates important decisions which have a direct and significant impact upon their lives to other people. It is irresponsible not to vote.

26. Perhaps the most compelling argument against a threshold requirement is that it has the potential to dissuade opponents of the proposed measure from voting, in the belief that their abstention is equivalent to a "no" vote. This can have a dangerous impact, whereby the will of a majority - those who would otherwise be prepared to vote against the proposal – is defeated by the will of an active minority.
27. As Munro observed (quoting a statistic from a 1995 source)[170], the liability of the electoral register "to be so inaccurate as to omit (and hence exclude) up to 10 per cent of potential voters"[171] is a strong argument against requiring a threshold.

28. Admittedly, it does seem fair to suggest that a certain percentage of the electorate voting should be required in certain circumstances, for example, in determining the Northern Ireland territorial question.[172] But such a case is an extreme example, with a historically-divided society and a minority group which was virtually disenfranchised in the past.

29. Ultimately, the result of a general election (however flawed it may be due to our farcical electoral system) would never be declared void because a statutory participation threshold had not been reached. It is difficult to think of a referendum that would pose a greater question than that of a general election.

Parliamentary sovereignty

30. Contrary to the observations of some commentators, the sovereignty of Parliament (which does not and should not exist in its orthodox, Diceyan interpretation) cannot override the result of a referendum on an issue such as reform of the House of Lords. It has been noted that due to the doctrine – allegedly the core principle of British democracy – any referendum result would be merely advisory and Parliament would retain the capacity to ignore it. Legally, this is entirely true. However, the political reality of the situation (the "fact" that the political pressure upon Parliament would be so intense in the event of a referendum result that it would be unable to choose the rejected option) renders this argument wholly unsustainable, as well as demonstrating the mythological status of parliamentary sovereignty.

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170 Robert Blackburn, *The Electoral System in Britain*, (1995), pp. 83-88. Noted in: Munro, Colin R. *Studies in Constitutional Law*. (Oxford: Oxford University Press, 2005).

171 Munro, Colin. *Power to the People*. Public Law, (Sweet & Maxwell, 1997). PL579. P 583.

172 Noted in *Ibid*. No. 153. P 194.

31. The idea that Parliament could turn against the explicitly-expressed will of the people indicates the folly of desiring parliamentary over popular sovereignty. One of the most fundamental principles of parliamentary sovereignty is that Parliament is a body representing the people; it would render the purpose of parliamentary sovereignty redundant were the legislature to choose to defy the will of the people in such a blatant fashion.

32. Even in the event of a low turnout, Parliament would be politically compelled. If only 30% of the electorate voted it would still constitute many millions of more people than the current 650 and 800 members of the two chambers.

33. It is essential to consider (in great brevity) the nature of parliamentary sovereignty. Quite simply, the doctrine is, and always has been, a fallacy. According to orthodox interpretations, it dictates that, inter alia:

- Parliament has unlimited legislative authority, other than an absolute restriction on its ability to limit its own sovereignty;
- No person or body has the right to override or set aside Parliament's legislation;
- There is no legal distinction between constitutional and "ordinary" statutes.

34. Each three of these basic components of the doctrine are instantly rebuttable. The claim that Parliament can pass any law it wishes except one restricting its power is immediately oxymoronic. It has limited its own sovereignty on several occasions, whether by granting independence to former colonies[173], joining the EU[174] or through devolution. Moreover, Parliament *cannot* pass any law it wishes: it may well be the plaything of theorists to argue that a Parliament composed of 650 King Herod types could legislate to slaughter the first-born child of every family but no judge would ever recognise the validity of such a law, whether or not Article 1 ECHR (the right to life) were incorporated into English law or not.

35. Neither does it remain true to deny that statutory provisions are valid, by default. In *R v Secretary of State for Transport, ex p Factortame*[175] the House of Lords denied effect to provisions in the Merchant Shipping Act 1988 which were in conflict with EC regulations.

36. Finally, it is difficult to understand how commentators can argue that there is no distinction between ordinary statutes and statutes of a constitutional nature. Acts of Parliament such as the Parliament Acts 1911 and 1949, the European Communities Act 1972 and the Human Rights Act 1998 created new means of legislating and imposed obligations and restrictions upon Parliament's competence. For example, the Human Rights Act's provisions could not be impliedly repealed: a moderately-ambiguous statute, failing an outright declaration of incompatibility (which, admittedly, would not affect the continuing validity of the statute), would invite a judicial interpretation (mandated and demanded by Parliament) which would give preference

173 Statute of Westminster 1931

174 Parliament voluntarily restricted its sovereignty in the European Communities Act 1972. It was established long before 1972 that EC law took precedence over domestic law: even lawyers who argue that such a principle is not explicit in the Treaty of Rome 1957 admit that it was confirmed in *Van Duyn v Home Office* [1975] Ch 358 (C-41/78).

175 [1989] 2 C.M.L.R. 353

to the HRA provision.[176]

37. Parliamentary and popular sovereignty are not synonymous. It should be the former which is recognised as the core principle of the UK constitution.

COST

Summary:

1) It is not yet possible to calculate the cost of the House of Senators.
2) Though concern must be shown to ensure that the reformed chamber is as inexpensive as possible, the issue must not be used for matters of political expediency.

1. The Government's white paper is correct in stating that:

"The overall cost of the reformed House of Lords will depend to a significant degree on the pay and pensions, and allowances (including staffing allowances) of members. The Government proposes that pay and pensions should be set by the IPSA in consultation with appropriate bodies. However, the number of members will be reduced to around 300 members, less than half its current size."[177]

2. It would be preferable for the Government to be willing to make a least an estimate as to the cost of reforms. However, one may sympathise with its decision not to do so: if it estimated that the cost would be higher than the current cost of the House of Lords, the figure would be used as an argument against the reforms; if its estimated cost was lower than the ultimate figure, the government would be accused of deception.

3. Until the number of members of the House of Senators and the role of the chamber is confirmed, a reasonable estimate will not be possible. There has been plenty of speculation as to the cost and, as with all progressive reforms, many opponents have sought to argue that the potential increase in cost should preclude the reforms taking place.

4. Predictably, some opponents of reform have employed false financial comparisons to bolster their arguments.[178] Mel Stride MP asked whether "the British people would rather have 21,000 additional nurses or some 300 fully expensed and fully paid identikit politicians?" (This cheap argument is wholly cynical, not just because it implies that the country is faced with an exclusive choice between a functioning NHS and democracy, but because Mr Stride's Party will certainly not be channel any money that would otherwise be

176 S3(1) HRA: "So far as it is possible to do so, primary legislation and subordinate legislation *must* [my italics] be read and given effect in a way which is compatible with the Convention rights." As Lords Bingham [Bingham, Tom. *The Human Rights Act*. European Human Rights Law Review. (2010) EHRLR 568. P 571.] and Phillips (at a Cambridge Union Society speech in March 2011) have observed, the imperative "must", rather than "may", is employed by Parliament, indicating that the judiciary is not invited to consider but is indeed obliged to attempt such an interpretation. Such an observation runs contrary to the opinion voiced by many politicians and media commentators over recent months that the judiciary, both domestic and European, is exercising excessive discretion and power, contrary to the will of Parliament.

177 *House of Lords Draft Reform Bill*, Cm. 8077. (May 2011) Pg 23, Para 104.

178 I am guilty of using these arguments myself in *Sacking the Monarch*. However, I am arguing against the continuation

of the monarchy itself; few opponents of reform are arguing against the continued existence of a second chamber.

spent on House of Lords reform to create 21,000 extra nurses.) Stride quoted figures given by Lord Lipsey on his blog, claiming that the reforms over the course of *the first five years* will cost £433m.[179] This figure quotes the estimated cost of the House with 656 members (100 elected; 556 transitional peers) and the cost of elections. As a result of the excessive membership figures, this figure should not be used as an indicator of the cost of the House following the initial period.

5. On the other hand, James Landale quoted figures published in the Political Studies Association's Briefing Paper which argues that the cost of a reformed second chamber would remain relatively constant at around £18m.[180]

6. Of course, the cost of the House will be considerably lower should the government drop its flawed plans of retaining transitional members of the House. Depending on the final number of members, the House of Senators could actually be a cheaper institution than the current House of Lords.

7. Ultimately, there should be no price on democracy. Nobody wishes for the apparatus of the state to cost a penny more than is necessary. But democracy costs. Are we really suggesting that we should name a lump sum we are prepared to pay for our democracy and above that amount suspend the democratic process?

5 October 2011

179 Lipsey, David. *Pricey Peers*. Lords of the Blog. 22 June 2011. Available at: http://lordsoftheblog.net/2011/06/22/pricey-peers/ Accessed 3 October 2011.

180 Landale, James. *Landale online: House of Lords reform – the small print*. BBC News: Politics. 20 May 2011. Available at: http://www.bbc.co.uk/news/uk-politics-13459331 Accessed 3 October 2011.
Renwick, Alan. *House of Lords Reform: A Briefing Paper*. Political Studies Association. Available at: http://www.psa.ac.uk/PSAPubs/HLReformBriefingPaper.pdf Accessed 3 October 2011. P 78.

Written evidence from Dr Colin Tyler (EV 27)

Please accept the following submission to the Joint Committee on the draft House of Lords Reform Bill. I write as a specialist in democratic theory, who has taught at various British universities since the early 1990s.

The Draft House of Lords Reform Bill is premised on the claims made in the Foreword to the White Paper that the Bill is necessary in order to render the second chamber more democratic. This is offered as if the claim is self-evidently true. There is nothing self-evident about the claim. It is eminently contestable. If the claim is not valid, then the Bill rests on unstable foundations.

The conceptual points seem straightforward. Parliament is democratic to the extent that its pronouncements and actions (crudely, the laws it makes and the policies it pursues) are determined by the electorate through the decisions of the representatives they chose at properly-constituted and authorised elections. To the extent that such a process of determination is not reflected in Parliament's subsequent pronouncements and actions, then Parliament fails to be fully democratic. The crucial point in the context of Lords reform is that what matters is that the outputs of Parliament can be traced to the will of the electorate as expressed through their representatives (as just described). Where these outputs enact something different to that will – or where they do not enact what the electorate will – then Parliament is not acting democratically.

To the extent that Lords reform will give the Lords parity with the Commons, it will divide sovereignty within Parliament, thereby making it harder for Parliament to act at all. (Witness the recent and on-going problems with the US budget). Consequently, democratising one part of Parliament (the Lords) will reduce the democratic character of the whole (Parliament). And ultimately it is the democratic character of Parliament that matters, not the democratic character of its constituent parts considered in isolation from each other.

Obviously, it depends on how one thinks of Parliament. Yet, as you can infer, I have very great concerns that, as with any complex institution, it is easy to focus on the parts while forgetting the whole from which they gain their function and worth.

I am often struck by the fact that many who support Lords reform seem to wish to address these problems. However, always the solutions they propose are palpably inadequate, often smacking of a desperate wish that 'democracy' meant something different.

Of course, another option would be to abolish the Lords completely. The resulting unicameral system *would* be more democratic than the present system, but very possibly recklessly so. After all, how much more havoc could both Thatcher and Blair (and many others) have reaped had they not been held in check to some degree by the Lords?

5 October 2011

Written evidence from Lord Judd (EV 28)

1 A significant part of the public disenchantment with, and even alienation from, the political process seems to me to be because, rightly or wrongly, politics has become perceived as a closed profession with an increasing number of MPs and peers having too little in depth, prolonged experience in their lives other than politics. There is a widespread sense that the system does not relate to life as it is out there. Surely a reality of an open society is that it comprises a matrix of different interests and dimensions: professions; skills; religions; trade unions; industries and commercial services; ethnic communities; N.G.O's; law and the administration of justice; etc. It is how these interplay that enables society to function (or not function!)

A relevant parliamentary system should surely include a place where these different dimensions are represented with their particular experiences and perspectives. This, I suggest, should be the role of an advisory "think again" scrutinising Second Chamber—one that could also initiate debate on issues not yet featuring in the legislative agenda of the Commons. In whatever is ultimately proposed it would be tragic if the opportunity to enrich the relevance and quality of parliament and our democracy were inadvertently missed. The key challenge is how membership of such a Second Chamber should be decided. Just to repeat the method for the Commons with numerical/constituency elected members would not, in my view, meet the challenge. In saying this, of course, I take it for granted that the power should be with the Commons: the Second Chamber should be a consultative and advisory body. I fear a conventionally elected body in the existing mould of parliamentary elections would be an own goal.

2. The name for the Second Chamber matters a great deal. It would surely be a nonsense to go on calling it the House of Lords. The whole point is that it should represent the matrix of society as it is; and it is high time that what the place is called and how its members are described made clear that it is a vital working place and not a setting for social elitism. "Lord" and "Lady" foster ambiguity about it all—or worse.

3. I raise one more issue. It seems to me to be beyond comprehension that we can justify going into the future with just one denomination of just one faith guaranteed representation. As a practising Anglican I understand the feeling about history and the anxiety about establishment; but to leave things basically unchanged would be highly provocative—not least to non-believers and humanists. Britain is a rich mix of differences. Incidentally, my wife brought me into the Church of England from my English nonconformist and Church of Scotland background. The Church of Scotland is the established church of the land but it has no corporate representation in parliament either in Edinburgh or in London.

25 September 2011

Written evidence from The Rt Revd Dr John Inge, The Bishop of Worcester via a letter to his MP, Harriet Baldwin MP (EV 29)

Though I try to exercise some restraint about writing to you, I feel that I must be in touch about the issue the Reform of the House of Lords. This is not simply because I am scheduled to take a seat in the House of Lords quite soon (I am next on the list0 but because I feel that the reforms proposed in the draft bill are very significant and will have a considerable effect upon our nation. It seems to me, therefore, that debate about them is something in which we should all be involved and I hope, you will forgive me for setting out below a few thought about the proposals for reform in general and the place of the Lords Spiritual in particular.

As you may know, the bishops have welcomed the draft bill as an opportunity to debate reform of the Lords, and in his public statements as Convenor of the Lords Spiritual, the Bishop of Leicester, has made clear that we feel some reforms are necessary and overdue. However, the ultimate test of any reform is whether it helps serve parliament and the nation better. It is generally agreed that the House is too large and some reform is needed (for example, measures to enable formal retirement to tackle the size of the House). However, these could be achieved by more immediate and smaller scale measures that those set out in the draft bill. What the latter proposes is something much more radical which brings with it considerable risks.

The introduction of an elected component into the House, the case for which I would suggest has yet convincingly to be made, risks destabilising a system which generally works well. Whatever may be said, it will be very difficult thereafter for the Lords to remain simply a scrutinising chamber since an electoral mandate would surely lead to the possibility of it challenging the primacy of the Commons. In addition, there would quite possibly be unhelpful tensions over legitimacy between elected and unelected members within the Upper House. Perhaps most importantly, there would be loss of independence and expertise available to Parliament since elected members would be more likely to toe party lines and existing members, known for their professional expertise or distinguished public service, would be less inclined to want to stand for election. The capacity of the Lords to act as a unique forum where the various voices of civil society (including the voice of organised religion) can be convened and heard would thus be seriously jeopardised.

As far as the latter is concerned, various arguments are used against the presence of the Lords Spiritual in Parliament which do not hold water and I take the liberty of setting out below a few points concerning their role.

As well as reading prayers at the start of each sitting day, bishops participate across the full range of issues before the House, tabling questions and speaking in debates. They are emphatically not there to simply defend the interests of the Church of England, though when issues arise that may affect the wider interests of people of faith (e.g. poverty, overseas aid,

civil liberties, refugees, child welfare etc), or where the Church has a particular stake (such as educational reform) they are able to act as informed participants in debate. Though they do not have a democratic mandate, this is surely not the only form of legitimate representation that should operate in a democratic society. Bishops by virtue of their day-to-day contact with churches in every community within their diocese, are able to speak with authority about them in a unique fashion. The Diocese of Worcester, for example, has within it 281 churches which are served by 200 clergy and as man lay ministers within whom I am in very frequent contact. As the Bishop of Leicester, Convenor of the Lords Spiritual, when debating with the Labour Humanists in January 2010 put it, Bishops in the Lords "bring to their contribution a network of connections into local communities which no other institution can begin to match, a regional perspective often lacking from the Upper House, and a framework of values which (while claiming no moral superiority over others' values) contributes to the political debate about what constitutes the common god." It might be added that attendance figures at Church of England churches remain at around one million each week. This is an attendance unmatched by any political party, voluntary association, public institution or trade union.

Bishops rarely influence the outcome of parliamentary votes, given that they constitute around 3.5% of Lords membership, are not whipped and do not act as a party (often taking different sides). Bishops take their voting responsibilities seriously and do not use them to act as a 'bloc'. The largest turnout for a single vote by bishops in recent times was for lord Joffe's 2006 Assisted Dying Bill. This saw 14 of the 26 lords Spiritual vote against the Bill (and none for), though as the majority against numbered 48, it can be said that the bishops' votes were not determining factors in the Bill failing to pass. This has not stopped secularist campaigners from claiming that the bishops 'blocked' the Bill.

Although the average collective attendance of bishops is below that for party and crossbench peers, the trend is towards increased attendance by the bishops as a whole in the past five years. There is always at least one - and usually more - bishop in the House on every day that it is sitting. I might add that the average claim for allowances from bishops is lower than that of all members of the House. The majority of bishops who attend the House do not claim the maximum entitlement to allowances.

The continuing place of Anglican bishops in the Lords reflects our enduring constitutional arrangements, with an established Church of England and its Supreme Governor as Monarch and Head of State. The bishops are a reminder that our key constitutional institutions, the monarchy, our systems of justice, education, health care and our charitable sector were all shaped by the Christian tradition and initiated by Christian motives.

Though the presence of bishops in the House of Lords is not the determining factor of the Establishment of the Church of England it is an important part of it. Establishment is unlikely to end with their removal, but it would be seriously diminished. Their removal would also be

likely to trigger a wider debate about the future of Establishment and send unhelpful signals about the place of religious voices in the public square.

Dating back to Archbishop Ramsey, the Church of England's public line has always been that there should be increased representation of other denominations and faiths in a reformed House of Lords. However, obstacles to achieving more 'formal' representatives relate to identifying who are the leaders of the different faiths, how many different faiths ought to be accommodated and whether the denomination or faith allows its representatives to sit in legislative bodies. In its past submissions on lord's reform, the Church has offered to help an Appointments Commission grapple with these issues.

It will be very clear from the above that I believe that the important scrutinising role of the House of Lords should not be undermined by wholesale reform and that, further, the role of bishops in the House is an important one which should be retained for the health of Parliament and nation.

Forgive me for writing at length but I do believe that this is a crucial matter about which I wish there were signs of wider debate. I end with some questions: could you, please, give me some indication of your views concerning the following:

1. Are you in favour of a wholly or mainly elected House of Lords?
2. Are you in favour of the retention of the Bishops (as envisaged in the draft bill)?
3. What are your views about the place of wider religious representation in the Upper House?

I do hope that you have not been bombarded with too many letters like this over the course of the summer and have been able to get some break despite the appalling nature of the riots which so shocked us all. There were, at least, none in Worcester and Dudley and it may be some comfort to you to know that, whilst communities elsewhere were being torn apart, communities here were being brought together by the most successful Three Choirs Festival ever which was a magnificent example of hundreds of people, professional and volunteers, working together for the enjoyment and good of all.

22 August 2011

WHAT THE REFORM TEAM IS LIKELY TO RECOMMEND TO THE JOINT COMMITTEE
BASED ON CORRESPONDENCE WITH THE REFORM TEAM

The second column are responses to the recommendations

1.	"The draft Bill breaks the link between members of the second chamber and the peerage. The peerage will revert to become an Honour."	Welcomed (And this would apply to the alternative reform)
2.	Provisions for cancelling or suspending membership.	Sensible.
3.	Membership limited to 300 members.	Welcomed, and could be applied to the alternative reform.
4.	"Members will be elected".	Welsomed, but there is reference to "80 or 100%" Not wanted is a half-baked decision. There must be 100% elected.
5.	"The reformed second chamber will inevitably be a political chamber" and "political parties will continue to have a central role to play"	This must be rejected. The public do not want two political cockpits, with squabbles from one being repeated in the other. What is required is a second chamber able to scrutinise proposed legislation objectively, what its effect will be on different sectors of the public and their interests.
6.	"Members should be elected in thirds for a single non recurring period of 15 years. Staggering elections in this way make it less likely that one political party would gain an overall majority"	This envisages General Elections to the second chamber, the cost of which could be avoided by the alternative reform. The first election would be fought by candidates from political parties and it is most likely that the majority Pary will be the same as in the Commons After the next 15 years which Party will have a majority in the second chamber becomes a game of chance. There may be a change of Parties in the Commons majority. Or there may not. And after another 15 years the same applies and the more "chancey" is the outset. A new constitution should not be accepted if it is based on chance. It is astonishing that the Reform team would consider this.

7."Members would be salaried and the arrangements should be broadly similar ¢ those which apply in the House of Commons".

Here we go again! Was the Reform Team unaware that the financial situation in the Country is so parlous that Austerity must be applied severely? In addition to costly elections here is another commitment adding up to billions of pounds over a period. The public will object to what they will conside to be another "gravy train" for politicians. This factor alone is sufficient justification for the alternative reform.

8. "The Government considers that serving a single term with no prospect of renewal should enhancethe independence of members...."

There can be no independence if members have obligations to particular Political Parties. The Reform Team seem to be trying to sell something which cannot be relied upon!

9. "The reformed chamber will be neither a mirror image nor a rival to the primary chamber, the House of Commons"

There can be no argument about which is the primary chamber, but it could well be a mirror image politically - see references to "chance" above. The only way to ensure it is not a mirror image may depend on the alternative reform.

10 "Members of the reformed chamber will be expected to be full time parliamentarians" and "will gain access to the data, knowledge and expertise via use of the Commons system".

Whatever reform is used, that access will be ddesirable but one would wish to know where the "expertise" is coming from and its type. Is any available on aby subjec The alternative reform would be more sure to have expertis on tap, without delay which would doubtless be involved otherwise.

If the Reform Team's idea of salaries etc for members of the second chamber, the members should indeed be prepared to work full time But if the alternative reform operates time spent will depend on the incidence and nature of the proposed legislation.

/cotinued

10.	The Reform Team appears appears to have based their deliberations on the findings of the 2000 Royal Commission on Reform of the House of Lords.	This, from 11 years ago, is outdated. There have been too many changes globally and nationally. A financial depression now dominates, and austerity will have to be exercise over many years. The National Debt is beyond the safety limit. We are still borrowing excessively. Despite budget cuts and the resultant misery and especially when so many will lose their jobs, despite which Ministers continue to find millions of pounds for any emergency arising here or even overseas. Political influence has changed. A "Big Society" is now a base policy involving the public more in details of government but the Reform Team have not applied this. There are crises ahead which will require radical attention by Government e.g. on water management when global warming and climate change really affects different parts of this land. There is a surge in the numbers of age. There has been excessive immigration. There is a likelihood of further loss of sovereignity if we continue in the E.U. The NHS has additional problems and Community Hospitals are not being fostered. Instead, centralisation is taking away local services. A broken Society has to be mended. We have been over-committed in the Middle East. Our Defence Forces are under greater strain than they were 11 years ago. Too many jobs have been transferred overseas. Our vital manufacturing base has deteriorated further. It is necessary to discard that 11 years old Report and take a fresh look at the second chamber. This should contain all the skills, all the expertise, experience and knowledge available. It is not a chamber for a duplication of a political Commons.
11.	Constitution of the Reform Team.	Presumably this is composed of civil servants and politicians, both of whom are so entrenched in old procedures and constitutions that consciously or not these have continued to engage them. If their recommendations are taken up a once in a lifetime opportunity will be lost to create a second chamber giving effect to the Big Society principles, to ensure austerity, to utilise the best brains in the Country.

Appendix available on request

7 October 2011

Written evidence from Programme for Public Participation in Parliament (PPPP) (EV 31)

SUMMARY

1. We are an organisation which advocates that Parliament should contain not only full time politicians but also part time politicians who combine legislative involvement with a life outside politics.
2. We do not believe that Parliament will be enhanced by diminishing its links with business, the professions and civil society.
3. We do not believe that the country needs 300 more full time politicians.
4. We ask the committee to maintain the House of Lords as a House of part time members.
5. This could be done by creating a larger number of seats but making them part time or it could be done by providing for the 312 seats proposed by the Government to be job shared.
6. The evidence contains a section listing the benefits of part time Parliamentarians.
7. It also contains a section listing various options and ideas which a part-time membership could open up.
8. We do not choose any specific option but our Chairman and Deputy Chairman will each be giving personal evidence advocating an option.

EVIDENCE

9. PPPP is a small organisation committed to the principle that full time politicians should constitute a smaller proportion of the legislature and that there should be better options available for those who wish to combine legislative involvement with a life outside politics.
10. The Government's proposals for reform of the House of Lords will phase out 788 part time members (whole time equivalent 388wte), many of them with extensive experience of business, the professions or civil society, and replace them with 300 full time politicians plus 12 Lords Spiritual.
11. We do not believe there is any significant body of opinion in this country which believes that Parliament could best be enhanced by diminishing its links with business, the professions and civil society.
12. We do not believe that there is any significant body of opinion which believes that this country needs another 300 full time politicians.
13. It is amazing therefore that there should apparently be a significant degree of support for a proposal which embodies both of those propositions. The explanation for this widespread acceptance is, of course, the belief in an elected house. Most of those who support the proposal accept that these two propositions would be foolish in isolation, but believe they are worth accepting in order to have an elected house. Most of those who oppose the proposals do so because of their opposition to one or other or both of these two propositions rather than to elections per se. There are some people who actually do not want elections,

usually in order to preserve the pre-eminence of the House of Commons, and others who do want full time politicians precisely because they crave a chamber elected by proportional representation to challenge the House of Commons, but these groups are not the mainstream of debate. To that mainstream we put forward the idea that the difficult choice they are debating is a choice that needs not be made. We can have an elected house without it being composed of full time politicians.

14. This evidence falls into three parts. The first is a description of the benefits of part time Parliamentarians. The second discusses some technical issues connected with the procedure of the House if it has part time members. The third sets out our request to the committee.

BENEFITS OF PART TIME PARLIAMENTARIANS

15. The following are the main benefits of making provision for part time Parliamentarians. This section is closely based on the evidence we have previously given to the Speaker's Conference in another place.
16. It reduces the currently very unpopular concept of politics as a distinct profession.
17. It would make it easier for peers to combine membership of Parliament with domestic responsibilities and child care. As women still bear a disproportionate burden of domestic duties and child care this would benefit women. This is one of the main reasons that part time work and job sharing have been promoted in other areas of work and it should form part of the solution in Parliament as well. The success of job sharing and part time work in enhancing the role of women has been especially notable in the medical profession.
18. It opens up links between the Westminster Village and some of the other worlds that make up our society
19. It makes it possible for peers to inform their contribution to Parliament with current experiences of life in industry, business, the professions, the public services, childcare or local communities.
20. It makes possible three new forms of full time political service which would augment the links between national government and local government, civil society and political thinktanks making Parliament once again the prime focus of political debate.

- work divided between Parliament and local government
- work divided between Parliament and campaign groups
- work divided between Parliament and political research

21. It would increase Parliament's access to expertise as professionals decided to combine professional practice with political service.
22. It solves the second jobs issue. There would be no justification for full time MPs having second jobs, but no basis to question part time peers doing so.
23. The following sets out some additional options that it would open up for the arrangement of the House. We do not specifically advocate any of these options,

as our evidence is directed solely to advocating part time membership. We merely point out that these options are available.

24. If members are not expected to attend every session there is no reason why the House should only sit for such periods that one member could attend every session. It could meet from 9am to midnight; it could meet Monday to Saturday; it could meet for the whole year without a recess.
25. Seats could be shared between a group of people. For example instead of 60 appointed members it would be possible for all life peers to share 60 seats.
26. It would make it easier to introduce youth representation. For example 10 seats could be shared between the members of the UK Youth Parliament.
27. Some members, especially non-voting members, could have a very limited commitment, essentially no more than a right to attend and speak occasionally. This might be suitable for life peers who choose to be inactive but could also be conferred on various offices and organisations
28. It would be possible to have non-voting members who were available to act as proxies for absent voting members. This would make it possible to have a substantial appointed element in a House which, so far as voting membership is concerned, was entirely elected.

SOME TECHNICAL ISSUES

29. There are two ways to cope with voting if there are part time members. One is to have part time seats and a proxy system. The other is for members to jobshare full-time seats. The latter is less flexible in terms of attendance but is easier.
30. If members have differing degrees of commitment it may be necessary to weight their voting power accordingly so that instead of every member having the same number of votes, each whole time equivalent has the same number of votes. This issue only arises if part time seats are created. If full time seats are jobshared the issue doesn't arise.
31. There may be occasions when the number of members wishing to attend exceeds the capacity of the House. On those occasions members who do not intend to contribute to the debate but simply to listen to it and vote could be allocated to overflow meetings, which need not be in London, Indeed with appropriate telecommunications they could be in the members' homes. Again this issue only arises with part time seats not with jobshares.

SOME OPTIONS

32. One option would be to implement the Government's proposals but with 300 wte (whole time equivalent eg two half time members or five members each attending one day a week) rather than 300 full time members.

33. The 60 appointed seats and the transitional seats could be split amongst the life peers who would identify their own mechanism for deciding who would attend for each day or part day
34. The 240wte elected seats could be made up of 600 members each 0.4wte (two days a week). This would make it easier to use STV with quota properly.
35. If members are part time so that not every member attends every session the House could meet for twice the length of time that it currently does and have 600wte instead of 300wte
36. To secure youth representation a number of seats could be shared between the members of the UK Youth Parliament
37. There is scope for some of the seats to be filled by citizen's jurors selected by lot sometimes to serve for a week or a few weeks, sometimes to serve on all the occasions that the House is debating a particular Bill .selected to serve for a few weeks.
38. Part time seats in the House of Lords could be combined with seats on local authorities thereby linking local and national government. Possibly the ancient title of aldermen could be revived for these seats.
39. 60 voting seats could be shared between life peers in place of the 60 appointed seats in the Government proposals. However if a wholly elected House is desired life peers could organise themselves into lists and voting take place, perhaps concurrently with European elections, to allocate 60 votes amongst the lists. The votes allocated to the lists would be shared between the peers on the list. Peers could be on more than one list (for example a scientist sitting as a Conservative peer might well appear both on the Conservative list and on a science list). If a list failed to gain any votes peers who were only on that list would be purely non-voting.
40. To strengthen the crossbench and cross-party lists and allow lists that were rooted in civil society

- voters would be able to vote for, say, five lists
- the law should specifically disapply, for this election only, any rule that a party may have preventing its members supporting opposing lists
- the laws restricting the fielding of candidates by charities and by trade unions should also not apply to this election.

41. A further modification of the above would be to allow lists that were sponsored by organisations to propose new candidates for peerages, perhaps one or two per list, to be effective only if the list wins a seat (this criterion to increase to 10 seats if the organisation if is a political party)

42. Another option would be to retain the current structure of the House as a non-voting membership but with provision for them to act as proxies for voting members who are absent because they are full time.
43. If life peers are to be retained either sharing the 60 seats which the Government proposes should be appointed, or as non-voting members who could take part in debates and could hold proxies for absent voting members then as life peers resign, die or elect to take only a limited role, there could be greater clarity about the role of the political parties and the House of Lords Appointments Commission in filling the non-voting seats that cone free and additional options for filling them, such as allocating them to organisations or to offices or appointing people for one Parliament only or only for the period that they hold a Ministerial appointment.
44. Provision could be made that the non-voting membership must include a certain number of people from certain categories of expertise (eg public health expertise, historians, economists).
45. The representative peers that currently represent hereditary peers could be replaced with non-voting seats allocated to be elected by professions or groups (eg a number of seats to be elected by chartered engineers, a number by Fellows of the Royal Society, a number by registered medical practitioners). In this context a number could be retained to be elected by those who own large amounts of land or hold aristocratic titles. This would not be inappropriate if the seats were non-voting and if it did not stand alone.
46. If a wholly elected house is desired and it consists of 300 seats but meets for twice the number of sessions that one full time member could be expected to attend and it therefore needs 600 wte those 600 seats could be allocated to the new Parliamentary constituencies and divided into five mini-seats of 02wte elected by STV with quota. Candidates who wanted to sit for more than 0.2wte would be free, when they have gained the quota, to elect to remain in the count to win more than one mini-seat.
47. Elected seats as well as non-voting seats could be held by organisations rather than individuals. Those organisations could have a number of individuals available to deploy on different days. To the extent that the organisations holding the seats are political parties this would give them a number of seats shared by a group of people. Membership of that group could be used in the same way that the House of Lords is now used – to bring in experts, to allow retired politicians to continue to contribute or to make provision for Ministerial or front bench appointments from outside Parliament (replacing the current specific provision for that in the Bill). To the extent that they were not political parties civil society would be directly represented.

48. Voters could elect an electoral college which would then choose members by a competitive appointments process. This would benefit individuals who have a significant contribution to make but are not attracted by electoral processes, which has been an important group in the current House. It would also permit specific types of expertise to be specified as essential in a number of seats eg public health experts, persons qualified in public finance, economists. (The alternative way of doing this would be to have specified numbers of seats for specified types of expertise and elect them nationally in a single constituency for each type using STV with quota, so that the whole of the UK population elected, for example, three historians but it would probably lead to too many separate elections)

REQUESTS

49. We ask the committee to maintain the House of Lords as a House of part time members.
50. This could be done by creating a larger number of seats but making them part time or it could be done by providing for the 312 seats proposed by the Government to be job shared.
51. It is not appropriate for us as an organisation to go further than this but two of our members, Dr. Stephen Watkins and Dr. Helena McKeown, our Chairman and Deputy Chairman, will be submitting personal evidence suggesting different ways that this can be achieved.

11 October 2011

Written evidence from Dr Stephen Watkins (EV 32)

1. SUMMARY This evidence builds on the evidence calling for part time members of the House of Lords submitted by the Programme for Popular Participation in Parliament of which I am Chairman. It calls for the House of Lords to sit for twice its current number of hours per year both by sitting for longer each day and on Saturday (amounting to 80 hours per week) and sitting through the recess. It proposes that there should be 312 whole time equivalent non-voting seats filled by modestly reforming the current membership of the House of Lords and 312 whole time equivalent elected voting members. This amounts to twice the number of whole time equivalents proposed by the Government because the House would sit more and therefore each seat would be 2wte. Non-voting members could hold proxies for absent voting members. The various whole time equivalent seats would be divided between a number of people elected from diverse democratic mandates. Specifically 100 voting seats would be filled by about 1,000 members called aldermen elected to serve one day a fortnight in the House of Lords and also to serve on their local council, 96 voting seats would be filled by 240 senators elected in the way the Government proposes but for two days a week, 12 voting seats would be filled by 30 people elected by faith groups, 5 voting seats would be shared by the members of the UK Youth Parliament, there would be 27 citizen's jurors at each session and 100 voting seats would be divided between the non-voting members by a list system election structured to favour cross party and crossbench lists.

2. I am Dr. Stephen Watkins. I am a public health doctor. I am a libertarian socialist and a member of the Labour Party. I have held various offices in the past in the Medical Practitioners Union and the Socialist Health Association and both in the past and currently in the British Medical Association and the Transport and Health Study Group. However this evidence is personal and is unconnected with any of those offices.

3. I am Chairman of the Programme for Popular Participation in Parliament. This small organisation which seeks to promote part time membership of Parliament has given evidence to your committee.

4. In that evidence it has asked the committee to maintain the House of Lords as a House of part time members.

5. It has said that this could be done by creating a larger number of seats but making them part time or it could be done by providing for the 312 seats proposed by the Government to be job shared.

6. It was not appropriate for PPPP as an organisation to go further than this. It exists only to advocate for the availability of part-time seats in Parliament and

does not have any specific policy on any other aspect of reform of the House of Lords.

7. However I am submitting personal evidence suggesting how this might be implemented.

8. In this evidence the abbreviation wte means "whole time equivalent". For example 5 members each attending one day a week amount to 1wte, as do two members each attending for half the time. If the House meets for double the time that a full time member could be expected to attend then one seat amounts to 2wte.

9. PPPP's evidence drew attention to various options. Those options were intended to stimulate debate as to how an elected House containing part time members might be constituted and to point out that it opens a much wider range of options than a full time House.

10. This evidence contributes to that debate.

MY PERSONAL PROPOSALS

11. It is possible to opt for a simple system, perhaps of the kind that might have been implemented for full time members, and then modify it by introducing jobshares or by increasing the number of people elected. This approach has the advantage that it is easier to understand. I am aware that my Deputy Chairman, Dr. Helena McKeown, favours this option and will be giving evidence accordingly.
12. Another option is to exploit the wider range of possibilities that part time members open up and to balance them so as to create a more balanced chamber. This is the approach I have taken in this evidence. I believe that it offers a more balanced membership representing a wider range of interests and, most importantly, a range of different forms of democratic mandate varying in the extent to which national political parties will be able to influence them.
13. The PPPP evidence listed various options. In this evidence I give one example, the one that I personally would choose, for balancing these various options.
14. One of my considerations has been that nobody has ever criticised the quality of debate in the present House of Lords – they have only criticised its democratic mandate.
15. I would have a House of Lords which sits for about twice its current number of hours per year, partly by sitting for longer each day and partly by sitting on Saturdays and during the recess. To fill 312 seats it would therefore require 624 wte members. If each of these wte is made up of several part time members then it would be a House that has more members than at present, not fewer.

16. I would suggest that the 624 wte should be made up of 312 wte elected members who would be voting members and 312 wte unelected members who would be non-voting members but would be able to hold proxies for absent voting members. Every vote cast in the House would therefore derive from a democratic mandate, but at the same time the current House with its high standards of debate and its considerable expertise would be retained.

THE VOTING MEMBERS

17. In suggesting the ways to elect the voting members I have had regard to the desirability of ensuring that there are a significant number of cross benchers and also of ensuring that the party members operate in a milieu which is not that of the Westminster Village and its associated think tanks.
18. I suggest that the 312 wte be made up of

- 100 wte made up of about 1,000 members who would be elected to a seat (usually 0.1wte – eight hours on one day each fortnight) in the House of Lords linked to a seat on a local council, with the title alderman. This would link local and national government and would ensure that those holding these seats operated in the milieu of local community politics rather than of Westminster.
- 96 wte made up of 240 members who would be elected in accordance with the Government's proposals for election for single terms of 15 years from regional constituencies using STV with quota. These would be elected in three tranches of 80 and would each be 0.4wte (eight hours on each of two days a week). They would be called senators.
- 12 wte made up of 30 elected Lords Spiritual each 0.4wte
- 10 wte made up by sharing 5 seats amongst the members of the UK Youth Parliament (because the jobshared seats would be filled all the time by one of its jobshare holders without needing recourse to non-voting members as proxies each such seat would amount to 2wte)
- 54 wte made up by having at any given time 27 citizen's jurors selected by a random process. Some jurors would attend on specific dates and times for which they were selected. Others would be selected for a particular Bill and would attend on each occasion that that Bill was being considered.
- 40wte made up of 100 seats divided between the non-voting members according to an election held by the list system concurrently with alternate European Parliament elections and organised so as to encourage crossparty and crossbench lists. There is an interesting question of how many wte this amounts to. On the one hand as seats filled on a rotating basis each seat is 2 wte so there is 200wte here. On the other hand as these seats are filled by people who also hold non-voting seats it is arguable that it is 0wte. I have assumed that the need to fill the

list seats will add to the attendance of non-voting members by about 20% so I have counted these as 40wte.

PROCEDURAL ISSUES

19. Voting should be on the basis of 1 vote for each 0.1wte. Thus an 0.1wte alderman would have 1 vote, an 0.4wte senator would have 4 votes, a jobshared seat that would be filled all of the 2wte that the House sits would have 20 votes, except for the list seats restricted to non-voting members which would have 10 votes (mainly to achieve balance – it would give this form of electoral mandate about the same voting power in total as aldermen and senators). Voting members who were absent could appoint proxies but there would be a limit of 30 votes on the number of votes that a member could hold.
20. When the number of members wishing to attend exceeds the capacity of the House members who do not intend to contribute to the debate but simply to listen to it and vote could be allocated to overflow meetings, which need not be in London, Indeed with appropriate telecommunications they could be in the members' homes.
21. I will discuss the arrangements for elections in a later section

THE NON-VOTING MEMBERS

22. Initially the non-voting members would be the members of the current House and during the transitional period of two Parliaments before the elected membership is complete they would not be entirely non-voting as they would be able to allocate the voting seats yet to be filled amongst themselves as in the Government proposals.
23. Currently the House's attendance pattern is the equivalent of 388wte. 312 wte non-voting seats in the permanent proposed membership plus 40 wte allowed for the list seats plus 56 wte transitional voting seats to represent the senators to be elected in 2020 and 2025 means that it would need 408wte members in the 2015 Parliament. This is not grossly out of line. Indeed some decline in attendance is likely if members feel no compulsion to attend on occasions when they do not intend to speak and do not hold a proxy so it is possible that there is scope for some additional appointments.
24. Over time as existing members reduce their activity the non-voting membership should be reshaped so as to consist of

- 75 wte appointed by political parties. These could be made up of life peers, Ministerial members, and members appointed for only a single Parliament. It would be up to political parties how many individuals shared these seats but they would need to agree the level of activity expected of each so that they could match

those appointed to the number of wte. The number of wte allocated to each party should be proportional to its average support over elections held in the last 15 years.

- 75 wte life peers appointed by the House of Lords Appointments Commission, mainly crossbenchers. Each appointment should include an agreement about the expected level of activity so that the number of wte can be calculated and these would be reviewed periodically
- 1 wte shared between a number of offices of state that should have the right to participate in debate when they have distinctive professional contributions to make. These should include the Chief Medical Officer, Chief Nursing Officer, Chief of the Defence Staffs, Comptroller and Auditor-General, Ombudsman, Local Government Ombudsman, Health Services Ombudsman, Commissioner of the Metropolitan Police, Poet Laureate, Controller of the Queen's Music, Lord Chamberlain, Earl Marshal, Cabinet Secretary, Court Jester (an office that should be revived) and Governor of the Bank of England.
- 75 wte representatives of organisations chosen by the House of Lords Appointments Commission to represent the range of civil society, like the CBI, TUC, BMA, Academy of Medical Royal Colleges, RCN, Council of Engineering Institutions, Bar Council, Law Society, Royal Society, Royal Academy, Royal Institute of British Architects, Women's Institute, National Trust, CPRE, Liberty, Amnesty etc. Each appointment should include an agreement about the level of activity so that the number of wte can be calculated and these would be reviewed periodically. Persons appointed by these organisations would be known as "representatives" and would place the initials RP after their name.
- 74 wte made up of 370 representatives, each 0.2wte (attending for eight house on one day a week), elected by or appointed from particular professions or economic groups. 10 members could be elected by and from amongst each of the following professional groups:- registered medical practitioners, nurses, allied health professionals & chartered environmental health officers, social workers, chartered civil engineers, chartered mechanical engineers, chartered electrical engineers, other chartered engineers, Fellows of the Royal Society, qualified architects, solicitors, barristers, chartered accountants, qualified public finance accountants, registered teachers, academics of the rank of senior lecturer or above in the natural sciences, academics of the rank of senior lecturer or above in the social sciences, academics of the rank of senior lecturer or above in disciplines other than the natural or social sciences, and University Vice Chancellors. 5 members could either be elected by and from amongst the members of their discipline or alternatively appointed by the House after advertisement and competitive interview from each of 8 disciplines which have particular relevance to the whole

range of issues before the House – historians, economists, public health specialists, academic experts in Government and politics, constitutional and human rights lawyers, organisational psychologists, social and behavioural psychologists, and experts in the interpretation of scientific evidence for policy purposes (including two statisticians, two academic experts in social policy and one scientist). Organisations of various types involved in the economic world would also elect representatives with ten representatives being elected by each of the following groupings of organisations:- FTSE200 companies and private companies of equivalent size, smaller companies that are still larger than SMEs, small and medium size enterprises, mutual organisations and social enterprises, large registered charities, trade unions of over 1,000,000 members, trade unions of between 100,000 and 1,000,000 members, smaller trade unions, and farmers. Holders of large landholdings or aristocratic titles could also form a group electing 10 members. 30 members could be chosen in some way by and from amongst those engaged in the arts, entertainment, media and sport. 10 members could be elected by and from amongst those honoured by the Crown or included in recognised lists of achievement and standing such as Who's Who, Debrett's People of Today, recognised Rich Lists and recognised celebrity lists.

- 12 wte Lords Spiritual, made up of 8wte allocated to the General Synod of the Church of England (4wte to the House of Bishops and 2wte to each of the other Houses), 1wte to other Christian churches, 1 wte to other Abrahamic religions, 1wte to other religions and 1wte to secular faiths like humanism and Marxism.

ELECTION METHODS

Senators

25. Senators would be elected by STV with quota from regional constituencies as proposed by the Government.

Aldermen

26. District councils and their equivalents would be allocated aldermen in the ratio 1 session of 0.1wte per 65,000 population.

27. In councils with between 3 and 7 sessions STV with quota would be used and the number of sessions rounded to the nearest whole number. One alderman would be elected for each session. These aldermen would also have a seat on the council.

28. In councils with 1 or 2 sessions entitlements would be calculated over a group of councils so that one alderman was elected for each Council and the remaining seats used for additional top up sessions for proportional representation by the AMS system. The top up seats would be allocated to parties. They would be allocated firstly to candidates who were runners up in the election in a council which, if considered alone, would be entitled to 2 sessions and secondly to candidates who were runners up in a smaller council. As between two or more such candidates priority would be given to candidates where the party in question is underrepresented on the council in question. These rules apart prioritisation would be order on the party list. If it was necessary to go beyond candidates who were runners up then the seats allocated to those aldermen on their local council would be non-voting, although their seat in the House of Lords would be voting.

29. No Council would have more than 7 aldermen. Instead if a council is larger than 500,000 population its Leader (or elected Mayor), its Chief Executive and its ceremonial head (ie Mayor in a council which does not have an elected Mayor) would be members of the House of Lords for 0.1wte. If a Council is over 1,000,000 population each of its 7 aldermen would be 0.2wte (one day a week). Over 1,500,000 and this would move to 0.3wte (three days a fortnight) and over 2,000,000 to 0.4wte (two days a week).

30. A small number of councils would have an entitlement which rounded to the nearest whole number is 0 sessions because they are smaller than 32,500 population. They would be entitled to one alderman of 0.05wte (about one day a month). In the case of the City of London this seat would be held by the Lord Mayor.

31. It would left to councils to decide the terms of office of aldermen (but this must not be less than 4 years nor more than 12 years), whether they are to take place at the time local government elections take place or whether they are to be concurrent with Parliamentary elections or with European elections and the years in which the elections take place if they are to be at the local government date. All aldermen in each council would need to be elected together so that proportionality can operate and in councils which are grouped for AMS purposes the terms of office and dates of election would need to be the same.

List Seats

32. These elections would take place concurrently with alternate European elections starting in 2018.
33. Non-voting members would organise themselves into lists.

34. 100 voting seats would be allocated to lists by the d'Hondt system. Those at the top of the list, to the number of seats won, would become voting members but other members on the list would be available to deputise for them.
35. Peers and representatives could be on more than one list (for example a scientist sitting as a Conservative peer might well appear both on the Conservative list and on a science list). If a list failed to gain any votes peers and representatives who were only on that list would be purely non-voting.
36. Lists could be named after organisations that sponsored them or after some common interest shared by those on the list or after the peer or representative leading the list.
37. To strengthen the crossbench and cross-party lists and allow lists that were rooted in civil society

- voters would be able to vote for, say, seven lists
- the law should specifically disapply, for this election only, any rule that a party may have preventing its members supporting opposing lists
- the laws restricting the fielding of candidates by charities and by trade unions should also not apply to this election.

Elected Lords Spiritual

38. These elections would take place in two parts. Firstly voters would be asked to indicate their faith and denomination concurrently with alternate European elections starting in 2023. 30 seats each 0.4wte would be allocated to groupings of religions, denominations and secular faiths such as humanism based on these indications. Some time later and separately from any political election an election would take place to those seats by STV with quota with voting taking place at places of worship for the religious group concerned at times appropriate to the groups in question. At this stage candidates would need to be members of the religious group in question. Everybody would be free to vote in one of the religious groups only and would receive a poll card which they would surrender when they vote.

12 October 2011

Written evidence from Dr. Helena Mckeown (EV 33)

1. SUMMARY This evidence builds on the evidence calling for part time members of the House of Lords submitted by the Programme for Popular Participation in Parliament of which I am Deputy Chairman. It proposes that each of the 312 seats proposed by the Government should be job shared by between four and ten members amounting in total to 2 whole time equivalent, thereby allowing the House for 80 hours a week throughout the year. Hence between 1248 and 3120 members would make up 624wte filling 312 seats in a House sitting for 80 hours a week throughout the year.
2. I am Dr. Helena McKeown. I am a medical practitioner in general practice. I am a social liberal and a member of the Liberal Democrat Party. I have held various offices in the past in Salisbury City Council and both in the past and currently in the British Medical Association and the Transport and Health Study Group. However this evidence is personal and is unconnected with any of those offices.
3. I am Deputy Chairman of the Programme for Popular Participation in Parliament. This small organisation which seeks to promote part time membership of Parliament has given evidence to your committee.
4. In that evidence it has asked the committee to maintain the House of Lords as a House of part time members.
5. It has said that this could be done by creating a larger number of seats but making them part time or it could be done by providing for the 312 seats proposed by the Government to be job shared.
6. It was not appropriate for PPPP as an organisation to go further than this. It exists only to advocate for the availability of part-time seats in Parliament and does not have any specific policy on any other aspect of reform of the House of Lords.
7. However I am submitting personal evidence suggesting how this might be implemented.
8. PPPP's evidence drew attention to various options. Those options were intended to stimulate debate as to how an elected House containing part time members might be constituted and to point out that it opens a much wider range of options than a full time House.
9. This evidence contributes to that debate.
10. It is possible to exploit the wide range of possibilities that part time members open up and to balance them so as to create a more balanced chamber thereby representing a wider range of interests and providing diversity of democratic mandate. I am aware that my Chairman Dr. Stephen Watkins will be giving evidence to that effect.
11. However I think it is better to have simplicity. The Government proposals of 240 elected seats, 60 appointed seats and 12 faith seats meets that requirement for

simplicity. I would simply replace the number of seats with whole time equivalents so that one seat could be two half time members or five seats sitting for one day a week.

12. It is possible to have more members elected, each of them part time, or to have seats jobshared. I think jobshared seats would be simpler as it does not require complex proxy systems.

13. I would have a House of Lords which sits for about twice its current number of hours per year, partly by sitting for longer each day and partly by sitting on Saturdays and during the recess. To fill 312 seats it would therefore require 624 wte members. If each of these wte is made up of several part time members then it would be a House that has more members than at present, not fewer. 312 seats would each be jobshared by 2wte made up of between four and ten members (ie ranging from 8 hours to 20 hours per week). Therefore between 1248 and 3120 members would make up 624wte filling 312 seats in a House sitting for 80 hours a week throughout the year.

12 October 2011

- The size of the proposed House and the ratio of elected to non-elected Members (the draft Bill gives options);
  Every member of the House should be an elected member with no appointed members. We are content with the proposed size of 300 members, although this may be on the low side given the expected workload. 100% should be elected. While 80% elected would be better than the current 0% elected we strongly favour 100%.

- A statutory appointments commission;
  With 100% elected there is no need for an appointments commission.

- The electoral term, retirement etc;
  Consideration should be given to a 10 year term, with 50% of the House elected each time. There could then be the possibility of standing again to serve a second term. Electing 150 members each time, rather than 100, would allow a more proportional result.

  On the issue of thirds vs halves – the proposal seems to be mostly based on transitional arrangements – thirds allows some of the current peers to stay in Lords for another 10 years in exchange for their support for the bill. However making a long term choice based on the transitional period isn't very sound.

- The electoral system preferred (the draft Bill gives options);
  We wish to see a fully proportional system. This would best be achieved by a single constituency for the country and elections using an open list system with the Sainte-Lague system used to allocate seats. Open lists ensure that the electorate can override the list order selected by the party. This places more power in the hands of the electorate. The Sainte-Lague system gives a more proportional result than the d'Hondt system used for the European parliament elections in the UK.

  Should smaller constituencies be used then we would want them to be multimember constituencies large enough to ensure that elections are proportional, e.g. current Euro region boundaries, and that STV is used.

- Transitional arrangements (the draft Bill gives options);
  We wish to see an all-elected House introduced as soon as possible, ie immediately following the 2015 election. The proposed transitional arrangements will not achieve this until 2025. Instead 300 members should be elected in 2015 with 100 serving for 15 years, 100 for 10 years and 100 for 5 years. This would be similar to the process used for councils, that normally use rolling thirds, after an all-out election following ward boundary changes, with the higher placed candidates getting the longer terms. While this would not absolutely guarantee any continuity we would expect the main parties to

include some of the current peers on their lists and so there would be some continuity.

- The provisions on Bishops, Ministers and hereditary peers;
  There should be no seats for Bishops or hereditary peers. In a multicultural society, a privileged position for the Church of England is inappropriate but neither would it be appropriate to provide additional reserved seats for representatives of other religions. Religion and politics should be kept separate. If bishops or leading figures from any other religion wished to sit in the second chamber, they should be allowed to seek election like any other candidate for public office.

  We do not support the proposal that the Government should be able to appoint extra members to serve as ministers. This would override the result of the election by giving the governing party extra members who had not been voted in by the electorate. It would be open to abuse and accusations of cronyism, precisely the sort of thing that these reforms are supposed to end.

- Other administrative matters like pay and pensions;
  We agree that salaries, pensions, expenses, etc should be subject to similar arrangements to those for MPs.

12 October 2011

Written evidence from Alan Renwick (EV 35)

This submission is accompanied by a copy of the Political Studies Association's publication, *House of Lords Reform: A Briefing Paper*, which I wrote. The briefing paper draws on extensive evidence from the UK and other countries and sums up what we can say about the likely impact of various aspects of the government's reform proposals. It is not my intention to duplicate the briefing paper here (I understand that it has already been sent to all members of the Committee). Rather, I shall briefly highlight five points that I regard as particularly important. The first three of these defend the government's proposals:

- claims that the proposed reforms would destroy Commons primacy are greatly exaggerated; in fact, they would probably lead to a limited increase in the power of the House of Lords, and this change might well be desirable;
- elections of the type proposed would not obviously deprive the chamber of experience, expertise, and independence, as some have presumed;
- the STV electoral system is the one most likely to deliver the sort of chamber that most participants in reform debates want.

The remaining two points highlight difficulties in the government's proposals and suggest possible remedies:

- the proposed move to a full-time, salaried chamber does appear likely to discourage many of the best candidates from running; consideration should be given to whether a satisfactory system of *per diem* payment can be devised;
- the proposed system would do nothing to enhance accountability; while there are advantages to this, there are also disadvantages; these could be mitigated through minimum service requirements and recall, both of which would be applicable at the five- and ten-year points in a member's fifteen-year term.

The power of the second chamber

The evidence suggests that the government's proposed reforms would create a more powerful second chamber, but would not threaten the primacy of the House of Commons: the reformed second chamber would have greater democratic legitimacy; but it would still be constrained by the Parliament Acts and probably by some conventional constraints, and the government would still be based in the House of Commons;

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.

But our judgement upon the desirability of the proposed reforms depends on whether the revised second chamber would use its powers effectively. This depends, in turn, upon the next point: the effects of the proposed reforms on the composition of the chamber.

The composition of the second chamber

The current method of composing the House of Lords is indefensible. While non-elected office-holders can play important roles in a democracy, there can be no case for a chamber whose overall party balance is shaped in significant part by the whims of successive prime ministers and most of whose members are party placemen.

Election, by contrast, is clearly a legitimate mechanism for determining the composition of a parliamentary chamber. The introduction of a statutory appointments commission would also safeguard the appointments process against prime ministerial interference.

Concerns have been expressed by some that the proposed reforms would deprive the chamber of its experience, expertise, and independence. There is, however, little reason to think that the creation of a largely elected chamber, on the basis proposed, would in itself necessarily have these undesirable effects.

- Much of the experience in the current House of Lords comes from members who were formerly MPs, who move to the Lords in order to stay active in politics without the burden of having to serve and nurture a constituency. It is not clear why many of these people would refuse to stand in one further election.
- Non-partisan experts would continue to be appointed as now. Some of the current partisan appointees are non-professional politicians who also bring expertise to the House from other fields. The willingness of such people to run for election is difficult to predict. But the differences between the sorts of election we are used to and the elections that are proposed – one-off elections in very large constituencies for a secondary chamber – are very great. We should not extrapolate from one to the other and presume that non-professional politicians will refuse to stand.
- Non-renewable terms will promote independence. Indeed, it is not at all obvious why popular election should be thought likely to lead to less independence than appointment by the party leader. The degree of independence of partisan members and the number of non-partisan members depends also on the specific electoral system, which is my next point.

The STV electoral system

There is general agreement that no party should hold an absolute majority among the partisan members of the second chamber. Given this, a proportional electoral system is

necessary: a majoritarian system such as First Past the Post or the Alternative Vote would often generate a majority for one party.

Among systems of proportional representation (PR), there are three basic options: closed-list PR (such as is used for British elections to the European Parliament), open-list PR (not currently used in the UK, but widely used elsewhere in Europe), and the Single Transferable Vote (STV, used for most elections in Northern Ireland and for local elections in Scotland). Of these, closed-list PR, quite rightly, has no defenders: it can create politicians who are no more than elective placemen.

Open-list PR and STV are both equally good at allowing voters to choose which of their favoured party's candidates will represent them.

In the context of the proposed second chamber, however, the case for STV over open-list PR is strong:

- STV, unlike open-list PR, allows voters to show support for candidates across party lines. For Commons elections, there is a good case for saying that voters should be encouraged to think first about party: Commons elections are in large part about choosing the party or parties that will form the government. But this does not apply to elections to the proposed second chamber.
- STV is far more permissive of independent candidates than open-list PR. Given the general (and justified) belief in the value of independents in the second chamber, this is a significant advantage.

STV is sometimes said to lead to excessive parochialism. But this is unlikely to be a problem in the context of very large constituencies and non-renewable terms.

The ability of STV (or open-list PR) to give voters a choice of candidates from their preferred party clearly depends upon the number of candidates that that party nominates. The experience of STV elections in Northern Ireland and Scotland is that parties have, in fact, often stood only as many candidates as they hope to win seats, thereby denying voters this choice. A rather obscure aspect of the government's proposed reforms – namely, the method for filling vacancies – would, however, prevent such behaviour. Vacancies would be filled by unsuccessful candidates, so parties would have a strong incentive to run more candidates than they expect initially to secure election. The proposal not to hold by-elections would thus – perhaps counterintuitively – expand democratic choice.

A full-time, salaried chamber

I have suggested that the proposed mixture of election and appointment, as well as the specific proposed electoral system, would probably have benign effects and, specifically, that

fears about scaring away the sorts of people whose participation in the current House of Lords is widely valued are probably exaggerated. But another aspect of the government's proposals that has received much less attention does appear likely to have these unintended effects. This is the proposal that members should work full-time and receive a salary for doing so.

Specifically:

- The current chamber benefits from the contributions of individuals with outside expertise. It is problematic if the outside experts never or only very rarely attend. Equally, however, outside experts, by definition, have other things to do. It is unclear why we should want them to attend the Palace of Westminster most of the time. It is also unclear why they would want to do so and why, therefore, they would accept membership on this basis.
- Many of the most active members, as already noted, are semi-retired politicians who devote considerable time to the chamber but who may not wish to commit themselves full-time. This consideration is particularly acute when we consider the proposed fifteen-year term, though members would at least be allowed to retire early.

I therefore suggest that the Committee consider whether a satisfactory system of *per diem* payment can be devised, such that varying levels of attendance can be acknowledged. It is clearly unsatisfactory if members can arrive, sign in, and promptly leave again, thereby securing their daily allowance. But it is surely not impossible to design a system that works better than this.

Accountability

The government's proposals would improve the representative quality of the second chamber, but – because terms would be fixed and non-renewable – would do nothing to enhance its accountability. Such a scheme has both advantages and disadvantages.

On the positive side, lack of accountability would promote independent-mindedness. Members would be freed from the game of calculating the effects of their every move upon their prospects for re-election. Non-politicians who have no desire to play this game would be more likely to put themselves forward.

On the negative side, members, once elected, would be free to do as they wished. They might disregard the interests of those who elected them. They might simply never show up, but still (if the government's proposals go through) pocket a handsome salary.

Given the desire for independence and expertise in the second chamber, the benefits of non-renewable terms appear great. Nevertheless, the negative effects of lack of accountability might be mitigated through two measures:

- *Minimum service requirements*. While I have suggested that the reformed second chamber should be built to accommodate widely varying levels of attendance, it is reasonable to expect – as the current Appointments Commission does – that members should regularly participate in the work of the House. Minimum service requirements might therefore be set as a condition for continuing membership beyond five years and beyond ten years. The Appointments Commission's most recent appointees have participated in a little over one quarter of the votes that they could have taken part in, suggesting that a minimum participation rate of, say, 20 per cent might not be so onerous as to dissuade highly accomplished candidates while still ensuring a significant contribution. Clearly, much care would need to be taken in devising the details of such a scheme.
- *Recall*. The government is non-committal on the subject of allowing recall of members of the House of Lords. If introduced, recall could not be used to precipitate a by-election: by-elections in such large constituencies would be very costly; they would also violate the principle of proportional representation. Rather, it could be used only to require a member to stand for re-election after five or ten years. A signature requirement of 10 per cent (as the government initially proposed for recall in the House of Commons) would be difficult to achieve in the proposed large constituencies, so successful recall initiatives would be rare. But such a provision should be considered as a way of providing an ultimate constraint against unrepresentative behaviour without violating the general practice of non-renewable terms.

11 October 2011

Written evidence from Bernard Jenkin MP (EV 36)

The House of Lords currently performs its functions well

The House of Lords currently performs its functions of revising and amending legislation well. Introducing a mainly elected upper house would put this at risk by reducing the expertise and diverse experience of the House of Lords, attracting political candidates who are similar to MPs and increasing the role of party politics. The enhanced role of party politics combined with the enhanced electoral legitimacy of the House of Lords would be likely to lead to a more confrontational approach and more clashes and deadlocks with the House of Commons, rather than constructive revision, scrutiny and advice. Alternately, where the same party or parties dominate both Houses, an elected House of Lords, far from holding the Government to account more effectively, would be more likely to 'rubber stamp' legislation due to party political loyalty.

House of Lords reform threatens the primacy of the House of Commons

The elected House of Commons currently has primacy over the unelected House of Lords. It can overrule the House of Lords, if necessary, under the Parliament Act. It is, however, very rare for the House of Commons to do this because the House of Lords understands that the House of Commons has primacy and will allow Government legislation to be passed. An elected House of Lords will challenge this principle. Given the preference of the Deputy Prime Minister and other advocates of House of Lords reform for alternative electoral systems based on proportional representation, which are included in the draft bill, and their disapproval of the First Past the Post system used to elect the House of Commons, some may argue that an elected House of Lords has greater democratic legitimacy than the House of Commons.

An elected House of Lords will reduce the number of independent peers

More than a quarter of the current members of the House of Lords do not take a party whip. This includes the Lords Spiritual and the much larger number of crossbench peers. They bring expertise to the chamber without being bound by party political affiliation. With an elected House of Lords, they would almost all be replaced by party political peers, and their expertise and additional perspective would be lost.

Introducing elected peers would be costly

House of Commons Library figures show that the average Member of Parliament costs the British taxpayer about £257,000 a year, whereas the average unelected appointed peer costs well under £100,000. Elected full-time peers will require more office space and staff, with costs more similar to those of Members of Parliament. The Deputy Prime Minister has indicated that the cost issue will be addressed by reducing the number of peers to three hundred. Yet this would represent a significant reduction in the expertise, experience and diversity of the current House of Lords.

There is little public demand for House of Lords reform

There is little evidence of strong public support for introducing an elected upper house. While opinion polls have indicated varying levels of support for House of Lords reform, this is not a priority for the overwhelming majority of voters. The Alternative Vote referendum indicated a distinct lack of enthusiasm for major constitutional reform.

The name 'House of Lords' should remain

The House of Lords is an historic part of the British constitution and reflects the history of the development of the English and then British Parliament. As the long as the chamber continues in its role, the name 'House of Lords' should remain. Alternative suggested names such as 'senate' have little historical resonance to the UK and are alien to the UK's tradition as a constitutional monarchy, rather than a federal state or a republic.

The number of Lords Spiritual should not be reduced

The presence of the 26 Lords Spiritual in the House of Lords reflects the fact that the Church of England is the established Church and, as such, is an integral part of the constitution. The draft bill proposes a reduction in the present number to twelve. This would have very little practical effect on the operation of the House of Lords, since it is extremely rare for more than a very few Bishops to be in the House of Lords at any one time. They operate a roster for attending the House of Lords. They also specialise in subject areas, so an appropriate subject specialist will be present at appropriate debates. A reduction in their numbers would increase the burden of attendance onto far fewer people, and reduce the ability of Bishops to develop specialist knowledge in subject areas. It would mean that fewer Bishops benefit from the experience of their duties in the House of Lords. It is hard to see any advantage in this, since the Lords Spiritual take great care not to abuse their collective position in any way. Were the Church to be disestablished, then there would be every reason to remove them altogether, but that is not what is proposed.

Proportional representation should not be introduced in the House of Lords

The Government proposes the use of the Single Transferable Vote for elections to the House of Lords. This is a much more complex electoral system than that used for the House of Commons. The multi-member electoral districts would also be much larger than parliamentary seats, so there would be little direct connection between the elector and the elected peer. These multi-member districts would therefore be likely to give the central headquarters of political parties, rather than local branches, control over candidates, strengthening the dominance of party politics in the legislature – hardly a popular or positive development.

The Alternative Vote referendum showed the level of public opposition for replacing the First Past the Post electoral system with a more complex one. The Single Transferable Vote would represent an even more radical change.

House of Lords reform should be subject to a referendum

It has become accepted that any major constitutional change in the UK should be subject to a referendum. The proposal to change the electoral system for the House of Commons to the Alternative Vote was subject to a referendum, as were the arrangements for the establishment of devolved institutions in Scotland, Wales and Northern Ireland. It would be perverse for a wholly different House of Lords to be established, with a new electoral system, without the electorate of the UK being directly consulted. Such a major change to the UK constitution, and to the relationship between electors and Parliament, should be subject to a referendum. Without a referendum, these reforms will lack legitimacy. The failure to offer a referendum demonstrates that the Government has no faith that these reforms would prove popular. It is highly likely that a referendum would result in a rejection of the proposed reforms.

12 October 2011

Written evidence from Fawcett (EV 37)

About Fawcett

The Fawcett Society is the UK's leading campaign for gender equality. Our vision is of a society where women, and our rights and freedoms, are equally valued and respected and where we have equal power and influence in shaping our own lives and our wider world.

- Raise awareness and change attitudes and beliefs
- Influence changes to legislation and policy
- Promote and support better practice
- Increase women's power and influence in decision making

For more information on Fawcett and our work visit www.fawcettsociety.org.uk

The Fawcett Society endorses the Counting Women In submission to the House of Lords Reform Joint Select Committee as well as those submissions put forward by the Centre for Women and Democracy, the Hansard Society, the Electoral Reform Society and Unlock Democracy.

Why Women?

Apart from issues around social justice and democratic legitimacy, the most compelling argument for ensuring that women are present in numbers in any legislature is that they change the nature of the debate so that it takes the whole of the population into account in different ways. In particular:

a) There is a growing body of evidence, largely drawn from business, that women make a positive difference to the quality of decision-making. For instance, in a recent report[1] Deloitte found that 'In Europe, of 89 publicly traded companies with a market capitalization of over 150 million pounds, those with more women in senior management and on the board had, on average, more than 10 percent higher return on equity than those companies with the least percentage of women in leadership', and came to the conclusion that 'In reality, the question is not women or men, it's how to ensure women and men are working together in decision-making roles'.

   The same argument pertains equally to the world of politics.

b) Research carried out by the Hansard Society[2] found that, despite the difficulties women face in institutional politics, they can and do bring issues to the table which may not otherwise be debated, or which might otherwise be considered to be of less significance. They thus have the effect of making the legislature more relevant to the whole population, both men and women.

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[1] *The Gender Dividend: making the business case for investing in women'* Pellegrino, d'Amato & Weissman, for Deloitte, 2011

[2] *Women at the Top: Changing Numbers, Changing Politics?* Childs, Lovenduski, Campbell, for the Hansard Society 2005

Frequently quoted examples of this are work/life balance issues and childcare, which in the early nineties were generally considered to be exclusively 'women's issues' but are now accepted as being relevant to both sexes.

c) There are also other considerations. Women and girls benefit enormously from the education system, and go on to develop skills and expertise based upon that and their life experience. If they are largely excluded from national (and local) politics these skills are being under-used for the public's benefit. Whilst it is true that in many respects the life experiences of men and women are the same, in some they are not, and to be truly effective the country's democratic institutions needs to take account of what the full range of people involved in them can offer.

Opportunities for increasing women's representation within the Lords

The House of Lords Reform Bill provides an opportunity to bring about a step change in women's political representation and address the democratic deficit of the current gender imbalance in the House of Lords.

The UK is now trailing in international league tables on women's access to positions of political power. At present just 22% of the Lords are women. A new, reformed Chamber must be representative of the population as a whole and be equally informed by the experiences and expertise of women and men. Government also has a legal duty to assess how measures for reform could promote equality between men and women and tackle discrimination. As we move towards reform of the Lords, the representation of women must be at the heart of the agenda.

If reform of membership of the House of Lords is implemented there are several options which could be adopted to ensure it is more representative in future.

Proportional Representation (PR) systems provide a fairer system of electoral representation, with political parties receiving seats in proportion to their electoral strength. Academic research classifies PR as a *facilitator* rather than a *guarantor* of better female representation[3], as no voting system in and of itself can guarantee gender parity in political life. While PR as a system has greater potential than other voting systems to improve women's representation and diversity, this can only be guaranteed in conjunction with additional positive action measures.

Where progress has been made in delivering more women into positions of power – both in the UK and internationally - the driver for this has been the implementation of positive actions measures, such as quotas, All-Women-shortlists, zipping or twinning shortlists such that women and men are equally represented, or reserved seats for women in appointment-only systems.

[3] Childs, 2008 as quoted in Evans, E & Harrison, L. Candidate Selection in British Second Order Elections: A Comparison of Electoral System and Party Strategy Effects, 2011.

Positive action measures need not be implemented on a permanent basis. Instead they can be time-limited and regularly re-evaluated to gauge their utility and necessity. Given the longstanding dominance of men within politics, positive action measures can provide a boost to the change already in process. Positive action measures could be built into the legislation in different ways depending on the reform model that is finally adopted.

In relation to the elected element of a reformed Upper House, positive action measures should be integrated into the electoral system, requiring parties to proactively cast their net wider to ensure the selection of equal numbers of women and men.

In the event that a proportion of peers are appointed rather than elected, the Appointment Commission should be statutorily required to ensure the appointment of equal numbers of women and men.

Many countries across the world use some form of quota arrangement to ensure the representation of women[1]. This includes the UK, in which the use of quotas by political parties is both legal and voluntary, which means that they are used by some and not others.

Many countries writing new constitutions or electoral laws include some form of quota requirements in them. Electoral quotas build the requirement for gender parity into electoral law and 47 countries worldwide use this mechanism, including Belgium (39% women), Portugal (27%) and Spain (37%). This provision works well where it is clear and enforced, and where the rules governing the implementation do not weaken the initial intention.

The reform of the House of Lords offers an unrivalled opportunity to ensure that gender equality and democratic legitimacy is at the heart of reform. Fawcett recommends that the final issue of legislation stipulates a minimum threshold for the number of men and women that should be represented in the Upper Chamber. For example, the legislation may wish to state that no one sex should constitute less than 30% of the Upper Chamber.

Selection Mechanisms

If proportional representation is to be used for elections to the new Second Chamber, political parties will find it much easier to select more women candidates. This is demonstrated not only by a comparison of the 2010 general election figures with those for the 2009 European elections (see table below) but by the results for all parties in the Scottish and Welsh devolved elections where 40% and 35% of the Assembly and Parliament respectively are female.

[1] See http://www.quotaproject.org/index.cfm, a website maintained by the International Parliamentary Union, the Institute for Democracy & Electoral Assistance, and the University of Stockholm.

Party	% Candidates	% Candidates
Conservative	32%	24%
Green	42%	33%
Labour	49%	30%
Liberal Democrat	26%	21%
Totals	31%	21%

There are a number of mechanisms open to political parties to use in list systems, but the most common are zipping (where men and women appear alternately on lists) and some form of quota (e.g., in Spain 40% of each party's candidates have to be men, and 40% women, but there is no stipulation regarding the order on the list, which is left to individual parties to resolve[4]).

In the end, increases in the numbers of women MPs can be achieved using most systems; what matters is the will of the political parties and the democratic institutions with which and within which they are working to create and drive change. Political parties have different traditions, structures and cultures, and need to be able to make their own arrangements for selection procedures, but if real improvements are to be achieved they need to be working with electoral systems that favour diversity as well as making the decisions necessary to ensure that they represent and reflect the communities they serve.

Principles for Reform and Policy Recommendations:

Fawcett recommends that:

- Reform of the House of Lords offers a once in a generation opportunity to increase the presence and voice of women in the Upper House;
- A PR model has greater potential than other voting systems to improve women's representation and diversity, but this can only be guaranteed in conjunction with additional positive action measures;
- The legislation should require the political parties to ensure the selection of equal numbers of women and men as candidates for election to the new Upper House;
- The final issue of the Bill includes a threshold stipulating that no sex should constitute less than 30% of the Upper Chamber.

[4] With 37% women parliamentarians Spain are currently 14th in the global league table. The top three are Rwanda (56%), Andorra (54%) and Sweden (45%). The UK is 48th.

- The Appointment Commission should be statutorily required to appoint equal numbers of women and men as peers in a reformed, hybrid House of Lords;
- Consideration should be given to the effect that the right of ministerial appointment and the allocation of 12 ex officio seats for Church of England Bishops – currently reserved seats for men – will have on equality and diversity of representation in a reformed Chamber.

12 October 2011

Written evidence from Ralph Hindle (EV 38)

Proposal for changes.

This proposal for fundamental changes to the Draft House of Lords Reform Bill is based on the belief that the draft Bill will fail to achieve its objectives;

1. Effective democratic government appropriate for the twenty first century.

2. To make the Reformed House of Lords attractive to desirable candidates.

3. To remove party political interference to freedom of debate.

4. To encourage freedom of communication between members and electorate.

5. To reduce apathy among the electorate.

This proposal has the objectives;

1. To reduce opportunity for non democratic influence on electorate.

2. To make the Reformed House of Lords independent of political parties.

3. To encourage the growth of leadership.

Key changes proposed to achieve these objectives are;

1. Membership for life, full-time and part-time for some.

2. Elections at a different time to the Commons to avoid party political influences.

3. Elections every year to replace dead members, (plus those otherwise leaving)

4. Candidate lists created through existing voting systems within professional institutions.

5. No geographical constituencies - national elections by internet annually.

6. Maintain present number of bishops to be the only regional links.

7. Maintain present hereditary peers for continuity of historical perspectives.

8. No political appointments but maybe exception for Ministers;

9. No MP's or former MP's may stand as candidates for election.

These changes are not expected to alter;

1. The relationship between the Lords and the Commons.

2. The role or functions of the Lords.

3. The primacy of the Commons.

4. The preferred choice of an STV election system.

These changes are expected to reduce and simplify the content of the bill and speed the improvement of government and enhance its fitness for the needs of this century.

12 October 2011

Written evidence from Counting Women In (EV 39)

The Centre for Women and Democracy, the Electoral Reform Society, the Fawcett Society, The Hansard Society and Unlock Democracy have formed the Counting Women In (CWI) campaign to address the lack of women in politics. We believe the under representation of women in Westminster, the devolved assemblies, and town halls around the UK represents a democratic deficit that undermines the legitimacy of decisions made in these chambers. Together, we will be campaigning to ensure women have an equal presence and voice within our democratic system.

1. Democratic Legitimacy

The House of Lords – the last UK legislative institution to admit women – has long been the subject of campaigns for reform. These have generally centred around democratic legitimacy in the sense of an unelected legislative body being an anachronism and therefore untenable for the future, but there are other reasons for viewing reform as both necessary and desirable.

a) The current House of Lords is heavily (78%) male, and almost all of the women members are life peers. At a time when the public increasingly expects legislators to reflect the make-up of the population, and as the general notion of what constitutes democracy continues to move from the delegative to the representative and participative, a Parliament in which a minority of the population is dominant both looks out of touch and lacks democratic legitimacy.

b) Reform of the second chamber offers a unique opportunity to create a strong and vigorous body capable of providing democratic leadership unencumbered by the weight of tradition and cultural expectation which weighs on the lower House. This opportunity would be enhanced by the inclusion of equal numbers of women and men, since it would enable the House to draw on the wider range of experience and approach increased diversity offers. As a result, the new House would be in a better position to deal more effectively with issues such as working hours, rights of petition, accountability, etc.

c) The under-representation of over half the population in the nation's legislature means that Parliament is failing to make best use of the skills, abilities and experience of all its citizens. As has been demonstrated in more than one study , the routes into the House of Commons have narrowed in recent years, but a reformed House of Lords with clear criteria for candidacy and a commitment to ensuring a diverse membership would be able both to open up new routes and secure access to the legislative process for a much more representative body of people drawn from across the population.

2. Better Decision-making

Apart from issues around social justice and democratic legitimacy, the most compelling argument for ensuring that women are present in numbers in any legislature is that they change the nature of the debate so that it takes the whole of the population into account in different ways. In particular:

a) There is a growing body of evidence, largely drawn from business, that women make a positive difference to the quality of decision-making. For instance, in a recent report Deloitte found that 'In Europe, of 89 publicly traded companies with a market capitalization of over 150 million pounds, those with more women in senior management and on the board had, on average, more than 10 percent higher return on equity than those companies with the least percentage of women in leadership', and came to the conclusion that 'In reality, the question is not women or men, it's how to ensure women and men are working together in decision-making roles'.

The same argument pertains equally to the world of politics.

b) Research carried out by the Hansard Society found that, despite the difficulties women face in institutional politics, they can and do bring issues to the table which may not otherwise be debated, or which might otherwise be considered to be of less significance. They thus have the effect of making the legislature more relevant to the whole population, both men and women.

Frequently quoted examples of this are work/life balance issues and childcare, which in the early nineties were generally considered to be exclusively 'women's issues' but are now accepted as being relevant to both sexes.

c) There are also other considerations. Women and girls benefit enormously from the education system, and go on to develop skills and expertise based upon that and their life experience. If they are largely excluded from national (and local) politics these skills are being under-used in terms of public benefit. Whilst it is true that in many respects the life experiences of men and women are the same, in some they are not, and to be truly effective the country's democratic institutions needs to take account of what the full range of people involved in them can offer.

3. Opportunities for increasing women's representation within the Lords

CWI welcomes the Government's proposals to use a fairer voting system such as STV or t he open list system, which provides more opportunity to increase women's representation within the Lords. The House of Lords Reform Bill provides an opportunity to bring about a step change in women's political representation and address the democratic deficit of the current gender imbalance in the House of Lords. CWI will be seeking measures within the House of Lords Reform Bill to this end.

The UK is now trailing in international league tables on women's access to positions of political power. At present just 22% of the Lords are women. A new, reformed Chamber must be representative of the population as a whole and be equally informed by the experiences and expertise of women and men. Government also has a legal duty to assess how measures for reform could promote equality between men and women and tackle discrimination. As we move towards reform of the Lords, the representation of women must be at the heart of the agenda.

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Principles for Reform and Recommendations:

Counting Women In recommends that:

- Reform of the House of Lords offers a once in a generation opportunity to increase the presence and voice of women in the Upper House;
- A PR model has greater potential than other voting systems to improve women's representation and diversity, but this can only be guaranteed in conjunction with additional positive action measures;
- The legislation should require the political parties to ensure the selection of equal numbers of women and men as candidates for election to the new Upper House;
- The Appointment Commission should be statutorily required to appoint equal numbers of women and men as peers in a reformed, hybrid House of Lords;
- Consideration should be given to the effect that the right of ministerial appointment and the allocation of 12 ex officio seats for Church of England Bishops – currently reserved seats for men – will have on equality and diversity of representation in a reformed Chamber.

12 October 2011

Written evidence from Pauline Latham OBE MP (EV 40)

I feel that the reforms that have been outlined in the proposals are unnecessary, and could damage the current system of the Upper Chamber, which we all acknowledge to be extremely effective.

My first concern lies with the proposal to have an elected House of Lords. It has been said by various parties on a number of occasions that those who make the laws of the land should be elected by those to whom those laws apply. However, I do not believe that enough consideration has been given to the practicality of this. The current system is well acknowledged to work superbly, and the most important feature that enables the Upper Chamber to work in this way in which is does is the expertise contained within the House of Lords. I am extremely concerned that should we lose the ability to appoint Peers to the House of Lords, then we could lose out on an enormous amount of expertise, which would otherwise be provided by an extremely diverse set of experienced people. 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. Even if the Bill allowed for 20% of Peers to still be appointed, I believe that this would still greatly jeopardise the composition and expertise contained within the House of Lords.

I firmly believe that an elected House of Lords would threaten the primacy of the House of Commons, instead of complimenting it, as it does under the current system. This would be a particularly difficult issue to resolve, because of the largely unwritten constitution that we have in the U.K. Furthermore, I believe that this
reform is flawed in respect that it will politicise the Chamber of the House of Lords. Not only would it make it harder for Cross-Benchers and Independents to be elected, but it would also mean that particularly at election times, party-politics could come into play and be taken into account on the basis of re-election. One of the advantages in the way that the Lords currently works is that it complements the work of the Commons without forcing Peers to consider the implications that their actions might have upon their re-election. It is inevitable that party-politics does come in to play in elected chambers on some occasions, and I think that it would be a disaster to force this upon the Lords.

In terms of the process of election to the House of Lords, this is something that must be considered in detail. The running of elections is hugely expensive, and an elected House of Lords would of course have a significant increase in the amount that the taxpayer would have to contribute. There would be difficulties with considering where candidates would stand, and constituencies would have to be drawn up. The proposed time frame of a term under a reformed House of Lords stands at fifteen years; which in my opinion is far too long. Somebody aged between 55 – 60 is unlikely to be selected for their term of office until they are 70 -75, meaning that the whole composition of the House of Lords would be down to people with less experience of life and the outside world.

Another concern that I have is electoral exhaustion. Currently, the United Kingdom is asked to vote in general elections, local elections, referenda, European elections, Parish Council elections, as well as assembly elections in devolved countries. I would be concerned that asking people to vote in another election would drive down voter turnout further.

There is one suggestion that I would like to make when it comes to the reform Bill, and that would be the insertion of a power to allow the removal of a Peerage, should a Peer be convicted of committing a crime. I do not think it is correct that Peers, or indeed Members, should be allowed to retain a title when convicted of a criminal act.

12 October 2011

Written evidence from Andrew George MP (EV 41)

I write to register my support for parts, but not all, of the Government's proposals for Lords Reform.

Rather than repeat myself, I attach a set of appendices which set out my comments and points on this subject going back a number of years.

I support the proposal to end hereditaries, the constraint on patronage, the reduction in the number of peers, the proposal to limit the term of service, the confirmation that functions and power will be maintained and the confirmation of the primacy of the Commons over the Lords.

However, I am not convinced that reform of the Lords requires a complete antithesis as proposed by the 'form-before-function' advocates behind this Draft Bill. If anything we should seek to adopt a form which enables the second chamber to become less rather than more tribal (which is what this proposal would result in).

If we had adopted a sequentially logical method of approaching the question of Lords reform, as I have consistently advocated for at least the last decade, we would first decide what we want a second chamber for before considering how its membership should be made up. In my mind any purpose, other than one to mirror all of the weaknesses of the Commons, would cause anyone to conclude that a wholly or partially elected chamber would be disastrous.

Although I am told by my Party colleagues that I should support the Government's policy, and am reminded that it is party policy, the logical consequence would be for us to go on and elect many other advisory, supervisory, and revisory public bodies - including the Judicial Appointment Commission etc – which demonstrates either the absurdity or inconsistency of this part of the reform.

12 October 2011

Written evidence from the Zoroastrian Trust Funds of Europe (EV 42)

The Zoroastrian Trust Funds of Europe is the oldest religious voluntary organisation in the United Kingdom of South Asian Origin. This Association is the principal Zoroastrian organisation representing the Zoroastrian community in the United Kingdom. Please convey to the Joint Committee on the draft House of Lords Reform Bill:

1. The Zoroastrian community is extremely concerned that if Parliament were eventually to decide for a 100% elected House then there would not be a 'voice of the faith community', because in a 100% elected second chamber there would not be room for the Lords Spiritual, or even for that matter leaders or representatives of other world faith communities that make up the unique multi faith and inter faith landscape in this country.

2. The Zoroastrian community full heartedly supports parliamentary democracy in this country and globally. But it is very mindful that minority faith communities like us could be marginalised in a 100% elected House of Lords. Thus we urge the Joint Committee to include faith leaders / representatives in the House of Lords who may not be elected by the people, but are representative leaders in their respective faith communities. By not having faith representation in the post reformed House of Lords would risk depriving our nation of a unique forum within which the voices and concerns of all stands of civil society are able to be convened and heard.

12 October 2011

Written evidence from Penny Mordaunt MP (EV 43)

How the draft Bill fulfils its objectives

The Draft Bill does not explicitly state an objective. The Foreword quotes from the Coalition's Programme for Government, 'We will establish a committee to bring forward proposals for a wholly or mainly elected Upper House on the basis of proportional representation. The committee will come forward with a draft motion by December 2010. It is likely that this will advocate single long terms of office. It is also likely that there will be a grandfathering system for current Peers.' To this extent the mere existence of the Draft Bill can be considered a mark of success, and it does indeed suggest single, long, terms and a grandfathering system.

Beyond the objectives established in the Programme for Government it is left to the reader to divine what the Bill's authors seek to achieve by its eventual enactment. The only discernable over-arching objectives are to ensure that Britain is a 'modern democracy' in which 'those who make the laws of the land should be elected by those to whom those laws apply', and to 'move power from the centre to the people'.

'Modernity' for its own sake is no sort of objective at all, and I invite the committee to consider the state in which we would now be if each successive generation of politicians had sought to sweep away what had come before in the name of modernity. It should be noted that under the conventions which currently obtain to ensure the primacy of the House of Commons (conventions which the Draft Bill aspires to protect, and a subject to which I will return) no law can be passed without the assent of the democratically elected representatives of the people. As such it is hard to see what 'the people' gain from the proposed reforms, whilst it is very evident what will be lost. In these circumstances readers of the Bill cannot but infer that the objective is not the enhancement of our democracy, but an assault on an institution to which the Bill's promoters are ideologically and irrationally opposed.

The Draft Bill lauds the referendum on the Westminster voting system as a means of 'moving power from the centre to the people', and yet, and despite the fact that the people told politicians on that occasion that the status quo was preferred, there is no facility by which the public can voice support for the House of Lords as it is currently constituted. Is this respect the Draft Bill can only fail the sophistic measure of success which is meeting its own objectives.

I will address narrower objectives relating to specific clauses below.

Powers and functions of the House of Lords, the relationship between the House of Commons and the House of Lords, and the primacy of the House of Commons

The Draft Bill does not seek to alter the powers of the House of Lords, but leaves conventions in this respect to operate as happens currently. This is right and proper; however, the sub-clause on maintaining the primacy of the House of Commons reveals the flawed thinking and lack of awareness of history which lies behind the entire enterprise.

'(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.'

Parliament cannot bind its successors or be bound by its predecessors, but it behoves every politician to recognise that he is but a temporary placeholder, that he has a duty as a custodian of our unwritten constitution and that it ill-becomes any politician to presume a perspicacity which has eluded previous generations. Our unwritten constitution allows for evolution to meet pressing needs, as has happened on numerous occasions in the past, notably during the Glorious Revolution, with the Great Reform Act and its successors, and the Parliament Acts. Promoters of the Draft Bill must explain what great constitutional crisis they seek to avert. The Deputy Prime Minister has confirmed to the House of Commons that House of Lords reform is 'not a pressing need' (Hansard, 5 July 2011: Column 1349), preferring to see it as 'an enduring need'; however, he could only define that need in terms similar, but different in one key respect, to those found in the Draft Bill, 'those who shape the laws of the land should be held to account by people who have to obey the laws of the land' (Hansard, 5 July 2011: Column 1349). This is an argument of change for the sake of change; a lazy argument invoking the will of the people without any supporting evidence. As explained above, the democratic element of Parliament, the House of Commons, represents the will of the people, and its will cannot ultimately be gainsaid by the House of Lords – once that principle is recognised any argument predicated on 'modernity' or 'better democracy' is fatally undermined. Would promoters of the Bill claim that Britain is not a democracy? I hardly think so.

The failure to observe the true nature of the constitution is evident in the Bill's insistence that the primacy of the House of Commons could, and should, endure once there is an elected Upper House. 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. It might be that under the provisions of the Bill this arrangement would continue for a time, but it will matter little that the Parliament Acts and what must surely be the House of Lords Abolition Act are on the Statute Book when an elected Upper House is in accord with popular opinion in opposition to the will of the House of Commons. When that scenario occurs, and it surely will, a constitutional crisis will ensue as the traditional and proper forces of the constitution begin to be felt. The position of the Commons will only be weakened by the reduction in the number of MPs and the concomitant increase in the 'payroll vote' as the number of

ministers remains the same. When a government of whatever stripe whips through an unpopular measure and asserts its cherished primacy against an elected Upper House it is inevitable that the latter, with the weight of popular support behind it, will push back. It will do so with a mandate achieved through a system of proportional representation which according to many of the very people promoting the Draft Bill is a better and more democratic system of election. This situation will create the agency for change which is absent from the current debate and will provoke calls for further reform.

It must be understood that an elected Upper House would not simply fill the void left by the abolished House of Lords. The House of Lords has a settled and accepted view of its position in the constitution, a new House composed of elected members could not be expected simply to conform to that view.

Before any challenge to the primacy of the House of Commons is deprecated we should consider why it is such a worthwhile principle. The value and legitimacy of the convention is that the Commons is the elected House, from where the majority of ministers are by convention drawn and whose support must be maintained if a government is not to fall. If the Upper House were an elected chamber, why should these conventions endure? An elected Upper House could assert with some force that it would be the chief instrument by which the government is held to account, citing once again the increased ease with which the government could get its business done in the Commons following the Parliamentary Voting and Constituencies Act 2011. The House of Commons will increasingly be regarded as the domain of the executive which must be held to account by the Upper House. The promoters of the Bill must accept that to change the composition of the Upper House is to inevitably change the dynamic between the two Houses.

Electoral term of an elected Upper House

As was suggested in the Programme for Government, the Draft Bill proposes single, long, non-renewable terms for elected members of the new Upper House. Terms of 15 years would be staggered with a third of members elected at successive elections.

In the passage on the electoral term, the Draft Bill proposals recognise that members of the Upper House should have a ‘distinct role’ from that of MPs, that the House should show independence of thought, and that if people of quality are to be attracted that they must be allowed to sit for a substantial period of time. Under these criteria it is hard to see why there is any talk of reform at all, but they do hint that the authors of the Bill are alive to the challenge an elected House could pose to the Commons – a suspicion confirmed by the reason for proposing staggered elections, ‘the reformed House of Lords would never have a more recent mandate than MPs’. It is as though the Bill’s promoters are fighting a rearguard action against their own creation. Evidently the ideology of change and the cosmetic appeal of modernity came before consideration of the realities and consequences of the reform they propose. We are entitled to wonder what the point is of

giving members of the Upper House a democratic mandate only with the same instrument to seek to undermine that mandate. The Bill implies that a mandate is devalued over time and that a mandate more recently received is superior. On that basis our concern should not be with creating a two tier structure in the Upper House but a four-tier system, as the most recent members will assume an elevated position. If that notion is rejected by the Bill's supporters then they cannot contend that the Upper House's older mandate is less valid than that of the House of Commons. That a mandate delivered almost fifteen years previously is accepted as valid by the Bill's proposers is demonstrated in the suggestion to use the results of the last election in the relevant constituency to fill vacancies in the Upper House. In these circumstances, the fact that staggered elections would mean 'the Government of the day would be unlikely to have a majority in both Houses' would only reinforce the sense that it is the Upper House's responsibility to challenge the executive in the Commons.

A third of members would be elected every five years at the same time as general elections. The Draft Bill does appreciate that in our Parliamentary system governments can fall before the end of their term, even if the original draft of the Fixed Term Parliaments Bill did not. Should elections to the House of Commons be necessary before the next Upper House elections are due the Bill proposals confirm that the term of the latter would not be cut short. What is not explained is whether the members of the Upper House next due to leave would have their term extend to the next general election, and the other tranches their terms by the same period of time, or Upper House elections will forever be out of kilter with those to the Commons.

Perhaps the chief irony of the proposals on the term to be served by members of this new Upper House is that they will be non-renewable. The principle seems to be one of democratic election but not democratic accountability, and consequently we must ask whether the Deputy Prime Minister will oppose the Bill as it stands, for as was mentioned above he thinks that 'those who shape the laws of the land should be held to account by people who have to obey the laws of the land' (Hansard, 5 July 2011: Column 1349).

There is no clearer evidence of the motives for this Bill than the contradictory and self-defeating proposals on terms.

Electoral system

The Bill proposes the use of the Single Transferable Vote to ensure that members of the Upper House have a direct mandate as individuals but on a proportional basis so that the mandate is distinct from that of Members of Parliament.

As has been said above, the use of a proportional system would propagate further debate about the validity of PR and First Past the Post. Each House could make an argument that it has a superior mandate based on the system used to elect it.

Even though STV has large multi-member constituencies members of the new House would still rival Members of Parliament and challenge their relationship with constituents. If an MP does not agree with a constituent, or a whole tranche of constituents on a polarising matter, the immediate recourse will be to go to the elected members of the Upper House who sit for the area. This will provide fuel for a challenge by the Upper House to the House of Commons. It is naive to pretend that this will not happen.

The Bill proposals might naively assert the benignity of STV in terms of the relationship between the two Houses, but the pretence that STV will ensure independence from the party control inherent in list systems is simply disingenuous. Members might be elected as individuals, but those individuals will represent parties and the mechanism by which they are chosen would be completely without Parliament's control. Current appointed members must be vetted by the Statutory Appointments Commission, of course.

Transitional arrangements and Statutory Appointments Commission

Option 2 and Option 3 for transitional arrangements are contradictory. Is it important to have the value of experience in the chamber or to have fewer members? Option 1 seeks a middle way, but all options would create tiers of members and encourage elected members to claim superiority over their fellows. In any case, all options are unacceptable in that they include the introduction of an elected element to the House of Lords to which I object absolutely.

The Statutory Appointments Commission is an acceptable method of appointment and should be considered as part of the reform of a non-elected House of Lords.

Ministers

The terms proposed make sense under the Bill's own rationale but are unacceptable in that they allow for election to the Upper House.

Hereditary Peers

I am content with the arrangement which obtains under the House of Lords Act 1999.

The Established Church

The established Church of England should continue to be represented in the House of Lords. The Bill's provisions on the Lords Spiritual, as with those on ministers, conform to the internal rationale of the Bill, but are unacceptable in the broader context of the reform debate. I advocate the retention of the right of the holders of the titles of Archbishop of Canterbury, Archbishop of York, Bishop of Durham, Bishop of Winchester and Bishop of

London to sit in the House of Lords on an ex officio basis along with 21 other Bishops of the Church of England.

To remove the Lords Spiritual from the House of Lords would be an attack on the very heart of the constitution.

Pay and Pensions

There is an assumption made by the Bill's authors that the public support elections to the Upper House – obviously so as no referendum is to be held. It is debatable whether there would be support for the creation of another tranche of salaried politicians.

Other bi-cameral systems

Direct comparison with other nations' institutions can be misleading. The British constitution has evolved over centuries, drawing from the nations which combined to form it. The institutions of nations which have been founded, or re-founded, at a definitive point in time with a written constitution following some great crisis or violent upheaval can be of little relevance to us. We should also be wary of comparisons with polities in which the separation of powers is more pronounced – the presence of the executive within the legislative branch in the British constitution renders such an exercise of limited value, unless a much wider reform is proposed.

Name of the reformed House

The present generation of politicians has no right to cast aside centuries of tradition merely because it suits the personal view of some among it of a 'modern democracy'. The notion that the peerage would 'revert to being an honour' is unfounded as the concept of the peerage has always had a Parliamentary connotation – it would be an innovation to break the link entirely.

Though the name House of Lords has been used throughout the Bill for want of another, the terms included within the Bill indicate that it would not be maintained once elections were made. As members of the peerage would be eligible for election to either House the name of the House of Commons would also be questioned. Together or individually the renaming of either House would be wanton constitutional, and cultural, vandalism.

Ceremonial traditions

The ceremonial traditions of the House of Lords and those of Parliament which occur in the House of Lords chamber should be maintained in every particular.

Referenda

I do not necessarily advocate a referendum on the matter of reform of the House of Lords, but I do note 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. I have been advised by the Minister of State by letter that the Government has no definition of an issue which warrants a referendum or the circumstances in which referenda should be held. The Minister continued that it is for Parliament to decide which issues are put to the people in a referendum. This does beg the question of how it was possible for the Government to decide to advocate a referendum on the voting system, and does nothing to dispel the notion that the Bill represents the worst of coalition politics.

I close by urging committee members to remember that the constitution and centuries of tradition are not the play things of transient politicians, but should be respected and cherished.

12 October 2011

Written evidence from Imran Hayat (EV 44)

First of all I would like to thank the Joint Committee in giving me the opportunity to provide evidence with regards to House of Lords reform. Although there will be many who will provide detailed proposals and evidence on how the reformed chamber should be structured as well as its composition, whether it should be fully elected or partially elected, my main focus to which I hope to draw the committee's attention to is the future of the Church of England Bishops in a reformed second chamber.

If the chamber were fully elected, the future of the Bishops would be very straight forward, that is to say they would lose their automatic right to sit in the reformed chamber as Lord's Spiritual and the privileges associated with it. If there were to remain an unelected element in the reformed chamber , then that would be a totally different ball game as there would be conflicting views on who should be entitled to sit in the chamber as unelected peers or *life senators*. The biggest confusion of all would be the future of the Church of England Bishops and the need for a Lord's Spiritual in a democratic institution that is supposed to represent the people of the United Kingdom as a whole and favour all races and faiths (including non-faith) not just one particular group or sect .

In the first instance one might suggest that a fully elected secular chamber with senators belonging to different ethnicities and faiths would easily solve the problem. Senators would not be representing any faith or group but would be representing their respective electoral regions though they would be free to practice their own faith or belief.

Unfortunately the present parliament is in turmoil over reform and there are many who oppose any change at all and try their best to delay and block any proposals through filibustering and other time wasting tactics. The three main parties do not have a clear position on Lord's reform especially when asked about the future of the bishops. Without any official policy from all parties, MP's and peers are free to do as they please and hence the turmoil and trench digging. In the last two years I have campaigned for the removal of the automatic right of bishops to sit in the chamber by virtue of their position and have challenged the leaders of the main parties about their views and that if the bishops continue to sit in a reformed chamber then other faiths should be allowed to sit in the chamber too by virtue if their position.

The main parties gave mixed responses to my proposals. The previous government's answer was unclear and misleading that although they believed in a fully elected chamber, should there be a partially elected chamber, then the Church of England bishops would have a right to sit in the House but as far as other faiths were concerned they had only consulted about it in the past and were not clear if they should include them. Lord Strathclyde replied to me personally on David Cameron's behalf and supported equal faith representation and mentioned at the same time that faith representation is important in parliament and about the Church of England's role through out parliaments history.

I wrote to him again in January last year (at the time very pleased and hopeful), asking him to reassure me that he would do his utmost in passing legislation or proposing clearer reforms that would include equal faith representation in the House of Lords. Sadly he did not reply and I felt a little bit disappointed as I was looking for real action and reassurance rather than mere sweet words as this issue was of great importance and a necessity for true democracy. One of David Cameron's representatives eventually wrote back to me and said that they were more concerned with the deficit right now rather than House of Lords reform (so much for change and fair reforms!). The Liberal Democrats replied by saying that they were committed to a fully elected chamber. However when my MP, Sheila Gilmore wrote to the Deputy Prime minister, his views as well as his party's had changed since the general election. He wrote personally to her stating that the government would retain a reduced number of bishops and that he acknowledged that there would be no reserved places for other faiths simply because the royal commission (2000) reported that other faiths and sects do not possess a hierarchal structure and that it would be difficult to determine who actually represents those faith communities. He also mentioned using the royal commission as a reference that if every faith or sect were to be represented then there would be a disproportionate number of peers representing faiths in parliament. He failed to mention however that the royal commission did support equal faith representation in parliament and suggested that parliament should find ways of overcoming the above obstacles. Having an appointments commission to determine and decide who actually represents the other faiths communities would be a good start. My MP also wrote to him my suggestion of temporarily removing the bishops from the Lord's until a final decision can be made about their future. The Deputy Prime Minister did not reply to this proposal. (I have not attached copies of my letters and responses from the above parties including Nick Clegg's and Lord Strathclyde's letter as these were private correspondence and I was not sure it was appropriate to provide to the committee).

It is clear that from the above we can deduce that none of the main parties are seriously interested in real democratic and constitutional change and that once again the rights of minorities are pushed aside. I believe that a fully elected chamber would have prevented such discrimination and that if the bishops are allowed to remain at the expense of other faiths and humanists then clearly in the eyes of many the government as well as parliament as a whole has failed as an institution and as a way to export true democracy abroad. I believe that the very concept of state religions is unconstitutional and discriminating. I believe a reformed second chamber is one of many constitutional changes that need to occur in order for Britain to truly consider itself as a democratic and free country. The monarch is still the Supreme Governor of the Church of England which binds the monarch to the Anglican faith and incorporates the Church's position and role within the constitution. The monarch should represent all faiths and peoples and

be permitted to choose any faith and marry anyone rather than someone from a particular sect. It is quite clear that the Human rights act and the European convention of Human rights does not extend to our own monarch and I am surprised amnesty international has not raised this with the government!

I would like to conclude that a fully elected second chamber where senators (about 300) sit in a *House of Senators* that represent electoral regions would be the ideal option for reforming the second chamber. The House of Lord's is a dated term for an archaic system of governance. However if there were to be an unelected element in the second chamber and if the bishops were to remain in the second chamber then there should be equal faith representation. I believe that life peers who are permitted to remain in the House after 2015 (after the first transition phase) should be known as life senators to distinguish them from elected senators who would simply be known as senators. The title 'Lord', Baron and Baroness should no longer carry any constitutional significance after that date. I hope the committee takes my views into consideration and that any real change should be one that promotes fairness and not appeasement as is the case with some parties.

12 October 2011

Written evidence from Nadhim Zahawi MP (EV 45)

I would like to register on record, my concerns regarding the draft House of Lords Reform Bill.

It is clear that when the direction of travel across Government is, as is laid out in the foreword to the draft bill "to move power from the centre to the people", that it is important that we consider accountability and modernisation in the second Chamber.

Modernisation and reform is after all not something that can be ignored, be it in the sitting hours of the Commons or the working practices of the Second Chamber, however I feel that we must question what form modernisation should take.

The underlying argument of the House of Lords Reform Bill is that more elections equals modernisation. However that simply is not the case, modernisation can in fact take many forms, all of which could improve accountability and function, without having to lose the detailed and expert knowledge that currently exists in the second Chamber.

It is the unique nature of the way members are appointed to the House of Lords that makes it possible to find a world renowned expert on any topic there. An individual or group of individuals who, without the need for briefings or preparation from staff, can speak eloquently and with great knowledge on any legislation that comes before them. It is this unique mix of knowledge and skill, which is found no where else in government, that has enabled the Lords to, again in the words of the draft bill's foreword, "Serve the country with distinction"

I have significant concerns that the proposals for a primarily elected Lords, as put forward in the draft Bill, will lose this great and ever evolving bank of knowledge, and replace it with merely a sub-standard imitation of the House of Commons.

I would therefore urge you to consider not just the content of this Bill, but whether it's underlying argument that modernisation must equal elections is correct.

11 October 2011

Written evidence from Democratic Audit (EV 46)

About Democratic Audit

Democratic Audit is an independent research organisation, based at the University of Liverpool. We are grant funded by the Joseph Rowntree Charitable Trust to conduct research into the quality of democracy in the UK and are currently conducting the fourth full Audit of UK democracy. The previous three Audits, which assess the democratic performance of the UK using a set of generic 'search questions', were published in 1996, 1999 and 2002

Introduction and summary

The idea of an elected House of Lords is not new. For instance, reference is made to a 'popular' second chamber in the introductory text to the Parliament Act 1911. It is also an issue that has constantly been on the political agenda since 1997.

Democratic Audit believes that the House of Lords, as currently composed, suffers from a lack of democratic legitimacy; and that the proposals contained in the draft bill and the white paper in which it is enclosed address these concerns in a fashion which is it be welcomed, bringing the UK more into line with general international democratic norms. However, it should be noted that there is no single international democratic model for the composition – or indeed role and functions – of a second chamber (nor is a bicameral system the only possible structure).

The key points advanced in this submission are as follows:

- It is inevitable, in the view of Democratic Audit, that a second chamber possessing new democratic legitimacy will become more assertive and challenge existing understandings of Commons primacy. It seems appropriate that a democratically composed second chamber should wield its power more confidently. However, Commons primacy will remain in some form; and in international perspective the formal powers possessed by the second chamber – which will be unaltered by this reform – are not great.
- Reform may have consequences – both good and bad – for the effectiveness with which the second chamber performs its legislative and policy oversight functions.
- Some of the details of the reform raise particular democratic difficulties. They include the inclusion of ministers appointed from outside Parliament and representatives of the Established Church; and the retention of peerages as honours.
- We welcome the government's recognition that a proportional representation (PR) system is required for the electoral system used to choose the second chamber, and support the logic by which this decision has been reached. The choice between list PR and STV is closely balanced and probably as much to do with practicalities as anything. We would urge the government to consider the details of the electoral system further.
- Running second chamber elections alongside general elections is a sensible proposition.

- We strongly agree that the role of a reformed second chamber is to be differentiated from that of the Commons, and that the electoral system can play a part in achieving this. Long non-renewable terms, partial renewal by thirds, and a lack of a single-member constituency relationship, all work in this direction.
- We urge the government not to be too dogmatic about the size of STV constituencies. While 7 is probably a reasonable ceiling from the point of view of complexity, the results of the Scottish local elections show that smaller STV seats offer a fairly high degree of major-party proportionality and there is no need to insist on a rigid 5-seat floor.
- The draft Bill also asserts as if it were axiomatic that there should be, in the government's terminology, 'equally weighted votes'. This assumption needs to be examined.
- It seems unnecessary to establish as an additional institution 'an independent committee of experts' to create electoral districts.
- The government may wish to consider the practicalities of large scale STV elections using units as large as a middling-sized English region (or the whole of Scotland).
- The provisions for filling casual vacancies are a matter of some concern, and we urge the government to consider alternatives.
- In our view, it would be inappropriate for the Lords as an unelected chamber to be allowed to frustrate the will of the Commons, an elected chamber, in order to sustain the unelected nature of the Lords. While it is appropriate for the Lords to seek to block to its maximum ability Commons proposals that serve to compromise democratic values, this reform hardly fits into this category, since it involves democratising the second chamber.
- Other issues – including the name of the chamber and the remuneration of its members – are of second order importance and should not distract from more substantial matters of democratic principle.

We cover the various subject headings suggested by the committee, followed by some additional material. This submission does not deal directly with the likelihood of these proposals for House of Lords reform being successfully introduced.

We are happy to provide more information and evidence if required.

The role and functions of a reformed House

A more democratically legitimate second chamber

It is important, when considering these proposed reforms, to stress a central feature of their likely political and constitutional impact, if implemented.

In establishing a second chamber that is mainly or wholly directly elected, they will infuse it with democratic legitimacy which it has previously lacked.

This shift is rightly presented as the central justification for the government proposals. As the

white paper puts it (para.13): 'The Coalition Agreement said that we would develop proposals for a wholly or mainly elected second chamber. This is the fundamental democratic principle'.

However, this change that will lead to consequences that are seemingly unintended, though not wholly unpredictable.

Eventually at least 80 per cent of its members will be able not only to claim that they are now democratically legitimate, but – rightly or wrongly – that they are *more* democratically legitimate than members of the House of Commons, since the second chamber will be elected on a more proportionate system than the Commons, and each member of the second chamber will represent a larger constituency of voters than MPs in the Commons (though as discussed below, there will not be the same direct link as with the First Past the Post system used for the Commons).

A more legitimate second chamber will surely become a more assertive one.

We consider the implications of this tendency for the principle of Commons primacy in the next section.

Legislative and policy oversight

The present House of Lords performs a valuable role in scrutinising legislation; and in investigating policy issues, in ways that the House of Commons may not.

Recently, for instance, the Lords has performed well in questioning some of the constitutional reform legislation introduced by the Coalition government, some of which seemed to suffer from being hurriedly devised and rushed through the Commons.

The Lords also has an important role in scrutinising secondary legislation – over which it possesses a (rarely used) power of veto, not subject to the Parliament Act – including through the Merits of Statutory Instruments Committee.

A number of Lords committees – such as the European Union Committee and its sub-committees; and the Constitution Committee – carry out, amongst other tasks, important wide-ranging thematic investigations.

The Lords also furnishes joint committees such as the Human Rights committee with valuable expert members.

It may be that the second chamber, if it became more democratically legitimate, could actually perform some of these tasks more assertively, to the benefit of the democratic system.

However, a case can be made that, with a shift towards a directly elected chamber, the personnel and ethos that made this work possible will be lost. It might be harder to attract experts to run for election; and a more party political environment might not be conducive to such activity.

But, if the democratic legitimacy issue is seen as of overriding importance, then this change – assuming it would occur - might be seen as secondary.

Moreover, ultimately the precise role and functions performed by the second chamber in such areas will be determined by the second chamber itself. Framers of the current reform proposals, if implemented, may impact – directly and indirectly, intentionally and unintentionally – upon the future development of the Lords, but they cannot wholly control it.

The means of ensuring continued primacy of the House of Commons under any new arrangements

The impact upon conventions

Commons primacy is a fundamental principle of the UK constitution, dating back a number of centuries. For instance, one of the sources of Commons privilege in financial matters is a Commons resolution of 1671 (for an assessment of these issues, see: Joint Committee on Conventions, *Conventions of the UK Parliament*, HL 256 – I/HC 1212 – I, 2005-06). It is worth highlighting three key features of Commons primacy as it presently exists:

1. It is founded in the respective possession and lack of democratic legitimacy by the Commons and the Lords.

2. It is upheld to a considerable extent by the observance of conventions, such as those facilitating the passage of government legislation through the Lords and the principle that the Prime Minister is always drawn from the House of Commons.

3. It has a statutory underpinning in the Parliament acts 1911/1949, which have the effect of giving the Commons the final word over nearly all issues.

Though they do not affect feature 3), the current proposals for Lords reform will inevitably impact upon Commons primacy as it is currently conceived, by altering feature 1) referred to above. This change will – as suggested above – lead to a more assertive second chamber which is likely to challenge some of the understandings referred to in feature 2). Constitutional conventions are not directly *legally* enforceable; and any *political* force they posses is dependent upon the extent to which there is general agreement over such issues as whether they exist at all and, if so, what is their precise nature. Even when there is a reasonable degree of consensus about conventions, it is in their nature that they can change over time – indeed this quality is held to be a strength by advocates of constitutional conventions.

The nebulous nature of conventions can be illustrated well by a consideration of the Salisbury-Addision doctrine. It arises from a 1945 agreement between the Conservative and Labour then-leaders in the Lords that Conservatives in the Lords would not obstruct legislation arising from commitments contained in the manifesto of the party which won the most recent General Election. It has come to be regarded by many, but not all, as a convention binding upon the whole House of Lords, which has developed in various ways over time. However, given the advent of a

Coalition government in 2010, with no one manifesto on which to base its legislation, Salisbury-Addison's continued existence – at least for as long as there is not single-party government – is in doubt. There is also claimed to have devloped a more general convention that the Lords will not obstruct the overall legislative programme of the government.

Members of a mainly or wholly directly elected second chamber may decide either that supposed conventions such as Salisbury-Addison never existed as fully fledged conventions, or that they no longer apply to it, and become more obstructive towards government legislation. They may also decide they are not bound by any convention that the Lords display a strong aversion towards using its power to veto secondary legislation. Furthermore, they may operate in ways which cannot yet be governed by established conventions – for instance, in their relationship with constituents, who will also be constituents of MPs in the Commons – which might be seen as affecting the position of the Commons.

The view of the Coalition seems to be that it can introduce its intended changes to the composition of the House of Lords without indirectly encouraging changes or challenges to conventions. Clause 2 of the draft bill states that:

(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.

This provision in the draft bill is futile. It does not define these conventions – indeed, it probably could not do so, since if it did they would presumably cease to be conventions, through obtaining a statutory footing. At the same time, the overall impact of the bill which includes this clause will be – as we have suggested – precisely to encourage the alteration that is ruled out in this particular part of it. Convention is by definition not a creature of legislation – though it has an informal relationship with it – and an Act of Parliament cannot achieve what the draft bill seems to be attempting here.

The tone of the white paper on Lords reform produced in 2008 (*An Elected Second Chamber: Further Reform of the House of Lords*, Stationery Office, Cm 7438, 2008), was perhaps more realistic. It stated that (p.5):

The current powers of the second chamber, the Parliament Acts and the conventions that underpin them have worked well. Given its electoral mandate, a reformed chamber is likely to be more assertive. The Government welcomes this. Increased assertiveness on the part

> *of the second chamber is compatible with the continued primacy of the House of Commons, which does not rest solely or mainly on the fact that the House of Commons is an elected chamber whilst the House of Lords is not. (One aspect of the primacy of the House of Commons is the operation of the 1911 and 1949 Parliament Acts, which the Government does not intend to change.)*

It seems to us reasonable that a wholly or mainly directly elected second chamber should be more assertive. Though it will be modified, Commons primacy will remain, particularly since it is not proposed to alter the Parliament acts. Prime ministers and most senior ministers, it can reasonably be expected, will continue to be drawn from the Commons for the foreseeable future. A slight shift in the direction of greater equality between the two Houses need not undermine the effectiveness of the democratic system and could arguably strengthen it through subjecting a government founded in a majority in the Commons to more effective oversight.

The size of the proposed House and the ratio of elected to non-elected Members

Size of the second chamber

The recent statutory provision for a reduction in the size of the House of Commons to 600 members at the next General Election was not based on a serious assessment of what was the appropriate figure within the constitutional and political environment of the UK.

Similarly, the figure of 300 for a second chamber seems suspiciously as though it has been chosen because it is exactly half the new Commons figure.

We note that the size of the House of Lords is presently nearly 800, substantially more than the Commons, and likely to grow further in future if the present reforms are not implemented. This issue may be regarded as meriting attention, if reform fails.

Ratio of elected to non-elected members

The white paper provides two options: a second chamber that is ultimately 80 per cent elected (which the Coalition states that it favours) and one that will be 100 per cent elected.

We note that even under the latter option, provision is made for ministerial appointments from outside Parliament to be recruited to the second chamber (who, in both scenarios, remain members of the chamber for as long as they are ministers).

If the principle of direct elections to the second chamber is accepted, then it could be seen as difficult to justify any unelected presence within the second chamber, except perhaps in a non-voting capacity, though even members of this sort would be able to influence proceedings.

It could be held that an unelected presence can provide qualities that might be lacking amongst elected members, such as expertise and independence from the party political system.

Yet such arguments, taken to their extreme, are anti-democratic. Moreover, they tend to stigmatise professional politicians and political parties, both of which, whatever flaws they may sometimes display, are seemingly indispensible components of a democratic political system.

We discuss the inclusion of bishops and ministers appointed from outside Parliament below.

A statutory appointments commission

A wholly elected second chamber could remove the need for an appointments commission.

However, assuming that some members will be appointed in a reformed second chamber (and will certainly be part of an unreformed second chamber), arguably it is desirable from a democratic perspective, and from the point of view of clarity, that the existence of the appointments commission is placed on a statutory basis.

There arises a difficulty here. Though commissioners would be appointed by the monarch, the mere fact of having a basis in an Act of Parliament would make the commission a parliamentary creation. Moreover, the white paper states that (para. 56): 'The Commission would be accountable to Parliament as its work would be overseen by the Joint Committee on the House of Lords Appointments Commission'.

There seems to be a potential conflict of interest if Parliament provides the legal authority for and holds to account a commission which regulates entry into Parliament. In countries with a codified constitution – which the UK lacks – it would be possible to provide for an appointments commission in the constitution, rather than in regular parliamentary legislation, perhaps avoiding this particular problem.

The electoral term, retirement etc

While they may help insulate members from party political pressures, single electoral terms of a likely fifteen years seem long by any standard. They are produced by the questionable decision by the Coalition to fix parliaments at five years, rather than four (or perhaps even three).

From the point of view of accountability, both the length of the term and its non-renewability are undesirable, since they mean that members are probably secure for a substantial period of time, and cannot be judged by their electors at a subsequent election.

While the government states it is interested in applying recall procedures to members of the second chamber as well as the Commons, how exactly such a mechanism would operate within the favoured STV system is unclear.

The electoral system preferred

We welcome the government's recognition that a proportional representation (PR) system is required for the electoral system used to choose the second chamber, and support the logic by which this decision has been reached.

Successive inquiries and analyses of the requirements of a second chamber electoral system have narrowed the effective choice between two systems, the Single Transferable Vote (STV) and some form of open list PR system. Both of these systems are capable of giving a proportional outcome and a wider choice of candidates for voters.

The choice between list PR and STV is closely balanced and probably as much to do with practicalities as anything. We would urge the government to consider the details of the electoral system further.

Timing of elections

Running second chamber elections alongside general elections is a sensible proposition. It is probable that results would reflect a similar division of public opinion to that of the general election outcome. Another system might result in exaggerated results arising from 'mid-term blues'. The draft Bill's point about mid-term elections disrupting the legislative timetable is reasonable, as is the contingency of not having a Lords election in cases where a second general election follows within two years of the previous one.

Differentiating the role of a reformed second chamber from the Commons

The white paper accompanying the draft bill notes (para. 32)

> *The individuals elected to the reformed House of Lords will serve a long term, and will inherit the important scrutiny role presently exercised by the House of Lords. Their role, and that of the reformed chamber, will be different from that of the House of Commons. For these reasons, it is important that the individuals are elected with a personal mandate from the electorate, distinct from that of their party.*

We strongly agree that the role of a reformed second chamber is to be differentiated from that of the Commons, and that the electoral system can play a part in achieving this. Long non-renewable terms, partial renewal by thirds, and a lack of a single-member constituency relationship, all work in this direction. We agree also that closed list PR on the model of the European Parliament electoral system is not suitable for a scrutinising chamber because it gives the party an inappropriate degree of control over which members will be elected, and does not provide personal mandates. STV and other forms of list PR accomplish this objective.

Electoral districts

Electoral districts are not a particularly critical aspect of the electoral system for the second chamber. Electoral districts are there to ensure that the chamber as a whole is a broadly representative national forum, but there is no sense, in theory at least, in which members are answerable to constituents or there as representatives of a particular area.

The 12 so-called 'Euro regions' are now fairly familiar electoral entities (their significance again underlined in the Parliamentary Voting System and Constituencies Act 2011 which urges but does not quite require that they are the foundation of the allocation of seats). The logic of using them as the basis for second chamber electoral districts is therefore strong – possibly stronger even than the draft Bill recognises.

Table 1: Entitlement by nation and region based on December 2010 electorate and Sainte-Laguë allocation

	80 per cent elected House (80 seats)	100 per cent elected House (100 seats)
Northern Ireland	3	3
Wales	4	5
Scotland	7	9
England	66	83
Eastern England	7	9
East Midlands	6	7
London	9	12
North East	3	4
North West	9	11
South East	11	14
South West	7	9
West Midlands	7	9
Yorkshire and the Humber	7	8

An advantage of list PR over STV in this instance is that it is easier to use larger electoral districts with list PR, and there need be no delineation of boundaries below the regional level.

Districting is an unsatisfactory aspect of the draft Bill; for instance paragraph 43:

> *The Government therefore proposes that the STV Electoral Districts are formed of the nations, and, within England, groups of administrative counties, taking the existing nine regions as the starting point, but allowing for districts to cross the regional boundaries where necessary to ensure a sufficiently proportional result. This will mean districts comprising around 5 to 7 seats in England. There will be a floor of three seats to ensure a proportional result in Northern Ireland, as is the case for the European Parliamentary elections.*

We agree with the exception for Northern Ireland, but urge the government not to be too dogmatic about the size of STV constituencies. While 7 is probably a reasonable ceiling from the point of view of complexity, the results of the Scottish local elections show that smaller STV seats offer a fairly high degree of major-party proportionality[1] and there is no need to insist on a rigid 5-seat floor. Allowing 4-member STV seats would mean that any region with an entitlement of more than four seats could be given a whole number of electoral districts within its region, without the need for complex and probably contentious electoral districts spanning regional boundaries. Insisting on 5-7 member seats would mean a significant number of regions with entitlements of between 9 and 11 members would have to be paired. A single departure for the region of the North East (if there are 80 members to be elected) allowing a three-member seat would not affect overall proportionality. We note also that the best-defined English region,

[1] Lewis Baston *The Scottish Local Elections of 3 May 2007* (Electoral Reform Society, 2007)

London, might need to be paired if 5-7 is taken as an absolute limit. We therefore urge, if STV is to be used, the government to amend the desired size of constituency to 4-7, with exceptions for small regions (Northern Ireland and possibly North East) that may be permitted to have a single three-member seat.

Subdividing larger English regions using counties as the base unit is reasonable, although rather than 'administrative counties' the counties should probably include their 'hived off' unitaries (like Bournemouth in Dorset) and abolished counties such as Berkshire, Cleveland and Bedfordshire should be treated as whole units.

It seems unnecessary to establish an additional institution 'an independent committee of experts' to create electoral districts. The Boundary Commission for England is perfectly capable of subdividing England and allocating seats to districts. If there are 100 seats to be elected at a time, the Boundary Commission for Scotland will also need to designate two districts.

The draft Bill also asserts as if it were axiomatic that there should be, in the government's terminology, 'equally weighted votes'. This assumption needs to be examined, because though the United Kingdom may, according to legal orthodoxy, be a unitary state, it is also a multinational Union, including within it territories that could be seen as developing in practice in the direction of sub-federal level states. Most federal legislatures, particularly those with directly elected second chambers, tend to give some sort of weighting to 'small states' – the United States in a particularly extreme form, but the principle applies in Australia and in the indirectly elected Bundesrat in Germany.

The provision for further review of numbers of members for each electoral district is reasonable, although we note a problem. Population drift will probably cause the entitlements of sub-regional districts to move outside the 5-7 (or even 4-7) band over time and therefore unsatisfactory. We see no reason why sub-regional electoral districts should be locked in place once and for all.

By allowing larger numbers of candidates to be elected at a time, list PR would involve a greater degree of proportionality and representation of smaller parties.

Administrative issues with a regional STV election

The government may wish to consider the practicalities of large scale STV elections using units as large as a middling-sized English region (or the whole of Scotland). A list PR election, as with the European Parliament, can be readily counted manually in parallel by a number of local counting centres, which then report their results to a regional counting centre which aggregates all the completed results, operates the electoral formula (D'Hondt in the case of the European Parliament) and declares the votes for each party and which candidates are elected. This can easily be adapted for an open list PR election by requiring local counting centres to report the personal preferences cast by their voters to the regional counting centre.

Large scale STV elections are different, in that it is hard to see how it could be accomplished without the use of optical scan machine counting or voting by machine. Manual counting is impossible because the regional counting centre would need to determine the order of distributions of surpluses and exclusion of candidates and communicate them to the local centres,

which would then have to conduct a manual count and report back the results to the regional centre. This process would be repeated perhaps ten times. With an electronic element, the problems would be minimised, but at a perhaps considerable initial cost.

The alternative to having every Returning Officer equipped with machines would be to regionalise the counting, as takes place with the London Mayor and Assembly elections which are counted electronically in three counting centres. The implications for the electoral administration profession are considerable, and the practicalities look daunting if the government intends the first election to take place in 2015.

Electronic counting will certainly be necessitated if the method for the transfer of consequential surpluses chosen is the 'Weighted Inclusive Gregory' method as used in Scottish local government.

Vacancies

The provisions for filling casual vacancies are a matter of some concern, and we urge the government to consider alternatives. The proposed mechanism is that (explanatory notes to draft bill, para. 10):

> *A vacancy is to be filled temporarily by a Substitute Elected Member until the next House of Lords election (unless the vacancy arises six months or less before that election). If the former member who caused the vacancy to arise was affiliated to a political party, the vacancy is to be offered to the candidate from the same party who failed to win a seat at the most recent House of Lords election in the electoral district where the vacancy exists, but who gained the highest number of votes. Where the vacancy occurs before the former member's final electoral period, an additional seat will be contested at the next House of Lords election to elect a Replacement Elected Member who will serve for the remainder of what would have been the former Member's term.*

The identification of 'the candidate with the most votes but not elected' is a potentially complex matter. A first preference count would be one possible measure, but it would occasionally produce peculiar results. It is probably more satisfactory, reflecting the overall views of the electorate more closely and more faithful to the principles of STV to use the final preference count, i.e. the total reached by the candidate in the last stage of the count before exclusion (or on the final count if not declared elected on the final count), which is the method the government seems to favour.

We agree that given the long terms of office, an interim appointment should not persist for more than the period until the next partial election. However, the method used to designate which candidate serves the short term is a rather crude one ('largest vote without being elected'). There is a fairer procedure to produce a ranked order result under STV devised by Colin Rosenstiel and used in internal Liberal Democrat elections. If the regular election is for 6 seats, one first counts a 6-member STV election with a quota of 1/7 of the total vote, declares those six elected for the long terms, and then counts a 7-member STV election with a quota of 1/8 of the total vote. The additional candidate elected serves the short term; one will need a contingency in case, as is

possible in a small number of cases, there are candidates elected in 6-member but not 7-member STV.

An advantage of using a list system as opposed to STV is that it creates a simple route for filling vacancies by looking at the next most popular candidate on the list of the party whose seat is now vacant (the election results will create an unambiguous ranking of candidates whichever method of semi-open or open list is used).

Under STV, we recognise that the government's proposal avoids the flaws of by-elections, which 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. This pattern can be observed in AV by-elections in Scottish local government and the Republic of Ireland.

However, the way in which party proportionality is maintained is questionable, because it involves a departure from the principle of STV that voters should determine where their preferences flow. It also depends on the assumption that there are two preferable alternatives.

A possible different approach is the 'count back' system in which the original election is essentially re-counted ignoring the candidate whose departure causes the vacancy. This system will tend to preserve the balance of opinion as originally expressed in the election. It also encourages parties, even if they only expect to elect one candidate in the electoral region, to stand multiple candidates to insure against losing a seat through casual vacancy. This in turn has the benefit of widening voter choice and increasing the chances of the election result producing an acceptable degree of gender and social balance.

Transitional arrangements

The three options offered on transitional arrangements involve variations in the extent to which the removal of existing members of the second chamber is front-loaded.

However, we note that, under any option, the second chamber will only reach its full elected component (either 80 per cent or 100 per cent excluding ministers) after three elections, that is, probably, by 2025.

It would be possible to discuss these options from the perspective of how valuable it is to preserve continuity and stability in the second chamber, with existing members transmitting their experience and working ethos to newcomers; and what kind of overlap would be required to achieve these goals effectively, if they are deemed desirable. From our perspective, option one seems reasonable.

However, 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.

It should, however, be noted that Coalition proposals at present (though the government is open to change in this area) provide for transitional members of the second chamber to be paid a salary,

where previously they received none. While this arrangement would make them equal to new members, it may prove controversial.

The provisions on Bishops, Ministers and hereditary peers

Bishops

The Coalition proposes that there will be a maximum of 12 places reserved in the reformed second chamber for Church of England archbishops and bishops.

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. Consequently this intended measure fails to recognise post-Second World work developments in UK society, including mass inward migration and declining religious adherence; as well as the longer-term presence of Roman Catholics within the UK.

Influenced by these concerns, the Royal Commission on the Reform of the House of Lords argued in 2000 (para. 15.9) that:

> *The Church of England should continue to be explicitly represented in the second chamber, but the concept of religious representation should be broadened to embrace other Christian denominations, in all parts of the United Kingdom, and other faith communities.*

But how representatives of non-Christian faith groups, which are less hierarchical than the Christian churches, would be selected is unclear, and could perhaps inadvertently produce tensions within some communities.

Another option, for which there is much international precedent, would be to provide no specific representation for any faith group in the second chamber.

However, the perfect is often the enemy of the good in terms of Lords reform. If it is in the interests of assembling a consensus to see the Lords reformed to maintain a few bishops in the second chamber, that is one thing. But to increase their relative importance is quite another.

The proportion of members in the second chamber who are there because they are Church of England bishops would rise under the government's proposals for a part-appointed chamber. With a House of 792 peers at present, the 26 bishops are 3.3 per cent of the Lords; with 12 out of 312 the new chamber would be 3.8 per cent bishops. Among appointed members, 12 in addition to 60, as suggested in the draft Bill, would be 16.7 per cent. Whatever the arguments for a presence from the established church, it is strange to increase the relative importance of the Church of England.

12 out of 60 appointed positions going to the Church of England would also restrict the ability of other parts of society (including other faiths and denominations) to be adequately represented.

Ministers

The Coalition proposes that – even under the option of a supposedly fully elected second chamber – it would be possible to include government ministers, appointed to the chamber for as long as they remain ministers. At present the draft bill provides for the Prime Minister to regulate this practice by order; though the government says it is open to the idea of including regulations on the face of primary legislation.

Placing extra-parliamentary ministerial appointments in the Second Chamber is democratically problematic.

If the introduction of directly elected members of the second chamber is seen as a desirable, democratising measure, then this allowance for unelected ministerial members would seem to contradict it.

Furthermore, it seems that these ministers will be able to vote in divisions, bolstering the position of the government in the second chamber. At present, there is no limit on the number of these ministers that may be appointed on the face of the draft bill.

We believe it could not plausibly be claimed that the functioning of government would be seriously undermined were it no longer possible to make these kind of extra-parliamentary appointments.

If an outside individual possessed expertise that was deemed essential, there exists provision to appoint them as advisers (perhaps on a special adviser contract), rather than ministers with executive responsibilities.

Moreover, it seems likely that the proposed reforms of the second chamber would expand the number of individuals in both houses who were, from the point of view of a Prime Minister, potential ministers, rendering less pressing the need to make appointments from outside.

For this reason there is a strong case for not allowing the introduction of extra-parliamentary ministerial appointments into the second chamber. It should probably also be made clear in legislation that ministers can only be drawn from Parliament – at present only a convention.

Hereditary peers

The proposed provisions for hereditary peers present no problems in the overall context of the Coalition proposals.

Other administrative matters like pay and pensions;

It is likely that some critics of these proposed reforms will focus on the claim that they will lead to increasing costs; and because they introduce a salary, rather than just an allowance, for members of the second chamber.

Our view is that issues of democratic principle should be determined first, with costs – within reason – being a subordinate issue. Members of the UK legislature should receive remuneration and other support appropriate to the important task they will be performing.

We would support an emphasis on central research support, shared by all members, to enable them to perform their legislative and policy oversight functions effectively. If the intention is to discourage engagement in constituency casework, then this kind of resourcing may help achieve this impact.

There may be grounds for exploring the possibility that members of the second chamber could be employed on a part-time basis. There may be advantages to its members having outside roles, though subject to careful regulation.

We note that the operating costs of the parliamentary estate will continue whether or not there is reform.

While they are not salaried, peers bring with them costs. There are more than double the number in the House of Lords than are intended to operate in the reformed second chamber. Furthermore, the number of peers is rising.

In 2000-2001, immediately after the removal of most hereditary peers, the figure was 683.

By 2011, though the increase was not continuous, the total was 789.

It can be assumed that this upward trend will continue if reform is not introduced.

There has also been an ever longer-term increase in the overall cost of the House of Lords, without direct elections being introduced (Dorothy Leys, Venetia Thompson and Patrick M Vollmer, 'House of Lords: Expense allowances and costs', House of Lords Library note, 10 August 2010).

In 1957-58, the overall expenditure of the House of Lords (all 2009 prices) was £3,044,000. By 1967-68 the figure had reached £5,408,000. For 1977-78 it was £10,391,000; for 1987-88 £23,234,000; 1997-98 £34,762,000. While there was a drop back from a peak of £125,675,000 in 2007-08 to £102,432,000 in 2009-10, the figure rose again to £111,655,000 in 2009-10.

Whether or not reform is introduced, this upward pressure is unlikely to vanish.

Relevant comparisons with other bi-cameral parliaments

There is no set model of how second chambers are composed and function. However international comparisons make possible certain tentative observations:

Many second chambers internationally are smaller in absolute terms and members per head of population than the House of Lords. For instance the US Senate has 100 members; the French Senate 343; the Australian Senate 76; the German Bundesrat 69. The proposed changes will move the UK closer to these kind of figures, though still leave it appearing relatively large.

The move away from an all appointed chamber and towards direct elections for the second chamber will leave the method of determining members of the UK second chamber less anomalous than it does at present.

However, direct elections are not the only means of determining the membership of second chambers. For instance, France uses indirect elections; while in Germany, the Bundesrat is composed of the state governments of Germany.

It is common for the membership of the second chamber to be determined in a different way to the membership of the first or 'lower' chamber.

Determining new members of a second chamber by stages, rather than in a single direct election (or other means of determining its composition) is an international norm.

Probable fifteen-year terms appear long.

In federal states, the second chamber is often composed in order to give representation to the state components of the federation. Such an approach would be problematic for the UK, particularly given that devolution has not been extended to England outside Greater London.

The UK second chamber is relatively weak in its powers when placed in internationally comparison. Under current proposals, even if existing conventions changed, the retention of the Parliament acts would ensure that this position remains.

Other matters relevant to the introduction of a largely elected House (e.g. name of a reformed House, referendum, applicability of the Parliament Acts etc.).

Name of reformed House

Ideally, it might be argued, the name of the second chamber should be altered, if these proposals are introduced, to reflect its new democratic status. The name 'Senate', mentioned in the white paper, might be appropriate.

But it is in keeping with UK constitutional practice for the name of institutions or offices to retain archaic labels. For instance, the Prime Minister still holds the post of First Lord of the Treasury, despite ceasing in practice to be directly responsible for the Treasury in the mid-nineteenth century.

Referendum

We believe that the most appropriate use of referendums is for major constitutional decisions. This reform certainly falls into such a category; and at the 2010 General Election the Labour Party proposed a wholly elected second chamber as part of a package of reforms upon which it would hold a referendum.

It could be held that since both Coalition parties included in their 2010 General Election manifesto proposals broadly similar to those now being put forward, that there has been endorsement by the electorate and that consequently no referendum is required. However, since all three main parties supported a mainly or wholly elected second chamber in May 2010, most voters had in effect little option but to support a party with this outlook, and were not offered a real choice.

It certainly appears inconsistent that a change as significant as introducing an elected second chamber does not require a referendum; while a possible shift to the Alternative Vote for UK parliamentary elections did; and in future, even relatively minor changes to the position of the UK within the European Union may as well.

The lack of a consistent rationale for the holding of referendums can be seen as associated with the 'unwritten' nature of the UK constitution.

Applicability of Parliament acts

In our estimation it would probably be *legally* possible for the Parliament acts to be used to enact Coalition proposals for House of Lords reform (assuming the bill is not introduced in the House of Lords, in which case the Lords will possess an absolute veto). The express provisions of the acts seem to allow for this legislation to be forced through against the wishes of the Lords; and the acts have been used previously to bring about major constitutional change. Indeed the 1911 Act was introduced specifically with the intention of making it possible to pass legislation providing Home Rule for Ireland. While there might be a legal challenge to a Lords reform act passed using the Parliament acts, we doubt that it would be upheld: though of course, we cannot predict judicial decisions with absolute certainty.

There is a strong possibility that, if these proposals are to become a reality, the Commons will have no option but to use the Parliament acts, since strong resistance is likely in the Lords. The important question will then be not about legality, but whether it is *politically* appropriate to apply the Parliament acts. It will be for the government, and perhaps in particular the Prime Minister, to provide the answer.

In our view, it would be inappropriate for the Lords as an unelected chamber to be allowed to frustrate the will of the Commons, an elected chamber, in order to sustain the unelected nature of the Lords. While it is appropriate for the Lords to seek to block to its maximum ability Commons proposals that serve to compromise democratic values, this reform hardly fits into this category, since it involves democratising the second chamber.

Peerages as honours

Under the Coalition proposals, the link between the peerage and membership of the second chamber will be broken, and peerages will revert to being an honour (para. 23).

We believe that the government already has sufficient – perhaps excessive - honours at its disposal and does not need more.

We are particularly concerned that the proposals appear to leave open the prospect that members of both Houses of Parliament could be granted peerages as a means of securing support for the government.

Any bill brought forward should either abolish peerages altogether, or as a minimum rule out their conferral upon members of either House.

Local councillors

We note that local councillors are seemingly not excluded from membership of the second chamber. We believe it could be valuable both to central and local democracy for individuals to hold dual roles, and would be a much needed means of promoting the interests of local government and Westminster level. This possibility of dual membership also seemingly applies to other elected office holders, other than Members of the House of Commons.

10 October 2011

Written evidence from Dr Julian Lewis MP (EV 47)

Introduction

1. Whenever the topic of House of Lords reform is discussed in the Commons, there is little or no suggestion that an elected Second Chamber would discharge its duties more proficiently or more efficiently than the existing House of Lords. Instead, it is asserted as a self-evident truth that, in the 21st century, all parts of the Legislature must be elected. It is at that point that the arguments for making this change run into trouble.

Would an elected Upper House be regarded as subordinate to the House of Commons?

2. There seems to be consensus that the Second Chamber should continue to be subordinate to the Commons and should also continue its primary function of revising and improving legislation. However, if the whole point of electing the Upper House is to give it democratic legitimacy, then the argument for recognising its status as subordinate immediately disappears. This can be avoided only by giving it less democratic legitimacy than the Lower House; but, if it is unacceptable to have an undemocratic Second Chamber in the 21st century, it is difficult to see why it should be acceptable that such a Chamber should be subject to only an inferior brand of democratic legitimacy.

3. Thus, during debates at the Commons, advocates of electing the Upper House try to justify its proposed subordinate status by relying on the fact that, under the scheme proposed, the Peers or 'senators' – once elected – would not be subject to democratic accountability by having to fact re-election in the future. This is frankly as incoherent as it is inconsistent.

4. In fact, those Members of the Coalition Government most strongly in favour of an elected Upper House – namely, the Liberal Democrats – face an additional paradox arising from the intention that the members of the Second Chamber would be elected by means of proportional representation. It has been instructive to observe the Deputy Prime Minister attempting to maintain that a Second Chamber elected by PR should and would be regarded as subordinate to a House of Commons elected by first-past-the-post.

5. There can be little doubt that the more democratic the Second Chamber is made to be, the more likely it is to cease to be seen as subordinate to the House of Commons. Indeed, there may well be circumstances under which it would be claimed that the elected Second Chamber had a greater democratic mandate than the Commons.

What type of person would sit in an elected Upper House?

6. Given the need to fight and win elections, the same factors which exclude almost all Independents from winning a seat in the Lower House would now remove most of them from the Upper House too. People who had been brought into the legislative process because they had achieved expertise and distinction in their specialist fields could no longer participate. The fighting and winning of elections is largely the prerogative of professional politicians. I have no doubt that many people who decided to leave their previous careers in order to become MPs

might have risen to the top of their professions if, instead, they had remained within them. One of the sacrifices one makes when becoming a professional politician is to abandon that prospect.

7. There may well be Members of the House of Commons who could have become eminent professors or brilliant brain surgeons, but the fact that they had this unfulfilled potential cannot compare with the presence, in today's House of Lords, of bona fide experts who turned their potential into reality. That such expertise will be lost is recognised by those proponents of an elected Second Chamber who suggest that perhaps 20 percent of its Members could continue to be appointed. This would mean a grand total of 60 out of 300 Members – a proportion ill-equipped to substitute for the vast body of specialised knowledge, for example, from the arts, from the medical profession, from the higher Civil Service, from the military, from the legal profession, and from the Church, with which the House of Lords is currently endowed.

8. Effectively, at a time when the House of Commons is reducing its membership by 50, the Second Chamber would introduce up to 300 new party politicians to Westminster. If the Second Chamber is genuinely regarded as subordinate to the Commons, it may also be expected that the more able and ambitious professional party politicians will seek to win a seat in the Commons and will regard election to the Second Chamber as a second-best outcome.

Will Members of an elected Second Chamber be as independent-minded as the existing House of Lords?

9. The answer to this is No – for two reasons. First, as already indicated, elected Members will have to affiliate to political parties in order to have a reasonable chance of electoral success. Many independent-minded people will be extremely reluctant to do this. Secondly, it is highly likely that a Second Chamber of professional party politicians will be subject to the Whips far more rigorously than is currently the case.

10. Ironically, the principal argument used by supporters of an elected Second Chamber to contend that a degree of independence will continue, is that its Members will not have to worry about facing re-election. Thus, the only guarantee that they can give of any continuing independence is in direct proportion to the most undemocratic aspect of the proposed new régime.

What else will be lost as a result of replacing the House of Lords with an elected Second Chamber?

11. As well as a great range of expertise and a high degree of independent-mindedness, the tremendous opportunities given by the present system to amend legislation for the better will largely disappear. Voting in the Second Chamber will become much more tightly organised and disciplined. The result of this will be the mechanical rejection of amendments – no matter how compelling the case for them – just as happens on a weekly basis in the highly structured House of Commons.

12. I speak here from personal experience: in the second half of the 1980s, I was a researcher to the late Lord Orr-Ewing and several other Peers. On three occasions I was able to promote amendments to important Bills which would not have had the ghost of a chance of succeeding if introduced by Backbench Members in the House of Commons. When these amendments to the

Trade Union Bill of 1984, the Education Bill of 1986 and the Broadcasting Bill of 1990 were introduced and debated in the House of Lords, however, votes were won on the strength of the argument and the effect of this, in each case, was to concentrate the mind of the Government so that, when these Bills returned to the Commons, either the amendments were allowed to stand or alternative changes were made to meet their essential points. None of this would have been possible if the Upper House had been as tightly controlled as the Lower House was then – and as an elected Second Chamber would be in the future.

What other disadvantages would apply to an elected Second Chamber?

13. Given that there will be 600 elected MPs in future and 300 elected Members of the Second Chamber if it is reformed, it follows that – under PR – each Member of the latter will be associated with a limited number of Parliamentary constituencies. This is a very different situation from the large number of House of Commons constituencies theoretically covered also by each Member of the European Parliament. I strongly suspect that elected Members of the Second Chamber – whether they liked it or not – would find themselves being approached by constituents from the limited number of seats which they supposedly represented. If they got involved in constituency cases, or indeed in local issues generally, this would cause tension and friction with the relevant constituency's own MP. If they refused to get involved, however, this would cause justifiable resentment on the part of the people who elected them. In the worst days of industrial confrontation, more than 30 years ago, the term 'demarcation dispute' was never far from the headlines. This is precisely what would happen, with a vengeance, when an elected Member of the Second Chamber trampled on the toes of Members of the House of Commons.

Conclusion

14. It is hard to see how an elected Second Chamber will be any more qualified or any better equipped to amend and improve legislation than the MPs in the Lower House where it originated. In the Second Chamber, expertise would disappear, independence would be much reduced, and the opportunity to win changes in legislation on the strength of the argument, rather than of the party machine, would all but cease to exist. There would be issues of primacy, legitimacy and demarcation between the Members of both Houses: often the result would be friction or even deadlock.

15. So adverse would the effects of an elected Second Chamber prove to be that there is a credible case to be made for having no Second Chamber at all, rather than one which led to such outcomes. Nevertheless, by sensibly adjusting our existing appointed House of Lords (for instance, with arrangements to ensure minimum acceptable levels of participation) we could keep in being a system with which there is no perceptible public dissatisfaction and which admirably serves our legislative process.

18 October 2011

Written evidence from Donald Shell (EV 48)

I offer the following comments on the White Paper and draft Bill, recognising that these exclude many areas of concern. I hope they may be of some interest and possible assistance to the members of the Joint Select Committee.

Strengthening the Second Chamber and strengthening Parliament.

The crucial test for any reform of the House of Lords is whether or not such reform can reasonably be expected to contribute to strengthening Parliament as a whole in relation to the Executive. The argument for a largely elected House was frequently made in the past because it was felt that the Government could always dismiss the views of an unelected House too easily, and frequently did do so. The Conservative Party Home Committee in 1978 recommended a two-thirds elected House (elections by thirds for nine year terms) precisely because the existing House was unable to resist what Lord Home called "mandated majority government" and what Lord Hailsham characterised as "elective dictatorship".

Matters do look somewhat different today. There is more evidence of MPs collectively seeking to "shift the balance" of power from the Executive towards Parliament (Eg, the select committee system; the Wright Committee reforms). And MPs generally appear less submissive to the party Whips than a generation ago. Furthermore the House of Lords has become a gradually more assertive institution from the 1960s onwards and more particularly since the 1999 Act.

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 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.

Elections to the Second Chamber

Taking the latter point first the draft Bill proposes exactly this. Elections by thirds, for lengthy single terms, on a regional basis, by STV are all factors that ensure the future second chamber will have a very different dynamic to that of the Commons. Combined with the retention of an appointed element they ensure the House will be unable to claim an electoral mandate in the way that a Commons majority can.

Fifteen year non-renewable terms have been much criticised as negating the accountability of elected members. While accountability to the public is one aspect of democracy this has to be balanced against other principles. Party Whips may be fearful of the consequences of having members who serve lengthy single terms, but if this ensures a greater independence from the party Whips, it could well be argued that such a pattern of election will enhance the personal

responsibility of elected representatives to their own values upon which the electorate have passed judgment at the time of their election.

The proposal to have fifteen year terms is in part driven by the decision to link elections to those for the Commons, within the new context of fixed five year parliaments. However the draft Bill contains the proviso that if a general election occurs in the first two years of the lifetime of a parliament this will not trigger elections to the second chamber; rather the length of term of those elected will be extended. This could result in members individually having a term of up to 21 years. I think this is definitely too long.

The arguments for tying elections to the second chamber to elections to the Commons are that a higher turnout can be anticipated, and that having this electoral (and appointment) cycle would avoid the possibility of having a change in the personnel involved in scrutinising legislation in one chamber mid-way through a parliamentary session. I don't think either of these arguments are convincing.

While the convenience of the electorate should be one consideration in devising an electoral system, it is by no means an over-riding factor. Holding elections for both Houses on the same day would probably result in elections to the second chamber being eclipsed in terms of campaigning by elections to the Commons.

Having some change in the legislators handling particular Bills at one end of Westminster mid-way through the passage of a Bill may impose some difficulties but could also be beneficial in refreshing the process by which the Bill is being scrutinised.

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 simultaneously with local elections for most of the electorate. If this alternative was adopted it might well be considered reasonable to allow individuals elected to serve a maximum of two terms. This would slightly re-balance the electoral system from independence towards accountability.

Powers of the House

The intention embodied in the draft Bill is that the primacy of the Commons should be undiminished, and more broadly that the role of the House of Lords should be unchanged by the Bill. For this reason the Bill does not address the powers or functions of the House. I can understand this approach but I think it is mistaken. The draft Bill has aroused considerable concern because of the fear that it will result in a second chamber that undermines the primacy of the first chamber.

The present relationship between the two Houses is governed by the Parliament Acts, by Standing Orders relating to the financial privilege of the Commons, and by Conventions. The possibility of codifying the Conventions involved was considered by the Cunningham Committee which rejected the idea, though the Committee did recognise that if the composition of the Lords were to be altered the present conventions may no longer hold.

I agree that conventions cannot be codified in legislation. To attempt to do so 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. If conventions were codified in legislation they would cease to be conventions.

However, 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 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.

The Lords veto over secondary legislation should be replaced with a right to delay such legislation for a short set period (I would suggest three months).

A non-legislative motion passed on division in the Lords should (as now) have no power to prevent or delay Government action.

Embodying these changes in new legislation would help to reinforce the principle of Commons primacy. This would also make the role of the second chamber in exercising power more transparent and less clumsy. Doing this would obviate the need for elected legislators in the second chamber to compromise the integrity of their House by feeling pressured into giving way against their own better judgment. This would improve parliamentary accountability to the public by making clearer to the electorate at large when a serious disagreement between the Houses had taken place and how power had been exercised to resolve this.

An Appointed Element

One of the distinctive and I believe very valuable features of the existing House is the way party politicians mingle with those whose expertise and achievements lie in areas utterly different from politics. The House of Lords has brought into Parliament many people in recent years who have made considerable and distinctive contributions to the work of parliament but whose career backgrounds have lain outside of politics. If the cross bench element were lost then the role the House was able to perform would certainly change. As has been widely pointed out this element is unlikely to attain membership of the House through election.

I am therefore a strong supporter of a mixed membership House. The draft Bill proposes a 20 per cent appointed House. I think this is a minimum and would have preferred a higher proportion of appointed members, say one-third.

Some commentators have expressed anxiety that a House composed of elected and appointed members would prove problematic. I don't think this will be a significant problem; it is worth noting that throughout its history the House has had diverse forms of membership: Lords Spiritual and Lords Temporal; peers by creation and peers by succession; life peers and hereditary peers. Having both elected and appointed members serving the same terms and under the same

conditions of service is I think important, as is the need to set out clearly the reasons for having appointed as well as elected members.

The Bishops.

I think it is unwise to retain Bishops as ex officio members in a smaller and more professional House, not least from the point of view of the Bishops themselves. The difficulties of their position will be aggravated by the fact that five of the twelve places kept for Bishops will be taken by the two Archbishops and London, Durham and Winchester, thus imposing a much heavier burden on the remaining seven than is currently borne by the 21 senior diocesan bishops who are members. Contributing in a sustained and responsible way to the work of a professionalised House overwhelmingly composed of full-time members will be difficult for serving Bishops all of whom bear major responsibilities within their dioceses.

But even if the Bishops themselves deny this and make heroic efforts to contribute to the work of the House, the fact remains that their presence in the House is widely perceived as anomalous because they represent one Church from only one of the four constituent parts of the United Kingdom.

It has been argued that removing Bishops from the House is tantamount to disestablishing the Church of England. But this is a mistaken view. 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.

The overall size of the House

The Government has argued that it wishes the reformed House to continue with its present role. I think this will be difficult in a House reduced to 300 members; it would be unfortunate to launch a reformed House unable to scrutinise legislation as thoroughly or one that had to curtail the select committee work at present undertaken. One reason for fixing a low membership is probably to limit the financial cost of the House, but it may be better to recognise that hitherto the costs of the second chamber have been artificially low because it has been a quasi voluntary body.

Government ministers

I think it is a mistake to give to the prime minister of the day the right to appoint ministers whose membership of the House would begin and end with their ministerial appointment. Personally I would exclude this possibility altogether, but if it is allowed a low limit should be placed on the permissible number of such appointments.

17 *October* *2011*

Written evidence from the All Party Humanist Group (APPHG) (EV 49)

1. The All Party Parliamentary Humanist Group (APPHG) brings together MPs and Peers from across the Parties and some with no Party affiliation. It does not take a position on Lords Reform as such but the issue of the position of the Church of England Bishops sitting in the House as of right is one that the Group has considered for some time. At the Group's AGM in 2010 it agreed that one of its priorities was to examine this issue further and make representations to the Joint Committee. In November 2010 the chair of the APPHG, the Rt. Hon. Lord Warner of Brockley, wrote to the Rt. Hon. Nick Clegg to detail some concerns the APPHG has with Bishops in the House of Lords. In light of the White Paper and Draft Bill which, regrettably, include proposals to retain reserved places for Bishops in the House of Lords, the APPHG would like to reiterate its position in this submission for the consideration of the Joint Committee.

2. The White Paper and Draft Bill make a number of specific proposals regarding how many places for Bishops should be retained in a reformed House of Lords, and on what basis. The APPHG does not consider that there should be any reserved places for Church of England Bishops – or any other religious representatives – in a reformed chamber and therefore limits this submission to setting out just two arguments for not retaining the privileged and automatic right for Bishops to sit and vote in the House of Lords. These are about equality and fairness to other religion and belief systems; and about the establishment of the Church of England.

3. In any reformed House of Lords – elected or part elected and part appointed – there are no grounds for reserving a set number of places for Church of England Bishops, even at a reduced number as the White Paper and Draft Bill propose. This privileged position 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. This would be discriminatory in terms of religion and gender.

4. This is not to say that no Bishops in the Church of England should have a place in reformed chamber but this would have to be done on a basis that was equal to others and using the same transparent criteria. For example, should a reformed chamber only be partially elected – as the White Paper and Draft Bill propose – there is no reason why Bishops should have a privileged place in an appointments process compared with other religious leaders or representatives or indeed anybody else. The candidature would be dealt with on the same basis as any other appointed candidate.

5. The issue of Bishops sitting in the House of Lords is quite separate from that of the established status of the Church of England. Bishops sit in the House of Lords

by virtue of the 1878 Bishoprics Act. The establishment of the Church of England rests upon Parliament's power over its legislation and the Sovereign's requirement as its Supreme Governor to be in communion with it. These are two quite separate issues as was made clear in the 1999 report by the Cabinet Office, *Modernising Parliament. Reforming the House of Lords*. Whether or not the Bishops sit in the House of Lords does not affect whether there could or should be an established Church of England.

6. The APPHG would be happy to provide any further information or clarification as the Joint Committee requires.

7 October 2011

Written evidence from Rt Hon Peter Riddell (EV 50)

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

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

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

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

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

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

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

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

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

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

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

11. Any change in composition involving a substantial reduction in the number of distinguished outsiders appointed both as party political and crossbench peers would also affect the contribution made by the second chamber. At present, the claim of the Lords to be

a revising chamber rests not only, politically, on the absence of a majority for the governing party, or now parties, thus permitting the amendment of bills, but also on the extensive expertise which enhances scrutiny of legislation and ministerial actions. The removal of many, if not most, of the peers with such expertise would weaken this aspect of the second chamber's contribution.

Broader Reform Process

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

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

14. The key issue is, however, the ballooning size of the House of Lords which is creating an unwieldy chamber. The proposals so far agreed by the House for voluntary retirement by taking permanent Leave of Absence are likely to have only a tiny impact. Proposals for a moratorium on new creations risk leaving an ageing chamber and excluding talented new members. Any interim bill should involve a compulsory retirement scheme, probably like the scheme adopted in 1999 for hereditary peers whereby each group, including the crossbenchers, elected those who should remain. This would be a total for each group proportionate to the current balance and in line with the overall reduction in the size of the Lords. This would be both more practicable and acceptable than fixing an age limit or a retrospective time limit. However, future appointments should be made for a fixed term of, say, 15 years. In time, this would reduce the number of aged members in the House.

15. More radically, short of a move to a fully or partially elected House, the Joint Committee should consider ending the connection between membership of a second chamber and honours. The 1999 Act ended the connection between the peerage and membership of the House of Lords. That could be extended with new creations, who would become ML, member of the Lords. That would not affect existing members of the Lords, or hereditary peers not among the 92, unless they chose to adopt that style. Any Prime Minister would be free to recommend to the Sovereign that the honour of peerage should be awarded to some

outstanding people, who would not have the automatic right to sit in the second chamber, though some might separately be appointed as MLs. Such a change would probably end any allegations about loans for peerages and the like.

23 July 2011

Written evidence from Unlock Democracy (EV 51)

About Unlock Democracy

Unlock Democracy (incorporating Charter 88) is the UK's leading campaign for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility. Unlock Democracy runs the Elect the Lords campaign to campaign for an elected second chamber. For more information about Unlock Democracy please see www.unlockdemocracy.org.uk

About this submission

In addition to writing our own response to the draft Bill, Unlock Democracy sought the views of our members and supporters. We ran a brief online survey on the key elements of the draft Bill as well as handing out leaflets at street stalls. We agreed to forward any comments people made regardless of whether or not they supported our policy. Over 4,100 people took up our offer, either filing in detailed comments on specific aspects of the proposals or just answering the survey. Many chose to do both. After discussion with the committee clerks we have submitted over 4100 individual responses as a separate word document but we refer to the survey results throughout our submission and the data set is included as an appendix.

Executive Summary

Unlock Democracy supports the following:

2) A fully directly elected second chamber with broadly the same powers as the current House of Lords;
3) Members elected in halves for renewable 8-10 year terms;
4) An electoral system that gives the voter choice between individual candidates and political parties such as the Single Transferable Vote or a number of open list systems;
5) A considerably smaller reformed second chamber, between 250 and 350 members;
6) Experts should be brought into the second chamber through the Committee system to consider specific Bills rather than as full time members of the legislature;
7) Government Ministers should not sit in the second chamber so that there is a clear distinction in roles and powers between the two chambers;
8) The second chamber should have a role as a 'chamber of the union' representing the nations and regions of the UK at Westminster;
9) Members of the second chamber should be barred from standing for the House of Commons for a lengthy period;

10) There should be no places reserved for religious representatives in the second chamber;
11) The second chamber should be called the Senate;

How the draft Bill fulfils its objects

1. Unlock Democracy very much welcomes the fact the government has published a draft bill. In the one hundred years that electing the second chamber has been seriously discussed, this is the first time that a government has presented a bill to Parliament. This is a significant step forward in its own right. We also welcome the fact that the Bill has been published as a draft and can benefit from pre-legislative scrutiny.

2. Unlock Democracy is broadly supportive of both the proposals and drafting of the Bill. We are pleased that the government is moving ahead with plans for an elected second chamber, selected on a different basis to the House of Commons and that they are proposing to end the link between the Peerage and membership of the legislature. The white paper clearly sets out that some elements of the policy are still open for debate and we have entered into this consultation in that spirit. There are some areas where we take a different view from the government. For example we believe that members of a reformed second chamber should be elected for terms of no more than 10 years, that they should be able to stand for re-election once and that the house should be elected in halves rather than thirds.

3. While we understand the stated logic behind drafting the legislation for the most complicated options, but leaving some questions open in the white paper, as an organisation that supports a fully elected second chamber we would have preferred to see this included in the draft bill.

4. One criticism that we would make of the white paper and draft Bill is that they very deliberately sidestep the issue of the powers of a reformed second chamber. The White Paper simply states that the powers would be the same as for the current House of Lords. Unlock Democracy does not accept that an elected second chamber will undermine the supremacy of the House of Commons but we think that this concern should have been addressed in these proposals. We have outlined below how we would do this.

The effect of the Bill on the powers of the House of Lords and the existing conventions governing the relationship between the House of Lords and the House of Commons

5. It has been asserted that an elected second chamber would no longer be bound by the Parliament Acts or the conventions that currently govern the

relationship between the two chambers. Unlock Democracy does not accept this argument.

6. The example of the Australian Senate also demonstrates that it is possible for a directly elected second chamber, even one with more formal powers than the House of Lords, to be constrained by convention. Even though the Senate can, periodically, make life very difficult for Australian governments, there is no attempt to try and move beyond being a reviewing chamber. The Australian Senate passes 74% of Bills sent to it without making any changes[1], leaving the House of Representatives clearly the prime chamber.

The role and functions of a reformed House;

7. Unlock Democracy and its predecessor organisations have long been committed to the reform of the House of Lords. We believe that a second chamber has a crucial role to play in the British constitution. Wherever a Parliament has only one chamber, the dominant party within it is in a position to abuse its power. Particularly in the UK, where the House of Commons is dominated by an unusually strong Executive, it is vital that a second chamber – democratically legitimate, and constituted differently from the lower House – exists to hold it in check.

8. Like the Government, we envisage a reformed second chamber as a deliberative body, complementing rather than duplicating the work of the Commons. It should provide additional capacity to an overburdened lower House, bringing a different perspective to the review of legislation and serving a discrete constitutional role.

9. In addition Unlock Democracy believes that the second chamber should play a specific role in representing the concerns of the nations and regions of the United Kingdom at Westminster. As the second chamber is elected on a different basis to the House of Commons, with considerably larger constituencies and with no mandate for constituency work, they can take a broader view when scrutinising policy. This is a role carried out effectively by the Australian and US Senates, although they do this through malapportionment of seats whilst we would prefer to use the electoral system and a minimum level of candidates per electoral district to ensure fair representation.

10. Unlock Democracy supports a reformed second chamber exercising the same powers as the current House of Lords. Specifically we believe the second chamber should be able to delay legislation for one year as is currently the

[1]Stanley Bach, "Senate Amendments and Legislative Outcomes in Australia, 1996–2007", Australian Journal of Political Science 43, no. 3 (September 2008), p 409 cited in Renwick A House of Lords Reform Briefing Political studies Association 2011

case. Unlock Democracy also believes that the reformed second chamber should retain the power to veto secondary legislation. Secondary legislation receives very little scrutiny and the power of veto provides an important if rarely used check on this power.

11. Unlock Democracy believes the second chamber should develop its current role in protecting certain constitutional principles. Currently the Parliament Acts give the House of Lords a specific role in preventing a Parliament being extended beyond five years without a general election. We believe it would be beneficial for the second chamber to take on a similar role in relation to core constitutional documents. There would need to be extensive consultation over exactly which Acts or constitutional principles should be included and what the level of protection there should be. It may be for example that it would be determined that certain constitutional documents such as the Scotland Act 1998 or the Human Rights Act would be exempt from the Parliament Acts or could not be repealed without a two-thirds majority in the second chamber.

The means of ensuring continued primacy of the House of Commons under any new arrangements

12. The debate on how the primacy of the House of Commons should be maintained is an important one. Unlock Democracy is committed to the House of Commons remaining as the prime chamber within the UK legislature. However we also campaign for a stronger Parliament and accountable government, and do not accept that the pre-eminence of the House of Commons should mean that it always gets its own way.

13. Unlock Democracy accepts that it is likely that an elected second chamber would be more willing to use the powers that it has. Dr Meg Russell of the Constitution Unit at UCL has published a detailed analysis of the Government's defeats in the House of Lords since the removal of the hereditary peers in 1999[2] which suggests that an elected second chamber would be more assertive in its dealings with the House of Commons. The significance of this research is not the number of defeats which the last Labour government suffered, which although high was comparable to other Labour governments[3]. Rather this research shows quite clearly where the House of Commons has rejected Lords amendments, the second chamber has, since the removal of the hereditary peers, become more assertive and has been more willing to insist upon the changes it wants.

14. However it is important not to overstate the significance of this change. It is still the case that much more frequently the House of Lords agrees to give in

[2] http://www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords/lords-defeats

[3] http://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-govtdefeats/ accessed 1 October 2011

and accept the decision of the House of Commons. This is not the second chamber challenging the primacy of the House of Commons; it is merely exercising its existing powers. Unlock Democracy sees this as part of a stronger Parliament using checks and balances to hold a powerful Executive to account, rather than a challenge to the primacy of the House of Commons.

15. Unlock Democracy recognises that there will sometimes be disagreements between the two Houses in Parliament, as indeed there are now. We believe that there needs to be a formal process for resolving any disputes that may arise. Currently this is managed through the use of conventions. Unlock Democracy believes that an elected second chamber would benefit from a more formal structure, such as Joint Committee to deal with such issues as may arise and to foster an effective working relationship between the two Houses.

16. Joint Committees are a common tool in bicameral parliaments for resolving disputes between two chambers, although some are less effective than others. We would be keen to see a Joint Committee set up along the lines of the German and US models whereby the committee is permanent, created at the beginning of each Parliament, with senior members of both houses chosen to serve on the committee. Although the committee being permanent means the members may not be familiar with the detail of the Bill in question, it allows the members of the committee to build effective working relationships and may also help to take some of the heat out of the debate.

17. Interestingly in the online survey that Unlock Democracy conducted, of the 3659 respondents 2690 supported the creation of a Joint Committee to resolve disputes once a Bill had been rejected twice by the second chamber. The other popular option was that the House of Commons should be able to override a veto with a super majority - if two thirds vote in favour of the disputed Bill. This system which in Japan and a version of this is used in Spain. However we believe that negotiation through the committee rather than a more adversarial super majority vote is a more constructive way to resolve differences between the two chambers.

18. Unlock Democracy believes that there should also be structural constraints built in to the design of a reformed second chamber to ensure the primacy of the House of Commons. These are addressed in more detail below but would include the use of staggered elections and government Ministers being selected from the members of the lower house.

The size of the proposed House and the ratio of elected to non-elected members;

19. Unlock Democracy supports a fully, directly elected second chamber. This is consistent with the will of the House of Commons expressed in the vote of

March 2007. Although both the 80% and 100% elected options received majorities, it was only the fully elected option that received an absolute majority from across the House. Also in the immediate aftermath of the vote in the House of Commons, ICM conducted a poll for Unlock Democracy that found the public supported a fully elected chamber by more than 2-1.[4] In the recent online survey that Unlock Democracy conducted, of the 3987 respondents that answered this question 57.69% supported a fully elected second chamber while 29.90% favoured an 80% elected chamber. Only 12.42% supported other options for reform.

20. It is often argued, including by those who support an elected second chamber, that a small number of appointed members should remain in the second chamber to guarantee an independent, expert chamber, to allow for the appointment of under-represented groups and to facilitate the appointment of Government Ministers to the second chamber. Unlock Democracy does not support these arguments and we set out alternative responses to these concerns below.

Independence

21. The House of Lords is often held up as an example of a less partisan chamber that benefits from the presence both of members who have no party affiliation and more independent minded representatives of the parties. Unlock Democracy does not support this assertion.

22. Dr Meg Russell and Maria Sciara's detailed analysis of votes in the House of Lords from 1999-2006[5] showed that while there were various groups from the independent Crossbenchers and Bishops, to party rebels and opposition parties that could contribute to a government defeat, the key factor in most cases was the opposition parties voting cohesively. In other words the government was more likely to suffer a defeat because of strong partisan voting than the presence of a significant group of independents in the chamber.

23. Rebellions in the House of Commons generally receive more media attention than those in the House of Lords. In part this is because they are more obvious; there are a number of reasons, other than a rebellion that governments can be defeated in the Lords. Party discipline is also generally

[4] Asked "MPs have recently decided that the House of Lords should be fully elected. Do you approve of this decision or disapprove?" the survey of 1,003 people polled by ICM found that 63% supported the reform, compared to just 26% who disapproved. See http://www.unlockdemocracy.org.uk/?p=710 for full details

[5] Meg Russell and Maria Sciara, "The Policy Impact of Defeats in the House of Lords", British Journal of Politics and International Relations 10 (2008), 517–89

accepted to be weaker in the Lords than the Commons so defeats are not seen as such a threat to the government's authority.

24. The website www.publicwhip.org.uk provides statistics on the voting records of both MPs and Peers and how often individuals take a different view from the main party group. Analysing the number of rebellions in both chambers since 2005, we found that not only are there slightly more rebellions in the House of Commons than the House of Lords but also that rebellions in the House of Commons are more likely to involve more than 10 people than in the House of Lords.
25. Using the public whip data and their definition of rebellion, we found that in the 2005-2011 period at least one person rebelled in 50.53% of divisions compared to 47.74% in the House of Lords, although there were fewer votes in the House of Lords. Dr Alan Renwick has analysed the public whip data differently, looking at rebellion levels within party groups and found that although rebellion rates are slightly higher in the House of Lords they are still very low[6].

26. It is also interesting to note that when rebellions happen in the House of Commons they tended to be larger - 17.05% of rebellions in the House of Commons involved 10 or more members rebelling compared to 10.24% of rebellions for the House of Lords.

27. It is too early in this government's term to look for trends in voting patterns, but it is interesting to note that the chamber does seem to have been more explicitly partisan, as demonstrated by the response to the Parliamentary Voting System and Constituencies Act, since the recent appointment of a large number of former MPs.

28. Unlock Democracy welcomes and supports the presence of independents in UK politics. However we do not believe that appointment is either the best nor only means of giving independents a voice in our legislature. We explore the ways in which independents can be encouraged through different electoral systems below.

Expertise

[6] Alan Renwick House of Lords Reform Briefing Political studies Association 2011p16

29. Unlock Democracy agrees that the legislative process can benefit substantially from the involvement of experts. We do not, however, agree that such experts must be full-time members of the legislature in order to have an influence.

30. It has also been argued that a reformed chamber must include an appointed element in order to ensure that the chamber has sufficient expertise to perform its deliberative duties.

31. This idea is to be rejected. Firstly, the current House of Lords is the clearest sign that appointment is not by any means a foolproof way of introducing expertise. A large plurality of sitting life peers – 41.57% – are drawn from active party politics, having served as MPs, MEPS, councillors or party officials; only 26.51% are current 'experts'. When we look at the Crossbenchers as a group who are appointed for their independence and expertise, only 45.71% of Crossbenchers are expert (10.5% of the House of Lords as a whole).

32. Our full analysis of expertise in the House of Lords is included in Appendix 2. It is very difficult to objectively assess expertise and there is a risk that any such classification can become arbitrary. However we used publicly available biographical information to assess seniority in a career before entering the House of Lords and the length of time since that position was held. This meant that peers who continue to practice their main career whilst also attending the House of Lords received higher scores than those who had retired.

33. One of the arguments in favour of retaining an appointed element to the second chamber is that experts would not be willing to stand for election. We do not find this a compelling argument. Two-fifths of the current membership of the House of Lords have either worked in politics or already stood for elected office so it is reasonable to assume, this experience could be gained through election.

34. We also question the idea that a chamber needs an internal cohort of experts to perform a deliberative role, and doubt their general value to such a chamber once appointed. Many expert members have a valuable contribution to be made in their field – such as sociology, or human fertility – but would be expected to vote on all issues whether versed in them or not. It is far preferable to have a chamber where expert advice is sought externally as needed – for instance, through the use of select committees or special Bill Committees – and where the final vote falls to democratically elected representatives of the people, who have been suitably informed.

35. One ongoing issue regarding the presence of independent experts in the House of Lords is the levels of attendance that are expected. One reason for the relatively low impact of the Crossbenchers on votes in the House of Lords is that with some notable exceptions they attend and vote far less frequently than party appointees. Dr Meg Russell and Maria Sciara[7] found that crossbenchers voted on average in just 12 per cent of the divisions they could have voted in between 1999 and 2007, compared to 53 per cent of divisions among Labour members, 47 per cent for Liberal Democrat members, and 32 per cent for Conservative members.

36. Unlock Democracy believes that expertise can more effectively be brought into the legislature though the appointment of special advisers to select committees or to committees to consider specific bills rather than through full time membership of the second chamber. This would ensure that the expertise called in was always relevant and up to date and would not mean that experts had to choose between their existing careers and advising on legislation in their field.

Gender and Ethnicity

37. Some have suggested that an appointed element should be preserved because it will allow for the adequate representation of women and ethnic minorities in the reformed chamber.

38. It is absurd that a chamber composed entirely of elected representatives should be rejected on the grounds that it will not be representative enough. As Unlock Democracy outlined in its evidence to the Speakers Conference on the Representation of Women and Ethnic Minorities in the House of Commons, the most effective means of increasing the representation of under-represented groups is to move to a proportional electoral system with multi-member constituencies.

39. Internationally, the countries that have more representative politics also have multi-member constituencies. This is the case even where there are no quotas in operation. Where parties have the opportunity to nominate more than one candidate they are more likely to nominate a balanced slate than if they can only nominate one candidate. If only one candidate can be nominated, parties will often choose the white, male candidate as he is seen as the more broadly acceptable candidate. The myth that women candidates lose votes has wide currency in constituency parties. Often discrimination is justified by blaming the voters, arguing (incorrectly) that the voters would not vote for a woman and the relevant Party could not risk losing the seat. However the Fawcett Society has shown that voters do not penalise women

[7] Meg Russell and Maria Sciara, "Independent Parliamentarians En Masse: The Changing Nature and Role of the 'Crossbenchers' in the House of Lords", Parliamentary Affairs 62, no. 1 (2009), 32–52, at p41

candidates. The problem is that political parties do not select women in sufficient numbers in safe or winnable parliamentary seats[8].

40. Multi-member seats also offer parties the choice of a number of different pro-active measures for selecting candidates from under-represented groups. In the UK, All Women Shortlists are the most well known and controversial form of positive discrimination but there are other mechanisms for encouraging selection of women candidates. For example in list electoral systems some parties 'zip' the party list so that every other candidate is female. Other parties use quotas, often thirds, for candidate selection so that at least a third of the list must be male and a third must be female. Of course it is not just getting on the list that is important but the position on the list which is why this technique is often combined with a quota for the top of the list so that at least one of the top three candidates also has to be female.

41. It should also be noted that these measures can also be used for electoral systems, like STV and open lists, that allow voters to choose between candidates as well as parties and not just closed list systems. Voters of course have the prerogative to choose not to elect female candidates but evidence suggests that this is not the main barrier to women's' representation. Indeed in Norway in 1971 women's organisations took advantage of an open list system used in local government elections to dramatically increase the level of women elected. They were able to do this because the type of open list system that was in use, allowed voters to strike through the names of candidates they did not want to support. So although the parties chose the orders of the list campaigners urged voters to go down the list of the party they wanted to support and cross out the male candidates until they reached a female candidate. As a result of this campaign the number of women elected to Councils in some cities rose from around 15-20% to a majority of the Council. Although there was some backlash to this campaign at the next election it changed the way in which political parties in Norway approached drawing up party lists.[9]

42. Unlock Democracy does not believe that reform of the second chamber should be entered into on the assumption that the process by which 80% of members are elected is so drastically flawed and unrepresentative as to need external correction. The focus should be on establishing an electoral system that takes proper account of voters' needs and wishes, rather than adding undemocratic buttresses to account for an existing system's flaws.

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[8] J. Lovenduski, and L. Shepherd Robinson, *Women and Candidate Selection in British Political Parties*, Fawcett Society (London: 2002).

[9] For more information see Maitland, Richard E, Enhancing Women's Political Participation: Legislative Recruitment and Electoral Systems http://www.onlinewomeninpolitics.org/beijing12/Chapter3_Matland.pdf

43. Unlock Democracy hopes that the opportunities implicit in creating a new chamber, to ensure that the chamber is more representative and takes advantage of more modern family friendly working practices, are seized. It is very rare in the UK context to consciously design a legislative chamber rather than seek to reform something that has evolved over time. We already have evidence from the creation of the Scottish Parliament, as well as the Welsh and Northern Irish Assemblies, that new bodies can lead the way both in increasing the level of women represented in politics but also in modernising working practices such as the reporting of expenses and engaging the public through the use of petition committees.

44. Finally, while the present House of Lords is slightly better in terms of gender balance and ethnic diversity compared to the present House of Commons, it is worth noting that it is only recently that levels of female representation in the House of Lords have begun to improve. Despite having none of the barriers frequently ascribed to elected chambers, the appointment process has repeatedly failed to produce a genuinely representative second chamber; if appointment worked, there is no reason why it should not produce 50:50 gender balance. There is certainly no evidence that appointment is inherently better for women or ethnic minorities, significant progress can be made in elected chambers if political parties are willing to act.

Size

45. The UK is unusual in having a second chamber that is considerably larger than the first. Unlock Democracy supports the view in the White Paper that the current House of Lords is too large. Partly this is a result of the differing views of membership in the House of Lords and the conflation of the honours system with membership of the legislature. We therefore welcome the fact that the government proposes to break this link.

46. Unlock Democracy agrees that the second chamber should be smaller than the House of Commons in recognition of its different functions and the lack of any constituency role for members of the second chamber. A smaller chamber would also encourage deliberation and a more collegiate method of working than the adversarial House of Commons.

47. Average daily attendance in the House of Lords has increased by 26.3% to 497 in 2010/11 from 394 in 2009/10[10]. Even if the reformed second chamber were reduced to the 2009 figure, this would still leave the UK with one of the largest second chambers in the world. Unlock Democracy believes that the

[10] House of Lords Briefing Note System of financial support for Members http://www.parliament.uk/documents/lords-finance-office/2011-12/briefing-note-april.pdf

scrutiny and revision functions required of the second chamber could be delivered by a full time chamber of between 250-350 members. Therefore we are content with the government's proposal for a chamber of 300 members. Although this would be a significant reduction in the size of the second chamber, we do not believe this would not undermine the current structures and methods of working. Rather it would take into account that all members would serve on a full time basis and would be given adequate staffing support to carry out their roles.

48. Part of the reason why the House of Lords relies heavily on part-time professionals who work outside the House is that members are not paid a salary, receive only a small attendance allowance and have little research and administrative support. Lack of salary also reinforces the metropolitan, affluent profile of the membership of the House of Lords.

A statutory appointments commission

49. Unlock Democracy supports a fully elected second chamber. However if we were to retain an element of appointment we would expect this process to be managed by an Appointments Commission rather than by political patronage. Equally we believe that any members appointed to the second chamber should be from a non-party political background.

50. We share the concerns of many at the way in which large numbers of political appointments were made after the last election. David Cameron has created more peers more quickly than any of his post-war predecessors, having ennobled 117 people in less than a year. This is unsustainable in an already overly large chamber. We also note the concern of Peers at the "fractious atmosphere"[11] created by the appointment of so many ex-MPs to the second chamber.

The electoral term, retirement etc

51. The government proposes that members of the second chamber should be elected in thirds for, periods of the 15 years and that they should not be able to stand for re-election at the end of their term. Unlock Democracy is sympathetic to the thinking behind these proposals although we do not come to the same policy conclusions.

[11] Russell, Meg House Full: Time to get a grip of Lords Appointments Constitution Unit 2011 http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/152.pdf

52. It is common in elected second chambers for elections to be staggered. This helps to ensure that although both chambers are have elected members and therefore have legitimacy the second chamber's mandate is never more recent than the first. It also ensures that there is an element of continuity and institutional memory as it is not possible for all members to be replaced in one election.

53. There are also examples of elected second chambers where the term of office in the second chamber is longer than in the first. This helps to differentiate the two chambers and longer terms can help to create a different culture in the second chamber, as members are not so focused on seeking re-election and can take a longer term view.

54. However a 15 year term is exceptionally long, even for a second chamber. It is two or three times the length of term for many elected second chambers around the world and over a third longer than the longest term currently in operation - 8 years in Brazil and Chile[12]. While France used to have terms of 9 years in the second chamber this has been reduced to six years which is only one year longer than the lower house.

55. Whilst we understand how the government came to this proposal by wanting staggered elections and a link to the term of the House of Commons which has now been fixed at five years, we believe that 15 years is too long and does not provide for any accountability.

56. Unlock Democracy would prefer 8 year term of office, linked to two 4 year terms of the House of Commons, however that is no longer appropriate as the term for the House of Commons has been set for 5 years. Therefore we recommend that members of the second chamber should serve for a 10 year term with 150 members being elected every five years.

57. Interestingly of the 3866 people who answered the question on length of term in our online survey, 51.24% supported a term of less than 10 years, while only 9.21% supported 15 year terms. Although we have used 10 year terms for modeling purposes in this submission we would hope that if the term limit for the House of Commons were reduced, this would be re-visited.

58. The lack of accountability is further exacerbated by the proposal that members of the second chamber should not be able to stand for re-election. Whilst we are sympathetic to the desire to promote independence among members of the second chamber we believe this has to be balanced with accountability. The only element of accountability on the current proposals is

[12] source Inter-Parliamentary Union Parline Database: www.ipu.org accessed 15 September 2011

that members will be able to be recalled on the same basis as members of the House of Commons if recall proposals are introduced. We do not believe that this is acceptable.

59. Unlock Democracy believes that members of an elected second chamber should be able to stand for re-election; but only once. This allows for some accountability but also ensures that members of the second chamber will move on. Of the 3921 people who answered this question in our online survey a significant majority, 76.46% supported members being able to stand for re-election.

60. If the reason for non-renewable terms is to promote independence and try and prevent members from using the second chamber as a means of launching a wider political career, then there are other ways that this can be achieved. It is already proposed that there should be a period of time after leaving the second chamber during which former members cannot stand for elections to the House of Commons. We would also support a similar bar on members of the House of Commons moving straight to the second chamber as we would not want to import the culture and working practices of the House of Commons into a reformed second chamber. However we recognise the difficulty that this would pose for political parties who wish to encourage some members of the House of Commons to retire. Our proposals of holding the elections to the second chamber on the same day as the elections to the European Parliament, rather than the House of commons would also have the effect of creating a short quarantine.

61. Unlock Democracy would also recommend that members of the second chamber be resourced in such a way that discourages them from establishing constituency offices and competing with members of the House of Commons for casework. We recognise that it is impossible to entirely prevent this from happening; it is as much to do with the culture of political parties who will expect members of an elected second chamber to support their campaigning work for other elections and bodies, as the career aspirations of the individual concerned. However we do believe that this can be discouraged in more nuanced ways, that also allow for some element of accountability, rather than the blunt tool of non-renewable terms of office.

Recall

62. The White Paper proposes introducing a system of recall, along the same lines as the system to be introduced for the House of Commons. While Unlock Democracy supports recall in principle, particularly in the case of an elected second chamber in which members will be elected for extended time periods, we do not believe replicating the model proposed for the House of Commons would be sufficient.

63. We support a model of recall in which, if 5% of an electoral district calls for it, a recall ballot must be held on the same day as the next second chamber election. Only members of the second chamber not up for election in this election could be recalled in this way. Petitioners must give a reason for

recalling the member, but it could be for any reason - not restricted to parliament having already disciplined the member.

64. If 50% of voters support recalling the individual, that member will be excluded from the chamber and the number of members to be elected for that constituency in the subsequent election will be increased by one.

65. We believe this model would ensure accountability throughout the member of the second chamber's term of office without adding an unnecessary administrative burden or disadvantaging minority candidates.

66. The system of increasing the number of members to be elected for that particular constituency could also be used to fill casual vacancies at the next opportunity.

Retirement

67. Unlock Democracy welcomes the government's proposal that members for the reformed second chamber should be able to retire. This is a particularly important provision when combined with long terms of office as it is possible a members circumstances may change during a 10 year period, in ways that they could not have predicted when they stood for office.

The electoral system preferred;

68. Unlock Democracy is pleased by the Government's recognition that members of the reformed upper chamber must be elected on a different basis from members of the House of Commons. There is widespread consensus that the second chamber should have a different culture and outlook from the House of Commons, and that members being able to exercise independence of judgement is essential. If the reformed chamber is to complement the work of the House of Commons it must be able to address legislation from a different perspective.

69. Unlock Democracy welcomes the rejection of closed list systems such as is used for elections to the European Parliament. Closed list systems encourage candidates for the second chamber to focus on the political party rather than the general public as a means of getting elected. Under such schemes, political parties have a huge degree of control over the chamber's final membership. This is unhealthy for a democracy; it would lead to what is essentially a system of political appointments by another name.

70. Unlock Democracy does not endorse any particular electoral system. Electoral systems can be modified to achieve different ends and as such we assess any proposed system on the effects that it will have rather than just its name. We support the use of a proportional electoral system that gives the voter the opportunity to choose between different political parties and individual candidates. The government has proposed that either the Single

Transferable Vote or Open List system should be used to elect members of the second chamber. We have outlined our views on these systems below. However, we note that there was a very strong preference among the 3671 respondents who answered this question on our online survey, with 86.33% favouring the use of STV.

Single Transferable Vote (STV)

71. STV uses preferential voting in multi-member constituencies. Each voter gets one vote, which can transfer from their first-preference to their second-preference and so on, as necessary. This means that fewer votes are 'wasted' (i.e. cast for losing candidates or unnecessarily cast for the winner) under STV. Therefore most voters can identity a representative that they personally helped to elect. Such a link in turn increases a representative's accountability. This strengthening of accountability would be particularly beneficial if, as we recommend, members of the second chamber served for long non-renewable terms of office.

72. With STV the design of the ballot paper has a significant impact on the way the electoral system is used by voters. STV ballot papers can range from a larger version of that already used in UK general elections to a ballot organised by party groups where the candidates are listed in the order chosen by the political parties. Ireland, Australia and Malta all use versions of STV to very different effect because of the different designs of the ballot paper.

73. STV in large multi member constituencies is a proportional system that allows voters to choose between political parties and individual candidates. It is also successfully used in the UK already (for Northern Irish local and assembly elections and Scottish local elections). Unlock Democracy would therefore support the use of STV for elections to the second chamber.

74. We would strongly oppose the introduction of Australian-style STV, in which voters have to choose between essentially voting for a closed list, or voting “below the line” and having to express a preference for every single preference. In practice, this is a closed list system by another name. Voters should only have the option of voting for candidates and should be free to express as many or as few preferences as they desire.

75. However, one of the issues with STV is that voters are presented with a large number of individual candidates from which to express a preference for. Larger multi-member constituencies are not significantly more proportional than medium sized ones yet have the potential to cause unnecessary confusion for voters. We therefore recommend that, if STV is used, constituencies are limited to between 5 and 7 members.

Open Lists

76. Party-list systems guarantee a high degree of party proportionality and ensure that every vote has equal value. Across the globe, list systems exhibit a lot of

variation, chiefly determined by the size of districts, thresholds for securing seats and the manner in which the seats are allocated.

77. There are large numbers of open list systems that allow voters to choose between both candidates and parties. However, in some list systems the choice is more formal than real. If a list system were to be used it should be a completely open list system. The system used in Finland where voters can vote for an individual candidates and the vote also counts towards the party total, may be of interest. This was the system supported by the Conservative Party during the debates on the European Parliamentary Elections Act 1999.

78. There are a number of systems that can be used to translate votes into seats depending on whether you wanted to weight the system in favour of encouraging smaller parties and minority voices or to ensure that parties received a significant level of support before wining seats. Where list systems are used in the UK the D'Hondt method is used but the Sainte-Laguë method, the Huntington-Hill method and the largest-remainder method would also be possible. Overall we would recommend that Sainte-Laguë is used as it would produce a more proportional result than the D'Hondt method, which tends to benefit larger political parties.

Constituency Size

79. As already outlined Unlock Democracy believes that the second chamber should be constituted differently from the House of Commons to emphasise the different role that it plays in the governance of the UK.

80. Currently membership of the House of Lords is disproportionately skewed towards London and the South East. We do not believe this would be desirable in a reformed chamber. In particular Unlock Democracy believes that the second chamber should be a 'chamber of the union' and play a role in representing the nations and regions of the UK at Westminster. This regional voice would emphasise the representativeness of an elected second chamber, without being seen to compete with the House of Commons.

81. When considering constituency size it is necessary to balance the needs of effective electoral administration with the need to create constituencies that have some meaning for the public. Regional boundaries are often seen as arbitrary, created for the ease of administrators with no regard for the sense of identity of local communities. It is not always easy to find a balance between these competing factors.

82. Unlike members of the House of Commons members of the second chamber will not be responsible for casework; therefore it would be feasible to have large regional constituencies. We do not believe that counties would be large enough units to work with a proportional multi-member system and so we do not consider this to be a viable option. The alternative would be to use the

existing regional boundaries used for the European Parliamentary elections, or to create some entirely new constituencies.

83. On balance Unlock Democracy agrees with the government proposal that the 12 electoral regions already used to elect members of the European Parliament should also be used as constituencies for members of the second chamber, although these will need to be subdivided into 1-3 constituencies if STV is used. While they are too large to reflect more than the most basic regional identities they are easy to understand and are already in use.

How many members should each constituency elect?

84. As already outlined, Unlock Democracy supports the use of a broadly proportional electoral system using large regional constituencies and electing more than one representative per election.

85. For this to be effective and proportional in practice there would need to be a minimum number of representatives per constituency elected at each election. Currently for the European Parliament elections the minimum per region is three MEPs. It would be possible to use this as the minimum for elections to the second chamber, but this would not allow for the expression of political diversity in the smaller regions. As we want the second chamber to have a particular role in representing the regions we do not think this would be appropriate.

86. While we would support allocating members of the second chamber to each region in broadly the same way that the Electoral Commission currently allocates members of the European Parliament, Unlock Democracy would support five being the minimum number of candidates being elected to the second chamber at each election. This would mean that the smallest region in the UK, Northern Ireland, would have a minimum of 10 representatives in the second chamber, with five being elected every five years. This would be sufficient to be proportional but would also allow the political diversity of smaller regions to be reflected in the second chamber. We would also recommend using the Sainte-Laguë method as this would marginally benefit smaller regions.

87. The maximum number of representatives per constituency can either be determined by the population of the area, as is currently the case for elections in the UK, or on the basis of strict equality for each area regardless of population, as is the case with the US Senate.

88. The system used in the US Senate guarantees equal representation for each state regardless of the size of population. It was known to be distorting when the system was created and has become more so over time. In 1787, the factor was roughly ten times (Virginia to Rhode Island), whereas today it is roughly 70 times (California to Wyoming, based on the 1790 and 2000

census). Unlock Democracy does not believe this would be a suitable system for the UK - especially since the current governmental regions in England were created primarily for administrative convenience.

89. As already mentioned, the current House of Lords is dominated disproportionately by members from London and the South East which emphasises a general perception that governance in the UK is very London-centric. If the number of the representatives per constituency were determined purely on the basis of population then this would give London and South East far more members than other less populated areas of the UK. This would not facilitate the second chamber playing a role as a 'chamber of the union'.

90. Any system based on population will inevitably give a large number of representatives to London and South East as they are the most populous areas the UK. However it would be possible to use a degressive system so that the difference between the representation of the most populous and least populous regions was less extreme.

91. Below, we have included two models: the first assumes that half of the chamber is elected every five years (150 members to be elected per election) while the second assumes that one third of the chamber is elected every five years (100 members to be elected per election). In each, we have assumed that regions should have a minimum of five members and have allocated seats using the Sainte-Laguë method.

92. This model highlights some of the problems with the government's proposed model of electing the chamber in thirds. The 100 seat model would make it harder for parties to ensure their candidate lists ensure gender balance and include sufficient representation of other under-represented groups. To ensure sufficient political plurality, the smallest regions would have to be significantly over-represented compared to the rest of the country. It would also be significantly harder to introduce STV using this model as constituencies would either be less proportional or harder to manage. In addition to the undesirability of long, non-renewable terms, we believe this demonstrates the desirability of adopting the half-elected model.

Table 1 - Half elected every 5 years

Region	Population (millions)	Seats per region per election	STV Constituencies
North East	2.638	6	1
North West	7.193	17	3
Scotland	5.206	12	2
Northern Ireland	1.812	5	1
Yorkshire and The Humber	5.621	13	2
Wales	3.038	7	1
West Midlands	5.662	13	2
East Midlands	4.825	11	2
East of England	6.179	14	2
South West	5.62	13	2
London	8.114	19	3
South East	8.871	20	3
Totals	64.779	150	24

Notes:

- The effect of allocating a minimum of five seats per nation/region is that Wales and the North East get an additional seat each, and Northern Ireland would get two additional seats.
- Assumes that between 5 and 7 members are elected to each STV Constituency.
- The D'Hondt method yields exactly the same result in this case.

Table 2 - One third elected every five years

Region	Population (millions)	Seats per region per election	STV Constituencies
North East	2.638	5	1
North West	7.193	11	2
Scotland	5.206	8	1-2
Northern Ireland	1.812	5	1
Yorkshire and	5.621	8	1-2

Region	Population (millions)	Seats per region per election	STV Constituencies
The Humber			
Wales	3.038	5	1
West Midlands	5.662	9	1-2
East Midlands	4.825	7	1
East of England	6.179	9	1-2
South West	5.62	8	1-2
London	8.114	12	2
South East	8.871	13	2
Totals	64.779	100	14-19

Notes:

- The effect of allocating a minimum of five seats per nation/region is that Northern Ireland gets an additional seat while the South East gets one fewer.
- Allocating between 5 and 7 members to each STV Constituency would be impossible using this model; the range would have to be extended to either 4-7 (which would be less proportional) or 5-9 (which would be less manageable).
- If D'Hondt is used, the South East would gain a seat while the West Midlands would lose a seat.

Independents

93. Unlock Democracy does not accept that it is necessary to retain an appointed element in the second chamber to ensure that independents have a voice. It would be possible for independents to be successful in either of the proposed electoral systems.

94. The evidence of elections to the devolved chambers and the European Parliament, has already shown that voting habits are different depending on the chamber. For example the SNP received 45.4% of the votes cast in the 2011 Scottish Parliament elections and was able to form a majority administration in Scotland, despite only receiving 19.9% of the vote in the 2010 House of Commons election. Equally UKIP gained 16.5% of the votes cast in the 2009 European Parliamentary election but only gained 3.10% votes in the 2010 general election. In part this reflects differences in electoral systems however it is also clear that there is a public desire to support parties other than the three largest UK parties.

95. Neither open lists nor STV would disadvantage independent candidates in the way single member plurality (the system used to elect the House of Commons) does. STV would enable voters to express preferences between both independent and partisan candidates without having to worry about their vote not counting. Open list systems do not allow for voters to transfer their vote in this way, but larger seats would ensure that independent candidates with broad support could still get elected. In addition, independents would also have the option of standing on a slate, as the Jury Team[13] demonstrated in the 2010 election. We are confident that if the public wants to elect independent members to the second chamber they will do so.

Timing of elections

96. The government has proposed that elections to the second chamber should be held at the same time as those to the House of Commons. This would have the advantage of reducing the costs of the elections to the second chamber and potentially increasing turnout, as the country would already be going to the polls. We agree with the government that combining elections is a sensible strategy. However we would prefer that the elections for the two chambers of Parliament are not held on the same day. In part this is a means of reinforcing the primacy of the House of Commons and emphasising the different roles that the different chambers play in the legislature.

97. Therefore, for as long as the House of Commons term is fixed at 5 years we believe that elections to the second chamber should be held on the same day as those for the European Parliament. This would mean the first elections being held in 2014. If the term of the House of Commons is reduced to 4 years, then we would suggest holding the elections on a day when most people in the UK are already going to the polls. We would suggest holding them on the same day as the Greater London Assembly, Scottish and Welsh local elections - most English local authorities outside of London also have elections on this day.

Transitional arrangements;

98. The government has set out a number of options for moving forward to an elected second chamber. We support the government's view that having a period of transition would be welcome and beneficial for the elected members. As it is intended that members should be elected in tranches, a transition in stages should be feasible and the government has shown how this can be achieved at different speeds.

[13] http://www.juryteam.org/

99. Unlock Democracy's strong preference is to move more quickly to a smaller chamber, and to reduce the current members of the House of Lords down to 150 when the first elected members first take office (assuming a model in which half are elected every five years). This would help to establish a new culture within the reformed chamber and establish new working practices. It would also dramatically reduce the costs of the new chamber. It is for others to explain how the cost of more leisurely transitional arrangements can be justified.

100. It would be a matter for the existing members of the House of Lords to determine who should remain as transitional members of the second chamber. We note that a similar process was successfully undertaken when the majority of the hereditary peers left the chamber in 1999.

101. The only option we believe to be impracticable is for all current Peers who wish to remain in the chamber to do so for a full electoral cycle. We are already in a situation where the numbers in the House of Lords can make effective working difficult. This model would lead to the second chamber growing even larger in size, guarantee that the unelected members continue outnumber the elected members for more than a decade and ensure that the costs of the second chamber would rise exponentially before coming down again, to no identifiable purpose.

The provisions on Ministers and Bishops and Hereditary Peers;

102. Unlock Democracy does not support specific places for religious representation in the second chamber. Rather we believe that these views can be represented by - and to - elected members.

103. Unlock democracy agrees with the government proposal that hereditary peers should not have reserved places in a reformed second chamber, although we agree that they should be able to remain as transitional members and be free to stand for election. The agreement in 1999 was that 92 hereditary peers would remain in the chamber until the second stage of reform. When we move to an elected second chamber that condition will have been met and it would be inappropriate for the hereditary peers to remain. Unlock Democracy does not believe that a seat in the legislature should be a birthright.

104. Unlock Democracy believes that government ministers should not sit in the second chamber. Confining government ministers to the Commons would help to distinguish the two chambers, secure a degree of independence for the second chamber and emphasise the primacy of the Commons. It would also end the current absurd practice whereby ministers who happen to be members of the Lords cannot be held to account by the House of Commons.

105. The scrutiny of government activity should be a task undertaken primarily by the specialist committees in the second chamber. Specialist committees should have the power to question ministers, and call for papers

and evidence from government departments. Individual members would continue to have the right to ask written questions of government ministers. We would also support ending the convention whereby ministers who are also members of the House of Commons cannot take questions in the second chamber.

106. The White Paper proposes that the Prime Minister should retain the right to appoint people directly to the second chamber as ministers. Unlock Democracy believes that this is an unacceptable retention of prime ministerial patronage and that all government ministers should be elected.

Other administrative options such as pay and pensions;

Name

107. Unlock Democracy is concerned that the second chamber should be fully elected on a proportional system and have broadly the same powers as at present. We have a preference for it being a called a Senate but we recognise that it may be controversial in some quarters and that there are a number of other names that would be adequate. Our prime concern is the democratic mandate of the second chamber rather than its name.

Salary

108. Members of the second chamber should be paid the same salary and allowances as MPs, reflecting the greater amount of specialist committee work they would be expected to undertake as opposed to the large constituency caseload of MPs.

109. Committees should also have greater financial resources to employ specialist staff or consultants to advise members. The example of the Joint Committee on Human Rights, which has paid specialist advisers, should be replicated. Committees' administrative resources should also be increased.

Is a referendum needed?

110. Unlock Democracy is sympathetic to the argument that significant constitutional changes, such as House of Lords reform should be subject to a referendum. The case for a referendum is certainly strengthened by the holding of the referendum on the Alternative Vote, which was in many ways a much less significant change to our system of government. However, unlike in the case of electoral reform for the House of Commons, there has been political consensus on this issue for some time. Indeed a predominantly elected second chamber was a manifesto commitment of the three main parties at the last two general elections.

111. Unlock Democracy believes that referendums should be triggered by a popular process rather than by the government of the day. If a minimum of 5% of UK voters petitioned for a referendum on whether to proceed with House of Lords reform, we believe that Parliament should respect that and trigger a referendum. However as we believe this issue is settled and has broad popular and cross-party support, we do not believe the government needs to hold a referendum to legitimise the change.

Tax status

112. Unlock Democracy agrees with the government that all members of a reformed second chamber should be resident in the UK for tax purposes. We think it is regrettable that members appointed to the current chamber have not been held to this standard.

Franchise

113. Unlock Democracy supports the proposal that when the honour of a peerage is separated from membership of the legislature it would be entirely appropriate for the franchise to be changed to allow peers to vote.

Disqualification

114. Unlock Democracy supports the government's proposals on the disqualification regime for the reformed chamber. Although it is unusual in elected second chambers for the age restrictions on candidates to be the same for both chambers, we very much welcome this proposal. Unlock Democracy believes it should be up to voters to decide whether or not an individual candidate has the right skills and experience to serve in the legislature.

Expulsion or suspension for misconduct

115. Unlock Democracy believes that the expulsion regime for misconduct for members of the reformed second chamber should, as a minimum, be the same as for the House of Lords. However we welcome the fact that the reformed chamber will have the opportunity to go further than this if it wishes.

Disqualification of former members of the House of Lords standing for election as MPs

116. Unlock Democracy agrees with the government that the reformed second chamber should be a scrutinising and revising chamber and should as

far as possible be prevented from becoming a training ground for aspiring MPs. We would not want to see situations like in Canada where MPs can lose their seat, be appointed to the Senate, resign their seat to fight an election for the lower chamber and then be re-appointed to the Senate when they are unsuccessful[14].

117. We believe that it is essential that there is a quarantine period during which it is not possible for former members of the second chamber to stand for election to the first. This will help to limit the temptation to do constituency work and with other measures outlines above will help to differentiate the second chamber from the House of Commons.

118. Unlock Democracy also supports there being a period of time during which former members of the House of Commons cannot stand for election to the second chamber.

Lobbying

119. Currently, as long as they do not votes on the issue concerned, it is possible for members of the House of Lords to act as paid advisers on government and legislation. Unlock Democracy does not believe that this is an appropriate role for a members of the legislature and hopes that this practice will not be permitted in a reformed chamber.

11 October 2011

[14]Senators Fabian Manning and Larry Smith both did this in 2011.

Appendix 1

Results of the Online Survey conducted by Unlock Democracy 14 September - 5 October 2011

1. The government has proposed that the reformed second chamber should be either fully or 80% elected. Do you think it should be

Fully elected	2300	57.69%
80% elected, 20% appointed	1192	29.90%
Other	495	12.42%
Total number of responses	3987	

2. If some members of the second chamber are to be appointed, what types of people would be acceptable?

Anglican Bishops	385	10.64%
Representatives of all faiths	1263	34.89%
Specially appointed government ministers	401	11.08%
People appointed by political parties	425	11.74%
People appointed by an independent body for their professional/academic expertise	2970	82.04%
Representatives of professional bodies (eg. British Medical Association, Royal College of Nursing)	3190	88.12%
Representatives of trade unions	1745	48.20%
Members of the public	1269	35.06%

randomly selected from the electoral roll		
Other	361	9.97%
Total number of responses	3620	

3. MPs are currently elected for up to 5 years at a time. This is usually longer for elected second chambers and the government has proposed they should be elected for 15 year terms. How long do you think members of the second chamber should be elected for?

15 years	356	9.21%
10 years	1529	39.55%
less than 10 years	1981	51.24%
Total number of responses	3866	

4. Should elected members of the second chamber be able to stand for re-election?

Yes	2998	76.46%
No	923	23.54%
Total number of responses	3921	

5. The government is considering using two voting systems to elect the second chamber: the single transferable vote (STV), in which voters can rank any or all candidates in order of preference; or open lists, in which voters put an “X” beside the candidate they most prefer. Both systems are broadly proportional. STV offers more choice and ensures that more votes will count. It is also better for independent candidates. However, the open list system is significantly simpler to vote in. Which system would you prefer:

Single Transferable Vote	3169	86.33%
Open Lists	502	13.67%
Total number of responses	3671	

6. The current House of Lords can delay government legislation by up to a year. However, the House of Lords rarely exercises this right, and has only used it four times in the past 60 years. Most experts agree that a wholly or mainly elected second chamber is likely to want to use this power more frequently. Should the powers of the second chamber be changed to reflect this?

No, the current rules should stay.	1734	44.61%
Yes, the current rules should change.	2153	55.39%
Total number of responses	3887	

7. Which of the following proposals to alter the second chamber's existing powers to delay legislation would you find acceptable (tick all that apply)?

Reduce the amount of time the second chamber can delay legislation by.	781	21.34%
Allow the House of Commons to overrule the second chamber if two-thirds of MPs vote to do so.	2085	56.98%
Only allow the House of Lords to block legislation on more than one occasion if two-thirds of its members vote to do so.	1388	37.93%
Require both chambers to set up a joint committee to work out a compromise if the second chamber rejects the legislation a second time.	2690	73.52%
Total number of responses	3659	

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
The Bishop of Bath and Wells		Bishop		Church				N/A	Bishop
The Bishop of Blackburn		Bishop		Church				N/A	Bishop
The Bishop of Bradford		Bishop		church				N/A	Bishop
The Bishop of Bristol		Bishop		church				N/A	Bishop
The Archbishop of Canterbury		Bishop		Church				N/A	Arch-Bishop
The Bishop of Chester		Bishop		Church				N/A	Bishop
The Bishop of Chichester		Bishop		Church				N/A	Bishop
The Bishop of Derby		Bishop		church				N/A	Bishop
The Bishop of Durham		Bishop		church				N/A	Bishop
The Bishop of Exeter		Bishop		Church				N/A	Bishop
The Bishop of Gloucester		Bishop		Church				N/A	Bishop
The Bishop of Guildford		Bishop		Church				N/A	Bishop
The Bishop of Hereford		Bishop		church				N/A	Bishop
The Bishop	of Leicester	Bishop		Priesthood	Second Secretary, Foreign and commonwealth office. Religious Career	1973/Ongoing		N/A	Bishop
The Bishop of Lichfield		Bishop		Church				N/A	Bishop

Unlock Democracy—Appendix 2

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
The Bishop of Lincoln		Bishop		Church				N/A	Bishop
The Bishop of Liverpool		Bishop		Church			Briefly teacher	N/A	Bishop
The Bishop of London		Bishop		Church			Some academia too.	N/A	Bishop
The Bishop of Manchester		Bishop		Church				N/A	Bishop
The Bishop of Newcastle		Bishop		church				N/A	Bishop
The Bishop of Norwich		Bishop		church				N/A	Bishop
The Bishop of Ripon and Leeds		Bishop		church				N/A	Bishop
The Bishop of Salisbury		Bishop		church				N/A	Bishop
The Bishop of Wakefield		Bishop		Religion				N/A	Bishop
The Bishop of Winchester		Bishop		Church				N/A	Bishop
The Archbishop of York		Bishop		Church				N/A	Bishop
Baroness	Berridge	Conservative		Law/Politics	Executive Director, Conservative Christian Fellowship	2011	Barrister until 2006	5	Director within last 5 years, barrister 5 years ago
Lord	Astor of Hever	Conservative		hereditary				1	Lieutenant in the Lifeguards until 1970, various other patronages and such of associations and societies, but nothing major

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Viscount	Bridgeman	Conservative		hereditary				1	Director of an Irish Merchant bank and a company doing something with Nurses, but neither seems at all major, and both were over 10 years ago.
Lord	Brougham and Vaux	Conservative		hereditary				1	No notable work outside of being a lord and various related group positions
The Earl of Courtown		Conservative		Hereditary peer. Possibly Agriculture.	'Land agent'; running the estates of another lord or some such	1993		1	Has been a 'Land Agent', stopped being that more than ten years ago
The Earl of Dundee		Conservative		hereditary	Government spokesman	1989		1	
Lord	Elton	Conservative		Hereditary				1	Various things like being an assistant master at a school, lecturer at a college, but no high level stuff, and the stuff that there is largely ended more than ten years ago
Viscount	Goschen	Conservative		Hereditary			Entered house of Lords at age of 21, became a Government whip 6 years later	1	Seemingly no expertise
Lord	Henley	Conservative		Hereditary	Various minister and Under Secretary positions		Ascended at the age of 24	1	Seemingly nothing before Political career
Lord	Lyell	Conservative		Hereditary	None notable			1	Nothing of note
The Duke of Montrose		Conservative		Farming	Hereditary Peer.			1	Seemingly nothing significant
Earl	Peel	Conservative		hereditary				1	Little of significance in the last 10 years
Lord	Reay	Conservative		hereditary				1	Little non-political experience
Lord	Rotherwick	Conservative		hereditary				1	Nothing significant after peerage over 10 years ago

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Baroness	Sharples	Conservative		none	husband was assassinated while governor to Bermuda			1	Seemingly no expertise
Lord	Strathclyde	Conservative		hereditary	Leader of the House of Lords	Current	Ascended at the age of 25	1	Little non-political experience
Lord	Swinfen	Conservative		hereditary			Rank of Lieutenant in Army	1	No significant experience, military career over 10 years ago
Lord	Trefgarne	Conservative			Hereditary Peer.		Elevated to the lords at 21	1	Little non political experience
Viscount	Younger of Leckie	Conservative		Hereditary				1	Seemingly nothing significant
Baroness	Anelay of St Johns	Conservative		Public Service	Social Security Advisory Committee	1996	lots of other boards, commissions and tribunals too	2	Over ten years out of date on her major expertise areas; Social Security Appeal Tribunal and Advisory Committee ended 1996, stopped being a Justice of the Peace in 1997. Her most recent stuff, 'President, World Travel Market' ended in 1997, and looks like it might be honourary/similar, given that travel or suchlike isn't amongst her political interests or other experience.
Baroness	Byford	Conservative		Agriculture	farmer; various agriculture boards	ongoing		2	Associate member of the Royal Agricultural Society
The Earl of Caithness		Conservative		Hereditary				2	Consultant to various property companies
Lord	Denham	Conservative		Hereditary			Countryside Commissioner 93-99, Author of political crime/thriller stories	2	Countryside commissioner, retired more than 10 years ago (4-2)
Viscount	Eccles	Conservative		Hereditary				2	Director of Monopolies and Mergers commission, retired over 10 years ago (4-2)

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Feldman	Conservative		Business	Underwriting Member of Lloyds	1997	various Chairmanships and boards	2	Underwriting member at Lloyds, Director of Young Entrepreneurs Fund, business interests, but retired from all the non-political things more than ten years ago. (4-2)
Lord	Geddes	Conservative		Hereditary	Lieutenant-Commander, Royal Naval Reserve		Chair of Trinity College London	2	Military career over 10 years ago and chair of college
Lord	Glenarthur	Conservative		Hereditary	Captain, British Airways Helicopters	1982	Various directorships and consultancies, worked for Government from 1982	2	Captain over 10 years ago, and directorships
Baroness	Hogg	Conservative		Media	economics editor, sunday times, telegraph	1990	Head Prime Minister's Policy Unit 1990-95	2	Economics editor over 10 years ago
Baroness	Hooper	Conservative		Law	Partner Taylor and Humbert Solicitors	1984		2	Law experience over 10 years ago
Lord	Howard of Rising	Conservative		Politics	Private Secretary to Enoch Powell	1970		2	Nothing of note for over 10 years
The Earl of Liverpool		Conservative		Hereditary	Chair, Rutland Management	Ongoing	Ascended at the age of 24	2	Nothing significant before lords, though current chair
Baroness	Morris of Bolton	Conservative		Various; nothing stands out	Deputy Chair, Salford Royal Hospitals NHS Trust	1997		2	Deputy Chair, over 10 years ago
Baroness	Neville-Jones	Conservative		Diplomat	every possible role in fco and diplomatic service	1996		2	FCO and diplomatic experience over 10 years old
Lord	Selsdon	Conservative		hereditary			Various banking roles	2	Banking roles over 10 years ago
The Earl of Shrewsbury		Conservative		Hereditary				2	Minor chairs
Lord	Skelmersdale	Conservative		Hereditary/Horticulture	Managing Director, Broadleigh Nurseries Ltd	1981		2	Managing director over 10 years ago
Viscount	Trenchard	Conservative		Banking	Hereditary Peer. Many directorships and chairings		8 years in the TA, rank of Captain	2	Many chairs, most over 10 years ago

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Baroness	Wilcox	Conservative		business	small businesses in cornwall; chair, national consumer council	1989; 1996		2	Chair over 10 years ago
Lord	Young of Graffham	Conservative		Business	Executive of various property and store businesses	1984		2	Executive over 10 years ago
Lord	de Mauley	Conservative		Hereditary	Lieutenant-colonel, TA	2005		2	Moderately ranked TA officer over 5 years ago
Baroness	Newlove	Conservative		Public Service	Anti gang campaigner	ongoing	Came to prominence after husband's murder in 2007	2	Current campaigner
Lord	Dobbs	Conservative		Journalist/Politics	Deputy Chairman of Conservative Party	1995	PhD, Nuclear Defence Studies. Also an adviser and Speechwriter	2	Worked in Politics since getting PhD in 1975
Lord	Lexden	Conservative		Academics	Director of the Conservative Political Centre	1997	Official historian of the Conservative Party since 2009; Consultant and Editor in Chief, Conservative Research Department since 2004. Also a lecturer in 70's and Gen Sec of Independent Schools Council until 2004	2	Mostly political experience, Lecturer over 10 years ago and GS over 5 years ago
The Earl of Arran		Conservative		hereditary				3	Ongoing Non-executive directorships
Lord	Campbell of Alloway	Conservative		Law	QC		Colditz, 1940-45	3	QC, but appears to likely have retired, and done so 10 or more years ago

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Carrington	Conservative		hereditary (though now in by virtue of being a life peer)	Politics/Military	Leader of the House of Lords, secretary of state for defence, Lieutenant		3	Secretary General of NATO, retired more than 10 years ago
Lord	Chilver	Conservative		Engineer / academic	Chair, RJB Mining	1997		3	Professor, various other reasonably high level stuff, but seems to have retired from all or most of his things between 1995-97 (he was about 70 at that point) (5-2)
Lord	Colwyn	Conservative		hereditary				3	Practicing dentist until 2008, on various national dental boards, chair of a financial advice company until 2008
Lord	Crathorne	Conservative		Hereditary peer. Fine Art selling. Hotels.	Director of various hotel groups, and of unknown company 'Cliveden Ltd'.	2002	Involvement in Royal Society of Arts	3	Runs his own Fine Arts Consultancy, various other art roles, some business directorships, etc
Earl	Ferrers	Conservative		Hereditary				3	Director of Norwich Union Insurance Group for two periods of four and five years respectively, retired more than ten years ago, no other major non-political roles in the last ten years. (5-2)
Lord	Gardiner of Kimble	Conservative		Business	Partner in family firm	ongoing	Also Deputy Chief Executive of Countryside Alliance	3	Current Deputy CE
Lord	Glentoran	Conservative		Hereditary	Managing Director, Redland Tile and Brick Ltd	1998	Olympic Gold Medalist, Bobsleigh, Major in the Army	3	Managing director over 10 years ago, plus Army and Sport experience

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Griffiths of Fforestfach	Conservative		Academia	Economics professor, LSE City University	1985	economic advisor to Thatcher, 85-90	3	Professor over 10 years ago
Lord	Hill of Oareford	Conservative		Politics	Advisor to Ken Clarke		Founded PR consultancy firm in 1998, Director	3	Founding Director
Earl	Howe	Conservative		Hereditary	Director of bank Adam & Co plc	1990	Managerial roles with Barclays 73-87, elevated in 84	3	Banking career over 10 years ago
The Earl of Lindsay		Conservative		Business	Chair, United Kingdom Accreditation Service	Ongoing		3	Some ongoing directorships, chair of the UK accreditation service, but none of it seems particularly high level
Lord	Lucas	Conservative		Hereditary	Chartered accountant	1988	Blogger, can program, involved in internet issues with understanding of such. Runs an e-commerce business	3	Chartered accountant over 10 years ago, plus e-commerce business
Lord	Luke	Conservative		Hereditary	High Sherrif, Bedfordshire.		Spent 16 years in managing positions in Bovril Ltd, and has been a dealer in fine art for the last 38 years	3	Managing positions over 10 years ago, plus current art dealer
Lord	Macfarlane of Bearsden	Conservative		Business	Chair, Guinness plc, Director, Clydesdale Bank	1989/1996		3	Director over 10 years ago
Lord	Mackay of Clashfern	Conservative		Law	Lord Advocate, (senior law officer for Scotland)	1984	Taught Mathematics for a few years	3	Lord Advocate over 10 years ago
Lord	Mancroft	Conservative		Hereditary	Chairman and non-exec director of various companies, primarily lotteries	Ongoing	Director and vice-chairman of the Countryside	3	Mainly non-exec roles

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
							Alliance		
Lord	McColl of Dulwich	Conservative		Medicine	Professor and Director of Surgery, Guy's Hospital	1998	Consultant surgeon to the army for 18 years.	3	Professor over 10 years ago
Baroness	Miller of Hendon	Conservative		Business	Chair, Barnet Family Health Services Authority	1994		3	Chair, over 10 years ago
Lord	Montagu of Beaulieu	Conservative		Hereditary	Chairman of English Heritage from 1984 to 1992		Some military service. Founded what became the National Motor Museum	3	Chairman of English Heritage from 1984 to 1992 (5-2)
Baroness	Noakes	Conservative		Business	President, Institute of Chartered Accountants in England and Wales	2000		3	President over 10 years ago
Baroness	O'Cathain	Conservative		business	economics advisor to many roles	1974	many other directorships in the 80s and 90s	3	Directorships over 10 years ago
Lord	Palumbo	Conservative		business	Chairman of the Arts Council	1993	property developer, patron of arts	3	Chairman over 10 years ago
Baroness	Perry of Southwark	Conservative		academic/ civil service	chief inspector, department of education and science	1986		3	Nothing significant for over 10 years
Lord	Popat	Conservative		business	Chief exec fast finance	1991		3	CE over 10 years ago
Lord	Sainsbury of Preston Candover	Conservative		Business	Chairman, Sainsburys; Life President	1992; Current		3	Chairman, over 10 years ago
Lord	Sanderson of Bowden	Conservative		Business	partner, Charles P Sanderson wool and yarn merchants	1987		3	Partner, over 10 years ago
Lord	Sheppard of Didgemere	Conservative		Business	Chairman, Grand Metropolitan	1996		3	Chairman, over 10 years ago
Lord	Soulsby of Swaffham Prior	Conservative		Veterinary Medicine, Academia	Professor of Animal Pathology, Cambridge University	1993		3	Professor over 10 years ago
Lord	Stevens of Ludgate	Conservative		Business	Drayton plc - various roles	1988		3	Chair more than 10 years ago
Lord	Taylor of Holbeach	Conservative		Agriculture	Director, taylor Bulbs, various bulb related	2010		3	Minor directorships

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
					positions				
Lord	Vinson	Conservative		Business	Director, Barclays Bank	1987	Various other chairings and directorships,	3	Director over 10 years ago
Baroness	Warsi	Conservative		Law	Legal Draftsman, Ministry of Law, Pakistan	2003	Solicitor, set up own practice	3	Solicitor over 5 years ago
Lord	Wolfson of Sunningdale	Conservative		politics	Chief of Staff, Downing Street	1985		3	Chief of Staff, over 10 years ago
Lord	Glendonbrook	Conservative		Business	Managing Director, British Midlands; Controlling stakes in major airlines / Chairman of Channel 4 television	1978; 2009 / 1997		3	Over 10 years since running company
Baroness	Heyhoe Flint	Conservative		Sport	Captain of England's woman's cricket team / Director of Wolverhampton Wanderers F.C	1978 / Ongoing		3	She was captain of England from 1966 to 1978, and was unbeaten in six Test series. Retired over 10 years
Viscount	Astor	Conservative		hereditary				4	Ongoing directorships of some reasonably large companies
Earl	Attlee	Conservative		hereditary	Major in the TA	Ongoing		4	Major in the TA
Lord	Black of Crossharbour	Conservative		Business	Chair of various newspapers internationally	ongoing		4	High level running of newspaper groups and suchlike, but the major elements of that finished in 2003-2005
Lord	Freud	Conservative		Media/Business	Journalist, Western Times, FT; Vice Chairman UBS	1983; 2003		4	Vice Chairman over 5 years ago and media experience
Lord	Kalms	Conservative		Business	Managing Director, Dixons, Chair, British Gas.	2002		4	Managing director over 5 years ago
Lord	MacLaurin of Knebworth	Conservative		Business	Chairman of Tesco, Chairman of Vodafone	1999/2006		4	Chairman over 5 years ago
Lord	Northbrook	Conservative		hereditary				4	'Cofounder and Director of the award winning Mars Asset Management' Retired from it five years ago (5-1)
Lord	Renfrew of Kaimsthorn	Conservative		academic	professor of archaeology	2004		4	Professor, over 5 years ago

Unlock Democracy—Appendix 2

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Sassoon	Conservative		Business/ civil service	HMT positions, incl rep for promotion of the City and advisor to George Osborne	2010	Vice Chairman, Investment Banking until 2002	4	VC over 5 years ago, and advisor position
The Earl of Selborne		Conservative		hereditary	Director, Lloyds group	2004		4	Director over 5 years ago
Lord	Sterling of Plaistow	Conservative		Business	Executive Chairman, P&O Cruises; Life President	2005; Current		4	EC over 5 years ago
Lord	Wei	Conservative		Business	Consultant, founder of Shaftesbury Partnership and Teach First	ongoing	Youngest member of the house, aged 34	4	Current prominent businessman
Lord	Gold	Conservative		Law	Senior litigation partner at Herbert Smith LLP	2010		4	Senior Partner within last 5 years
Lord	Fellowes of West Stafford	Conservative		Acting	Director, Lionhead Productions Limited	Ongoing	Creator and Exec Producer of Downton Abbey	4	Current prominent screenwriter, producer etc
Lord	Lingfield	Conservative		Education	Pro-Chancellor of Brunel University	Current		4	Current pro-chancellor
Baroness	Shackleton of Belgravia	Conservative		Law	Co-founder of the International Academy of Matrimonial Lawyers		Has defended many high profile clients. Remains solicitor for Prince William and Prince Harry of Wales.	4	Current solicitor
Baroness	Stowell of Beeston	Conservative		Broadcasting	Former Head of BBC corporate Affairs;	2010	Used to be a civil servant. Past Deputy Chief of Staff to William Hague as Leader of HM Opposition. Director, Tina Stowell Associates	4	Head of Corporate Affairs within 5 years

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Ashcroft	Conservative		Business	CEO and Chairman ADT ltd	1997	also Ambassador to the UN 1998 - 2000	5	Retired in 2010 from chairmanship of BCB holdings. Still a major shareholder in many things, but does not seem to be in charge of any top level companies/groups
Lord	Bell	Conservative		Business	Director, Governor, MD of various companies	ongoing		5	Still involved in high level companies
Lord	Black of Brentwood	Conservative		Media	Director Press Complaints Commission; Executive Director, Telegraph Media Group	2003; ongoing		5	Ongoing role as Executive Director of the Telegraph Media Group
Lord	Blackwell	Conservative		Business	Director of various companies	ongoing		5	Ongoing chair and director of various companies, Board member of Office for Fair Trading until 2010, OFCOM ongoing
Lord	Blyth of Rowington	Conservative		Public Service	Mill Worker, senior Steward TGWU	1990		5	Chairman of Diago, very major alcohol producer, until 2008
Baroness	Buscombe	Conservative		Law	Chair, Press Complaints Commission; Chief Executive, Advertising Association	both ongoing		5	Chairing two high level media watchdogs.
Lord	Chadlington	Conservative		Business	Shandwick International plc, CEO; Chairman	1994; 2000	amongst many other businesses	5	Ongoing group CEO of an international public relations and integrated healthcare communications group
Baroness	Eccles of Moulton	Conservative		Public Service	Ealing District Health Authority	1993	various boards on Media, Transport, social issues in the 80s and 90s	5	Various high level directorships
Lord	Harris of Peckham	Conservative		Business	Carpet companies	ongoing		5	Current CEO/Chair of Carpetright
The Earl of Home		Conservative		hereditary				5	Director and chair of various high level businesses, chairman of Coutts and Co, a private bank

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Baroness	James of Holland Park	Conservative		Public Service	Chair, Literature Advisory Panel			5	At the top of the crime writing genre
Lord	Kirkham	Conservative		Business	Executive Director DFS	Ongoing		5	Current executive director
Lord	Leach of Fairford	Conservative		Banking	Director of various forms of Rothschild	Ongoing		5	Director of Rothschild Continuation AG
Lord	Lloyd-Webber	Conservative		Arts	Playwright	Ongoing		5	Top of field
Lord	Marland	Conservative		Business	Various directorships and chairings	2010	Founded 2 insurance companies	5	Directorships within last 5 years
Lord	Norton of Louth	Conservative		academia	politics professor	ongoing		5	Current professor
Lord	Saatchi	Conservative		Business	Founder Saatchi and Saatchi, Partner, m&c Saatchi	ongoing		5	Current executive director, M&C Saatchi
Lord	Sheikh	Conservative		business	chair, Camberford law plc	ongoing		5	Current Chair
Baroness	Verma	Conservative		Business	Senior Partner, Domiciliary Care Services UK, Director DCS Foods Ltd	Ongoing	Stood for election as an MP twice unsuccessfully	5	Senior partner/Director
Lord	Wolfson of Aspley Guise	Conservative		Business	Chief executive, Next Clothing	ongoing		5	Current CE
Lord	Grade of Yarmouth	Conservative		Broadcasating	Director of Programmes at the BBC, Chief Executive of Channel 4, Chair of the BBC Board of Governors, Executive Chairman of ITV	1987? / 2004 /2006 / 2009	Briefly a journalist	5	Top media experience within last 5 years
Lord	Fink	Conservative		Business	CEO of the Man Group; CEO of ISAM	2007; Current	Chairman of the hedge fund-backed Academy sponsor Absolute Return for Kids. Many chairings and directorships	5	Current business leader
Lord	Edmiston	Conservative		Business	Chairman, IM Group Limited	Ongoing	Has also started up a number of charities	5	Current business leader
Baroness	Stedman-Scott	Conservative		public service	Chief Exec, Tomorrows peoples trust	ongoing		5	Current CE
Lord	Faulks	Conservative		Law	QC	Current		5	Current QC

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Green of Hurstpierpoint	Conservative		Business	Group Chairmain, HSBC Group	2010	Minister of State for Trade and Investment, Incumbent	5	Buiness leader within the last 5 years
Lord	Feldman of Elstree	Conservative		Law	Chief Executive, Jayroma London ltd, now director		Co-Chairman of Conservative Party, called to the Bar in 1991	5	Current Director
Lord	Ribeiro of Achimota and of Ovington	Conservative		Surgery	President, Royal College of Surgeons of England	2008		5	President within last 5 years
Lord	Wasserman of Pimlico	Conservative		Business	Senior Adviser and Chief of Staff to the Philadelphia Police Commissioner / Assistant Under Secretary of State	Unsure / Unsure		5	"Consultant to police and public safety agencies specialising in the management of agencies and, in particular, their scientific and technological support services"
Lord	Baker of Dorking	Conservative	y	Politics	Home Secretary	1992		N/A	Ex MP
Lord	Bates	Conservative	y	Politics	Paymaster General in the Cabinet Office	1997		N/A	Ex-MP
Baroness	Bottomley of Nettlestone	Conservative	y	Science	Behavioural Scientist	1984		N/A	Ex-MP
Lord	Bowness	Conservative		Law	Solicitor	2002	Mayor of Croydon 1979-80	N/A	Ex-Councillor
Lord	Brittan of Spennithorne	Conservative	y	Law	QC	Ongoing		N/A	Ex-MP
Lord	Brooke of Sutton Mandeville	Conservative	y	politics				N/A	Ex-MP
Baroness	Browning	Conservative	y	Public service	Director, Small Business Bureau	1994		N/A	Ex-MP
Lord	Carr of Hadley	Conservative	y	Business / politics	numerous directorships while in the commons			N/A	Ex-MP
Earl	Cathcart	Conservative		hereditary				N/A	Councillor 1998-2007
Lord	Cavendish of Furness	Conservative		Business	Chairman, Holker Estate Group	Ongoing		N/A	Member of the Cumbria County Council (1985-

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
									1990)
Baroness	Chalker of Wallasey	Conservative	y	Business	Executive director, Opinion Research International Ltd	1974		N/A	Ex-MP
Lord	Coe	Conservative	y	Sport	Athlete, various sports organisations	ongoing	Private secretary to Hague	N/A	Ex-MP
Lord	Cope of Berkeley	Conservative	y	Politics	Minister for the Cabinet Office	1998		N/A	Ex-MP
The Earl of Crawford and Balcarres		Conservative	y	Brief military, then politico	Secretary to Conservative Parliamentary Committees	Pre 1955	-	N/A	Ex-MP
Lord	Crickhowell	Conservative	y	Business/Banking	Directorships	2004	Chairman, National Rivers Authority, appointed after peerage	N/A	Ex-MP
Baroness	Cumberlege	Conservative		Council/NHS Health Authorities	Chair, South West Thames Regional Health Authority	1992	Chair and council member for various NHS related bodies	N/A	Local councillor 1966-1985
Lord	Deben	Conservative	y	Publishing	Editorial Coordinator, British Printing Corporation	1970	Has held various board level positions in publishing companies since his election.	N/A	Ex-MP
Lord	Dixon-Smith	Conservative		Politics / Farmer	Chair, Association of County Councils	1993	farmer	N/A	Councillor on Essex County Council, 1965-93
Lord	Eden of Winton	Conservative	y	Military	Lieutenant with the Ghurkha Rifles	1947	then mp from 1954	N/A	Ex-MP
Baroness	Flather	Conservative		Politics	Councillor and Mayor		called to the bar in 1962	N/A	Councillor
Baroness	Fookes	Conservative	y	Teacher	History and English Teacher	1970		N/A	Ex-MP
Lord	Forsyth of Drumlean	Conservative	y	Politics	Secretary of State for Scotland	1997		N/A	Ex-MP
Lord	Fowler	Conservative	y	Media	Correspondent, the Times	1970		N/A	Ex-MP

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Lord	Fraser of Carmyllie	Conservative	y	Law	QC (scot)			N/A	Ex-MP
Lord	Freeman	Conservative	y	Business	Partner, Lehman Brothers	1986		N/A	Ex-MP
Baroness	Gardner of Parkes	Conservative		Health	Dentist	1990	Former councillor	N/A	Former councillor
Lord	Garel-Jones	Conservative	y	Politics	Assistant to an MP	1979		N/A	Ex-MP
Lord	Goodlad	Conservative	y	Politics	High Commissioner to Australia	2005		N/A	Ex-MP
Lord	Hamilton of Epsom	Conservative	y	politics	Chairman of the 1922 committee		During his time in Parliament he was the tallest MP at 6 feet 6 inches	N/A	Ex-MP
Baroness	Hanham	Conservative		politics	Local Councils			N/A	Former Councillor
Lord	Hanningfield	Conservative		Agriculture	Farmer		Was imprisoned for falsely claiming overnight allowances when he didn't stay overnight.	N/A	Essex County Councillor for 40 years.
Lord	Hayhoe	Conservative	y	Engineer	various technical appointments in Ministry of Aviation	1963	Research Head, Conservative Research Department 1965-70	N/A	Ex-MP
Lord	Heseltine	Conservative	y	politics	Deputy Prime Minister of the United Kingdom	1997		N/A	Ex-MP
Lord	Higgins	Conservative	y	Business	Economic Specialist, Unilever	1964	also in commonwealth games team 1950	N/A	Ex-MP
Lord	Hodgson of Astley Abbotts	Conservative	y	Business	investment banker; director of various companies	1967; ongoing		N/A	Ex-MP
Lord	Howe of Aberavon	Conservative	y	Law	QC			N/A	Ex-MP
Lord	Howell of Guildford	Conservative	y	Business	Various directorships, MP since 1966.			N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Hunt of Wirral	Conservative	y	Law	International Chair: Board of the Chartered Insurance Institute; Vice-Chair, Conservative Party			N/A	Ex-MP
Lord	Hurd of Westwell	Conservative	y	Public Service	Foreign Secretary, Home Secretary, other ministerial and shadow cabinet posts. Adviser to Rt. Hon. Edward Heath MP as Prime Minister.			N/A	Ex-MP
Lord	Inglewood	Conservative		Hereditary	Background in Law, former MEP			N/A	Ex-MEP
Lord	James of Blackheath	Conservative		Business	-lacks sufficient information-			N/A	Seems to be a largely political appointment; he did a review for the Conservatives finding savings that could be made in state spending ahead of the 2005 elections, then a Conservative watchdog to monitor Labour's promises to make savings after that
Lord	Jenkin of Roding	Conservative	y	Business	Chair, various companies and charities.			N/A	Ex-MP
Lord	Jopling	Conservative	y	Farmer	Former Govt. chief whip.			N/A	Ex-MP
Lord	Kimball	Conservative	y	Politico	Some banking/tenancy chairing/directing	1996		N/A	Ex-MP
Lord	King of Bridgwater	Conservative	y	Business	Divisional General Manager	1969	Did National Service and was in TA. Chairs and non–exec directorships after becoming an MP	N/A	Ex-MP
Baroness	Knight of Collingtree	Conservative	y	Politics	Director, Computeach International and Heckett Multiserv	2002		N/A	Ex-MP
Lord	Lamont of Lerwick	Conservative	y	Business	Various Directorships, Chancellor of the Exchequer	Ongoing/1993		N/A	Ex-MP
Lord	Lang of Monkton	Conservative	y	Politics	Non-exec directorships	Unclear		N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Lawson of Blaby	Conservative	y	Journalism	Editor of The Spectator, Chancellor of the Exchequer	1970/1989		N/A	Ex-MP
Lord	MacGregor of Pulham Market	Conservative	y	Banking	Various directorships and chairings, none leap out as especially notable	Ongoing		N/A	Ex-MP
Lord	Maples	Conservative	y	Law	Chair and Chief Executive, Saatchi & Saatchi	1996		N/A	Ex-MP
Lord	Marlesford	Conservative		Business	Various directorships and chairings		Political adviser and editorial consultant to The Economist. Former Councillor	N/A	Former Councillor
Lord	Mawhinney	Conservative	y	Academics	Professor of radiation research at the University of Iowa	1970	Ph.D. in radiation physics. Was a member of the General Synod for five years.	N/A	Ex-MP
Lord	Mayhew of Twysden	Conservative	y	Law	Attorney General for England and Wales and Northern Ireland / Secretary of State for Northern Ireland	1992 / 1997	Captain in the Army Emergency reserve for 11 years	N/A	Ex-MP
Lord	Moore of Lower Marsh	Conservative	y	Finance	Chairman of Dean Witter (International)	1979	Various chairings and directorships	N/A	Ex-MP
Lord	Moynihan	Conservative	y	hereditary				N/A	Former MP
Lord	Naseby	Conservative	y	business	Director, service advertising	1971		N/A	Ex-MP
Lord	Newton of Braintree	Conservative	y	politics	Leader of the House of Commons, Lord President of the Council	1997		N/A	Ex-MP
Baroness	Oppenheim-Barnes	Conservative	y	Social work	Minister of State for Consumer Affairs in the Department of Trade	1982		N/A	Ex-MP
Lord	Parkinson	Conservative	y	politics				N/A	
Lord	Patten	Conservative	y	politics	Secretary of State for Education	1994		N/A	
Lord	Patten of Barnes	Conservative	y	politics	Governor and Commander-in-Chief of Hong Kong,	1997		N/A	

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Baroness	Platt of Writtle	Conservative		engineering	British European airways, Councillor	1949; 1986		N/A	
Lord	Plumb	Conservative		agriculture/ EU Politics	president NFU; president of EU Parliament	1979; 1989		N/A	Former MEP
Lord	Prior	Conservative	y	business	various directorships	1998		N/A	Ex-MP
Baroness	Rawlings	Conservative		business?	California Dress Company	1982	Former MEP	N/A	Ex-MEP
Lord	Renton of Mount Harry	Conservative	y	business	director of various companies	1974		N/A	Ex-MP
Baroness	Ritchie of Brompton	Conservative		Politics	Local Councillor			N/A	Councillor
Lord	Roberts of Conwy	Conservative	y	Media	harlech TV	1969		N/A	Ex-MP
Lord	Ryder of Wensum	Conservative	y	politics	Advisor to Thatcher	1981		N/A	Ex-MP
Baroness	Seccombe	Conservative		politics	chair, Lord chancellor's advisory Committee, Solihull	1993	Former councillor	N/A	Former councillor
Lord	Selkirk of Douglas	Conservative	y	hereditary				N/A	Ex-MP
Lord	Shaw of Northstead	Conservative	y	Politics				N/A	Ex-MP
Baroness	Shephard of Northwold	Conservative	y	Politics/Education	Secretary of State for Education and Employment	1997		N/A	Ex-MP
Lord	Spicer	Conservative	y	Financial Journalist	Managing Director of Economics Models Ltd	1980		N/A	Ex-MP
Lord	St John of Fawsley	Conservative	y	Politics	Leader of the House of Commons	1981		N/A	Ex-MP
Lord	Stewartby	Conservative	y	business	brown, shipley and co, chair	1983		N/A	Ex-MP
Lord	Taylor of Warwick	Conservative		Law	barrister at law, councillor	1980?		N/A	Former councillor
Lord	Tebbit	Conservative	y	pilot	airline pilot	1970		N/A	ex-MP
Baroness	Thatcher	Conservative	y	politics				N/A	Ex-MP
Lord	Trimble	Conservative	y	Academic	Head of the Department of Commercial and Property Law, University of Belfast / First Minister of Northern Ireland	1989 / 2002	Awarded a Nobel Peace Prize	N/A	Ex-MP

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Baroness	Trumpington	Conservative		Politics	Mayor of Cambridge	1972	During World War II, she worked in Naval intelligence at Bletchley Park	N/A	Former councillor
Lord	Tugendhat	Conservative	y	Journalist	Director of NatWest	1991	Various charings and directorships	N/A	Ex-MP
Viscount	Ullswater	Conservative		Hereditary	Government Chief Whip in the House of Lords / County Councillor	1994 / Ongoing		N/A	Councillor
Lord	Waddington	Conservative	y	Law	Governor of Bermuda	1997	QC.	N/A	Ex-MP
Lord	Wade of Chorlton	Conservative		Farmer	Various chairings and memberships of farming related organisations	Most ended in or before 1988	Also apparently a 'cheesemaster'. Former councillor	N/A	Former Councillor
Lord	Wakeham	Conservative	y	Business	Director of Enron	2001	A director of Enron when it went bankrupt	N/A	Ex-MP
Lord	Waldegrave of North Hill	Conservative	y	Politics	Leader of Opposition's Office / Chief Secretary to the Treasury	1975 / 1997		N/A	Ex-MP
Baron	Blencathra	Conservative	y	politics	Opposition Chief Whip	2005		N/A	Ex-MP
Baroness	Jenkin of Kennington	Conservative		Public Relations	Co-founder of Women2Win, a campaign to get more women Conservatives into Parliament.		Married to an MP who's the son of a Peer. Possibly gained the rank of Captain in the service of the Women's Royal Army Corps (Territorial Army).	N/A	Does political work for the Conservatives including co-founding Women2Win, a campaign to get more women Conservatives into Parliament.
Lord	Magan of Castletown	Conservative		Business	Various directorships and board memberships	Ongoing		N/A	Conservative Party's Treasurer since 2003 and is presently the Deputy Chairman of the Conservative Foundation.

Unlock Democracy—Appendix 2

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Empey	conservative		politics	Leader of the Ulster Unionist Party	2010	Also some business/retail experience	N/A	Former NI Assembly member
Lord	Framlingham	Conservative	y	politics	Deputy Speaker of the House of Commons	2010	Briefly a teacher, also a businessman whilst a councillor	N/A	Ex-MP
Lord	Ahmad of Wimbledon	Conservative		Business	Strategy and Marketing Director, Sucden Financial Limited	Ongoing	Also a local councillor	N/A	Councillor
Lord	Flight	Conservative	y	Business	“Director in various banks”	1998	Various other chairings and directorships	N/A	Ex-MP
Lord	Boswell of Aynho	Conservative	y	politics / agriculture	advisor to minister for agriculture	1986		N/A	Ex-MP
Lord	Howard of Lympne	Conservative	y	Law / Politics	QC 1982, MP 84			N/A	Ex-MP
Baroness	Eaton	Conservative		politics	local government			N/A	Current councillor
Marquess	of Lothian	Conservative	y	Politics	Shadow Foreign Secretary	2005		N/A	Ex-MP
Lord	Cormack	Conservative	y	Teaching	Head of history at the Brewood Grammar School	1970		N/A	Ex-MP
Lord	TRUE	Conservative		Politics	Director of the Public Policy Unit from / Deputy Head of the Prime Minister’s Policy Unit / Special adviser within the Prime Minister's Office	1990 / 1995 /1997	London local Councillor	N/A	Councillor
Lord	Risby	Conservative	y	Politics	Vice-Chairman of the Conservative Party responsible for business links in the City of London.	Ongoing		N/A	Ex-MP
Baroness	Carnegy of Lour	Conservative		Agriculture / Politics	Farmer (councillor at the same time)	1989		N/A	Former Councillor
Earl	Baldwin of Bewdley	Crossbench		hereditary				1	Education officer for Oxford, finishing in 1987, chair British Acupuncture Accreditation Board finishing in 1998

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Brabazon of Tara	Crossbench		hereditary				1	Only non-political, non-honourary/similar role/job has been 12 years as a member of the Stock Exchange, ending in 1984
The Earl of Erroll		Crossbench		Hereditary	President of ERADAR	Current	TA from 1975 to 1990, marketing and computer consultant	1	No real expertises
Lord	Freyberg	Crossbench		Hereditary	Seemingly none		BA degree	1	
Lord	Greenway	Crossbench		Hereditary			Marine photographer, shipping consultant	1	Little before becoming member of HoL
Lord	Hylton	Crossbench		Hereditary	Range of charity chairmanships		Served in the Coldstream Guards 1951-52	1	Little before becoming a Lord
The Earl of Listowel		Crossbench		Hereditary	BA English Lit	1992	Ascended in 1997	1	Little before Lords
Baroness	Masham of Ilton	Crossbench		Social Work	Volunteer in social work and health stuff		Disabled in a riding accident, and a champion for disabled causes	1	No significant expertise
Lady	Saltoun of Abernethy	Crossbench		hereditary				1	Little of note before peerage
The Earl of Stair		Crossbench		Hereditary				1	Seemingly nothing of significance
Viscount	Tenby	Crossbench		hereditary	Chair/President of minor groups		Reached rank of Captain in Army	1	Small chairs, over 10 years ago
Viscount	Waverley	Crossbench		hereditary				1	Nothing of note
Viscount	Allenby of Megiddo	Crossbench		Military	Commander TA	1977		2	Reached high-ish but not top ranks in the Army and TA (Brigade Major and Commander of Yeomanry respectively), retired over ten years ago (4-2)

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Cameron of Dillington	Crossbench		Agriculture	Royal Bath and West Society, President	2007		2	Chair of the Countryside Agency, retired over five years ago. (3-1)
The Marquess of Cholmondeley		Crossbench		hereditary				2	Film maker/director of small scale/little stuff
Lord	Chorley	Crossbench		hereditary				2	Partner at a reasonably big-ish accountancy firm (which later merged with Price Waterhouse Coopers), retired for over ten years (4-2)
Viscount	Clancarty	Crossbench		hereditary	"self-employed artist and freelance writer and translator"			2	"self-employed artist and freelance writer and translator"
Lord	Cobbold	Crossbench		hereditary				2	Various mid level chairings and presidencies, but all of the higher level stuff is more than ten years old (4-2)
Viscount	Craigavon	Crossbench		Hereditary Peer. Chartered Accountant.	Member of the Executive Committee of the Anglo-Austrian Society.	Ongoing		2	Is doing stuff for UK-Austria relations; doesn't seem to be high responsibility, or massively visible, but is something
Baroness	Emerton	Crossbench		Health	Chief Nursing Officer, St John's Ambulance	1996		2	CNO over 10 years ago
Lord	Laming	Crossbench		Probation	Director of Social Services for Hertfordshire County Council. Chief inspector of the social services inspectorate	1998		2	Director of Social Services over 10 years ago
The Countess of Mar		Crossbench		Hereditary			Also a farmer. Founded an organisation campaigning for more support for and research into Chronic	2	Little significant beyond farming and campaigning

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
							fatigue syndrome/ME		
Lord	Palmer	Crossbench		hereditary				2	Minor chairs over 10 years ago
Lord	Powell of Bayswater	Crossbench		civil Service	diplomatic service; private secretary to Thatcher and Major	1991		2	PS over 10 years ago
Lord	Rogan	Crossbench		politics	President of the Ulster Unionist party	2006		2	Minor chairs over 10 years ago
The Earl of Sandwich		Crossbench		hereditary	Co-Founded Earl of Sandwich sandwich shop			2	Founded Sandwich shop
The Earl of Snowdon		Crossbench		Photographer	Artistic Adviser to the Sunday Times	1990	Various Exhibitions	2	Prominent photographer over 10 years ago
Baroness	Warnock	Crossbench		Academics	Mistress of Girton College, Cambridge	1989	Was a teacher for 6 years too, and was headmistress	2	Head of Cambridge College over 10 years ago
Lord	Wilson of Tillyorn	Crossbench		Civil Service	FCO	1992	Penultimate Governor of Hong Kong	2	FCO experience, and Governor of Hong Kong over 10 years ago
Lord	Armstrong of Ilminster	Crossbench		Civil Service	Secretary of the Cabinet / Head of the Home Civil Service — In overall charge of the civil service	1987		3	Head of the Civil Service (5), retired and over 10 years out of date (-2)
Lord	Bhatia	Crossbench		Business	Director, Casley Finance Ltd	2001		3	Was high level director (Forbes Campbell International, Casley Finance), but that's 10 years out of date
Lord	Bramall	Crossbench		Military	Chief of Defence Staff	1985		3	Chief of the Defence staff (overall military commander of UK military forces), retired over 10 years ago (5-2)
Lord	Bridges	Crossbench		hereditary	Ambassador to Italy	1987		3	Ambassador to Italy, retired more than 10 years ago. Other medium-high positions, but all ending more

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									than five years ago (5-2)
Lord	Briggs	Crossbench		Academia	History Professor	1991	Bletchley Park Cryptographer !	3	Professor, Chancellor of the Open University and other high level academic positions, but all the major positions ended more than ten years ago (5-3)
Lord	Browne-Wilkinson	Crossbench		Law	QC, Vice Chancellor to the Supreme Court	1991		3	Was in various high level legal positions
Lord	Butler of Brockwell	Crossbench		Civil Service	Cabinet Secretary	1998		3	Head of the Civil Service, retired over 10 years ago
Baroness	Butler-Sloss	Crossbench		Law	President Family Division	2005		3	High Court Judge in the Family Division
Lord	Cameron of Lochbroom	Crossbench		Law	QC (Scot)			3	QC, but appears to likely have retired, and done so 10 or more years ago.
Lord	Chalfont	Crossbench		Military / business	various intelligence appointments; Shandwick plc, Director	1961; 1994	many other postings, directorships and a few media roles too	3	Director of The Television Corporation, other high level roles, but all the major things were 10 or more years ago.
Lord	Chitnis	Crossbench		Public Service	Joseph Roundtree Trust,Secretary, Director	1975, 1988		3	Director of the Joseph Rowntree trust, but retired well over 10 years ago. Has done other stuff since then, but little or nothing of strong relevance in the last ten years (5-2)
Lord	Condon	Crossbench		Public Service	Commissioner, Metropolitan Police	2000		3	Met Commissioner over 10 years ago
Lord	Craig of Radley	Crossbench		Military (RAF)	Chief of the Defence Staff (AKA professional/military head of UK armed forces)	1991		3	Head of military over 10 years ago

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Croham	Crossbench		Civil Service	Head of the Home Civil Service/Cabinet Secretary (AKA highest ranking civil servant)	1977	Also some involvement in Business	3	Head of the civil service, retired over ten years ago. Various other medium to high level positions, but all of the higher level ones retired more than ten years ago, and the lower ones retired at least five years ago
Baroness	D'Souza	Crossbench		Academia	Consultant to UN, director of NGOs	1998	DPhil	3	Director of the Redress Trust (seeking reparations for victims of torture), retired from that over five years ago.
Lord	Dear	Crossbench		Police	Chief Constable of West Midlands / HM Inspectors of Constabulary	1997		3	Chief Constable and Inspector of Constabulary, both roles ended more than 10 years ago (5-2)
Lord	Fellowes	Crossbench		Civil Service	Managing Director, Allen Harvey and Ross Ltd; Assistant Private Secretary to the Queen	1977; 1986	Princess Diana's brother-in-law, and Sarah Ferguson's cousin	3	Managing Director over 10 years ago
Lord	Goff of Chieveley	Crossbench		Law	QC, Lord Justice of Appeal	1986		3	Lord Justice over 10 years ago
Baroness	Greengross	Crossbench		BusinessPublic Service	Age concern UK Director General	2000		3	Director General of Age Concern, returned more than 10 years ago.
Lord	Griffiths	Crossbench		Law	QC, High Court Judge		Law Lord until 1993	3	Career peaked over 10 years ago
Lord	Guthrie of Craigiebank	Crossbench		Military	Chief of Defence Staff	2001		3	Head of Military 10 years ago
Lord	Hannay of Chiswick	Crossbench		Civil Service/Diplomacy	FCO, including Ambassador to the UN	1995		3	Peaked over 10 years ago
Baroness	Howarth of Breckland	Crossbench		Public Service	Director of Social Services, Brent Council; Chief Executive, Child line Charity	1986; 2001		3	CE 10 years ago

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Baroness	Howe of Idlicote	Crossbench		Public service	President, UK committee of UNICEF			3	Chair of Broadcasting Standards organisation, retired more than 10 years ago.
Lord	Imbert	Crossbench		Public Service	Met Commissioner; Lord Lieutenant of Greater London	1993; 2008		3	Met Commissioner over 10 years ago
Lord	Inge	Crossbench		Military	Chief of the Defence Staff	1997		3	Head of Military over 10 years ago
Lord	Jacobs	Crossbench		Business	Chair of Liberal and Social Democrats (Lib Dems)		Stood for MP in 1974	3	Chairman of some fairly major companies, retired more than 10 years ago.
Lord	Jay of Ewelme	Crossbench		Public service	Ambassador to France	2001		3	Ambassador over 10 years ago
Lord	Joffe	Crossbench		Public Service	Chair, various health authorities; high level NGO positions		Former human rights lawyer, co-founded Hambro Life Assurance	3	Chairmanships over 10 years ago
Lord	Kilpatrick of Kincraig	Crossbench		Medical	Chair, GMC, BMA			3	Professor, chair of GMC and BMA, but retired from all of those more than 10 years ago.
Lord	Kingsdown	Crossbench		Banking	Governor of the Bank of England/Non Executive directorships	1993/1998	Also some stuff in Law and Business	3	Governor of the Bank of England over 10 years ago
Lord	Knights	Crossbench		Police	Chief Constable of West Midlands Police.	1985		3	Police chief over 10 years ago
Lord	Levene of Portsoken	Crossbench		Business	Lord Mayor of London	1998-99	3 non-executive directorships	3	Peaked over 10 years ago
Lord	Lewis of Newnham	Crossbench		Science	President, National Society for Clean Air and Environmental Protection; Professor of Chemistry at Cambridge	1995		3	Professor over 10 years ago
Lord	Lloyd of Berwick	Crossbench		Law	Lord of Appeal in the Ordinary			3	Peaked over 10 years ago
Baroness	McFarlane of Llandaff	Crossbench		Medicine	Professor and Head of Department on Nursing	1988	Some involvement in the General Synod	3	Professor over 10 years ago

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Baroness	Meacher	Crossbench		Social Work	Commissioner, Mental Health Act / Chair, East London & City Mental Health Trust	1992	Chief adviser to the Russian Government on employment, Deputy Chair Police Complaints Authority.	3	Most senior positions over 5 years ago
Viscount	Montgomery of Alamein	Crossbench		Business	Hereditary Peer. Director of Shell International.	1962	Various President-ings and chairings	3	Director over 10 years ago
Lord	Moran	Crossbench		Diplomat	High Commissioner to Canada	1984	Hereditary Peer. Two years service in the Royal Naval Reserve. Various chairings and directorships of nature-related organisations	3	Career peaked over 10 years ago
Lord	Moser	Crossbench		Academic / civil service	Head of Government Statistical Service	1978		3	Peaked over 10 years ago
Lord	Mustill	Crossbench		law	Lord justice of Appeal; Law Lord	1992; 1997		3	Law Lord over 10 years ago
Lord	Nickson	Crossbench		Business	Hambro's plc; Director of National Australian Bank	1998; 1996		3	Director over 10 years ago
The Duke of Norfolk		Crossbench		hereditary				3	Chair of a Natural gas company in Saudi Arabia over ten years ago, chair of a UK company doing PFI, grounds management, etc, over 5 years ago (4-1)
Lord	Northbourne	Crossbench		hereditary				3	Farmer, Chair - Betteshanger Farms Ltd (UK), and Nchima Tea and Tung Estates (Malawi)
Lord	Ouseley	Crossbench		public service	chief exec local government, Chief exec Commission for racial	2000		3	CE over 10 years ago

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
					equality				
Lord	Oxburgh	Crossbench		academic	chief scientific adviser to the Ministry of Defence	1993	Rector of Imperial College until 2000	3	Career peaked over 10 years ago
Lord	Quirk	Crossbench		academic	linguistics professor, speech therapist; Quain Professor UCL	1981		3	Professor over 10 years ago
Lord	Ramsbotham	Crossbench		Military	Adjutant general	1993		3	General, over 10 years ago
Lord	Rix	Crossbench		medical	actor	ongoing	Known for charity work	3	Current actor
The Earl of Rosslyn		Crossbench		hereditary	Commander, Met Police	Current		3	Current commander
Viscount	Slim	Crossbench		Hereditary/Military/ Business	Director, Trailfinders ltd	2007	Lieutenant-Colonel in Army	3	Most significant roles seem to be over 10 years ago
Lord	St John of Bletso	Crossbench		Hereditary	Managing director of Globlix UK		Has a Master of Law degree from LSE	3	Last significant role over 10 years ago
Lord	Stevenson of Coddenham	Crossbench		business	Chair, SRU Group	1996		3	Chair more than 10 years ago
Lord	Steyn	Crossbench		law	QC, Lord justice of appeal	1995		3	Lord Justice over 10 years ago
Lord	Templeman	Crossbench		law	barrister, law lord	1995		3	Law Lord over 10 years ago
Lord	Thomas of Swynnerton	Crossbench		Civil Servant	Chairman, Centre for Policy Studied	1990	Also an academic for much of the same time	3	Chairmanship over 10 years ago
Lord	Tombs	Crossbench		Industry	Chairman & Director of Rolls-Royce	1992		3	Nothing significant in the last 10 years
Lord	Vincent of Coleshill	Crossbench		Military	Chief of the Defence Staff (professional head of all the British Armed Forces) / Chair of the Military Committee of NATO	1992 / 1996		3	Head of military over 10 years ago
Lord	Walton of Detchant	Crossbench			President of the British Medical Association / President of the General Medical Council / President of the Royal Society of Medicine	1982 / 1989 / 1986		3	Presidencies over 10 years ago

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Wedderburn of Charlton	Crossbench		Law	QC, Cassel prof of commercial law LSE	1992		3	Career peaked over 10 years ago
Lord	Williamson of Horton	Crossbench		Civil Service	numerous agriculture posts; secretary general EC	1983; 1997		3	Deputy Secretary in the Cabinet office, over 10 years ago.
Lord	Wright of Richmond	Crossbench		Diplomacy	Head of the diplomatic service	1991		3	Head of Diplomatic Service over 10 years ago
Baroness	Young of Hornsey	Crossbench		Academic/ media	head of Culture, GLA	2004	Actress 76-84	3	Head of Culture over 5 years ago
Lord	Lytton	Crossbench		Hereditary	Set up own chartered surveyor practice	Current		3	Current chartered surveyor
Lord	Bichard	Crossbench		Public Service / Civil Service	Director/ senior Fellow, Institute for Government	ongoing	numerous commissions and committees	4	Was in a very high role in the civil service, retired about ten years ago, however has remained involved in other fairly high level stuff (Institute for Government, Design Council), thus given (5 - 2 +1) overall 4
Lord	Birt	Crossbench		Media	Director General, Granada TV	2000		4	Top level experience in broadcasting, but more than ten years out of date, and none of his current stuff is of that level
Lord	Boyce	Crossbench		Military	First Sea Lord, then Chief of the Defence Staff	2001, 2003		4	Retired from Chief of the Defence Staff over five years ago, still involved as Colonel Commandant of the Special Boat Service (5-1)
Viscount	Brookeborough	Crossbench		hereditary				4	Lieutenant Colonel in the army, still involved though possibly in an honourary position
Baroness	Campbell of Surbiton	Crossbench		Public Service	Chair, Disability Committee and Commissioner Commission for Equality and Human Rights	2009	various disability and equality roles 1985-	4	Commissioner on Equalities and human rights commission, chair of its Disability committee
Lord	Carswell	Crossbench		Law	Lord Chief Justice NI	2004		4	Lord Chief Justice of Northern Ireland,

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
									retired over 5 years ago.
Lord	Crisp	Crossbench		Civil Service (NHS)	Chief Executive of NHS	2006	Active in global health and international development	4	CE of NHS 5 years ago
Lord	Cullen of Whitekirk	Crossbench		Lawyer/Judge	Lord Justice General (Head of Scottish courts system)	2005	Law Lord until that function transferred to Supreme Court	4	Head of Scottish Courts over 5 years ago
Baroness	Finlay of Llandaff	Crossbench		Health	GP, Palliative Care Specialist	ongoing		4	Current specialist
Baroness	Fritchie	Crossbench		Public Service	Chair, Gloucester Health Authority; and other consultancy roles	1992; ongoing		4	Chair, South West Regional Health Authority, Civil Service Commissioner. Retired for more than 5 years (5-1)
Lord	Haskins	Crossbench		Business	Chair, Northern Foods	2002		4	Chair over 5 years ago
Lord	Hutton	Crossbench		Law	Lord of Appeal in the Ordinary (Law Lord), Lord Chief Justice	2004		4	Law Lord over 5 years ago
Lord	Jones of Birmingham	Crossbench		Business	Director General, CBI. Sits on board of various businesses and charities. Govt spokesman on foreign and commonwealth matters, Lords.	2006		4	Director general of CBI 5 years ago
Lord	Kerr of Kinlochard	Crossbench		Public service	Head of Diplomatic Service	2002	Current Deputy Chair, Shell	4	Head of Diplomatic service over 5 years ago
Lord	Laird	Crossbench		Politics	Chair, John Laird Public Relations	2005		4	Chair over 5 years ago
Lord	Low of Dalston	Crossbench		Academics	Visiting professor	Ongoing	Chairman of the RNIB, other disability related work	4	Current visiting professor, chair of RNIB
Lord	Marshall of Knightsbridge	Crossbench		Business	Chairman and CEO of British Airways.	2004	X	4	Chairman over 5 years ago
Lord	McCluskey	Crossbench		Law	Solicitor General for Scotland / Senator of the College of Justice (a judge of Scotland's Supreme Courts)	1979 / 2004	QC	4	Supreme court judge over 5 years ago

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Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Millett	Crossbench			Lord Justice of Appeal; Law Lord	1998; 2004	QC, Judge. Currently a non-permanent judge of the Court of Final Appeal, Hong Kong	4	Law Lord over 5 years ago
Baroness	Murphy	Crossbench		Health	Chair, North East London Strategic health Authority	2006		4	Chair 5 years ago
Baroness	O'Neill of Bengarve	Crossbench		Academic	philosophy professor	2006		4	Professor 5 years ago
Lord	Patel	Crossbench		health	obstetrician; Chancellor of Dundee University	2003; Current		4	Obstretician more than 5 years ago, current Chancellor
Lord	Rana	Crossbench		business	Founder, Indian business forum; president, NI chamber of commerce	1985;2006		4	President, 5 years ago
Lord	Rowe-Beddoe	Crossbench		business	president of various businesses	ongoing		4	Top experience over 10 years old, but some more recent positions
Baroness	Stern	Crossbench		Academia	Secretary General Penal Reform International	2006		4	SG 5 years ago
Lord	Stevens of Kirkwhelpington	Crossbench		Police	Commissioner of the Met	2005		4	Met Commissioner over 5 years ago
Lord	Tanlaw	Crossbench		Business	Various directorships	ongoing	Son of an earl. Chancellor of Buckingham University	4	Chancellor and directorships
Lord	Turnbull	Crossbench		Civil Servant	Head of Her Majesty's Civil Service and Cabinet Secretary	2005		4	Cabinet Secretary over 5 years ago
Lord	Walker of Aldringham	Crossbench		Military	Chief of the Defence Staff (professional head of all the British Armed Forces)	2006		4	5-1, Head of military 5 years ago
Lord	Wilson of Dinton	Crossbench		Civil Servant	Head of Home Civil Service, Cabinet Secretary	2002		4	Cabinet Secretary over 5 years ago
Lord Woolf		Crossbench		Law	Lord Chief Justice	2005		4	Lord Chief Justice over 5 years ago

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Lord	Aberdare	Crossbench		hereditary / Business	Director: ProbusBNW (Corporate Consultants	2009		5	Retired from a directorship. Is currently a director of a 'training for work and apprenticeships' company/organisation, but this doesn't seem to be on the same level
Lord	Adebowale	Crossbench		Public Service	New Deal; Turning Point Chief Executive,	ongoing	housing affairs expert, also Chancellor of Lincoln University and head of numerous charities	5	Still a chief executive of a major care organisation, as well as numerous other involvements
Baroness	Afshar	Crossbench		Academia	Professor, Politics and Women's studies	Ongoing	Iranian, vocal on women's rights overseas	5	Professor in politics and women's studies at the University of York, England, visiting professor of Islamic law at International Faculty of Comparative Law at Robert Schuman University in Strasbourg, France.
Baroness	Andrews	Crossbench		Politics	Chair of English Heritage	Ongoing	Left the Labour Benches in 2009	5	Ongoing chair of English Heritage
Lord	Ballyedmond	Crossbench		business	Director, Bank of Ireland	1987 - ongoing		5	Director of the Bank of Ireland.
Lord	Best	Crossbench		Public Service	Chief Executive, National Federation of Housing Associations; Joseph Rowntree Foundation etc.	ongoing		5	Some of his major stuff (e.g. chief executive Rowntree Foundation) has ended, but he's still president of Local Government Association, Hanover Housing Association and other things
Lord	Bew	Crossbench		Academia	Politics Professor, Queen's University Belfast	ongoing		5	Working professor
Lord	Bilimoria	Crossbench		Business	Chair, Cobra Beer Partnership Limited	ongoing		5	Still a chair of a major company

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Lord	Broers	Crossbench		Academia	Various science posts, most recently Chair of Diamond Light Source	ongoing	Australian, so can cook a damn good BBQ	5	'Chairman of the board of directors at the Diamond Light Source, the United Kingdom's largest new scientific facility for 30 years.'
Lord	Brown of Eaton-under-Heywood	Crossbench		Law	Supreme Court Justice			5	Currently a Justice of the Supreme court
Lord	Burns	Crossbench		Academia	Economics Professor		Permanent Secretary, HM Treasury	5	Professor, chair of Marks and Sparks less than five years ago, Chair of Channel 4
Baroness	Campbell of Loughborough	Crossbench		Public Service	National Coaching Foundation, Chief Executive	1995		5	Chair of UK Sport, organisation for directing the development of sport within the UK
Lord	Clarke of Stone-cum-Ebony	Crossbench		Law	Supreme Court Justice	ongoing		5	Current Supreme Court Justice
Lord	Collins of Mapesbury	Crossbench		Law	Supreme Court Justice	ongoing		5	Current Supreme Court Justice
Baroness	Coussins	Crossbench		NGOs	CEO of Portman Group (alcohol trade group), NGO directorships	2007, other still ongoing NGO involvements	Adviser on corporate responsibility	5	CEO within last 5 years
Baroness	Cox	Crossbench		Medical and Academic	CEO & founder of Humanitarian Aid Relief Trust, Director Nursing Education Research Unit	Ongoing	Author of various publications on medicine and healthcare.	5	Current CEO
Lord	Currie of Marylebone	Crossbench		Academia	Chairman of Ofcom	2009	Director of Joseph Rowntree Reform trust 91-02	5	Chairman of OfCom retired less than five years. Other high level positions.
Baroness	Deech	Crossbench		Academia	Principal of St Anne's College, Oxford	2004	Independent Adjudicator for Higher Education 04-08	5	Professor of Law at Gresham College in London

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Baroness	Greenfield	Crossbench		Academia	Professor of Synaptic Pharmacology, Oxford Uni; researcher into Alzheimer's and Parkinson's - could be useful in Lords	ongoing	'Thinker in Residence' Adelaide 2004-5	5	Current Professor
Baroness	Grey-Thompson	Crossbench		Sport	Paralympian	2004		5	'considered to be one of the most successful disabled athletes in the UK.', 11 gold medals at paralympics. Retired from that less than 5 years ago.
Baroness	Hale of Richmond	Crossbench		Law	Lord Justice of Appeal; Supreme court Justice	2004; ongoing		5	Current Supreme Court Justice
Lord	Hall of Birkenhead	Crossbench		Media	Chief Exec BBC; Chief Executive Royal Opera House	2001; Current	Started at BBC in 73 as a trainee	5	Current CE
Lord	Hameed	Crossbench		Health	Clinical assistant; Chair and CEO, London International Hospital	1980; ongoing		5	Current CEO
Lord	Hardie	Crossbench		Law	QC (Scot), Lord Advocate; Judge of the Supreme Courts of Scotland	2000; Current		5	Current Judge of Supreme Court of Scotland
Lord	Hastings of Scarisbrick	Crossbench		Media	BBC Head of Corporate social responsibility	2006		5	Head of Public affairs at the BBC within the last five years, then head of corporate social responsibility, and other high level positions in that area
Lord	Hoffmann	Crossbench		Law	QC; Lord Justice of Appeal	ongoing; 1995		5	QC current
Lord	Hope of Craighead	Crossbench		Law	QC (Scotland), Judge, Deputy President of Supreme Court	Current		5	Current Deputy President
Lord	Janvrin	Crossbench		Public service	Various military, diplomatic service.			5	Private Secretary to the queen 'the principal channel of communication with Her Majesty's Government and the governments of the fifteen other Commonwealth realms. ' Retired less than five

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									years ago
Lord	Judge	Crossbench		Law	Lord Chief Justice	Current		5	Current Lord Chief Justice
Lord	Kakkar	Crossbench		Medicine	Director, Thrombosis Research Institute		Professor of Surgery, UCL	5	Current Director and Professor
Lord	Kerr of Tonaghmore	Crossbench		Law	Justice of the Supreme Court (disqualified from participating in House activities).	Current		5	Current Justice
Lord	Krebs	Crossbench		Academics	Principal of Jesus College, Oxford University	Ongoing	"World leader in zoology". Chairman of the British Food Standards Agency for 5 years.	5	Current Principal
Lord	Mackay of Drumadoon	Crossbench		Law	Lord Advocate, (senior law officer for Scotland)	1997	Also a Judge, and a Lord of Appeal before those stopped doing Appeals	5	Current judge, former Lord Advocate
Lord	Mance	Crossbench		Law	Justice of the Supreme Court of the United Kingdom.	Current	QC. Bencher of the Inns of Court	5	Current Justice
Baroness	Manningham-Buller	Crossbench			Director General (DG) of MI5	2007	Three years teaching experience	5	DG in the last 5 years
Lord	Mawson	Crossbench		Social work	Co-founder, executive director and president of Community Action Network	Ongoing	Ordained Minister	5	Current ED
Lord	May of Oxford	Crossbench		Academics	Chief Scientific Adviser to the UK Government / President of the Royal Society, Professorship at Oxford/Imperial	2000 / 2005 / Current	Numerous Honourary Degrees	5	Current professorship
Lord	Mogg	Crossbench		Civil Servant	Chairman of energy regulator Ofgem	Ongoing		5	Current chairman
Lord	Neill of Bladen	Crossbench		Law	QC	Current		5	Current barrister, QC

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Lord	Neuberger of Abbotsbury	Crossbench		Law	QC, Master of the Rolls	Current		5	Current Master of the Rolls
Lord	Nicholls of Birkenhead	Crossbench		law	QC, lord Justice of appeal	2007		5	Justice of appeal within 5 years
Baroness	O'Loan	Crossbench		police	police ombudsman	2007		5	Ombudsman within last 5 years
Lord	Pannick	Crossbench		law	deputy high court judge, QC	2005		5	Current QC
Lord	Patel of Bradford	Crossbench		health / academia	chair, mental health act commission, mental health academic	2008		5	Chair within 5 years
Lord	Phillips of Worth Matravers	Crossbench		law	lord Chief Justice	2008		5	Lord Chief Justice within 5 years
Baroness	Prashar	Crossbench		public service	National council of voluntary organisations, chair; Chair, Judicial Appointments Commission	2000; 2010		5	Chair of JAC within last 5 years
Lord	Rees of Ludlow	Crossbench		academic	professor of astrophysics	ongoing		5	Current professor
Lord	Rees-Mogg	Crossbench		Media	editor of times, FT, columnist for Mail on Sunday	ongoing		5	Current editor of the Times
Lord	Rodger of Earlsferry	Crossbench		law	Supreme Court Justice	ongoing		5	Current Supreme Court Justice
Lord	Saville of Newdigate	Crossbench		Law	Supreme court Justice	ongoing		5	Current Supreme Court justice
Lord	Scott of Foscote	Crossbench		law	QC, Judge; Law Lord	2009		5	Law Lord within last 5 years
Lord	Skidelsky	Crossbench		Academia	Professor of Political Economy, Warwick University	Current	Director, Greater Europe Fund 2005-	5	Current Professor
Lord	Smith of Kelvin	Crossbench		Business	Chair, Weir Group plc & Scottish and Southern Energy plc	Current	Chancellor Paisley University 2003-	5	Current chair
Lord	Stern of Brentford	Crossbench		Academia	Chair of Grantham Research Institute on Climate Change and the Environment	Current	IG Patel Professor of Economics and Government, London School of Economics	5	Current Professor

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Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Sutherland of Houndwood	Crossbench		Academia/Public service	founder of OFSTED, various education boards; Provost of Gresham College	2000; 2008		5	Provost in the last 5 years
Lord	Turner of Ecchinswell	Crossbench		Business	Chairman of Financial Services Authority and Committee on Climate Change	Ongoing	Part time Lecturer at LSE	5	Current FSA Chair
Baroness	Valentine	Crossbench		Business	Manager of Barings Bank / chief executive of London First	1988 / Ongoing		5	Current CE
Lord	Walker of Gestingthorpe	Crossbench		Law	Justice of the Supreme Court of the United Kingdom. Non-Permanent Judge of the Hong Kong Court of Final Appeal.	Ongoing		5	Current Supreme Court Justice
Lord	Weidenfeld	Crossbench		Media	chair, Weidenfeld and nicholson publishers	ongoing, in theory		5	Publishing career, high level chairings and suchlike, still somewhat ongoing
Lord	Stirrup	Crossbench		Military	Chief of the Defence Staff (AKA professional/military head of UK armed forces)	2010		5	Head of military less than 5 years ago
Lord	Dannatt	Crossbench		Military	Chief of the General Staff (Professional head of the British Army)	2009		5	Head of military within last 5 years
Lord	Blair of Boughton	Crossbench		Police	Met Commissioner	2010		5	Met Commissioner in the last year
Lord	Hennessy of Nympsfield	Crossbench		History, Academia, Journalism	Attlee Professor of Contemporary British History at Queen Mary, University of London	Current	Historian of Government	5	Current Professor
Baroness	Hollins	Crossbench		Academic	Professor, St George, University of London	Current	President of the Royal College of Psychiatrists 2005-08	5	Current Professor
Lord	Alton of Liverpool	Crossbench	y	Teaching	Primary School Teacher	1979		N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Ampthill	Crossbench		hereditary			'career in publishing, currently a councillor on Rye Town Council having been elected in July 2003, and as a Conservative councillor on Rother District Council	N/A	Councillor
Lord	Barber of Tewkesbury	Crossbench		Civil Service	Dept of Agriculture, Fisheries and Food; environmental consultant to Humberts, Chartered Surveyors	1972; 1993		N/A	Councillor 1948-1952
Baroness	Boothroyd	Crossbench	y	politics	Speaker of the House of Commons	2000		N/A	Ex-MP
Lord	Boston of Faversham	Crossbench	y	Law			Called to the Bar 1960	N/A	Ex-MP
Lord	Carey of Clifton	Crossbench		Church	Archbishop of Canterbury	2002		N/A	Ex-Archbishop
Lord	Eames	Crossbench		Church	Primate of All Ireland	2006		N/A	Ex-MP
Lord	Elis-Thomas	Crossbench	y	Academia	Lecturer in Welsh Studies	1974	lecturer at various other places until 1999, MP from 74	N/A	Ex-MP
Lord	Elystan-Morgan	Crossbench	y	Law	Deputy High Court Judge	2003		N/A	Ex-MP
Lord	Habgood	Crossbench		Church				N/A	Ex Archbishop
Lord	Harries of Pentregarth	Crossbench		Church				N/A	Religious based appointment
Lord	Hope of Thornes	Crossbench		Church				N/A	Ex-Archbishop of Canterbury
Lord	Kilclooney	Crossbench	y	Politics	Little information available on pre-MP activities.			N/A	Ex-MP
Lord	Luce	Crossbench	y	Civil Service	Governor of Gibraltar	2000	Also involved in marketing/business	N/A	Ex-MP
Lord	Maginnis of Drumglass	Crossbench	y	Military	Major in the Army	1981	Also was a teacher for	N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
							some years		
Lord	Marsh	Crossbench	y	Business	Chairman of the British Railways Board	1976	Various other chairings and directorships	N/A	Ex-MP
Lord	Molyneaux of Killead	Crossbench	y	Politics	Leader of the Ulster Unionists in the House of Commons	1995	Served in the RAF in Second World War	N/A	Ex-MP
Lord	Owen	Crossbench	y	politics	Foreign Secretary / Leader of the Social Democratic Party	1979 / 1990	was a doctor until 1966	N/A	Ex-MP
Baroness	Richardson of Calow	Crossbench		church				N/A	President of the Methodist Conference 1992-93, other experience is purely religious
Lord	Robertson of Port Ellen	Crossbench	y	unions	Scottish Organiser, gmwu	1978	secretary general NATO	N/A	Ex-MP
Lord	Sacks	Crossbench		religion	Rabbi			N/A	Chief Rabbi of the UK
Lord	Walpole	Crossbench		Hereditary	County Councillor	1981		N/A	Councillor
Lord	Bannside	DUP	y	Church / Politics	Moderator, Presbyterian Church of Ulster	2007		N/A	Ex-MP
Lord	Browne of Belmont	DUP		Teaching	A-level Biology Teacher	2000		N/A	Has been a councillor, has been a member of the Northern Ireland Assembly
Lord	Morrow	DUP		politics	Northern Ireland Assembly member	Current		N/A	Northern Ireland Assembly member
Baroness	Paisley of St George's	DUP		politics	Vice-president of the Democratic Unionist Party		Former councillor/NI Assembly member	N/A	Former councillor/NI Assembly member
Lord	Stoddart of Swindon	Independent Labour	y	Unions	NALGO, EETPU, power station clerical worker	1970		N/A	Ex-MP
Baroness	Blood	Labour		Public Service	Police Commissioner	2008		1	Various involvements (community worker/information officer for Greater Shankhill Partnership, some trade union involvement) but none of it very high level and the main parts of it more than ten years

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									ago
Lord	Harrison	Labour		unions	union manager NE Wales	1989		1	Union manager, over 10 years ago
Baroness	Hilton of Eggardon	Labour		Public Service	various roles in Police	1990		1	Police experience over 10 years ago
Baroness	Morgan of Huyton	Labour		Politics	Director, Government Relations	2005	Was a teacher for four years	1	Only non-political experience was as a teacher, over 10 years ago
Baroness	Ashton of Upholland	Labour		Public Service	Public Policy Advisor, Business in the Community; Director, Political Context	1998	High Representative for Foreign Affairs and Security Policy of the European Union, 2009 -	2	Chair of the Health Authority in Hertfordshire until 2001. Therefore put down as (4-2)
Lord	Carter of Coles	Labour		Business	Westminster Healthcare plc	1999		2	Various chairings of mid level companies and boards, but nothing high level, and most of the more important stuff has ended five or more years ago (3-1)
Lord	Evans of Watford	Labour		Business - publishing	Chair of various printers and publishers	2002		2	Various chairings and non-executive directorships, nothing notably high level, and most of it retired more than five years ago (3-1)
Baroness	Gale	Labour		Unions	GMB chair, Wales and South West Section	1999	originally a shop keeper	2	Chair, over 10 years ago
Baroness	Howells of St Davids	Labour		Public service	Various posts, mainly around racial equality campaigns			2	Equal opportunities director of Greenwich Racial Equality Council '…until her retirement'. No information given on *when* she retired

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
									(3 - 1)
Baroness	Jay of Paddington	Labour		Journalism	Non-exec directorships, Scottish Power, Independent News and Media, Carlton Television. Chair, Board of Overseas Development Institution.			2	Production and presenting roles in television, but nothing else major that's not linked to her being in the Lords, and the TV roles were over ten years ago, and not at the top level (4-2)
Lord	Lea of Crondall	Labour		Trade Unions	Assistant General Secretary of the TUC	1999		2	Assistant GS over 10 years ago
Lord	Lipsey	Labour		Journalism	Chair, Financial Services Consumers Panel	2008		2	Deputy Editor of The Times over 10 years ago, other journalistic stuff, but not as major or more than ten years ago (4-2)
Lord	Mackenzie of Framwellgate	Labour		Police	Chief Superintendent of the Durham Constabulary, President of Police Superintendents' Association	1998		2	Chief Superintendent over 10 years ago
Lord	McCarthy	Labour		Academics	Chair, Railway National Staff Tribunal	1985	Many adviser positions held	2	Minor chair over 10 years ago
Lord	Patel of Blackburn	Labour		business	manager of a clothing company	1997		2	Manager over 10 years ago
Lord	Prys-Davies	Labour		law	solicitor, consultant and partner	1993		2	Over 10 years ago
Baroness	Ramsay of Cartvale	Labour		diplomat	numerous diplomatic ad advisory posts, MI6	1994		2	Failed to make highest level, over 10 years ago
Lord	Rea	Labour		hereditary	GP	1993	Other medical experience	2	GP more than 10 years ago
Lord	Sawyer	Labour		unions / engineering	engineer, deputy gen secretary, NUPE	1994		2	Deputy Gen Secretary over 10 years ago
Viscount	Simon	Labour		Hereditary	President, Driving Instructors Association	Current		2	Presidency but does not seem more than honourary

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Baroness	Smith of Gilmorehill	Labour		Arts, Politics	Non-Executive Director, Deutsche Bank, Scotland. Chairman, Edinburgh Fringe Festival	2004	Made a peer following husband John Smith death in 1995	2	Some experience with arts, banks
Baroness	Symons of Vernham Dean	Labour		civil service/unions	General secretary, association of first division civil servants	1996		2	GS of a smaller Union over 10 years ago
Baroness	Thornton	Labour		Unions	General Secretary of the Fabian Society	1996		2	GS of a smaller union over 10 years ago
Baroness	Wall of New Barnet	Labour		Unions	National secretary / head of policy of AMICUS.	1998 / 2003		2	NS more than 10 years ago, Head of policy more than 5 years ago
Lord	Young of Norwood Green	Labour		Unions	National Communications Union	1995	various union positions	2	GS more than 10 years ago
Lord	Berkeley	Labour		Engineer	various Chairs etc of freight and Engineering companies	ongoing		3	Civil engineer, various chairings and president of some associations, but nothing major
Lord	Brooke of Alverthorpe	Labour		Unions	Senior Strategic Advisor, Accenture	2010		3	High level union positions, but more than 10 years ago
Lord	Brookman	Labour		unions	General Secretary, Iron and steel Trades Confederation; Joint Secretary, British Steel	1999		3	Various high level Trade Union and British steel positions, retired for more than 10 years.
Lord	Christopher	Labour		unions	TUC chair; Broadcasting Complaints Commission	1989; 1997		3	Chair of the TUC general council, retired more than 10 years ago (5-2)
Lord	Davies of Coity	Labour		unions	General Secretary of USDAW	1997	National Service, Electrician	3	General Secretary of Union of Shop, Distributive and Allied Workers, retired over 10 years ago (5-2)
Baroness	Dean of Thornton-le-Fylde	Labour		unions	President then General Secretary of the print union SOGAT	1991		3	In charge of a trade union, retired more than 10 years ago
Baroness	Donaghy	Labour		Unions	National executive Committee, NAGLO/Unison	2000	president 89-90	3	President of the TUC, other high level Union roles, all the high level stuff retired from 10 years ago or more

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Lord	Evans of Temple Guiting	Labour		Business - publishing	Literary Advisory Panel	1997	various other Book firms and councils	3	Managing Director/Chair of Faber and Faber for many years, Director of Which? for three years. Retired from the more major things ten or more years ago. (5-2)
Lord	Filkin	Labour		Politics	Local council positions	1997		3	Was chief executive of Reading Borough Council and Association of District Councils, retired over 10 years go(5-2)
Baroness	Gibson of Market Rasen	Labour		Unions	National Secretary, UNITE	2000		3	National Secretary, over 10 years ago
Lord	Gordon of Strathblane	Labour		Media	Managing Director, Radio Clyde, Chief Executive, Scottish Radio Holdings	1996	various other media roles too	3	Significant media experience over 10 years ago
Lord	Griffiths of Burry Port	Labour		Church				3	Canon at St Paul's Cathedral, minister at a Methodist chapel in London. Doesn't *appear* to have been chosen specifically for his faith, unless he's the top of the Methodist church in the UK or somesuch (which he doesn't visibly seem to be)
Lord	Haskel	Labour		Business	Chairman, Perrotts group	1997		3	Chairman over 10 years ago
Baroness	Kingsmill	Labour		Law	Partner in London Solicitors firm, non-executive directorships		Found liable for professional negligence by the Court of Appeal in 2001	3	Lawyer, directorships
Lord	Kirkhill	Labour		Unclear	Lord Provost, Aberdeen	1975	Chairman of North of Scotland Hydro-Electric board for 3 years. Has no	3	Has been 'Lord Provost' of Aberdeen which may have meant that before that he was a councillor. Little information before

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							findable details before 1971 (age of 41 then)		1975, none before 1971.
Lord	Leitch	Labour		Business	Chief Executive of Zurich Financial Services UK	2004		3	CE over 5 years ago
Lord	Liddle	Labour		Politics	Principle Adviser to the President of the European Commission, SPAd to Tony Blair		Managing Director of Prima Europe Ltd until 1997	3	Non-political career over 10 years ago
Baroness	Lockwood	Labour		Politics	Chair, Equal Opportunities Commission	1975-1983	Chancellor, Bradford University until 2005	3	Chancellor of former technical college, over 5 years ago
Lord	MacKenzie of Culkein	Labour		Unions	President of the TUC; Associate General Secretary of Unison	1999; 2000	Six years experience as a nurse, four years as an assistant lighthouse keeper	3	Union experience over 10 years ago
Lord	Macaulay of Bragar	Labour		Law	Chairman of the Supreme Court Legal Aid Committee	1970s	QC	3	Career seems to have peaked over 10 years ago
Baroness	Mallalieu	Labour		Law	QC, Recorder (part-time judge)	1994	QC. President of the Countryside Alliance	3	Seemingly law career peaked over 10 years ago
Baroness	Massey of Darwen	Labour		Teaching	Director of the Family Planning Association	1994	Honorary Associate of the National Secular Society	3	Director over 10 years ago
Lord	Morgan	Labour		Academic	Vice-Chancellor of the University of Wales	1995	Has authored a lot of books on history	3	VC over 10 years ago
Lord	Myners	Labour		business	Chairman, Gartmore plc	2001		3	Chair, 10 years ago
Lord	Paul	Labour		business	Founded caparo industries	1996		3	Over 10 years out of management of Caparo
Lord	Peston	Labour		academic	economic advisor to treasury, special advisor to education and prices	1979		3	Over 10 years ago

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Baroness	Pitkeathley	Labour		public service	Chief exec, national carers association; chair, children and families court advisory and support service	1998; 2008		3	CE over 10 years ago
Baroness	Prosser	Labour		unions	various roles in TGWU	2002		3	Dep. GS over 5 years ago
Lord	Puttnam	Labour		media	CEO Columbia Pictures; film production	1988; 1999		3	CEO over 10 years ago
Baroness	Rendell of Babergh	Labour		arts	Novelist	ongoing		3	Current novelist
Lord	Renwick of Clifton	Labour		diplomat	ambassador to USA	1995		3	Ambassador over 10 years ago
Baroness	Royall of Blaisdon	Labour		politics	PA/ advisor to Kinnock; Head of EU Office in Wales	1995;		3	Former Head of EU Office in Wales
Lord	Sainsbury of Turville	Labour		Business	chair, Sainsbury	1998		3	Chairman, over 10 years ago
Lord	Simon of Highbury	Labour		Oil	Chair, BP Oil International	1997		3	Chair over 10 years ago
Lord	Simpson of Dunkeld	Labour		Finance	Director, British Aerospace	1994	Senior positions at various other companies	3	Nothing signficant for 10 years
Lord	Stone of Blackheath	Labour		business	marks and Spencer, managing director	2000		3	MD over 10 years ago
Lord	Thomas of Macclesfield	Labour		Banking	Executive Director Co-operative bank	1997	Various chairings and directorships	3	Nothing significant in over 10 years
Baroness	Turner of Camden	Labour		Unions	Assistant General Secretary, Association of Scientific, Technical and Managerial Staffs / Member, TUC general council	1987		3	TUC Council member over 10 years ago
Baroness	Vadera	Labour		Banking	Executive Director UBS Warburg	1999		3	Exec Director over 10 years ago
Baroness	Whitaker	Labour		Public Service	Commission for Racial Equality and numerous other boards	1999		3	Many boards, chair-ings, etc, but few high level ones, and much of them retired 5 or ten years ago
Lord	Williams of Elvel	Labour		Business	various directorships	1992		3	Career peaked over 10 years ago

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Baron	Glasman	Labour		Academic	lecturer at London Met uni	ongoing		3	Current Lecturer
Lord	Boyd of Duncansby	Labour		Law	Solicitor General then Lord Advocate for Scotland	2000, 2006		4	Has been Lord Advocate of Scotland (chief legal officer of Scotland), retired five years ago (5-1)
Lord	Brennan	Labour		Law	Deputy High Court Judge, Chair, General Counsel of the Bar			4	Possibly a 5; QC, Deputy High Court Judge and a Recorder in the Crown Court,
Lord	Carter of Barnes	Labour		Politics	CEO, OFCOM	2007		4	In charge of OFCOM, retired more than 5 years ago.
Viscount	Chandos	Labour		hereditary				4	Director of various things; ENO, some companies, but none seem to be top level
Baroness	Cohen of Pimlico	Labour		Law	various directorships, chairs, etc	ongoing	also an author	4	Reasonably high level but not top level directorships, seems to be an at least semi-successful author
Lord	Desai	Labour		Academia	LSE Economics Professor	1990-2004		4	Professor over 5 years ago
Lord	Donoughue	Labour		Academia	Senior Lecturer LSE	1974	Head of R&D at a number of firms up til 1988	4	Visiting Professor of Government at LSE, retired over five years ago (5-1)
Baroness	Drake	Labour		Unions	Deputy General Secretary Communication Workers Union	2008		4	President of the TUC 2005-05
Lord	Drayson	Labour		Business	Chief Executive, Powerject Pharmaceuticals	2003	originally an engineer, high up in lots of pharmaceutical businesses up til 2003	4	CE over 5 years ago
Lord	Gavron	Labour		Business - publishing	Director/chair of various publishing companies	ongoing	also called to the bar in 1955	4	Current Directorships/Chairs
Lord	Giddens	Labour		Academia	Director LSE	2004	Written over 30 books, prominent figure on Sociology	4	Director over 5 years ago

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Lord	Hart of Chilton	Labour		Law	Partner, Herbert Smith Solicitor,	1998	special advisor to minsters in Ministry of Justice 1998-2007	4	Law experience over 10 years ago, but advisory role within last 5 years
Lord	Hollick	Labour		Business	Hambros bank, Director	1996	Various more recent chairs etc	4	Director over 10 years ago and more recent chairs
Lord	Irvine of Lairg	Labour		Law	QC, Lord Chancellor	2003		4	Lord Chancellor, QC more than 5 years ago
Baroness	Jones of Whitchurch	Labour		Trade Unions	Director, Policy and Public Affairs, Unison.	Current		4	Current Director of Policy and Public Affairs
Lord	Jordan	Labour		Trade Unions	President, AEU, AEEU. Gen Sec ICFCU	1995; 2002	TUC General Council	4	Gen Sec over 5 years ago, and was on TUC Gen. Council
Lord	Layard	Labour		Academics	Director of the Centre for Economic Performance; Programme Director CEP	2003 ; Current	Was also an Economic Consultant to the Russian Government for 6 years.	4	Director over 5 years ago
Lord	Malloch-Brown	Labour		United Nations	Deputy Secretary-General of the United Nations, Minister of State for Africa, Asia and the United Nations	2006/2009	Involvement in the World Bank too.	4	Deputy Secretary-Gen 5 years ago
Baroness	McIntosh of Hudnall	Labour			Chief Executive of the Royal Opera House / Executive Director of the Royal National Theatre	1997 / 2002		4	CE over 5 years ago
Lord	Mitchell	Labour		Business	IT Entrepreneur; Chair and Founder Syscap Plc	2006		4	Entrepreneur/founder of two companies, last one within five years
Baroness	Morgan of Drefelin	Labour		Voluntary Sector	Chief Executive, Breakthrough Breast Cancer	2005		4	CE over 5 years ago
Lord	Morris of Handsworth	Labour		Unions	General Secretary of the Transport and General Workers' Union	2003	First black leader of a British trade union. Non-executive director of the Bank of England	4	GS over 5 years ago

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Lord	Rosser	Labour		unions	General Secretary, transport salaried staffs' association	2004		4	Union leader, over 5 years ago
Baroness	Sherlock	Labour		Politics/Charity	Chief Executive, Refugee Council	2006	Special Advisor to Gordon Brown	4	CE 5 years ago
Lord	Turnberg	Labour		Academic	President, Royal College of Physicians / Vice President, Academy of Medical Sciences / Prof of Medicine, Manchester	1997 / 2004 / 1997	Also a fair bit of medical experience	4	Several presidencies over 5 years ago, and Professor over 10 years ago
Lord	West of Spithead	Labour		Military	1st Sea Lord (Head of Navy)	2006		4	Head of Navy 5 years ago
Baroness	Wilkins	Labour		public service	Disability campaigner	1990		4	President of the College of Occupational Therapists , retired less than 5 years ago
Baroness	Worthington	Labour		Charity worker	Head of Gov. Relations, Scottish and Southern Energy; Director, Sandbag Climate Campaign	2008; Current		4	Head of Gov Relations in last 5 years, Director of charity she founded
Baroness	Bakewell	Labour		Presenter	Chairman of the British Film Institute	2002		4	TV presenter, active within the last five years. Has done fairly noticeable stuff (Heart of the Matter), but not top level stuff.
Baroness	Wheeler	Labour		Health / unions	Unison director of development	ongoing	confederation of health service employees, 1973-93	4	Current Unison director of development
Lord	Wood of Anfield	Labour		Academic	Strategic Adviser, Office of the Leader of the Opposition, Shadow Minister without portfolio	Ongoing		4	Current Politics tutor at Oxford
Lord	Stevenson of Balmacara	Labour		Media	Director BFI; Director, Smith Institute	97; 08		4	Director within last 5 years
Lord	Ahmed	Labour		Business	head of various property development (and other) companies, chair of business parks etc	ongoing		5	Two property development directorships and Business development manager of a Business park, all ongoing

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Lord	Alli	Labour			Director Carlton Media Group; director, Shine Ltd	2000; ongoing	Y, and co runs a Shine Limited with Elizabeth Murdoch (and has since 2000	5	Ongoing chairman of a large fashion/beauty company and a large media rights/production company, part owner of another media production company
Baroness	Amos	Labour		Politics	UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator	Ongoing	Previously British High Commissioner to Australia.	5	Currently in a major UN position
Lord	Attenborough	Labour		Media	Channel 4 Television Chair	1992	President of RADA, ex-president of BAFTA, Chairman of Capital Radio	5	Mostly based on president ship of RADA, plus having been until last year president of BAFTA.
Lord	Bhattacharyya	Labour		Academia	Council for Science and Technology	2003	Professor at Warwick University, 1980 -	5	Working Professor
Baroness	Blackstone	Labour		Academia	Chair, British Library	ongoing	University Administrator	5	Professor and chairings of major bodies, still active in those areas.
Lord	Borrie	Labour		Law	ASA	2007	lots of legal teaching and directorship jobs	5	Chairman of the Advertising Standards Authority until 2007
Lord	Bragg	Labour		Media	Border Television, chair	1995		5	Presenter of The South Bank Show until 2010, also has ongoing Radio show stuff.
Lord	Brett	Labour		Public Service	Various Administrative positions	2003		5	Ex member of TUC General Council, currently UK director of the International Labour Organisation
Lord	Darzi of Denham	Labour		Medical/Academic	Head of a division in a hospital	Ongoing	"one of the world's leading surgeons", His appointment was part of Gordon Brown's "Government of all talents."	5	One of the world's leading surgeons, professor. Both ongoing

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Lord	Davidson of Glen Clova	Labour		Lawyer	Lord Advocate (chief legal officer of the Scottish Government)	2010	QC.	5	Lord Advocate a year ago
Lord	Davies of Abersoch	Labour		Business	Directorships	2009		5	Previously was director and still now chair of Standard Chartered plc
Lord	Eatwell	Labour		Academia	Professor of Financial Policy, Cambridge	Ongoing	financial Advisor to Kinnock 85-92	5	Current professor
Lord	Falconer of Thoroton	Labour		Law	QC, Lord Chancellor, Secretary of State for Justice			5	QC, whilst his job as Secretary of State for Justice doesn't earn him points in and of itself, it does mean that it was staying up to date on legal issues, and he retired from that job less than five years ago
Baroness	Ford	Labour		Business	Founder and Chief Executive, Good Practice Ltd	2007	Various boards and chairmanships	5	CE within last 5 years
Lord	Goldsmith	Labour		Law	QC, Attorney General; head of European Litigation at law firm	2007;Current		5	Attorney General with the last 5 years
Lord	Grabiner	Labour		Law	QC			5	Current barrister, QC
Lord	Grantchester	Labour		Agriculture	Dairy Farmer and Cattle breeder			5	Chairman of one of the UK's largest milk and cheese businesses, Dairy Farmers of Britain,
Baroness	Kennedy of The Shaws	Labour		Law	Chair, Kennedy Foundation. Range of other charity responsibilities; QC	Current		5	Current barrister, QC
Lord	Parekh	Labour		academia	politics professor everywhere	2009		5	Professor within last 5 years
Lord	Plant of Highfield	Labour		academia	politics, law and philosophy professor	2008		5	Professor within 5 years
Lord	Rogers of Riverside	Labour		architecture	architect	ongoing	Work includes Lloyd's Building, Millennium Dome and Welsh Assembly	5	Current leading architect

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							Building		
Baroness	Scotland of Asthal	Labour		law	QC	Current		5	Current barrister, QC
Lord	Sugar	Labour		Business	owns everything,	ongoing		5	Current business leader
Baroness	Warwick of Undercliffe	Labour		Unions	General secretary of the Association of University Teachers / Chief Executive of the Westminster Foundation for Democracy / Chief Executive of Universities UK.	1992 / 1995 / Ongoing		5	Current CE, former GS
Lord	Winston	Labour		Academic/ media	Professor of Science and Society, Imperial college	2008		5	Professor within last 5 years
Viscount	Hanworth	Labour		Hereditary	Professor of Economics, Leicester University	Current		5	Current professor
Baroness	Lister of Burtersett	Labour		Academic	Director, Child Poverty Action Group	1987		5	Professor within last 5 years. Numerous other commissions and suchlike positions
Lord	Noon	Labour		Business	Founder and operator of his own food company	Ongoing	Embroiled in the Cash for Peerages affair	5	Current head of company
Lord	Kestenbaum	Labour		Business	Chief Executive of the National Endowment for Science, Technology and the Arts	Unknown; recently left		5	CE within last 5 years
Lord	Williams of Baglan	Labour		Diplomacy	Middle East specialist, UN Special Coordinator for Lebanon	Current		5	Current UN Diplomat
Baroness	Adams of Craigielea	Labour	y	politics	Chairwoman of the Scottish affairs committee	2005		N/A	Ex-MP
Lord	Adonis	Labour		Press	political columnist, Observer;	1998	Since 98 worked for PM's policy unit and Director of Institute for Government 2010 - . 1987–	N/A	Ex-councillor

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							1991 was an Oxford city councillor.		
Lord	Anderson of Swansea	Labour	y	Politics / Law	Shadow Solicitor General 1994-96.	1996	called to the Bar in 69	N/A	Ex-MP
Lord	Archer of Sandwell	Labour	y	Politics / Law	Solicitor General / Shadow Secretary of State for Northern Ireland	1979 / 1987	Called to the Bar in 1952	N/A	Ex-MP
Baroness	Armstrong of Hill Top	Labour	y	Academia	Lecturer in community and Youth Work, Sunderland Polytechnic	1986		N/A	Ex-MP
Lord	Ashley of Stoke	Labour	y	Press	Senior Television Producer, BBC	1966		N/A	Ex-MP
Lord	Bach	Labour		Law	Head of Chambers at King Street Chambers in Leicester	Unclear	Called to the Bar 1972	N/A	Local Councillor in Leicester
Lord	Barnett	Labour	y	Politics / Law	Senior Partner, J. C. Allen & Co	1974		N/A	Ex-MP
Lord	Bassam of Brighton	Labour		Politics	Social Worker, Legal Advisor	1983		N/A	On Brighton Council 1987-1999
Baroness	Billingham	Labour	y	Teaching	teacher 1960-90; Examiner	1995		N/A	Ex-Councillor, Ex-MEP
Lord	Bilston	Labour	y	politics				N/A	Ex-MP
Lord	Boateng	Labour	y	Politics	Chief Secretary to the Treasury / British High Commissioner to South Africa	2005 / 2009		N/A	Ex-MP
Lord	Bradley	Labour	y	Public Service / Politics	Secretary, Stockport Community Health Council	1987		N/A	Ex-MP
Lord	Brooks of Tremorfa	Labour		politics	Secretary of State for Northern Ireland	1992	Sports Administrator, President British Board of Boxing 2000-2004	N/A	Councillor 1973-1993
Lord	Campbell-Savours	Labour	y	Politics	Spokesman for international development and for food, agriculture and rural affairs	1992 & 1994	Primarily a backbench MP, due to health reasons	N/A	Ex-MP
Baroness	Clark of Calton	Labour	y	Law	QC			N/A	Ex-MP

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Lord	Clark of Windermere	Labour	y	Politics				N/A	Ex-MP
Lord	Clarke of Hampstead	Labour		unions	Deputy General Secretary, United Postal Workers	1993	started as a telegraph boy	N/A	Councillor in Camden 1971-78
Lord	Clinton-Davis	Labour	y	politics				N/A	Ex-MP
Lord	Corbett of Castle Vale	Labour	y	Media / politics	reporter, Daily Mirror	1970		N/A	Ex-MP
Baroness	Corston	Labour	y	Law	Barrister			N/A	Ex-MP
Baroness	Crawley	Labour		Teacher, MEP	MEP	1999		N/A	MEP
Lord	Cunningham of Felling	Labour	y	Brief research, then politico	Research fellow		PhD in Chemistry.	N/A	Ex-MP
Lord	Davies of Oldham	Labour	y	Academia	Chaired Further Education Funding Council	2000		N/A	Ex-MP
Lord	Davies of Stamford	Labour	y	Diplomat / Businessman	Director of Morgan Grenfell	1987	Carried on as a consultant until 93	N/A	Ex-MP
Lord	Dixon	Labour	y	Unions	GMWU			N/A	Ex-MP
Lord	Dubs	Labour	y	Politics	Chair, Westminster community relations council	1977		N/A	Ex-MP
Lord	Elder	Labour		Politics	Assistant to various MPs			N/A	Various special adviserships and such, little outside-government expertise — it's clear that that peerage was granted for the in-government advising
Lord	Evans of Parkside	Labour	y	Unions	Marine Fitter	1962		N/A	Ex-MP
Baroness	Falkender	Labour		Politics	Political Secretary to Howard Wilson	1976		N/A	All of her experience is politically aligned; first secretary to the General Secretary of the Labour Party, then private secretary for, and then the political secretary and head of political office to, Harold Wilson
Baroness	Farrington of Ribbleton	Labour		Politics	Councils			N/A	Former councillor

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Lord	Faulkner of Worcester	Labour		Politics	Government relations advisor to various bodies	1999		N/A	Variously research assistant and journalist, and communications advisor to the Labour party, as well as contesting several elections for it. Has reasonable outside experience, but it's clear that it's the political work that's got him the peerage
Lord	Foster of Bishop Auckland	Labour	y	Business	Private Sector Marketing	1970		N/A	Ex-MP
Lord	Foulkes of Cumnock	Labour	y	Politics	director, ELEC (and other pro european groups)	1969		N/A	Ex-MP
Lord	Gilbert	Labour	y	Business	Accountant	1970		N/A	Ex-MP
Lord	Glenamara	Labour	y	Military	Captain in WW2	1945		N/A	Ex-MP
Baroness	Golding	Labour	y	Unions	Secretary, Newcastle staffs and district trades	1986		N/A	Ex-MP
Baroness	Goudie	Labour		Public Service	Brent Housing Association; WWF; consultant	1981; 95; 98	Former Councillor	N/A	Former Councillor
Lord	Gould of Brookwood	Labour		Business	Phillip Gould Associates	ongoing		N/A	Leads a polling/strategy company, is a visiting professor at LSE, but has been very heavily associated with the Labour Party, to the point where his appointment is political more than expertise
Baroness	Gould of Potternewton	Labour		Politics	Director of Labour Party	1993		N/A	24 years involvement in the Labour party; including being director of organisation. Other experience; some union involvement, though it doesn't seem to have gone massively high, Vice President of the ERS, and so forth. However, from the look of it is does seem most

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									likely that it was the work for the labour party that got her the job.
Lord	Graham of Edmonton	Labour	y	Business	Various CO-OP roles	1974		N/A	Ex-MP
Lord	Grocott	Labour	y	Media	Presenter and Producer, Central Television	1987		N/A	Habgood
Lord	Harris of Haringey	Labour		politics	Councillor	2002	member of heaps of boards too	N/A	Councillor
Lord	Hattersley	Labour	y	politics	Deputy Leader of the Labour Party, Shadow Home Secretary	1992		N/A	Ex-MP
Lord	Haworth	Labour		Politics	Various positions in the Parliamentary Labour Party incl secretary	2004		N/A	Nothing significant outside of Labour Party
Baroness	Hayman	Labour	y	Social Services	Deputy Director of the National Council for One-Parent Families / Chair of Whittington Hospital NHS Trust.	Unsure / 1997		N/A	Ex-MP
Baroness	Hayter of Kentish Town	Labour		Politics	General Secretary Fabian society		CE of the European Parliamentary Labour Party	N/A	Experience is very much politicised
Lord	Healy	Labour	y	politics	Secretary of State for Defence / Chancellor of the Exchequer	1970 / 1979		N/A	Ex-MP
Baroness	Henig	Labour		Academic	Senior History Lecturer and head of department (95-7)	2002	Former councillor	N/A	Former councillor
Baroness	Hollis of Heigham	Labour		Academia	Dean school English and American Studies, Norwich UNi	1990	on various boards too. Former councillor	N/A	Former Councillor

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Howarth of Newport	Labour	y	Academia	Researcher for Montgomery; History Teacher,	1967; 1974		N/A	Ex-MP
Lord	Howie of Troon	Labour	y	Journalism	Director, Internal Relations, Thomas Telford Ltd. (publishing firm).			N/A	Ex-MP
Lord	Hoyle	Labour	y	Politics	Trade Unionist. Former joint president, MSF (now part of Unite).			N/A	Ex-MP
	Hughes of Stretford	Labour		Academia	Leader, Manchester City Council			N/A	Councillor
Lord	Hughes of Woodside	Labour	y	Politics	Chair, Action For South Africa, founder member, CND			N/A	Ex-MP
Lord	Hunt of Chesterton	Labour		Academia	Various professorships, Leader, Labour Group, Cambridge City Council, President, National Society of Clean Air.			N/A	Former Councillor
Lord	Hunt of Kings Heath	Labour		Public Service	Chief executive, NHS Confederation; Birmingham City and Oxford City Councillor	1997; 1982		N/A	Former Councillor
Lord	Hutton of Furness	Labour	y	Politics	Minister of Defence, other ministerial positions			N/A	Ex-MP
Lord	Janner of Braunstone	Labour	y	Law	QC			N/A	Ex-MP
Lord	Jones	Labour	y	Trade Unions	Chairman, advisory committee on political parties, Opposition Front Bench Spokesman for Employment.			N/A	Ex-MP
Lord	Judd	Labour	y	Public service	General Secretary, International Voluntary Service			N/A	Ex-MP
Lord	Kennedy of Southwark	Labour		Politics	Former Labour Party Regional Director		Former councillor	N/A	Former councillor
Lord	King of West Bromwich	Labour		Teaching	Managing Director, Sandwell Polybags	2007	Also done some stuff in business, former councillor	N/A	
Lord	Kinnock	Labour	y	Politics	Head of the Opposition	1992		N/A	Ex-MP
Baroness	Kinnock of Holyhead	Labour		Teaching	Unclear on the teaching side, otherwise, MEP	2009		N/A	Former MEP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Knight of Weymouth	Labour	y	Arts	Director of West Wiltshire Arts Centre Ltd, then of Dentons Directories Ltd	2001		N/A	Ex-MP
Lord	Levy	Labour		Business	Chair, International Standard Asset Management Inc.	Ongoing		N/A	"Levy ran the Labour Leader's Office Fund to finance Blair's campaign before the 1997 general election" and was then given the peerage, it's fairly clearly political.
Baroness	Liddell of Coatdyke	Labour	y	General	High Commissioner to Australia, Scottish TUC, Head of Economics Department			N/A	Ex-MP
Lord	Lofthouse of Pontefract	Labour	y	Mining	Leader of Pontefract council, Deputy Speaker of the House of Commons	1993/1997	Also heavily involved in unions	N/A	Ex-MP
Lord	Macdonald of Tradeston	Labour	y	Journalism	Managing Director of Scottish Television, Chair of Scottish Media Group	1996	Has been a TV presenter	N/A	Ex-MP
Lord	Mandelson	Labour	y	Politics	Various political roles		European Commisioner for Trade for 4 years. Director of the British Youth Council	N/A	Ex-MP
Lord	Martin of Springburn	Labour	y	Manufacturing.	Speaker of the House of Commons		Sheet metal and car maker before politics. Was Speaker of the House of Commons	N/A	Ex-MP
Lord	Mason of Barnsley	Labour	y	Mining	Secretary of State for Defence, then for Northern Ireland	1979	Significantly reduced violence in Northern Ireland during his tenure there	N/A	Ex-MP
Lord	Maxton	Labour	y	Academics	Lecturer in Social Studies	1979	Was a teacher before a lecturer	N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	McAvoy	Labour	y	Industry	Shop steward for the Amalgamated Engineering Union / Comptroller of HM Household	Unknown, 80s-ish / 2008		N/A	Ex-MP
Lord	McConnell of Glenscorrodale	Labour		Politics	Scottish First Minister	2007		N/A	Former MSP
Baroness	McDonagh	Labour		Politics	General Secretary of the Labour Party	2001		N/A	Former Labour GS
Lord	McFall of Alcluith	Labour	y	Teaching	Deputy Head Teacher	1987		N/A	Ex-MP
Lord	McKenzie of Luton	Labour		Business	Partner in Charge, Vietnam at PriceWaterhouse	1998	Former councillor	N/A	Former councillor
Lord	Moonie	Labour	y	Medicine	Community Medicine Specialist	1987		N/A	Ex-MP
Lord	Morris of Aberavon	Labour	y	Law	Recorder (part time judge)	1997	QC	N/A	
Lord	Morris of Manchester	Labour	y	politics				N/A	Ex-MP
Baroness	Morris of Yardley	Labour	y	teaching	teacher	1992		N/A	Ex-MP
Baroness	Nicol	Labour		politics	local gov, councillor			N/A	Former councillor
Lord	Northfield	Labour	y	politics	Special Adviser to the ECC Commission on Environmental Policy / Director of Wembley Stadium	Unknown / 1988		N/A	Ex-MP
Lord	O'Neill of Clackmannan	Labour	y	politics	Shadow defence secretary and later was Chairman of the Trade and Industry Select committee.	Unknown		N/A	Ex-MP
Lord	Pendry	Labour	y	unions	national union of public employees	1970		N/A	
Lord	Ponsonby of Shulbrede	Labour		hereditary			Former councillor	N/A	Former Councillor
Lord	Prescott	Labour	y	Politics	Deputy Prime Minister of the United Kingdom, First Secretary of State	2007	Some trade union experience prior to politics	N/A	Ex-MP
Baroness	Quin	Labour	y	politics	Minister for Europe	1999		N/A	Ex-MP
Lord	Radice	Labour	y	politics	Chairman of the Treasury Select Committee	Unclear		N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Randall of St Budeaux	Labour	y	engineering	radio and electrical engineer, manager Plessey Communication Systems	1983		N/A	Ex-MP
Lord	Richard	Labour	y	law	QC			N/A	Ex-MP
Lord	Rooker	Labour	y	politics	Minister of State for Sustainable Food, Farming and Animal Health	2008		N/A	Ex-MP
Lord	Rowlands	Labour	y	Academic	history and government lecturer	1966		N/A	Ex-MP
Lord	Sewel	Labour		academia	professor economics and social sciences	2004	Former councillor	N/A	Former councillor
Lord	Sheldon	Labour	y	Politics				N/A	Ex-MP
Baroness	Smith of Basildon	Labour	y	Politics	Minister of State for Third Sector	2010		N/A	Ex-MP
Lord	Smith of Finsbury	Labour	y	Politics	Secretary of State for Culture, Media and Sport	2001	PhD, English, 1979	N/A	Ex-MP
Lord	Smith of Leigh	Labour		Academia	Lecturer, Manchester College of Art and Technology; Councillor	1991; Current		N/A	Councillor
Lord	Snape	Labour	y	Railways	Travel West Midlands Chair	2000	6 Years in Army, Royal Corps of Transport 1964-67	N/A	Ex-MP
Lord	Soley	Labour	y		Senior Probation Officer, Inner London Probation Service	1979	1959-51 in RAF	N/A	Ex-MP
Lord	Taylor of Blackburn	Labour		Politics	Chairman of the Electricity Consultative Council for the North West	1980	Former councillor	N/A	Former councillor
Baroness	Taylor of Bolton	Labour	y	politics	Minister of State for International Defence and Security	2010		N/A	ex-MP
Lord	Temple-Morris	Labour	y	law	lord justice of the appeal	1982		N/A	ex-MP
Lord	Tomlinson	Labour	y	Politics	Parliamentary Secretary, Ministry of Overseas Development	1979	MEP for 15 years	N/A	Ex-MP
Lord	Touhig	Labour	y	Journalist	General Manager and Editor-in-Chief of the Free Press Group of newspapers	1992		N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Triesman	Labour		Unions	Chairman of the Football Association	2010	Also long time as an Academic	N/A	Former General Secretary of Labour Party
Lord	Truscott	Labour		Politics	MEP	1999	DPhil in Modern history. Various consultancies and non-executive directorships for Energy firms. Got in trouble in the Cash for Amendments/Influence thing in 2009	N/A	MEP
Lord	Tunnicliffe	Labour		Pilot	Chief Executive, London Transport	2002	Former councillor	N/A	Former councillor
Baroness	Uddin	Labour		Social Work	Deputy Leader of Tower Hamlets council	1996		N/A	Former councillor
Lord	Warner	Labour			Director of Social Services for Kent County Council. Senior Policy Adviser to the Home Secretary	1991/ either ongoing or 2010		N/A	Advisorship positions in government when that government was Labour, but during the Tory years was doing stuff in the regions. Thus most likely a political appointment
Lord	Watson of Invergowrie	Labour	y	Unions	Industrial Officer for the Workers Educational Association		Expelled from Labour party on 22 September 2005 following his conviction and imprisonment for fire-raising. Still sits in the Lords	N/A	Ex-MP
Lord	Whitty	Labour		Unions	General Secretary of the Labour Party	1994	Boilermakers and Allied Trade Union	N/A	Ex-MP
Lord	Wills	Labour	y	Diplomacy/ Media	Secretary to Diplomatic service; director juniper TV productions	1980; 1997		N/A	Ex-MP

Unlock Democracy—Appendix 2

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Woolmer of Leeds	Labour	y	Academic	Leeds university	1970		N/A	Ex-MP
Baroness	King of Bow	Labour	y	Politics	Chief Diversity Officer of Channel 4	Ongoing in a freelance capacity		N/A	Ex-MP
Lord	Collins of Highbury	Labour		Trade Unions	Central Office Manager/Head of Administration/Assistant General Secretary of the Transport and General Workers' Union (essentially same post throughout)		General Secretary of Labour Party	N/A	Peerage given for political work for the party
Baroness	Hughes of Stretford	Labour	y	politics	senior lecturer in the Department of Social Policy at the University of Manchester	1997		N/A	Ex-MP
Lord	Reid of Cardowan	Labour	y	politics	Advisor to Kinnock	1985		N/A	Ex-MP
Baroness	Healy of Primrose Hill	Labour		politics	various positions in the labour party	2010		N/A	Only experience of note is political
Baroness	Nye	Labour		civil servant	political secretary to Gordon Brown	2007	Involved in “Duffygate”	N/A	Only experience of note is political
Lord	Beecham	Labour		politics	Leader of Newcastle City Council	1994		N/A	Current councillor
Lord	Browne of Ladyton	Labour	y	Law	solicitor	1997		N/A	Ex-MP
Baroness	Morgan of Ely	Labour (Wales)		Politics	MEP		Worked as a researcher for S4C and the BBC	N/A	
Baroness	Brinton	Lib Dem		Television, Politics	Floor Manager, BBC		Elected Councillor 1993	N/A	Councillor
Lord	Stephen	Lib Dem		Politics	Leader of the Scottish Lib Dems	2008		N/A	MSP
Lord	Storey	Lib Dem		Politics	Lord Mayor of Liverpool	2010		N/A	Councillor
Baroness	Parminter	Lib Dem		Public Service	Head of Press, Royal Society for the Prevention of Cruelty to Animals, freelance consultant on charitable issues	2010	Former councillor	N/A	Former Councillor
Baroness	Tyler of Enfield	Lib Dem	y	Civil Service	Chief Executive Officer of Relate	Ongoing		N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Hussain	Lib Dem		Unknown	County Councillor. Other than that, can't find anything on him	Ongoing		N/A	Councillor
Lord	Stoneham	Lib Dem			Various chairings and directorships. Unclear beyond that.			N/A	senior party activist for the Liberal Democratic party. From 2003 to 2010, he was operations director of the party
Lord	Palmer of Childs Hill	Lib Dem		politics	local gov			N/A	Former councillor
Lord	Addington	Liberal Democrat		hereditary				1	3 - 2. Pre-Lords experience negligible, was 'charity fundraiser and counsellor' for 4 years ending 1994, and a consultant for an events company for 4 years ending 1999.
Viscount	Falkland	Liberal Democrat		Hereditary				1	Some trading/consulting experience, but nothing at all high level, and all of it much more than ten years ago
Baroness	Garden of Frognal	Liberal Democrat		Public Service	Teacher; Administrator; consultant	1984; 2000; 2008	Was made a peer after Husband, Baron Garden, died	1	Teacher over 10 years ago
The Earl of Glasgow		Liberal Democrat		Hereditary	Sub-lieutenant, Royal Naval Reserve		TV documentary producer	1	Little of note, over 10 years ago
Baroness	Linklater of Butterstone	Liberal Democrat		Politics	Liberal Democrat Spokesperson for Penal Affairs	2005-2007	Former governor to 3 Islington schools	1	Little significant non-political experience, over 10 years ago
Lord	Methuen	Liberal Democrat		Engineer	Computer Systems Engineer	1994	Hereditary Peer	1	Engineer more than 10 years ago
Lord	Newby	Liberal Democrat		politics	Chief of Staff to Charles Kennedy	2006		1	Only non-political role was Private Secretary to Permanent Secretary, over 10 years ago
Baroness	Northover	Liberal Democrat		Academic	Research fellow at St Thomas's Medical School; Lecturer at UCL	1984; 1991		1	Lecturer, over 10 years ago

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Redesdale	Liberal Democrat		hereditary				1	Little non-political experience
Lord	Watson of Richmond	Liberal Democrat		Media	Various TV jobs	1994	Panorama presenter 71-74	1	Presenter, over 10 years ago
The Earl of Mar and Kellie		Liberal Democrat		Social Worker	Community Service Offenders Supervisor	1987	Has also worked as a boatbuilder, and has served with the Royal Auxiliary Air Force and Royal Naval Auxiliary Service	2	Supervisor over 10 years ago
Baroness	Thomas of Winchester	Liberal Democrat		Politics	Head of Lib Dem Whips office	2006	A founding member of the Liberal Party	2	Head of Whips Office 5 years ago
Lord	Tordoff	Liberal Democrat		Business	Public affairs manager for Shell UK	1983	Member of the press complaints commission for 8 years	2	Public affairs manager over 10 years ago, 3-2, member of the press complaints commission, +1
Baroness	Walmsley	Liberal Democrat		Public Relations	"Public relations consultant"	2003	Teacher for 7 years, worked in science side of medicine for 2. Failed to get elected as an MP twice	2	Own PR Consultancy over 5 years ago
Lord	Strasburger	Liberal Democrat		Business	Unsure			2	Millionaire, philanthropist, semi-retired businessman. No information on what he *did* as a businessman. 3-1
Baroness	Barker	Liberal Democrat		Public Service	various positions in Age Concern	2008		3	'Project coordinator' for various things, retired less than 5 years ago
Baroness	Bonham-Carter of Yarnbury	Liberal Democrat		Media	Producer	2004		3	Television Producer, first of Panorama and Newsnight, then for an independent company, stopped being a producer and started being an 'associate'

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
									over five years ago (4-1)
Lord	Ezra	Liberal Democrat		Business	Board member and Chair of numerous organisations	ongoing	Army service in World War II	3	Chairman of the National Coal board, retired more than 10 years ago, none of his other things are as major (5-2)
Lord	Hutchinson of Lullington	Liberal Democrat		Law	Professor of Law, Vice-Chair, Arts Council of Great Britain		Currently on leave of absence	3	QC, over 10 years
Lord	Sandberg	Liberal Democrat		business	HSBC chair	1986		3	Nothing significant in the last 10 years
Baroness	Sharp of Guildford	Liberal Democrat		academic	Director, economic and social research council	1999	Stood for MP 4 times	3	Director, over 10 years ago
Lord	Smith of Clifton	Liberal Democrat		Academia	Vice-Chancellor, University of Ulster	1999		3	VC over 10 years ago
Baroness	Thomas of Walliswood	Liberal Democrat		Business	Chief executive of the Council of Europe of the British Clothing Industries	1978		3	CE over 10 years ago
Lord	Vallance of Tummel	Liberal Democrat		Business	Chairman of British Telecommunications	2001	Left BT after many shareholders calling for his resignation	3	Chairman over 10 years ago
Baroness	Benjamin	Liberal Democrat		Media	Ofcom board	2006		4	High but not top level actress and other associated things, retired less than five years ago.
Lord	Clement-Jones	Liberal Democrat	no, but was Lib Dem chairman and finance chairman	Law	Legal advisor/officer to numerous organisations. Partner, DLA Piper The Global Law Firm	ongoing		4	Partner/co-chair of a reasonably big legal firm, retired less than five years ago
Lord	Goodhart	Liberal Democrat		Law	QC	2003	Failed to be elected as an MP in 1992	4	(QC, retired more than 5 years ago)

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Baroness	Neuberger	Liberal Democrat		Religion	rabbi			4	'Bloomberg professor, Harvard divinity School, 2006' (5-1), much other academia
Lord	Phillips of Sudbury	Liberal Democrat		Law/media	Partner, Bates Wells and Braithwaite; freelance journalist on bbc radio 2	Current; 2001		4	Current law firm partner
Lord	Alliance	Liberal Democrat		Business	Chair, Tootal Group	1999		5	Chairman and 1/3rd owner of Chairman of N Brown Group Plc; one of the largest direct mail order companies in the UK
Lord	Lester of Herne Hill	Liberal Democrat		Law	QC, Recorder of the Crown Court	1993		5	QC, active within the last 5 years
Lord	Sharman	Liberal Democrat		Business	Chartered Accountant to Chair, KPMG; Chairman Aviva Group	1999; Current		5	Current Chair
Lord	Thomas of Gresford	Liberal Democrat		Law	Deputy High Court Judge	Ongoing		5	Current Deputy High Court Judge
Lord	Wallace of Saltaire	Liberal Democrat		Academic	Visiting professor, Senior Research fellow, chair of an LSE international affairs advisory board, Emeritus Professor	1996 / 1995 / Ongoing/ ongoing		5	Current Emeritus Professor and Chair of advisory board
Lord	Macdonald of River Glaven	Liberal Democrat		Law	QC, Deputy High Court Judge	Current		5	Current Deputy High Court Judge and prominent law figure
Lord	Marks of Henley-on-Thames	Liberal Democrat		Law	QC		Some academics in the field of law as well.	5	Current Barrister, QC
Lord	Loomba	Liberal Democrat		Business	Founder and executive Chairman of clothing company the Rinku Group			5	Executive chairman
Lord	Alderdice	Liberal Democrat		Medical	Executive Medical Director, South and East Belfast Health and Social Services Trust	1997		N/A	Member of the Northern Ireland Assembly
Lord	Ashdown of Norton-sub-Hamdon	Liberal Democrat	y	Military / Politics	SBS Commander, UN	1976		N/A	Ex-MP
Lord	Avebury	Liberal Democrat	y	hereditary				N/A	Ex MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Bradshaw	Liberal Democrat		Transport	General Manager, Weston Region, BR	1985	started as a trainee at BR 1959, Various other transport jobs 89-01	N/A	Ex Councillor, Oxfordshire County Council 'till 2008
Lord	Burnett	Liberal Democrat	y	Military / Agriculture / Law	Commando commander; Cattle Breeder	1970; 1998	also solicitor 1976-1997	N/A	Ex-MP
Lord	Carlile of Berriew	Liberal Democrat	y	Law	QC			N/A	Ex-MP
Lord	Chidgey	Liberal Democrat	y	Engineer	Brian Colquhoun and partners, Associate Partner	1993		N/A	Ex-MP
Lord	Cotter	Liberal Democrat	y	Business/industrial	Managing director of small plastic making company	2003	Company is now a co-operative. Did 2 years National Service	N/A	Ex-MP
Lord	Dholakia	Liberal Democrat		Public Service	Ethnic Minority Advisory Committee on Judicial Studies Board	1996	Medical Lab Tech 1960-66, Lord Hunts committee on Immigration and Youth Service 1967-69, Commission for Racial Equality1976-94	N/A	County Councillor for Brighton 1961-64
Lord	Dykes	Liberal Democrat	y	Business	Stockbroker	1987		N/A	Ex-MP
Baroness	Falkner of Margravine	Liberal Democrat		Politics	Researcher, Policy director	1998		N/A	The majority of her experience is politically aligned, and it's clearly that which she was given the peerage for, not four years as deputy manager of Saudi Arabian Airlines in France and the USA.
Lord	Fearn	Liberal Democrat	y	Politics	Deputy Chief Whip 1988-90 / Spokesperson for: Tourism 1997-2001 / Civil Service / Constitution	1990 / 2001 / 1999 / 1997	Was previously a councillor	N/A	Former councillor

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	German	Liberal Democrat		Teaching	Head of Music, Corpus Christi High School	1991	Former councillor and Welsh Assembly Member	N/A	Former Councillor
Lord	Greaves	Liberal Democrat		politics	Organising Secretary of the Association of Liberal Councillors	Mid 1980s		N/A	Former councillor
Baroness	Hamwee	Liberal Democrat		politics	GLA	2008		N/A	Former Councillor
Baroness	Harris of Richmond	Liberal Democrat		politics	Chair of North Yorkshire County Council / Chair of the North Yorkshire Police Authority	1992 / 2001		N/A	Councillor
Lord	Hooson	Liberal Democrat	y	Law	called to the Bar 1949			N/A	Ex-MP
Baroness	Hussein-Ece	Liberal Democrat		Public Service	Commissioner, Equality and Human Rights Commission, Special Adviser to Nick Clegg MP.		Former Councillor	N/A	Former Councillor
Lord	Jones of Cheltenham	Liberal Democrat	y	Public service	Background as civil servant. Held a number of Lib Dem front bench positions.			N/A	Ex-MP
Lord	Kirkwood of Kirkhope	Liberal Democrat	y	Solicitor	Solicitor/Notary Public	Unclear		N/A	Ex-MP
Lord	Lee of Trafford	Liberal Democrat	y	Banking	Founding Director, Chancery Consolidated Ltd.	Unclear		N/A	Ex-MP
Baroness	Ludford	Liberal Democrat		Banking	European Affairs Consultant, American Express	1999	Currently an MEP. Fair bit of civil service experience	N/A	Current MEP
Lord	Mackie of Benshie	Liberal Democrat	y	Farmer	Scottish Whip as an MP	1966	Six years military service in the Second World War. Oldest living person to have served as a Liberal Member of Parliament in the UK.	N/A	Ex-MP
Lord	Maclennan of Rogart	Liberal Democrat	y	Politics	Last leader of the Social Democratic Party, Interim Leader of the Social and Liberal Democrats	1988	Also a barrister	N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Baroness	Maddock	Liberal Democrat	y	Teaching	President of the Liberal Democrats	2000		N/A	Ex-MP
Lord	McNally	Liberal Democrat	y	Politics	Vice Chair, Weber Shandwick	2004		N/A	Ex-MP
Baroness	Miller of Chilthorne Domer	Liberal Democrat		Publishing	Unclear, beyond being on Somerset County Council	2005	Bookshop owner for 10 years	N/A	Former councillor
Baroness	Nicholson of Winterbourne	Liberal Democrat	y	Public service	save the children Fund	1985		N/A	Ex-MP
Lord	Oakeshott of Seagrove Bay	Liberal Democrat		politics / business	founding director OLIM ltd	ongoing	Former Councillor	N/A	Former Councillor
Lord	Razzall	Liberal Democrat		law	solicitor and partner, Frere, Cholmeley, Bischoff	1996	Former councillor	N/A	Former councillor
Lord	Rennard	Liberal Democrat		politics	Lib Dem Chief Executive	2009		N/A	Only significant positions were with Lib Dems
Lord	Roberts of Llandudno	Liberal Democrat		church				N/A	Former councillor
Lord	Rodgers of Quarry Bank	Liberal Democrat	y	Politics	general secretary, Fabian society			N/A	Ex-MP
Lord	Roper	Liberal Democrat	y	academic	economics lecturer			N/A	Ex-MP
Baroness	Scott of Needham Market	Liberal Democrat		politics	local council			N/A	Councillor
Lord	Shutt of Greetland	Liberal Democrat		Finance	Consultant, Bousfield Waite and Co, former councillor and Mayor of Calderdale	2001	Stood unsuccessfully as an MP seven times between 1970 and 1992	N/A	Former councillor
Lord	Taverne	Liberal Democrat	y	law	QC			N/A	Ex-MP
Lord	Teverson	Liberal Democrat		Business	consultant	2002	MEP	N/A	MEP
Baroness	Tonge	Liberal Democrat	y	Medicine	Manager of Community Health Services for Ealing		Was a GP for a decade	N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
Lord	Tope	Liberal Democrat	y	Politics	Leader of the Lib Dem group on the London Assembly		Only an MP for two years. 8 years as a member of the London Assembly.Only person in the country to have served as a member of a European Institution, a member of the UK Parliament, a member of a regional government structure and as a borough councillor all at the same time.	N/A	Ex-MP
Lord	Tyler	Liberal Democrat	y	Various	Director, National Union of Journalists	1982	Various other directorships and chairings	N/A	Ex-MP
Lord	Wallace of Tankerness	Liberal Democrat	y	Politics	Leader of Scottish Liberal Democrats.	2005	Briefly worked in Law, but only briefly. QC.	N/A	Ex-MP
Baroness	Williams of Crosby	Liberal Democrat	y	Journalism		1958		N/A	Ex-MP
Lord	Willis of Knaresborough	Liberal Democrat	y	Politics	Liberal Democrat Shadow Education and Skills Secretary	2005		N/A	Ex-MP
Lord	Shipley	Liberal Democrat		politics	Council Leader, Newcastle City Council / Vice-President, Local Government Association	2010 / Ongoing		N/A	Councillor
Lord	Taylor of Goss Moor	Liberal Democrat	y	politics	Lib Dem Treasury spokesman	2010	Baby of the House for 10 years	N/A	Ex-MP
Lord	Allan of Hallam	Liberal Democrat	y	IT	Chair of the House of Commons Information Select Committee	2005?	was an architect in the 80s and now works for	N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
							facebook		
Lord	Sharkey of Niton Undercliff	Liberal Democrat			Chairman and co-founder of the advertising agency Bainsfair Sharkey Trott, Managing Director of Saatchi and Saatchi UK	Unknown	Was in charge of the Yes campaign and the Lib Dem's 2010 election campaign	N/A	In charge of the Lib Dem's 2010 election campaign
Baroness	Doocey	Liberal Democrat		Politics	Chair of the London Assembly	Unsure, but has finished	Member of the Metropolitan Police Authority. Some business experience running a management consultancy, and a director in a fashion company	N/A	London Assembly member, former councillor
Baroness	Kramer	Liberal Democrat	y	Banking	Vice-President of Citibank			N/A	Ex-MP
Baroness	Jolly	Liberal Democrat		Unclear	Chairman, Digital Services Cornwall CIC	Ongoing	Chair of Executive Committee of Liberal Democrats in Devon and Cornwall	N/A	Member of Lib Dem Federal Executive committee
Lord	Grenfell	Labour		Hereditary				2	Some reasonably high positions but not top level (representative of World bank to UN, senior adviser in Washington DC). Retired for more than 10 years. (4-2)
Baroness	Young of Old Scone	Other		Health	District General Manager, Parkside Health Authority; Chief Executive, Diabetes UK	1991; Current		5	Current CE
Lord	Archer of Weston-super-Mare	Other	y	Author				N/A	Ex-MP

Name	Surname	Party	Were they an MP prior?	Field of expertise (before politics)	Highest/most useful/most recent point reached	Last in this position	other expertise related info	Expertise score	Expertise score reasoning
The	Marquess of Salisbury	Conservative	y	hereditary				N/A	Ex-MP
Lord	Wigley	Plaid Cymru	y	Politics	Leader of Plaid Cymru	2000		N/A	Ex-MP
Lord	Willoughby de Broke	UKIP		hereditary				3	Chair, Heart of England Tourist Board and 'St Martins Magazines' less than 5 years ago,
Lord	Pearson of Rannoch	UKIP		business	founder, pws insurance brokers	2009		5	Business leader within last 5 years
Baroness	Randerson	Welsh Lib Dem		Politics	Acting Deputy First Minister for Wales	2002		N/A	Member of Welsh parliament

Methodology
Expertise in this context means bringing knowledge from outside the world of government and political parties
If someone has reached the top of their profession eg medical consultant, QC, Professor then they are given a score of 5, however they are deducted 1 point if their experience is 5 years out of date and 2 points for more than 10 years
Although the decisions are all to some extent arbitrary we need to be able to show our working/ give a rationale for each decision
All former MPs/Councillors are excluded as non-experts who have already demonstrated that they are willing to stand for election

257 to 466 is Crossbench	
350 to 380 is 4	
381 to 445 is 5	
257 to 445 is 1-5	
446-466 is N/A	
Total Lords in data	829
Total Crossbenchers	210

Total Crossbenchers scoring 5	65
Total Crossbenchers scoring 4	31
Total Crossbenchers scoring N/A	21
Total Lords scoring N/A	344

Percentage of Crossbenchers scoring 5	30.95%		**Percentage of Crossbenchers scoring 4 or 5**	**45.71%**		
Percentage of non N/A Crossbenchers scoring 5			34.39%		**Percentage of non N/A Crossbenchers scoring 4 or 5**	**50.79%**
Percentage of total MPs that are crossbenchers scoring 5	7.84%		**Percentage of all MPs that are Crossbenchers scoring 4 or 5**	**11.58%**		
Percentage of total non N/A MPs that are crossbenchers scoring 5		13.40%		**Percentage of all non-N/A MPs that are crossbenchers scoring 4 or 5**	**19.79%**	

Written evidence from Richard Douglas (EV 52)

Summary

- Current proposals do not give due consideration to the prospect of constitutional gridlock.
- The mantra of 'checks and balances' actually reflects a view that wishes to hamper government and undermine democracy, not improve it.
- Some alternatives are proposed, mainly to highlight shortcomings of the Government's proposals, and caution against their adoption.
- It is suggested that the Lords remain unelected, but be reformed—e.g. by creating two classes of peers, one with the right to sit in Parliament, one without.

Background

I do not represent any organisation, nor am I a specialist in constitutional affairs. I have some first-hand experience of the workings of Parliament, having worked as a committee specialist for the Environmental Audit Committee from 2006-09, in which capacity I was an Officer of the House of Commons. During that time I also supported a joint committee of both Houses, the Joint Committee on the Draft Climate Change Bill.

I am making this submission because I believe the prevailing debate concerning the primacy of the House of Commons overlooks an important argument. My concern is that, without greater thought, proposed reforms could undermine the democratic mandate of the Commons, and with that the idea of the state as acting in the public interest.

Primacy of the House of Commons

Most of the debate on the issue of primacy of the Commons focuses on the potential for legislative gridlock, should a reformed upper house be emboldened, through its democratic mandate, to challenge the Commons on equal terms. The responses to this tend to fall into two. One minimises this as a problem, by pointing to existing arrangements which limit the role of the Lords; these could simply be continued, it is said. The other says that gridlock would be no bad thing, if it represented the balance of opinion between two elected houses.

A characteristic example of the first is given in the 2007 white paper on Lords reform introduced by the then Leader of the House of Commons, the Rt Hon Jack Straw MP:

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

It is hard to believe that this was introduced by a Leader of the House of Commons. Read it, and we find the suggestion that the primacy of the House of

Commons does not rest solely on its democratic mandate! On what does it rest, then? On … its *terms of reference*. As though it were some university admin committee.

Let us ask the important question: who sets its terms of reference? On whose authority are the powers and role of the House of Commons decided? If it is not the democratic authority of the people, then … what are we saying? That the democratic authority of the people can be outranked by some other authority? No. The primacy of the Commons results from its being the elected will of the people. If the House of Lords were also to be elected, then there would be another version of the Commons. Or rather its authority would be the same, even if its initial 'remit' were different.

After all, by what logic are governments formed in Britain? Whichever MP can command a majority in the House of Commons is invited by the head of state to form a government. This is what makes the government, the government: that it commands a working majority of the representatives of the people's will. If an upper house were elected, then it, too, would represent the people's will. By what logic or authority would whichever party or parties which commanded a majority within it not be entitled to form the government? If the answer to this is that the Commons has a different remit, then it is saying that the government's authority is not primarily derived from a democratic mandate, but some other rules. If rules can be used to outrank the democratic mandate of one house, what's to say there couldn't be other rules or conventions which outranked or undermined the democratic mandate of the other?

There appears to have been a certain amount of complacency among many MPs on this issue for a number of years. One can gain a further sense of this from a Public Administration Select Committee report on another iteration of these proposals, this time from 2002:

> The Government, and some members of the Lords, have laid particular stress on the threat which would allegedly be posed to the pre-eminence of the Commons by a more legitimate reformed second chamber. We are satisfied that the Parliament Acts provide sufficient safeguards against that. The differences in powers between the Houses are already very clear. These have only to be identified for any argument on this point to be removed. The Commons can pass legislation without the consent of the Lords, after delay of about one year. But the Lords cannot pass legislation without gaining the consent of the Commons. The Commons only has to wait one month before passing a money bill without the consent of the Lords. Governments are formed, tested and held to account in the Commons. They have to retain the confidence of the Commons if they are to retain office. Only the Commons can make or break governments. We therefore do not believe that a reformed, more representative second chamber will pose a threat to that status. Moreover, our proposals are intended further to strengthen the distinctiveness of the second chamber, and so increase the effectiveness of Parliament as a whole.

The weakness in these arguments it that all the powers to rein in the Lords cited in the above paragraph hail from the authority of the Commons; when it says Parliament can decide what role the Lords should play, it means (as is currently the case) the Commons, with advice (conforming to its current role) from the

Lords. The Parliament Acts, hobbling one house, are only tenable in a democratic age if the upper house is not democratically elected.

Embracing the prospect of gridlock

Another prevailing view, that which embraces the potential outcome of legislative gridlocks, is well represented by an Unlock Democracy policy briefing:

> Some people are concerned that an elected second chamber would want to use its powers more than the current House of Lords and that this would create more gridlock. As long as it is clear which is the more powerful chamber and how the dispute can be resolved, as it is in the UK, then gridlock is not necessarily a bad thing. It means the second chamber is doing its job: examining proposals for new laws and asking the government to think again.

Why is this wrong-headed? There are three, related, reasons. One, it would potentially lead to a chronic condition in which the effectiveness of the government to take action were undermined. Two, this would potentially discredit politics and the idea of state action. Three, while a proportion of those advancing this as a view will be classical liberals who are suspicious of government, probably the majority will be left-wingers who believe in a strong and active state.

The mantra of 'checks and balances' tends to get invoked in the aid of this, the flirting-with-gridlock, view. Where does this come from? The ideas of Locke, and the example of America. These are, let us remember, the ideas of moneyed classes who want the state to protect them, certainly, but equally want to be protected from the actions of the state. They do not identify themselves with the state. They see it as an alien power. The checks and balances in the American constitution were designed, and have worked with great success, to hamper the ability of any government to act. Such checks on state power have not abolished the abuse of power. They have, primarily (and increasingly so in recent years), reined in the state from curbing the wealthy from exerting power over those below them. In so doing they have encouraged a widespread cynicism about politics – fostered, of course, by those who stand to gain from such disengagement.

There is an alternative to the Lockean conception of government: the Hobbesian. Thomas Hobbes viewed those controlling the state as being the embodiment of all the people who comprised it. The government thus acted with the authority of the people in everything it did. Hobbes's views have been characterised as totalitarian, as justifying untrammelled exercise of power, and removing any basis on which the individual could protest against abuse by the state. In another way, his ideas are intrinsically democratic, since he makes the entire basis of state authority the (even if conjectured) agreement of the people to be represented by it. The closer the state is to the people, and the more democratic participation there is, the stronger and more legitimate the state becomes.

It is, I would argue, by virtue of these ideas that MPs gain their status and authority (or what should be their status and authority). Irrespective of who they are as individuals, as MPs they are something greater. They are not simply people who have happened to come first in some contest or other, even an important one. They are the representatives, the embodiments, of the people of their constituency; they speak and act in their constituency's name.

Under a Hobbesian concept of the state, it is a nonsense to create a second elected house of parliament. There aren't two peoples; there can't be two embodiments of the people. And if the second isn't an embodiment of the people, then the first isn't, either. At which point the idea of the state as acting in the people's name collapses; and you have instead the idea of the state as an alien thing, something run by professional politicians and civil servants for their own ends. An outcome which many on the liberal-left spectrum would surely deplore.

Whom is a second chamber for?

Most discussions of why we need a second chamber at all concentrate on the question of what it should *do*. Perhaps the right question to start with, however, is *whom is it for?* To ask this is to think about how we got here, why it is we have a House of Commons and a House of Lords?

To think about this is to remember that they were originally representing different *estates*, the gentry and then middle class (though always, to an extent, representing the common man), on the one hand; and the nobility and bishops, on the other. With the king above them. And how did the Commons come to achieve pre-eminence, first over the king, and then the Lords? Partly, of course, it's a reflection of the rise of the economic power of the middle classes from the seventeenth century onwards. But even more than this, it's because of the triumph of the democratic ideal. This dictated that governments would be formed by those parties which won *elections*; this dictated that the views and powers of elected representatives were greater than those of the unelected (and increasingly anachronistic) Lords; this dictated that the Lords accepted this state of affairs. As the democratic ideal has triumphed, so have all the old estates collapsed into one: the people. The Commons is the house which represents that estate, the people. The Lords has only survived because it has renounced its power.

Alternative proposals for an upper house

To pick up the question of whom might an upper house be for, we could begin by thinking about what other important interests are not represented, or not adequately represented, by the representatives of the people as a whole.

This could be different peoples, in the sense of the alternative local, regional, or national communities we all belong to in addition to that of British society as a whole. The logic here would suggest creating an upper house with representatives with an explicit mandate to ensure the Government were considering the interests of their region or nation. This could potentially be done by indirect election, possibly meaning membership were automatically extended to local authority leaders, MSPs, AMs, and NIAMs, or their delegated representatives.

They could also be the people as defined and divided by important social identities. The logic here would suggest an appointed house made up of representatives from a variety of interest and representative groups, including religious faiths, professional associations, unions, business groups, and scientific and cultural bodies.

Another set of interests could be the people of the past and of the future, whose memories and prospects would not always coincide with the interests of the people

of the present. The logic here might suggest an appointed house with members selected for their distinguished contribution to British society, especially in an intellectual capacity.

A final, and certainly radical proposal, would be for the roles of the Commons and Lords to be reversed, with a Lords 100% elected under pure PR, out of which the government would be formed, and the Commons made into the revising chamber with an explicit mandate to represent local interests. Although almost certainly unpalatably radical for most, this idea would have clear logic on its side. At the moment, there is a deficiency in the ability of the Commons to represent the people's will: the electorate does not vote as one people, and it does not vote for the government, simply for individual, local representatives. In practice, of course, voters, especially at general elections, overwhelmingly do vote for whichever party they want to from the government (or to help keep a different party out of government). But it is an imperfect arrangement.

Some people advocate switching to PR to remedy this. One of the drawbacks of this proposal is that it would lose the link between constituents and their local MP. PR enthusiasts tend to address this by pointing to varieties of PR which still allow people to vote for and be represented by individual MPs. But these systems suffer from one of two flaws: either you have large, multi-member constituencies, in which the mechanics of the system are difficult to understand and the link with a local representative is weakened; or you have a top-up system, which creates two classes of politician, those with a direct mandate (and casework), and those without.

For these reasons, I'd suggest retaining the essential structure and voting system of the Commons, but making the Lords elected on pure PR (voting for parties, not people), whose outcome would determine the executive. The Commons would then perform the role of scrutinising and revising chamber (though with greater powers than the current Lords), to which MPs as backbenchers, with personal mandates and high profiles, are well-suited. To help avoid gridlock it would make sense to elect MPs in tranches, say, a quarter a year (e.g. if general elections were made every four years).

Conclusion

All of these proposals are, of course, far too radical to be of any immediate use in the Committee's deliberations. I offer them by the way of criticising what *is* proposed, and to caution against its adoption—since a reformed Lords, with a democratic mandate, would be much harder to fundamentally alter, even if highly flawed.

My final remarks on the proposed reforms are that the proposals for election by STV are misguided, for reasons touched on above: the mechanics are impossible to explain on the doorstep, and the constituencies far too big for there to be any personal link. The White Paper even likens the system to European elections: but MEPs hardly have any personal link to their electorates. For this reason, elected members are likely not to have a personal mandate, and since unable to win a seat as an MP, be party apparatchiks, less able to provide scrutiny than the Lords today. The rest of the house would be made up of the entire leadership of minority parties: nothing wrong with their being represented in Parliament, but their interest would not primarily be in scrutinising legislation but grandstanding and campaigning.

A further reflection on the current proposals is that the majority of those voting will not particularly understand or care about the role of the upper chamber: most will simply vote for the same party they vote for in all elections, with some voting for a different party out of the knowledge that this election is less important and that party will never form the government (e.g. they might UKIP or Green, out of a sense that the main parties were not representing certain points of view). Either way, it will have an imperfect mandate: most will still just be voting for whom they want to form the government, with the rest not casting their actual first preference vote. Of course, one could try to minimise this by holding elections separately from general and national elections—but then turnout would likely be dismal.

I would suggest the best course of action would be to reform the current Lords, but leave it unelected. My main suggestion would be to reduce numbers, and make two classes of peers, one with the right to sit in Parliament, one without—so that those in Parliament were specifically chosen for that role, while others could still be honoured with titles for whatever reason, but did not have a parliamentary role. And, if we are going to retain Church of England bishops in the House, representatives of other faiths—and some philosophers—ought to be made members automatically.

Finally, I would suggest that consideration of a more radical reform of the Lords not be abandoned, but be subjected to more thought.

20 October 2011

Written evidence from the Muslim Council of Great Britain (EV 53)

Introduction

1. The Muslim Council of Britain (MCB) is an inclusive umbrella body that represents the interests of Muslims in Britain and is pledged to work for the common good of the society as a whole. It was founded in 1997.

2. The MCB is made up of major national, regional and local organisations, specialist institutions and professional bodies. Its affiliates include mosques, educational and charitable bodies, cultural and relief agencies, women and youth groups and associations. At present it has over five hundred affiliates.

3. The Muslim Council of Britain is a non-partisan organisation that does not endorse any political parties. But we do have a duty to encourage greater political participation amongst Muslims, and in helping Muslims make informed choices.

4. MCB's specialist work is undertaken at a committee-level, and this submission is based on consultations involving members of its Legal Affairs and Public Affairs Committees. The MCB welcomes this opportunity to comment on the Coalition Government's white paper and draft bill on the reform of the House of Lords.

Background

5. Muslims are a community with a sense of the sacred, believing that a civilised society depends on the strength and preservation of sacred values. It is for this reason we respect the leadership role of the Church of England in the matters of faith. It is on this basis that in the wake of the Satanic Verses affair of the early 1990s our community did not call for the abolition of the law of blasphemy which affords protection to the Anglican faith[1]. Similarly the MCB does not covet the historical pre-eminence of the Church of England in English law and in our unwritten Constitution.

6. The MCB is committed to supporting measures that promote a socially cohesive and genuinely pluralistic society free from all forms of discrimination. Muslims are the second largest religious community in the UK but stand under-represented in both the Lower and Upper House. The political parties have much more work to do in mentoring and encouraging Muslims with political ambitions. Similarly there is no dearth of Muslims who have a record of public service and who are capable and willing to contribute in the highest political and democratic institutions of this country.

Substantive Response

7. The MCB is concerned that the proposals for an elected Upper House will adversely affect the checks and balances on power that is currently in place. 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. The 80/20 allocation of elected/appointed members should therefore be reconsidered. There is also a risk of stalemate in legislative process if a more assertive Upper House claims equal authority by virtue of same popular electoral mandate as the Commons, which should retain primacy in the legislative process.

8. The Lords presently provides a mechanism for the men and women of distinction and wisdom to contribute to national affairs, without dependence on any party political machinery because they have largely eschewed ambitions of gaining political power. This arrangement has evolved over many years and after much experience and should not be jettisoned for change's sake.

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[1] For example, see 'Muslims and the law in multi-faith Britain – Need for Reform', UK Action Committee on Islamic Affairs, Autumn 1993; p.39

9. The Lords' capacity for expert oversight and impartiality has been affected by the disqualification of the 12 Law Lords from sitting or voting since October 2009. Moreover newly appointed Justices to the Supreme Court no longer have the right to sit in the Lords.

10. The proposal now to reduce the number of Lords Spiritual from the current 26 to 12 will be disastrous because there will be practically a further reduced voice for the spiritual and moral dimension in formulating new law or influencing public policy.

11. To reflect the diversity and plurality of modern Britain and to add to complement the Lords Spiritual, there should be representatives of the country's minority religious communities[2]. If this principle is accepted, then clearly further reflection is needed on the modalities for such appointments. However, this should not be difficult to formulate as 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.

12. A strengthened 'voice of faith' within the heart of British governance will go some way in addressingthe various corruption scandals that have befallen both Houses in recent years thus eroding public confidence.

13. The MCB does not have a view on whether the Peers should be appointed for life or the duration of three Parliaments. However it questions the requirement for Peers to be full-time parliamentarians – this may exclude senior figures e.g. vice chancellors of universities – who can provide essential expertise and knowledge to bear on debate.

14. The right of Peers to sit in the House of Lords and play a role in the shaping of legislation by virtue of inheritance is an anachronism and the MCB would support the gradual reduction of hereditary peers from an Upper House.

15. In conclusion, we are supportive of this consultation in terms of providing the space for faith and community organisations to offer feedback on the reshaping of our constitutional hierarchy.

20 October 2011

[2] The generally accepted main minority faith communities are: Buddhist, Hindu, Jewish, Muslim, Sikh e.g. in the National Census

Written evidence from Professor Gavin Phillipson, Durham Law School, University of Durham (EV 54)

Introduction

1. I am writing this memorandum as a Professor of Constitutional Law who has published widely on this topic, and taught it for over 15 years at both undergraduate and post-graduate level. I also have expertise in the area of anti-terrorism legislation, in relation to which the relative performance of Lords and Commons when engaging in legislative scrutiny is illuminating. I wish to address the issue of the respective balance of appointed and elected members left open by the Bill and White Paper and in particular to argue in favour of the hybrid elected /appointed House[1] I am concerned in particular to address what I believe is the simplistic view, which now appears to be gaining ground, that if 80% elected is 'good' than 100% is 'better'. My key purpose is to defend the idea of a hybrid House, with at least a 20% appointed independent element, from those who argue in favour of fully elected chamber by showing that it is not a poor compromise but rather a better intellectual solution.

The problem

2. I have summarised the way in which all the main options for reform call forth equally virulent criticism, as follows:

> 'an appointed House is derided as a giant quango, representing rule by an elite, lacking an democratic legitimacy and ultimately ineffectual. A wholly elected chamber, on the other hand, is objected to on the basis that it would produce a clone of the commons, that could become its rival, thus producing the danger of legislative impasse and destroying the clear line of democratic accountability between parliamentary government and the people that is said currently to exist... Finally the seemingly obvious compromise, a mixed elected/appointed House, is scorned as a "hybrid nonsense" that simply represents a failure to decide the issue one way or the other and would be crippled by internal divisions between its elected and appointed members and the different degrees of legitimacy each would claim.'[2]

3. Disagreement over the proper composition of a reformed House springs from the fact that politicians and commentators tend to emphasise only one key quality that a new chamber should have: thus those in favour of an elected House urge that democratic legitimacy must be overriding; those favouring an appointed House stress the importance of the House being able to make a distinctive contribution from the Commons in terms of providing independent and non-partisan scrutiny of legislation. In this memorandum I will suggest that when a balanced set of criteria, drawn from analysis of second chambers overseas, are applied to the problem, and the necessity of certain trade-offs accepted, then the hybrid solution emerges as the best one in the UK constitutional context. I believe that Parliament got this question broadly right in the report of the Public Administration Select Committee[3] some years ago (hereafter 'PAC'). While a 60/40 elected/appointed House

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[1] I draw in particular on my article '"The greatest quango of them all", "a rival chamber" or "a hybrid nonsense"? Solving the second chamber paradox' (2004) *Public Law* 352.

[2] Ibid, at 353

[3] Fifth Report, H.C. 494-i (2001-2002).

would probably be the optimum balance, an 80/20 elected/appointed House would be hugely preferable to a fully elected House.

4. In this memorandum I do not discuss the possibility of a wholly or mainly appointed House as such a reform is not suggested by the White Paper and nor is it supported by any of the three main political parties. I do however believe that leaving the House wholly appointed would fail to cure the main problem it has had for many years that much of its excellent policy work, including its proposed revisions to legislation, goes to waste because of its perceived lack of legitimacy. As Donald Shell has put it, the UK has for some time been working under a system of "de facto unicameralism",[4] mainly because of the conventional limits upon the exercise of the House's powers, which stem from its perceived lack of legitimacy.
5.
6. However, I also believe that if no agreement on radical reform to composition can be reached, the current House would be considerably enhanced were Prime Ministerial patronage to be appointed and an independent statutory Appointments Commission to take over the appointment of new members to the House. If necessary, this reform can and should be carried out even if no other change can be agreed.

Evaluation: key criteria

7. There is general agreement that the reformed House will continue to carry out the same functions as the present House, and that is what the White Paper proposes. Meg Russell, in her authoritative comparative analysis of second chambers overseas, has identified three factors as crucial for judging the likely effectiveness of a second chamber.[5] As summarised by the PAC,[6] the reformed Lords should have the following qualities: *distinct composition; perceived legitimacy; adequate powers*. Parliament's previous Joint Committee on Lords reform[7] arrived at five key criteria, that I believe command wide acceptance: legitimacy; representative-ness; no domination by one party, independence and expertise. In substance, it is suggested, these coincide with the first two of Russell's criteria: representative-ness goes to legitimacy, while independence, freedom from party domination and expertise are all qualities that render the Lords distinct from the Commons. Moreover, the broadly agreed functions of the second chamber - particularly its special role in relation to technical scrutiny and protection of human rights and the constitution - reinforce the claim that the reformed chamber should seek to maintain those qualities of relative independence and expertise that are particularly suited to these types of scrutiny, in contrast to the partisan culture of the Commons.

8. Distinct composition for the House, as well as enabling it to perform the particular scrutinising role that all agree it should have, also ensures that the second chamber makes a worthwhile addition to the legislative scrutiny carried out by the first. Thus it is also vital to ensure that the party balance in the chamber is different, and more proportional from that in the Commons, to prevent one-party domination, and ensure that the House

[4] Shell, D. 'The Future of the Second Chamber' (2004) 57(4) *Parliamentary Affairs* 852, 855.

[5] M. Russell, *Reforming the Lords: Lessons from Overseas* (Oxford: OUP, 2000) esp. pp. 163-164 and 250-254.

[6] *Op cit*, para. 8.

[7] *Constitutional Reform: Next steps for the House of Lords*, H.L. 17 H.C. 171 (2002-03). para 3.

has an alternative and more broadly-based perspective on the development of public policy. Russell's research clearly indicates that while Government control of the second chamber can render it too weak and Opposition control too likely to result in deadlock with the first chamber, the option of no overall control, is "the most effective option;"[8] "a powerful upper house which is controlled by forces independent of government can help create a form of consensus politics which results in better political outcomes in the longer term."[9] The proposed STV electoral system would be likely to achieve this in practice. The use of First Pass the Post would *not* be suitable for the second chamber, as likely to produce either Government or Opposition control.

9. The third criterion for an effective second chamber is *perceived legitimacy*. As the PAC put it: "In order to use its powers, the new chamber – unlike the existing House of Lords – will need to be seen to have legitimacy, and be able to carry public support."[10] What counts here is *percieved* legitimacy: in other words, a perception in the minds of the public and the government that the power and position of the House are justifiable in a democracy; without this, the House will lack the confidence and extra-parliamentary support to oppose the government effectively. In a democracy, the starting point is that political power must derive from the people, via election, though this is a matter that will be explored further below, in the context of the detailed arguments about the merits of the balance between appointed and elected members.

A general objection to *all* mixed Houses.

10. The Royal Commission, successive White Papers and the PAC have all recommended a mixed House; however opposition to it continues, as the quotation above indicates. Determining the force of this objection, is, however, crucial: if any form of mixed House is rejected on these grounds, then the only options left will be the polarised positions of a wholly elected or wholly appointed House, ruling out any form of compromise.

11. There appear to be two main strands to the objection. The first main argument is the so-called "Strathclyde paradox:"[11] "If election is so good, why should the public not elect *all* our political Members? If it is bad, why elect any at all?"[12]. This piece of apparent logic has gained considerable support in the Lords. It is however flawed because it rests upon the false premise that electing members is straightforwardly either good or bad. Thus those we believe that election is 'good' believe that 100% elected is better than 80% elected. In fact, if the three criteria for an effective second chamber noted above are borne in mind, it becomes apparent that election to the second chamber has some advantages and some drawbacks. Election *is* "good" in terms of legitimacy: if there were to be *no* elected members, this would prevent the House from having sufficient democratic legitimacy to assert itself effectively against the Executive-dominated Commons. **However, the issue of the composition of the Lords does not rest solely upon**

[8] Russell at 299.

[9] *Ibid*, at 164.

[10] *Op cit*, para. 8

[11] After Lord Strathclyde, then Conservative Leader in the Lords.

[12] H.L. Deb. col. 830 (22 Jan 2003).

legitimacy. As canvassed above, in addition to being legitimate, it should also be distinct from the Commons, more independent from party control and have the expertise to aid it in its sometimes highly technical work. Once these factors are considered, we can see why we might not want *all* the chambers members to be elected, desirable though this would be in terms of legitimacy: such a course of action would preclude the appointment of members who would add expertise, independence and thus distinctive value to the House. Having different classes of members – in other words a hybrid House - ensures that these different requirements are *all* met. These arguments show why, on a balanced view, the majority-elected solution comes out as the best one. In contrast, the so-called Strathclyde paradox only has any force if it is assumed that reform of the Lords is to be judged by one criterion alone.

12. The second, and only plausible objection is that originally voiced by Professor Bogdanor:

> "A mixed chamber would contain members enjoying different degrees of democratic legitimacy. The danger then is that any vote carried by a group with a lesser degree of democratic legitimacy will be seen as less valid than a vote carried by a group with greater democratic legitimacy…Who elected you? would be the cry directed at the hapless nominated members whenever they carried a vote against their elected colleagues." [13]

This point has been echoed in Parliament by some of the more thoughtful objectors to a mixed House. However, the extent to which this would be a problem for a hybrid House has been much too readily assumed and three points may be made against it.

13. First of all, the reaction of the elected members to such an eventuality is a matter of speculation. As Russell has pointed out, only two chambers out of 58 bi-cameral legislatures world-wide have a substantial amount of appointed members in the second chamber, so there is little evidence from which to predict with any confidence the dynamics of such chambers.[14] If a mixed House had been approved by both Houses of Parliament on a free vote, and so had received all-party endorsement, it would be difficult for elected members to carp at the presence and influence of the non-elected members which Parliament itself had agreed should be there.

14. Second, there are ways of minimising the problem. Both the Royal Commission and the PAC[15] recommended that in a mixed House everything should be done to ensure that all members enjoy parity of esteem, whether elected or appointed. Thus as the Royal Commission put it:

> Once members have arrived in the chamber, by whatever route, they should so far as possible serve the same terms, benefit from the same allowances and facilities and be treated in all respects identically.[16]

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[13] V. Bogdanor, 'Reform of the House of Lords: a Sceptical View' (1999) 70(4) *Political Quarterly* 375.

[14] "Second Chambers Overseas" (1999) 70(4) *Political Quarterly* 411, 417.

[15] *Op cit*, paras 98-99.

[16] *A House for the Future*, Cm 4534, para 12.5.

This very clear recommendation has been completely ignored by many of the opponents of mixed House in Parliament.[17]

15. Finally, the proponents of this view miss a simple, but crucially important point: if the elected members constituted a large *majority* of the House, as the White Paper envisage, then the elected could never be defeated by the un-elected; thus the danger Bogdanor foresees would simply never materialise. A 20% un-elected contingent simply could never defeat an 80% elected one.

16. Moreover, it is unlikely that any given issue would split the two groups of members squarely down the middle as Bogdanor suggests. In nearly all cases, there would be bound to be some elected members (particularly perhaps Liberal Democrat and non-partisan party members generally) siding with their independent colleagues. This would preclude the isolation and exposure of the un-elected members.

17. However, a modified version of this objection, that could still apply where the elected members were in a majority, was advanced by Lord Butler, former Cabinet secretary, in debate:

> Let us envisage that on a controversial issue the government of the day and the opposition parties are in conflict, but one side has a small majority which is overturned by the votes of the minority of appointed Members. If we have accepted election as a necessary condition for legitimacy, where is legitimacy then?[18]

18. It is clear that in such a case, there would be no straightforward clash between the elected and the un-elected, as Bogdanor envisages. But the only response to Butler's question, "where would legitimacy be then?" is that legitimacy should be seen as a condition for the House as a whole: if it has a majority of elected members, it is House in which the democratic will can always prevail and thus a legitimate institution. Moreover, if the situation Butler envisages were to materialise, it seems plausible to believe that the public would view with relief the sight of the squabbling parties having the odd issue resolved by the dispassionate intervention of independent experts. Moreover, it is ironic that this objection is nearly always made by those who favour a wholly appointed House. Such a House, when it disagrees with the Commons, precisely pits the appointed, as a body, against the elected Commons, and therefore raises in a far more stark and extreme way the problem at issue.

19. It is possible therefore that a mixed House *could* raise some legitimacy issues in this way, but this does *not* provide, as Bogdanor and others suggest, a conclusive argument against such a chamber. Rather it may represent the only real drawback in what is otherwise the best solution to a notoriously difficult problem; a drawback to be balanced against the numerous advantages to be discussed below.

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[17] See, e.g. H.L. Deb. col. 648 (21 Jan 2003), Lord Sheldon: elected members "will still claim a greater legitimacy with secretaries, research assistants and offices." "Imagine the ill-feeling if you have a hybrid House and elected Members get salaries and appointed Members do not." (*ibid*, col. 649 (Lady Saltoun). See also the similar fears of Baroness Seccombe, *ibid,* col. 653 and of Lord Gilbert, *ibid*, col. 818 (22 Jan 2003).

[18] *ibid*, col. 770.

Why not a wholly elected second chamber?

20. In contrast to the position under the Blair government, it is the 100% elected House that has now emerged as the main rival to the hybrid option in the current proposals. The arguments in *favour* of such a House are clear and straightforward: that a democratic mandate should be the only way to political power in a democracy and that the greater legitimacy and so potency such a House would have would give it a much more prominent voice in the policy-making process.

21. Many of the arguments *against* such a House are equally familiar. In essence they stem from the basic contention that, if proposals for a wholly appointed House tip the balance too far in favour of distinctiveness at the expense of legitimacy, a wholly elected House would do the opposite. Proposals for such a House strike a bad balance between the three criteria discussed above, because, while such a House would have very strong legitimacy, its distinctiveness would be almost entirely lost. A wholly elected House would face the loss of the distinctive expertise that, as discussed above, renders it such an effective scrutinizer of legislation and policy.

22. Coupled with this loss would be the certain removal of the current House's relative independence from party, with the resultant danger that the second chamber would merely duplicate in character the Commons and thus add little to the legislative and scrutinising functions carried out by that House. While the second chamber, if elected by PR, would still have a different party balance from the Commons, essentially, we would have another chamber exclusively made up of professional politicians. This would give us a narrowly-based, rather than a pluralistic House and one that, though elected, was, paradoxically, not very representative of the concerns of the people: as Shell has pointed, out, in contrast to the strongly partisan character of British MPs, "the overwhelming majority of [the electorate] have at best no more than the weakest of party allegiance.[19] Representation of different interests from those of the lower chamber is one of the classic functions of a second chamber, as is the injection of more independent viewpoints in otherwise "party-dominated Parliaments."[20] Moreover, experience has shown that it is extremely difficult for independent candidates to gain election; even under a PR system, it may be expected that the political parties would retain their stranglehold on the second chamber. Independent members would become a rarity, as in the Commons. At a stroke, this would remove the distinctive contribution made by the cross-bench Peers at present.

23. What may be added to these familiar arguments are perspectives gleaned from the respective performances of the Commons and the Lords in dealing with the large number of anti-terrorism Bills introduced into Parliament under the last Government. The response of both Houses to the 2001 Anti-Terrorism, Crime and Security Bill, introduced into Parliament in response to the perceived greater threat from international terrorism following the attacks on America on 11 September 2001, was particularly striking. The behaviour of the Commons in relation to this Bill, one of the most draconian pieces of legislation brought before Parliament in peace-time in this or the last century, was

[19] D Shell, "The Future of the Second Chamber" (1999) 70(4) *Political Quarterly* 390, 393.

[20] See M. Russell, "What are Second Chambers for?" (2001) 54 *Parlt. Aff*,.442, 443.

sobering, especially for the enthusiasts for a wholly elected second chamber as the guardian of our liberty. Whilst the Lords passed a series of important amendments to the legislation, ameliorating at least some of its worst aspects, the Commons passed a Bill some 124 pages long, which partially abrogated habeas corpus, and made the UK the only country in Europe to derogate from Article 5 of the ECHR, in just 16 hours; of the 135 clauses of the Bill, precisely 86 were debated in the Commons.[21]

24. Despite powerful reports from the Joint Committee on Human Rights,[22] warning that the Bill as drafted, almost certainly violated the ECHR, the Commons imposed not a single amendment against the Government, and then, as and when instructed to by Government Whips, obediently and repeatedly overturned Lords amendments intended to safeguard human rights and keep the proposed new powers within reasonable, internationally-endorsed limits. Although there were small back-bench rebellions, in general, party discipline was rigidly maintained. The Common's spineless performance in relation to this Bill caused one respected commentator, Hugo Young, to remark: 'In a long record of shaming fealty to whips, never have so many MPs showed such utter negligence towards so impressive a list of fundamental principles.'[23]

25. In the light of this experience, it is suggested that anyone with a concern for basic civil liberties should be deeply concerned at the prospect of a second chamber that more or less replicated the Commons dealing with such a Bill. While a chamber elected by PR rather than first past the post would be unlikely to contain an absolute government majority, the often close rapprochement between Labour and Conservatives on anti-terrorist and crime-fighting measures, due to the electoral imperative to appear "tough on crime", would mean that the combined, whipped Labour and Conservative members would probably be able to drive through such legislation with little difficulty.[24] For those of us, therefore, who care about civil liberties, and who would like to see such legislation given particularly close and penetrating scrutiny by Parliament, the retention of a strong independent element in the Lords is vital.

26. Against this argument, it could be pointed out that, as Russell's research has established, wholly-elected second chambers overseas tend to take a more deliberative view of legislative measures, be less partisan and show greater concern for human rights and constitutional issues than their respective first chambers; governments are also more likely to concede amendments in second chambers, partly because, in the less confrontational atmosphere that is characteristic of them, such concessions appear less like political defeats. Reasons for this include a combination of longer terms of office and a greater average age of the members, and the fact that such chambers usually have no power to unmake governments and generally lesser powers over legislation than the lower House, resulting in the imposition of less strict party discipline.[25] These factors, then, tend

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[21] See H.L. Deb. vol. 629 col. 1533, (13 Dec 2001), Baroness Williams.

[22] Second Report, H.C. 37, H.L. 372 (2001-02); Fifth Report, H.C. 51, H.L. 420 (2001-02).

[23] H Young, 'Once lost, these freedoms will be impossible to restore' *The Guardian,* 11 December 2001.

[24] See e.g. the analysis by F. Klug, K. Starmer and S. Weir: "Civil Liberties and the Parliamentary Watchdog: the Passage of the Criminal Justice and Public Order Act 1994" [1996] 49(4) *Parlt. Aff.* 536,542.

[25] Russell, *op cit*, p. 103-104.

to result in "mature and deliberative parliamentary chambers with a less adversarial atmosphere."[26] It could therefore be argued that the concern expressed in the preceding paragraph, that a directly elected second chamber would have had little more ameliorating impact on the Anti-Terrorism Bill than the Commons, is overdone.

27. This argument, however, fails to take account of the unique constitutional arrangements and political culture of the UK, which, it is suggested, make the addition of independent members to its reformed second chamber of peculiar, compelling importance. Not only does the UK constitution offer no judicial protection against unambiguous legislation that abrogates fundamental human rights[27] - unusually amongst Western democracies - but there is no need for special majorities in Parliament or referenda in relation to such legislation,[28] so that, legally speaking, the overall constitutional arrangements of the UK, including its protection for fundamental rights, can be altered as easily as the dog-licensing laws. I**n short, within such a political and constitutional context, it is uniquely important that the *composition* of the UK's second chamber must guarantee the presence of members who will instil a particularly strong culture of mature, objective, and long-termist scrutiny of the wisdom and necessity of any such changes, in a chamber insulated to an extent from the short term political considerations which generally drive governments and political parties.** A fully elected second chamber would be unlikely to provide such members in sufficient numbers to make a difference; it is suggested that it would for this reason not be a chamber apt for the UK constitution.

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[26] *Ibid,* p. 103.

[27] Under the Human Rights Act 1998 such legislation remains of full effect, even if declared incompatible by the Courts(s 4(2) and public authorities may act under it: s 6(2).

[28] See the table in M. Russell and R. Cornes, 'The Royal Commission on Reform of the House of Lords: A House for the Future?' (2001) 64 M.L.R. 82 at 86, which shows the special powers over constitutional legislation of the second chambers of the legislatures of Australia, Canada, France, Germany, Ireland, Spain, Italy, Japan, Switzerland and the USA.

Written evidence from the Electoral Reform Society (EV 55)

About the Electoral Reform Society

The Electoral Reform Society was founded in 1884 and has over 100 years of experience and knowledge of democratic processes and institutions.

As an independent campaigning organisation working for a better democracy in the UK we believe voters should be at the heart of British politics. The Society works to improve the health of our democracy and to empower and inform voters. As well as our campaigns and lobbying, the Society also conducts expert research on electoral systems and outcomes.

http://www.electoral-reform.org.uk

The Electoral Reform Society welcomes the government's moves on Lords reform.

Lords reform has been characterised as 'unfinished business' for just over a century. This government has an historic opportunity to build on cross-party consensus and finally finish the job of reform.

Key points

The Electoral Reform Society supports the following:

- A 100% elected House of Lords using the Single Transferable Vote form of proportional representation, with elections by thirds tied into the European Parliamentary election cycle.
- Codifying existing conventions to ensure it would be technically and legally impossible for a new second chamber to bring government to a halt.
- Members of the second chamber should be banned from standing for the House of Commons for a period of 4 years.
- There should be no reserved seats for Bishops of the Church of England, or indeed for any faith community leaders.
- Thresholds or other positive measures to ensure diversity of party candidates.

The Case for Reform

The Electoral Reform Society welcomes the government's moves on Lords reform.

Lords reform has been characterised as 'unfinished business' for just over a century. This government has an historic opportunity to build on cross-party consensus and finally finish the job.

The House of Lords of course cannot be viewed in isolation. An effective second chamber is part and parcel of an effective parliament and effective government, and that remains our chief concern. Reform is a chance to preserve the chamber's vital scrutiny role and to actively enhance it with the legitimacy conferred by public election.

There will always be plenty of excuses to put reform on the back burner. But Lords reform must not burden another parliament. Much of the work this committee is tasked with has already been done; there is sufficient time in the parliamentary timetable and it is impossible to justify wasting any more time on an issue on which broad agreement already exists.

The Coalition Agreement was unequivocal: it is "*time for a fundamental shift of power from Westminster to people*." And that is precisely what Lords reform means.

Winston Churchill put it well when he detailed his doubts on the "*trumpery foundation*" of "*mere nomination*". He insisted: "*If we are to leave the venerable, if somewhat crumbled, rock on which the House of Lords now stands, there is no safe foothold until we come to an elected chamber."*[1]

The elective principle offers us a solid foundation. What other basis for legitimacy and law-making can there be?

How the draft Bill fulfils its objects:

1. The government proposals and draft Bill are in keeping with the general consensus that has existed on the issue of House of Lords reform for some time. The basic design of an elected replacement – a proportional system with choice of individual candidate, a chamber significantly smaller than the House of Commons (or indeed the current Lords), long terms of office with election by parts – is certainly firmly within the mainstream of thought on the issue.

2. There are certainly areas in which the Society takes a different view to the government, although these are in the main points of detail rather than general principles. To that end we congratulate the government in not attempting to 'reinvent the wheel' and to respect and build on the consensus established under past governments.

[1] Public Record Office CAB 27/502, Cabinet committee HL(25); Churchill memorandum HL(25)13

3. The Society does however feel the government has failed to give sufficient attention to the question of powers. Our observations follow in point 4.

The effect of the Bill on the powers of the House of Lords and the existing conventions governing the relationship between the Lords and the Commons:

4. **On balance the Society feels insufficient attention has been given to the question of powers.** The reliance on continuation of Parliament Act(s) fails to take into account impact of the second chamber having strengthened democratic legitimacy. The proposals seek to leave the Lords' powers unchanged, and there are mixed messages about whether the conventions will endure. The Deputy Prime Minister Nick Clegg has said:

   > "There are a number of bicameral systems in democracies around the world that perfectly manage an asymmetry between one chamber and the next, even though both might, in many cases, be wholly elected".[2]

   But most do that through second chamber powers being far more limited than those of the House of Lords, or are in presidential systems quite different to the UK:

   a. Poland and the Czech Republic may be overridden by absolute lower house majority
   b. Spain can do the same, or with a simple majority after two months' delay
   c. Japan may be overridden by a two-thirds lower house majority, and has suffered much recent instability
   d. Italy has co-equal powers, but composition is largely identical
   e. Australia is nearly co-equal and its Senate is very strong, but held back by 'illegitimacy' argument over equal state seats
   f. The United States, Argentina and Brazil have co-equal powers, but operate under presidential systems.

   The Government needs to take into account lessons from elsewhere on second chamber powers.

5. Before the 1911 Parliament Act, Britain was in an ambiguous position in that there was nothing to stop the Lords from breaking convention and denying the government supply of funds, in effect terminating its existence. A similar ambiguity persists in Australia, where the Senate attempted to choke off government funds in 1974, prompting an election, and 1975 culminating in the fall of the government. The need for the support of both chambers has been one of the elements encouraging instability in Italian government, at least until the more majoritarian post-1994 dispensation – although the prospect of hostile majorities in Chamber of Deputies and Senate still exists.
6.
7. **The Society believes it is useless to imagine when designing a constitutional system that drastic circumstances will not happen – from time to time they do.** A clear choice should be made giving the responsibility for forming a government unambiguously to one chamber, to

[2] Evidence to House of Lords Constitution committee, 18 May 2011, q217

avoid 'unconstitutional' episodes like those in 1909 in Britain and 1974-75 in Australia.

8. The implication of this position is the carrying-over of the provisions of the Parliament Act relating to money bills and conceivably – given the relatively small number of bills certified as money bills – a broadening of the class of legislative business that is the sole preserve of the House of Commons. **The Society believes it should be technically and legally impossible for a revised second chamber to bring government to a halt.**

The role and functions of a reformed House:

9. The Society has long argued for a reformed House of Lords. We do not support elections for elections sake, but as a means to preserve and enhance the chamber's vital constitutional role.

10. After the work of the Wakeham Commission and the two parliamentary committees (Joint, and Commons Public Administration), a fair degree of consensus about the role for a second chamber exists. The government's proposals broadly reflect this.

11. Like the government, we envisage the second chamber is intended to be primarily a revising and debating chamber with real but limited powers making it an effective part of a constitutional system rather than a source of authority in its own right. It is intended to be a more reflective, less tribal political environment than the Commons, with a measure of independent judgement and seniority. Independence means that, while many members will generally follow their party whip, the ethos and rules of the House should tolerate judgement and dissent and members should not be influenced by patronage (either in gratitude or expectation) or fear reprisals. Many argue that independence should also mean that the parties are not the only pathways into the second chamber.

12. In addition, the Society is part of the long term consensus that a reformed second chamber should represent the regions and nations of the UK, and that it should fairly represent the UK's diversity. No party should have an overall majority and its composition should be roughly representative of the strengths of the parties in the country. It should be a forum where all interests are heard but none dominate, unlike even the present appointed House of Lords. Again the government's measures on direct elections broadly reflect this.

The means of ensuring continued primacy of the House of Commons under any new arrangements:

13. The Society does not accept the argument that a largely or wholly elected Lords would challenge the primacy of the Commons. Local authorities and devolved assemblies are wholly elected, as are MEPs. These bodies do not undermine the role of MPs in the areas they represent because the jobs they are elected to do are sufficiently different from those of MPs. Whilst it is inevitable that tensions will arise between different levels of government from time to time, it is clearly understood that, in the last resort, the Commons is the paramount authority.

14. The role differentiation between members of the Commons and the second chamber are broadly clear in the government's proposals. Members of the upper house are elected to

scrutinise legislation. There is no obligation – and more importantly no incentive – for constituency casework. Election by thirds also ensures that a clear majority of the chamber have been elected longer ago than the previous General Election and therefore have a weaker mandate than the Commons.

15. As we have stated before, codifying the powers and conventions governing the second chamber would help remove potential ambiguity from this relationship.

The size of the proposed House and the ratio of elected to non-elected members:

16. The Society agrees with the government that the House of Lords is too large and believes that a smaller chamber is necessary to provide an effective and efficient second chamber. The current House is grossly oversized and growing unstably as each incoming Prime Minister moves to restore party balance.

17. The Society agrees that a smaller second chamber is compatible with its intended role and would support a more collegiate style of working,

18. This noted, the Society is not persuaded that 300 is the optimal size for a new second chamber. Given the government's intention to have elections by thirds, there must be concern not only that the elections produce results that are proportional between parties and members drawn from different geographical subdivisions of the United Kingdom, but that they are more broadly representative as well. Our concern is that elections for 80 or 100 members at a time may result in parties not providing sufficient choice and diversity in their slates of candidates; international evidence tends to show, for instance, that representation of women is improved when a party must choose more than one candidate at a time and where more than one candidate of a party is elected. We fear that 80-100 members at a time may be too few to produce a fully representative institution. For this reason, we submit that a chamber of 450 members (either 120 or 150 elected at a time) would be more likely to be socially representative and therefore more likely to be the basis for a permanent solution.

19. On balance the Society supports a fully, directly elected second chamber. There are many scenarios in which appointed members could prove decisive in divisions and we would regard this to be problematic. Should the final proposals recommend a proportion of non-elected members, we would see 20% as a tolerable maximum.

20. The Society does not accept the logic or necessity of a corrective appointed element to support expertise and independence.

Independence and 'independents':

21. The Society welcomes the government's determination to preserve and enhance the 'independence' of the second chamber. However, we note that independence can be characterised in several ways, which are related but not the same. Institutional factors in the organisation of the House, such as control over timetabling, the functioning of the party

whips, the extent of consensus working through committees, and so on will affect the collective independence of the House as a whole.

22. Independence can exist within the party system. Not everyone elected to a body on a party ticket sees their role identically. Every elected representative has to weigh the respective strength of:

    a. their party loyalty,
    b. their moral conscience and ideological principles,
    c. their conception of the national interest, and
    d. the interests and views of the constituency for which they are elected.

    Any legislature will cover a number of views about how this balance should work. In the House of Commons, party discipline is arguably important because, after all, people do elect governments, not just MPs. In the Lords, it should be different. The forces of party loyalty and constituency interest should be weakened and the members' independent judgements about morality, ideas and the national interest should be relatively strong.

23. **The Society believes that some features of the draft Bill aim to encourage this form of independence** – long, non-renewable terms of office mean that members will be insulated from the pressures of party and constituency which would apply if they were seeking to be re-selected and then re-elected. This will encourage independent behaviour once a representative is elected. This will encourage senate membership to be either at the end of a political career, or to appeal to those who wish to engage in public service without having the aspiration for a lifetime career in politics. We support these features of the draft Bill.

24. **The provisions on the electoral system also reflect this by helping to select the type of person elected to the second chamber.** Some electoral systems encourage the balance to be struck against these independent qualities which one seeks in the second chamber. For instance, closed list PR makes party loyalty an absolute priority in seeking election. First Past the Post and the Alternative Vote can encourage an excessive constituency focus, and also the desire to be mainstream within a political party (to maximise chances of selection) rather than independence of mind. **It is therefore welcome that the government has narrowed the effective choice down to two sorts of system – the Single Transferable Vote (STV) or a form of list PR that gives voters an effective choice between candidates as well as parties.**

25. Looking beyond the idea of independence within the larger political parties, an independent-minded second chamber should contain viewpoints with support in the country which are independent of the structure of major-party politics. There are a number of ways in which a perspective somewhat distanced from party politics may be brought in to a second chamber and independents come in several varieties:

    a. Disaffected former members of political parties who already have a political profile. This may arise as a result of deselection or selection disputes, or ideological or disciplinary disagreements with the party. The classic cases of this would be people

like Eddie Milne (1974) or Dennis Canavan as an MSP (1999-2007) who fell out with their parties but defeated them in an election. Being an independent in this sense can be a transition stage to membership of another party.

b. Representative of a local cause whose importance is concentrated in the immediate area being contested – the classic example here being Richard Taylor (2001-10).

c. Representative of a national cause, often supported by one or more political parties which has withdrawn from the contest in order to support the independent; classically, Martin Bell (1997-2001) and often with independent candidates between the wars in by-elections such as Oxford and Bridgwater.

d. Parties of either small but genuine parties (like the Greens in the Commons at the moment) or parties that are vehicles for a single politician (like the labels under which Kilfedder and McCartney won election in North Down).

e. Non-party but political – such as several independent MPs between the wars, most notably but atypically Eleanor Rathbone and A.P. Herbert (elected under STV in the University seats).

f. Eminent persons in fields other than politics, such as scientific and religious leaders appointed to the current House of Lords.

26. Two more detailed features of electoral system design, beyond the requirement for minority representation and therefore proportionality, would probably lead to more independent and small party candidates. Large district size (perhaps whole region for list PR) would bring down the barriers to entry. **Because of this phenomenon, and the fear of 'wasted votes' under small-area list PR, we argue that there should be a presumption, if list PR were to be used, to have larger districts than would be required under STV.**

27. Electing small parties under list PR is not problematic, provided that the districts are large enough and there is sufficient support. The Greens have had a constant presence in the Scottish Parliament thanks to the list component of the Scottish electoral system, and the 'rainbow parliament' of 2003 saw a short-lived breakthrough of smaller parties on the lists. Interestingly, an independent, Margo MacDonald, has been elected from the list vote to the Scottish Parliament three times since 2003. **Under list PR, an independent candidate stands as a 'list of one'** (unless there is some sort of voluntary slate of independents). However, winning is relatively unusual. MacDonald had been elected as an SNP candidate originally and was already a well-known Scottish political and media figure before winning as an independent. But it clearly can be achieved, particularly if the electoral dynamics for senate elections turn out like mayoral elections, when voters seriously consider unusual options.

28. **STV, on the other hand, makes life significantly easier for independents**. Preferential voting would mean that independent-minded candidates with a base of sympathy that crosses political divisions would attract transferred votes as the count progressed and unsuccessful

party candidates were excluded. Preferential voting also means that people will not be deterred from looking seriously at, and supporting, small party and independent candidates through fear of wasting their vote. Independent candidates are placed on the same basis as major party candidates.

29. **There is considerable evidence that STV is favourable to independents and small party candidates from the recent history of the Republic of Ireland** and the contrast between its election results and those in the United Kingdom. ***See appendix 1.***

Expertise:

30. The Society agrees with the government that a second chamber's deliberative function is greatly enhanced by the involvement of substantial expertise. However, we do not agree that experts need to be sitting members of the legislature.

31. The Society notes and accepts the broad conclusions of Professor Hugh Bochel and Dr Andrew Defty:

> "Whilst there is certainly a great deal of expertise in the House of Lords, it is not clear that this makes the House as a whole more expert".[3]

In key policy areas such as welfare there are clear gaps in the chamber's expertise, limited to a relatively small number of peers. More broadly, while many expert members have a valuable contribution to make in their specific fields, all are expected to participate on and vote on all issues, regardless of specialism.

32. The Society would strongly encourage other methods for deepening the expertise of the chamber *in toto* via the committee system and that external advice is open to all members as a matter of course.

Representation of Women and Black and Ethnic Minorities:

33. The Society has stated repeatedly that consensus dictates a reformed second chamber should fairly represent the diversity within the UK. That diversity should rightly include gender and ethnicity alongside other aspects of a person's identity and background.

34. **While the Society welcomes agreement on a proportional voting system, we recognise that PR is not a silver bullet.** It is best characterised as a *facilitator* – not a *guarantor* – of better representation for women[4] and other under-represented groups.

35. **We believe that serious consideration should be given to require parties to achieve a rough gender balance in their candidates for each region.** It seems reasonable to ensure

[3] A Question of Expertise? The House of Lords and welfare policy. Professor Hugh Bochel and Dr Andrew Defty

[4] Childs, 2008 as quoted in Evans, E & Harrison, L. Candidate Selection in British Second Order Elections: A Comparison of Electoral System and Party Strategy Effects, 2011.

that at least 30% of the candidates presented in each region should be either male or female.

36. If an appointment commission is to remain in place, the Society believes there is a strong case for a statutory requirement to appoint equal numbers of women and men.

A statutory appointments commission:

37. As stated previously, the Society sees a case for a fully elected second chamber. An appointed element may form part of the final proposals, but is not required as a corrective influence to provide either independence or expertise.

The electoral term:

38. The Society believes that electing a second chamber by thirds is a reasonable proposition. It means that two thirds of the chamber is elected longer ago than the previous General Election, which means that the second chamber will be less likely than otherwise to think it has a mandate to challenge the supremacy of the Commons.

39. We do note that 15 years is exceptionally long by international standards. However we recognise that this is a side effect of the 5 year fixed term measures brought forward for the Commons, not the Lords design per se.

40. A more sensible Lords term (12 years) would be the consequence of a more sensible Commons term (4 years) but we appreciate that we are not starting from an ideal situation.

41. A single non-renewable term of office is clearly compatible with the desired character of a reformed second chamber – i.e.: members insulated from the pressures of party and constituency work, neither seeking re-selection nor re-election.

Quarantine:

42. The Society believes that the ban on standing for the Commons for 4 years is a welcome – nigh essential – part of the proposals. Quarantine measures avoid significant problems observed in overseas chambers:

    a. Ireland's Seanad has often proved a 'stepping stone' to the Dáil, e.g. in 1997, 16 senators (of 60) were elected as MPs.

    b. In Canada, a similar phenomenon is developing in 2011 with members departing the Senate to run as MPs and returning if defeated.

    This provision also rightly limits temptation to undertake constituency work.

Recall:

43. The Society notes the government's consideration of recall measures for a reformed second chamber. While we are sympathetic to the challenges presented by one long single term of office, the Society is strongly opposed to recall on principle.

44. Recall was originally part of the progressive government reform package in the United States in the early decades of the 20th century, along with primary elections and the direct election of senators. But in practice recall has proved reactionary rather than progressive. It has given well-organised interest groups the ability to target public figures who oppose their agenda. While the overthrow of Governor Gray Davis of California in 2003 is probably the most famous example, recall has become a conventional partisan campaign tool at state level.

45. The Society believes strongly that the chamber requires correct and proportionate sanctions that bypass the need for recall. Members should simply be subject to rigorous and properly enforced standards of conduct, including attendance, and be subject to criminal laws of fraud and corruption.

The electoral system preferred:

46. The Society welcomes the government's acknowledgement that members of the upper house must be elected on a different basis to the House of Commons. It is a matter of general consensus that the upper house should represent the regions and nations of the UK, and that it should fairly represent the diversity within the UK. No party should have an overall majority and its composition should be roughly representative of the strengths of the parties in the country. It should be a forum where all interests are heard but none dominate, unlike even the present appointed House of Lords. The government's choice of systems reflects this.

47. The Society applauds the government's rejection of closed lists (as used in European Parliamentary elections). The degree of party control possible under a closed list system would simply replace one form of political appointments with another.

48. **The Society welcomes the government's proposal to use of STV system for elections to a reformed second chamber.** The key differences between STV and Open Lists are noted throughout this submission, and are perhaps best expressed by Paul Tyler, Kenneth Clarke, Tony Wright, Sir George Young and the late Robin Cook in *Breaking the Deadlock* (2007):

> "We believe that the electoral system for the second chamber should maximise voter choice, and we therefore reject the idea of closed party lists. We thus propose that elections should be carried out using either open lists or STV. **On balance we believe that STV is more in keeping with the needs of the second chamber."** [5]

49. STV, as a candidate-based multi-member system, is the most friendly there is to independent candidates.

[5] http://www.ucl.ac.uk/spp/publications/unit-publications/119.pdf

a. **Voting is for candidates** rather than party lists.

   i. This puts independents on an equal footing to political party candidates – in list PR elections, independents are often placed below the parties on the ballot paper with a blank box next to them where parties have an emblem, and the task of independents in communicating what they each stand for is harder.
   ii. STV encourages parties to offer candidates who differ a bit from each other in order to maximise their vote and encourages candidates to highlight what is distinctive about themselves, which means allowing them some latitude. It also means that community leaders who agree with a party most of the time but do not want to take a whip are able to stand as independents without harming the party's chances.

b. **Voting is preferential**, i.e. 1, 2, 3… rather than a single X as is usual in FPTP or list PR.

   i. Voters do not have to worry about wasting their vote or splitting the vote of the section of the electorate they belong to because it can transfer to their next choice of candidate if their first choice does not have sufficient support to get elected. One of the barriers to voting for independents under FPTP (and even many forms of list PR) is the fear that one's vote will be wasted. STV removes this barrier.
   ii. Preferential voting affects the behaviour of parties and candidates in that it makes it harder for parties to deselect or discipline candidates. Attempts to insist on conformity will founder because rebels will be more willing and able to stand as independents without splitting the vote.

How many STV seats are needed for reasonable proportionality?

50. **The government has reasonable concerns about providing for electoral areas with sufficient 'district magnitude'** (i.e. the number of representatives elected from each district) to provide a fair degree of overall proportionality. The general principle is that the larger the district magnitude, the closer the system overall gets to proportional representation of the votes cast.

51. **However, it is not necessary to insist, as the government suggests, that there should be a 'floor' of 5 members elected at a time per seat.** Research shows that a fair degree of major-party proportionality, and lower barriers to entry for smaller parties and independents, do not require a high district magnitude under STV.

52. In the Scottish local authority elections of 2007, a mixture of three- and four- member wards was able to achieve a level of proportionality which was comparable to that achieved by list PR or Mixed Member Proportional (MMP), namely a DV score of around 8. The least proportional results were in authorities which had a uniform pattern of three members per ward. In the Scottish local elections, 74 % of first preferences elected a candidate, and if

second and third preferences are taken into account perhaps up to 90% of voters had a say in electing *someone*.

53. In dealing with small seats, list PR can sometimes involve considerable numbers of 'wasted' votes cast for unsuccessful candidates, which can distort representation. For instance, 6-member list PR in South West England in the 2009 European Parliament election resulted in 30.5% of votes cast failing to elect anyone.

54. Allowing a few seats electing three or four members would enable electoral boundaries to be more consistent over time and more coterminous with regional boundaries.

55. **The Society recommends that the normal minimum size for STV electoral districts be three, not five, seats, provided that the average size is around five or more.**

What number of STV seats is the practical maximum?

56. The government proposes to create subdivisions where using whole regions would result in an STV election of more than 7 members at a time. This is reasonable given that a larger figure may result in very long ballot papers and that, except in Scotland and Northern Ireland, preference voting will be initially unfamiliar to voters. The size of the quota for election, and thus the 'barrier to entry', also falls more slowly when there are more seats. For instance, increasing the number of seats from three to four means that the quota drops from 25% to 20%, while increasing it from 6 to 9 only achieves a reduction from 14.3% to 10.0%. Using international comparisons, normal STV district magnitudes are as follows:

    a. Republic of Ireland: 3-5 seats
    b. Republic of Ireland local government: normally 4-7 seats
    c. Malta: 5 seats
    d. Australian Senate: 6 seats
    e. Northern Ireland Assembly: 6 seats
    f. Northern Ireland local government: 5-7 seats
    g. Tasmania: 5 seats
    h. Australian capital territory: 5-7 seats

    There are some elections with larger STV districts than this, including some smaller local authorities in the Republic of Ireland and the occasional 'double-dissolution' Australian Senate election, and of course frequently for elections of executive committees in voluntary organisations and trade unions. But international experience, and common sense, suggests that a district magnitude of 7 is a reasonable ceiling for the UK's second chamber.

    The Society agrees with the draft Bill's proposed maximum of 7 seats per electoral district.

How does one allocate seats to parts of the United Kingdom?

57. An allocation method for seats which is consistent with the government's broad approach and established policy as regards the distribution of seats for MEPs and, under the 2011 Act, 596 of the 600 MPs, would involve the following procedure:

a. A minimum of three seats per nation, and the remainder (68 or 88 seats) allocated using the Sainte-Laguë divisor method

b. The English seats allocated between the nine regions, again according to the Sainte-Laguë divisor method

However, we note that international experience suggests that seats in elected second chambers are rarely allocated with sole reference to population (leaving aside the problems in matching population to registered electorate). Elected second chambers usually reflect the make-up of federal or multi-national states and are seen as a balance to prevent the interests of 'big states' overriding those of 'small states'. This is the pattern in the Senates of the United States and Australia, and also with the indirectly elected Bundesrat of Germany.

Applied to each tranche of seats, based on the proposed three hundred members, election by thirds and the alternatives of 80% and 100% elected, the above formula gives the following distribution of seats in proportion to the 2011 electorate figures (as compiled December 2010).

	80 seats per election	100 seats per election
Northern Ireland	3	3
Wales	4	5
Scotland	7	9
England	66	83
Of which…		
East Midlands	6	7
Eastern	7	9
London	9	12
North East	3	4
North West	9	11
South East	11	14
South West	7	9
West Midlands	7	9
Yorkshire/ Humber	7	8

If more precise equalisation is required, and if future adjustments are needed, there is no reason why the number of people elected from the same area should not be allowed to vary slightly in successive elections. The following two tables indicate how the allocation of seats to regions might vary to give each region a more precise degree of equality, under 80% or 100% election. **However, the instability of the electoral register, and the long terms of office for members of the second chamber, suggest that there are dangers to excessive precision.**

80 seats per election	Seats per election - uniform electoral cycle	Total seats - uniform electoral cycle	Total seats -variable electoral cycle	Term A	Term B	Term C
TOTAL	80	240	240	80	80	80
Northern Ireland	3	9	9	3	3	3
Wales	4	12	12	4	4	4
Scotland	7	21	20	7	6	7
England	66	198	199	66	67	66
Of which…						
East Midlands	6	18	18	6	6	6
Eastern	7	21	22	7	8	7
London	9	27	27	9	9	9
North East	3	9	10	3	4	3
North West	9	27	27	9	9	9
South East	11	33	33	11	11	11
South West	7	21	21	7	7	7
West Midlands	7	21	21	7	7	7
Yorkshire/ H	7	21	20	7	6	7

100 seats per election	Seats per election - uniform electoral cycle	Total seats - uniform electoral cycle	Total seats -variable electoral cycle	Term A	Term B	Term C
TOTAL	100	300	300	100	100	100
Northern Ireland	3	9	9	3	3	3
Wales	5	15	15	5	5	5
Scotland	9	27	25	8	9	8
England	83	249	251	84	83	84
Of which…						
East Midlands	7	21	22	7	7	8
Eastern	9	27	28	9	9	10
London	12	36	35	12	11	12
North East	4	12	13	4	4	5
North West	11	33	34	12	11	11
South East	14	42	41	14	13	14
South West	9	27	26	9	9	8
West Midlands	9	27	27	9	9	9
Yorkshire/ H	8	24	25	8	8	9

However, the technique of varying the numbers elected each election can allow more freedom to draw sub-divisions, where needed, which comprise sensible groupings of whole counties.

58. One should not become unduly concerned with the issues of the subdivision of regions for an STV election; it is very much a subsidiary matter. **The draft Bill suggestions on this point are unsatisfactory for two reasons:**

    a. **There is no need to create a new institution to draw boundaries of sub-divisions.** The Boundary Commissions for England and, if necessary, Scotland, could easily perform this rather simple task. There is no need for frequent boundary adjustments.

    b. **The draft Bill leaves open the possibility that the electoral regions for the second chamber may cross the boundaries between English regions.** This is undesirable, in that the regions are now accepted units for the European Parliament and drawing House of Commons constituencies, and electoral administrators are familiar with co-operative working within them. It is also unnecessary.

    Good proportionality is perfectly consistent with having a few districts smaller than 5 seats in magnitude. A close relationship between size of registered electorate and number of representatives is also easier to achieve in multi-member than single-member seats.

    Model electoral districts for STV election for both 80 (80% elected) and 100 (100% elected) seats per election are provided in appendix 2.

Vacancies:

59. The Society agrees that given long terms of office interim appointments should not persist for more than the period until the next partial election.

60. The Society notes that proposals for filling casual vacancies are crude – i.e.: the candidate with the 'highest vote without being elected'. Under STV, a first preference count does give one measure of support, but can produce unusual results. The final preference count – i.e. the total reached by the candidate in the last stage of the count before exclusion – is another.

61. **The system of increasing the number of members to be elected for that particular constituency – as used in Liberal Democrat internal elections – is the best way to represent the views of the overall electorate.**

Timing:

62. The Society notes the government's preferred option is concurrently with General Elections. We accept that this has the advantage of maximising turnout and that is important. The point that mid-term second chamber elections will disrupt the legislative process is also not a trivial one. **However, the Society believes there are significant drawbacks to running alongside General Elections:**

    a. **Prominence.** Holding the second chamber election on the same day as the General Election would mean that the more decisive and important election (for the Commons) would dominate media and public attention. Given that the government

seeks, and we agree, an independent-minded chamber of expertise and legislative revision, the electoral timetable should allow a considered assessment by the electorate of the qualities of those seeking election.

b. **Political.** It would seem likely that the voting patterns in second chamber elections would be fairly close to those for the election to the House of Commons given that they would reflect the same state of political opinion and be strongly influenced by views on national issues. But the newly elected tranche of senators would arguably have a superior mandate given that its composition would more closely resemble the votes actually cast in the election because of the proportional system. It may or may not be considered desirable, but the prospect of eroding the supremacy of the Commons throughout each government's term exists with this proposal.

c. **Public understanding.** It will be easier to promote knowledge and understanding of the new electoral system used for the Lords away from the General Election campaign period.

d. **Administrative.** General Elections involve a complex and heavy administrative load already, and a second chamber election using a new electoral system and new boundaries will add massively to this problem. There may well be cases where the boundaries of Commons constituencies and sub-regional senate electoral districts do not match up as well as the complexities of English local elections on the same day.

63. The Society sees two possible alternatives:

a. **To hold second-chamber elections on the same day as the European Parliament election.** This has the merit of combining two UK-wide second-order elections. The European Parliament election is also already conducted on a regional, proportional basis and it may therefore be simpler from the point of view of voter education and administration. It will also mean substantial coverage and awareness of the distinctive nature of the election for the second chamber. However, this would mean (assuming that the five-year term is a permanent fixture) second-chamber elections taking place late in each term of the House of Commons and perhaps therefore to them being regarded as surrogate General Elections by the public.

b. **Establishing a new mid-term date, for instance 2017-2022-2027.** This would certainly be more costly than the alternatives, as there would be no other UK-wide national election on that date.

There is no strong international evidence for one solution or another. Italy, Australia and the United States directly elect their Senates in whole or in part alongside their lower chambers. In Japan, House of Councillors elections take place in mid-term, although with both Japan

and Australia the elections are legally capable of being separate or combined, and the difference just depends on the timetable of early dissolutions of the lower houses.

64. **On balance, we would argue that timing second chamber elections alongside the European Parliament election would be the best option**, although we recognise that all the possibilities have pluses and minuses.

Transitional arrangements:

65. A period of transition is necessary to ensure the upper house's operational continuity. Using elections by thirds, the government has indicated how the change can be achieved at different speeds.

66. On balance, the Society believes a brisk move to a smaller chamber is desirable. While we appreciate the need for continuity, a critical mass of elected peers will be necessary to establish the chamber's new working practices. As such the Society sees no merit in allowing all current peers to remain for a full electoral cycle.

The provisions on Bishops:

67. The Society does not accept that there is a case for reserved seats for Bishops of the Church of England. Britain is a multi-faith and multi-denominational society and we do not believe it is acceptable for one denomination to receive such representation.

68. **The Society therefore recommends that reserved seats for the Bishops are removed.**

Other administrative matters like pay and pensions:

69. The Society believes that remuneration for members of the second chamber should be such that people from all social backgrounds and all regions of the UK can serve in the chamber without facing financial hardship.

70. We agree with the Wakeham Commission's conclusion that "payment should be made for the time members of the second chamber devote to their parliamentary duties". But given the valuable and distinctive nature of members "duties" from those in lower house – the stronger focus on deliberation and the absence of casework – we would, on balance, recommend giving members the same basic salary and allowances as MPs.

71. We continue to support the Wakeham Commission's recommendations that additional office and secretarial resources should be provided to enable members to fulfil those duties more effectively.

72. The Society agrees with the government that all members of the second chamber should be resident in the UK for tax purposes.

21 October 2011

Appendix 1: Independents in Ireland and UK

	Independents	Minor parties	Combined	Combined %	UK number	UK %
1981	6	2	8	4.8	1 (1979)	0.2 (1979)
1982 Feb	4	3	7	4.2	-	-
1982 Nov	3	2	5	3.0	1 (1983)	0.2 (1983)
1987	3	5	8	4.8	1	0.2
1989	8	5	13	7.8	-	-
1992	4	6	10	6.0	1	0.2
1997	6	8	14	8.4	2	0.3
2002	13	14	27	16.2	1 (2001)	0.2 (2001)
2007	5	10	15	9.0	2 (2005)	0.3 (2005)
2011	14	19	33	19.9	3 (2010)	0.5 (2010)

(Major parties defined as Fianna Fail, Fine Gael, Labour and Progressive Democrats in Ireland, and the leading four in each part of the United Kingdom – i.e. Conservative, Labour, Liberal Democrat, SNP, Plaid Cymru, DUP, UUP, SDLP and Sinn Fein). Arguably, Sinn Fein (14 seats) should be counted as a major Irish party in 2011.

As Irish political scientist Michael Gallagher observed 'independents represent a face of Irish politics that simply will not go away. Whereas independents are almost unknown in most European counties, they have proved tenacious in Ireland.'[6] Ireland does have a distinctive political culture but STV plays a significant part in explaining why Ireland elects so many independents and minor parties to its lower House. By contrast, the number of independents has varied from zero to two in the same period in the UK's considerably larger parliament, and those of minor parties also from zero to two (currently two, one Green and one Alliance Party). Significantly, Northern Ireland, whose political culture is affected by STV which is used in all other elections in the province, has provided one of the four candidates elected as an independent since 1983 (Hermon, the others being Bell, Taylor and Law), and three of the four small party MPs (Kilfedder, McCartney and Long, the other being Lucas). Ireland's parliament has the highest proportion of independent members in Europe.

The Irish Senate is mostly indirectly elected, but there are six seats elected using STV by graduates of the Irish universities, who are usually all independents although occasionally party candidates can win.

[6] M. Gallagher 'The Results Analysed' in M. Marsh and P. Mitchell *How Ireland Voted 1997* p136.

Appendix 2: Model STV electoral districts

Model electoral districts (80 seats per election)

Regions elected as a whole without subdivision:

- Northern Ireland (3)
- Wales (4)
- Scotland (7)
- East Midlands (6)
- Eastern (7)
- North East (3)
- South West (7)
- West Midlands (7)
- Yorkshire and the Humber (7)

Subdivided regions:

London:

North London (5 seats, technical entitlement 5.20)

South London (4 seats, technical entitlement 3.80)

South London, for these purposes, would be all boroughs south of the Thames, plus Hounslow and Twickenham north of the river.

It would be possible, however, to use the fact that the elections will take place by thirds to draw more meaningful boundaries for these subdivisions. There is no need, for instance, to add Hounslow to South London if one varied by 1 the number of seats elected from each subdivision at different elections. London south of the Thames (plus Twickenham) could elect 4 for term A, 3 for term B and 4 for term C, and North London would elect 5 for term A, 6 B and 5 C.

North West:

Cumbria, Greater Manchester, Lancashire (6 seats, technical entitlement 5.93)

Cheshire, Merseyside (3 seats, technical entitlement 3.07)

South East:

Berkshire, Buckinghamshire, Oxfordshire, Surrey (4 seats, technical entitlement 4.28)

East Sussex, Hampshire, Isle of Wight, Kent, West Sussex (7 seats, technical entitlement 6.72)

Electoral districts (100 seats per election)

A wholly-elected chamber would involve more subdivision of the regions.

Whole regions:

- Northern Ireland (3)
- Wales (5)
- East Midlands (7)
- North East (4)

Subdivided regions:

	Seats – even distribution	Entitlement	Variable term A	Variable term B	Variable term C
EASTERN					
Bedfordshire, Cambridgeshire, Hertfordshire	4	3.80	4	3	4
Essex, Suffolk, Norfolk	5	5.20	5	6	5
LONDON					
North London	7	7.31	7	8	7
South London	5	4.69	5	4	5
NORTH WEST					
Cumbria, Lancashire	3	3.15	3	3	4
Greater Manchester	4	4.10	4	4	4
Cheshire, Merseyside	4	3.75	4	4	3
SOUTH EAST					
Berks, Bucks, Hants, IoW, Oxon	7	6.77	6	7	7
E Sussex, Kent, Surrey, W Sussex	7	7.23	8	7	7
SOUTH WEST					
Avon, Gloucestershire, Somerset, Wiltshire	5	4.84	5	5	5
Cornwall, Devon, Dorset, Isles of Scilly	4	4.16	4	4	4
WEST MIDLANDS					
West Midlands, Warwickshire	5	5.14	5	5	5
Herefordshire, Worcestershire, Shropshire, Staffordshire	4	3.86	4	4	4
YORKSHIRE/ HUMBER					
Humberside, South Yorkshire, York	4	3.77	4	4	3
North Yorkshire, West Yorkshire	4	4.23	4	4	5

Several divisions of Scottish local authorities and other administrative geographies are possible; there may be merit in dividing the country into two blocks, each containing four Scottish Parliament regions, for the purpose of electing second chamber representatives.

The workings demonstrated here should give a clear indication that the Single Transferable Vote in seats, each contained within a European Parliament region, electing for the most part from 4 to 7 members at a time, is a workable system for filling either an 80% or 100% elected second chamber.

Written evidence from John Wainwright (EV 56)

I wish to respond to the consultation exercise which you have initiated regarding proposals for the reform of the House of Lords. (In making this brief submission, I confirm that I am a British citizen resident in the UK at the above address.) In particular I wish to comment on **Part 4** entitled **'Lords Spiritual.'**

I do so as a private individual and not on behalf of any official body or campaigning organisation. As regards my own background which may be relevant in this area I am a graduate in Theology from King's College, London, and additionally have had many years experience teaching RE and PSHE in various state Secondary schools. Currently I am a voluntary worker, including in my local church.

Although there will be differences of opinion between members of the Committee as to the as to the merits or otherwise of retaining Lords Spiritual, just as there are among the public at large, I nonetheless welcome the implied recognition of the valuable contribution they may make to debates within the Chamber and to those enquiries and deliberations which

precede them. Historically the Church has been involved not only in such matters as Education, Health Care, and Prison Reform, but also in promoting higher standards of employment through leadership in Industry and the Trade Union movement. The Church with its emphasis on the intrinsic worth of every human being, irrespective of class or ethnic background, combined with a concern to foster community values and reconciliation between different interest groups has a message which is as vital today as when our national

institutions first began to take shape. The Church at its best, whilst very aware of the need to encourage sustainable productivity, also recognises, not least because of its international contacts, the importance of responsible stewardship of the environment in all its forms, especially during a period of climate change and social upheaval. For Christians, and I would suggest for people of other religions represented in our national life, because of their inherent commitment to justice, Faith can never be just a private matter, it must always have practical implications both in regard to the promotion of just legislation and also in terms of listening and compassionate service.

However, whilst appreciating the recognition of the Faith dimension I regret that the new proposals lack the imagination and insight of the **Wakeham Committee** a decade ago. The latter proposed not only the retention of seats for certain Anglican bishops, including the two Archbishops, but also suggested the appointment of representatives from other denominations, as well as representatives from other Faith communities. This concern does not arise from any bias against the Church of England. Indeed, my theology degree was awarded by a college with an Anglican foundation and my own wife is a communicant member! However as many in the Anglican Church have graciously acknowledged the Church of England only represents a proportion of Christians and in this ecumenical era it is time, indeed some would say time is overdue, that the contribution of adherents from the Catholic and Free Churches, including the so-called Black Churches, was given greater affirmation. From within the Christian community more broadly based appointments could be made on the advice of bodies like Churches Together in Britain and Ireland and the Evangelical Alliance. Furthermore, need all such appointments come from the ranks of the clergy? In the case of the Roman Catholic church they could not do so anyway. Surely there

are many lay people who would have appropriate qualifications and probably more time to devote than the clergy! One does not want to end up with mere token representation.

Finally, in a reformed Chamber so far as **Standing Orders** are concerned there would seem to be a good case for broadening the nature of the **prayers** which begin each session. Quite rightly such prayers include petitions for the Queen and Royal Family but why not incorporate prayers related to the business of the day or for members who might be ill (subject to their consent, or that of their family, of course) or thanksgiving for the life of a deceased member or former member? Naturally there would have to be sensitivity and the avoidance of obvious partizanship. Such an approach would make intercessions far more relevant to a greater number of people and I would suggest more appropriate for the Twenty-First century.

Thank you for the opportunity of being able to make this submission and I shall naturally be interested in your response.

21 October 2011

Written evidence from Lord Howarth of Newport (EV 57)

The test against which proposals to reform the House of Lords should be judged is, surely, whether they would be likely to improve the performance of Parliament. Over the years I have asked proponents of elections to the Second Chamber how and why the change they advocate would improve the performance of Parliament and I have never yet received an answer. In their Foreword to the White Paper the Prime Minister and Deputy Prime Minister say, "We believe that our proposals will strengthen Parliament." One looks in vain, however, for an explanation as to why this should be so. It appears to me that the reforms proposed in the White Paper would damage rather than strengthen Parliament.

Of course the Government put forward their case for an elected Second Chamber less on the basis that it would strengthen Parliament than on the basis that that it is unacceptable today that a Chamber of the legislature should not be democratically elected. The Prime Minister and Deputy Prime Minister say, "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." This ignores, however, that the appointed House of Lords takes upon itself only to advise. The House offers its thoughts in debates and in the work of its committees, questions and holds Ministers to account, and proposes amendments to legislation. These are appropriate functions for an appointed House. Sometimes it may persist in reiterating its advice when it considers that an issue is of outstanding importance. But in the end the appointed House of Lords always defers to the elected House, because it recognises that in a democracy this is proper and necessary. So it is the elected House of Commons that decides on legislation as well as supply. Nor is there any evidence of a frustrated desire amongst the electorate for an elected Second Chamber. Rather, there is reason to think that people do not want more elections and they do not want the establishment of another set of politicians with salaries, allowances and pensions. The rationale, in terms of a necessary democratisation of the legislature, for replacing the House of Lords with an elected Second Chamber is a red herring.

The White Paper contains much detail on mechanics: the system for election, transitional arrangements and remuneration. But it barely engages with the major and highly contentious constitutional issues as to whether an elected second Chamber is desirable in principle and what the implications would be for relations between the two Houses.

It is predictable that a wholly or even a mainly elected Second Chamber would be more assertive vis-à-vis the House of Commons. Any elected politician worth his/her salt would be bound to pledge himself when seeking election to champion his electors, to pursue the best interests of his country as he perceives them and to hold the Government vigorously to account. Democratic election would confer this right and duty. Legitimacy deriving from election would make inevitable a greater incidence and intensity of challenge by the Second Chamber to the House of Commons. I am concerned that creating an elected Second Chamber would lead to endless conflict and impasse between the two Houses. This would mean, as in the USA, that it would become much more difficult for the Government to secure its legislative programme. The spectacle of such conflict would also, I fear, be repellent to the public, who would become further disaffected from politics.

The statement in the White Paper on powers – "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", together with Clause 2 (1) of the draft Bill - is wishful thinking. At paragraph 30 the Government speak of their "aspirations for a reformed second chamber – that it should perform the same role as at present, but have a clear

democratic mandate." The reality is that they can have one or the other of these, but not both. Elections will instigate a new dynamic with profound effects on the relationship between the two Houses. Of their very nature, 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. If you introduce radical change to that reality you cannot expect the same conventions to persist. The Cunningham Committee, whose conclusions were endorsed by both Houses, indeed foresaw this starkly and warned (in paragraph 61): "If the Lords acquired an electoral mandate, then in our view their role as a revising Chamber, and their relationship with the Commons, would inevitably be called into question, 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."

The Government recognise, in paragraph 9 of the White Paper, that the balance between the Houses is "delicate." Lord McNally, speaking for the Government (Lords Hansard, 22 June 2011, col 1376), went further when he acknowledged:

"What is clear is that the relationship between the two Houses has always evolved and will continue to evolve in the future."

We have seen how the European Parliament, the Welsh Assembly and the Scottish Parliament have all sought, relentlessly and successfully, to add to their powers.

It has to be anticipated that, in due course, an elected Second Chamber will challenge the financial privilege of the House of Commons. The rationale for Commons privilege is that it is the sole elected House. Indeed a Second Chamber elected under proportional representation is likely to claim greater legitimacy than the House of Commons elected under first past the post. The Parliament Acts will come under challenge. An elected Second Chamber would threaten the primacy of the House of Commons.

If such developments do occur, the present clear cut accountability of Government via the House of Commons to the people will become blurred and confused.

The Government intends, through Clause 2 (1), to entrench the present relationship between the two Houses. In truth there is no way, within our flexible, unwritten constitution, and with the doctrine of the omnicompetence of statute, to entrench any constitutional arrangements. In our present political culture politicians who find themselves in Government, armed with a majority in the House of Commons, though perhaps with no more than a shallow knowledge of history, feel free to alter the constitution at whim, and in important recent instances without manifesto justification or consultation with the people to whom the constitution belongs or pre-legislative scrutiny. No constitutional "settlement" will be other than ephemeral. If the measures in the Bill the Government is putting forward are enacted by Parliament they could be superseded at any time thereafter by further legislation.

Supposing, indeed, that legislation were passed requiring that an elected Second Chamber should be limited to the exercise of no more powers than the existing conventions allow, what value would there be in the new elected House? A House of elected politicians whose role was merely to advise and who always deferred to the other House of elected politicians would have little, if anything, to contribute to parliamentary deliberation or action. Why would politicians of any merit other than meekness put themselves forward for election to such a House?

Aside from the effects of a competition for power between the two Houses, relations would also be likely to deteriorate in an atmosphere of mutual resentment as Members of each traversed each others' constituencies appealing to constituents and being appealed to by them. It was the prospect of something like this which lay behind the draining away of enthusiasm for regional elected assemblies among English MPs as they saw the experience of their counterparts in Scotland and Wales following devolution and the creation of the Scottish Parliament and the Welsh Assembly. In multi-Member constituencies as proposed by the Government for the Second Chamber there would be more rival representatives trampling over the constituencies of Members of the House of Commons.

Good relations and productive complementarity between the two Houses of Parliament are better secured by having an elected House of Commons on the one hand, representative of geographical constituencies, with all the vigour and authority which come from being elected and accountable, and on the other hand an appointed House with the strengths that come from experience, pre-eminent professional ability and expertise, and being more representative of the professional, cultural and ethnic diversity of the country.

The Government recognises the need not to create, in an elected Second Chamber, a pale version of the House of Commons, but it is at a loss how to avoid that. So, with no conviction, it proposes as an option a hybrid House, containing one fifth appointed Members, ignoring the obvious problems in mixing two categories of Member – elected and appointed – within one Chamber. It is unimpressive that Ministers, meeting for many months, should have failed to resolve the basic question as to whether a reformed Second Chamber should be wholly or partially elected.

The Government proposes to differentiate the electoral term for the Second Chamber, but by extending it to fifteen years and insisting that a Member may serve only one term, they ensure that, after all this upheaval in the name of democracy, there will be no accountability of Members to their electorates. The Government claim that these arrangements will underpin the independence of Members. However, democracy without accountability, power (even only a little power) without responsibility, is not worth having and may indeed be dangerous, encouraging corruption and abuse.

For this dubious "democratic" gain it is proposed to discard the strengths of the present appointed House of Lords. The existing House of Lords does have a representativeness different from that of the House of Commons, containing as it does peers who have achieved distinction in the upper reaches of various professions - the law, politics, academia, medicine, business, the arts, the armed forces, the police and so forth – as well as leaders of the Church of England and other faith communities. It therefore has a legitimacy that derives from the personal distinction and authority of many of its Members. The present House of Lords is diligent and acute in its scrutiny of legislation and the performance of its advisory role. The quality of its debates is frequently praised in the media and is appreciated by many in the country. Democracy is not the only source of legitimacy – as we see also in the authority of the judiciary and the development of common law.

Would a Second Chamber, whose elected Members owed their status as candidates to approval by the political parties and were subject to a more insistent whip than Members of the present House of Lords, with few or no cross benchers, have resisted the erosion of trial by jury and the extension of pre-charge detention, as the House of Lords has done in recent years?

The British constitution was traditionally praised by foreign observers for the effectiveness of its checks and balances. Many believe that the checks and balances within our constitution have weakened with the rise of the "elective dictatorship," and that reform should be directed to renewing

checks and balances consistent with democracy. An appointed Second Chamber, appropriately reformed, is more likely to be a judicious check on the executive than a Second Chamber elected on a basis of organisation by the political parties, more preoccupied with the party battle and more susceptible to party management.

It would be preferable for the Government to concentrate its reforming energies on improving the existing House of Lords. The choice is not between the status quo and moving to a wholly or mainly elected Second Chamber. Everyone wants reform. Key reforms to the appointed House are set out in Lord Steel of Aikwood's House of Lords Reform Bill: phasing out of the hereditary Members of the legislature, improved arrangements for retirement, and disqualification of peers found guilty of a serious criminal offence. These reforms are also proposed in the White Paper. The Government would be wise to proceed purposefully here where there is genuine consensus. These particular reforms will be necessary whether the Second Chamber is eventually to be elected or not.

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. It ought to be legitimately constituted by statute, with its membership and terms of reference also approved by Parliament. Its task should be to enhance the representativeness of the Second Chamber in the sense of the term which I have used above. The draft Bill does not make clear the role of the SAC beyond its duty to make a certain number of appointments to a partially elected House in a manner consistent with the Nolan principles. Nor does it make clear the role of the proposed Parliamentary Joint Committee overseeing the SAC. These provisions are too vague.

Given the precedents since the referendum on membership of the European Economic Community in 1975, such major reform of Parliament as the Government now proposes, in either of the variants in the White Paper, could not properly be introduced without a referendum.

In the remainder of this submission I will comment on some more incidental aspects of the proposed reforms: the size of the Second Chamber, its political balance, its gender balance, and the system of elections to it.

A reformed House of 300 Members would, I think, be too small. The Government notes that average daily attendance in the Lords is at present 388 and that with 300 full time Members the workload should be manageable. But the existing House struggles to get through all the work entailed by the complexity of modern government and the ambitions of the legislative programmes of every Government. Besides, it would be a mistake to require that appointed Members should be full time. They should bring to the House their experience of a wider world and over a fifteen year term of full time membership their capacity to do this would rather largely diminish.

It is not stated whether any limit is intended to the number of Ministers the Prime Minister could appoint to the smaller Second Chamber. Would he be free to appoint a Minister to represent every Whitehall Department? Will Ministers in the Second Chamber be entitled to vote? Would not a free patronage for the PM in this regard enable him to tilt the political balance of the Second Chamber too far? Might not this make it more likely, contrary to the suggestion in paragraph 25 concerning staggered elections, that the Government of the day would have an overall majority? It is desirable that in a revising Chamber the Government of the day does not have an overall majority because Ministers then have to secure the assent of the House by reasoned exposition of their case, rather than

being able to rely upon the party whip to secure a majority. Between 1999 and 2010 it was the case that no one party in the Lords had a majority over the other parties. This was good for the performance of the revising Chamber. Since the last general election, on the dubious newfangled constitutional doctrine that the make-up of the House of Lords should reflect the pattern of voting at the previous general election, the House has been packed with new peers who take the whips of the governing Coalition parties. That development has been in striking contrast to the Government's policy of reducing the size of the elected House of Commons, its professions of intent to reduce the size of the Second Chamber and its claim to see it as a virtue of the electoral system it proposes for the reformed Second Chamber that it would make it "less likely that one particular party would gain an absolute majority".

At paragraph 49 the Government says reform of the House of Lords is "an opportunity to consider how to increase the participation of women in Parliament." They also say that political parties have an important role to play in this. I would observe that the political parties, though paying lip service for many years to the desirability of a better gender balance within the House of Commons, have done disappointingly little to achieve it. 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.

In discussion of the proposed STV electoral system for the Second Chamber the Government says "it is important that the individuals are elected with a personal mandate from the electorate, distinct from that of their party." This seems a forlorn hope. I fear that most voters in very large multi-Member constituencies, electing individuals to a House that is to exercise no real powers, will not know the individual candidates nor be particularly interested to do so. The Government acknowledges that there will be one Member elected to the Second Chamber for every 570,000 voters. Under STV the "surplus" votes of first preference candidates are redistributed to second and third preference candidates, who are likely to be even less well known to voters. A low turnout seems likely, and the complexity of the voting system may reinforce this.

24 October 2011

Written evidence from Dr Meg Russell (EV 58)

Draft paper for submission to Political Quarterly

House of Lords reform is once again on Britain's political agenda. The Conservative/Liberal Democrat coalition government formed in 2010 has announced its intention to replace the currently unelected second chamber with one that is largely or wholly elected. In May 2011 it published a white paper and draft bill to achieve that end.[1] These proposals are controversial, and provoked a mixed reaction when presented to the two chambers of parliament a month later.[2] The next step in the process is for a joint committee of both Houses to consider the proposals, and report in spring 2012. This may be followed by formal introduction of a bill in 2012-13.

Lords reform has been discussed at length in Britain in the last 15 years, with no fewer than five previous government white papers since 1997, plus a Royal Commission and numerous other reports. Most attention to date has focused on options for changing the second chamber's composition. Here the latest proposals seek to build on what has gone before, as parliamentary opinion appears to have gradually moved towards a largely or wholly elected chamber, with the Commons expressing its in principle support for this in 2007.[3] Relatively less attention has so far been given to the appropriate powers for a second chamber, and indeed how powers and composition interrelate. But focus has shifted in this direction with the publication of the latest proposals, for two reasons. First, because with the argument over composition seemingly over, it is now important to consider what the repercussions of a largely elected chamber would be. But second, because clause 2 of the draft bill controversially suggests that '[n]othing in the provisions of this Act... affects the primacy of the House of Commons... or the conventions governing the relationship between the two Houses'. This clause attracted much critical attention during the parliamentary debates.

Opponents of election to the House of Lords, and indeed some who support it, believe instead that a reformed chamber with a more democratic composition would inevitably make greater use of its powers. That is, that whatever is written into the bill, the conventions governing the relationship between the two chambers would change. This had previously been the conclusion of a joint parliamentary committee established in 2006 specifically to consider the conventions, which suggested that '[i]f the Lords acquired an electoral mandate... their relationship with the Commons, would inevitably be called into question, codified or not'.[4]

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

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

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

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

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

> *... There are a number of bicameral systems in democracies around the world that perfectly manage an asymmetry between one chamber and the next, even though both might, in many cases, be wholly elected.*[5]

During the debates in June 2011, various claims were made about international practice. Most notably, former Liberal Democrat leader Lord Ashdown told the House of Lords that '[o]f the 77 bicameral Chambers in the world, 61 are elected. In no single one of those has the primacy of the lower Chamber been affected'.[6] This intervention seemed to set off a parliamentary game of 'Chinese whispers', including Shadow Lord Chancellor Sadiq Khan suggesting to the Commons that '[o]f the 61 other bicameral Parliaments, none has an appointed upper chamber. All of them are elected and seen to be doing a pretty decent job'.[7]

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

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

The existence and composition of second chambers

Lord Ashdown's comments were broadly correct about the number of second chambers internationally (though arguably about little else). Reliable information on this matter is available from the Inter-Parliamentary Union's extremely useful online database, and is

[5] Evidence to the House of Lords Constitution Committee, question 217, 18 May 2011.

[6] House of Lords Hansard, 21 June 2011, column 1198.

[7] House of Commons Hansard, 27 June 2011, column 653.

regularly updated. The number of such chambers tends to fluctuate, in part due to changes in the number of national parliaments judged to exist by the IPU, and in part due to parliaments shifting from unicameral (single-chamber) to bicameral (two-chamber) and vice versa. On 5 October 2011 the IPU database included 190 national parliaments, of which 78 were bicameral and 112 were unicameral. In May 1999 the equivalent figures were 66 and 112 respectively.[8] Bicameralism therefore remains popular, and perhaps increasingly so.

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

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

Sources:
Composition of second chamber: IPU Parline Database, www.ipu.org, accessed October 5, 2011. Exceptions: Egypt and Tunisia, whose parliaments and constitutions are currently suspended, excluded. Russia coded as indirectly elected, despite IPU description as 'appointed'.[9]

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

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

Presidential or parliamentary: World Bank dataset.[10] Exceptions: Palau and Antigua and Barbuda are missing from this dataset; Pakistan and South Africa are placed in a third category on the basis that they have an assembly-elected president. All four were classified instead on the basis of their constitutions, and specifically presence or absence of a confidence vote.

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

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

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

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

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

The presidential model centres on a single individual with significant executive power.[11] In the US, and many countries modelled upon it, the president has a real veto over legislation. The same does not apply to either the Prime Minister or the head of state in most parliamentary systems. In parliamentary systems the government depends on the confidence of the legislature (though normally only the lower house) for its survival, while this does not apply in presidential states. Under presidentialism, therefore, the executive is far less dependent on the legislature, meaning that a strong legislature is less of a threat to government stability.

The powers of second chambers

As indicated above, UK politicians have sought to make generalisations about the powers of second chambers, as well as their composition. This information is far less readily available, and is not collected by the IPU. It therefore needs to be gathered by carefully reading each individual country constitution, and secondary literature where this exists.[12] I am only aware of one previous global survey of this kind, conducted by John Coakley and Michael Laver in 1997.[13] This classified second chamber powers as 'greater than', 'more or less equal to', or 'less than' the powers of the respective lower house. Such classification is very difficult in practice, given the great variety of possible second chamber powers. For example, such chambers may have power over public appointments, the signing of treaties, linguistic rights or other constitutional matters. For simplicity, and because none of these special powers apply in the case of the House of Lords, we focus here simply on second chamber powers over government legislation.

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

In other countries, it is likewise quite common for second chambers to have greater power over some legislative matters than others. As in the UK, reduced power over financial legislation, and increased power over key constitutional legislation, is particularly common.

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

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

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

Further, in several federal countries where the second chamber represents subnational units (i.e. provinces or states), it enjoys more power over legislation on regional matters, variously defined. This applies for example in Germany, and in South Africa, where bicameralism was based to some extent on the German model.

It is thus not straightforward to classify second chambers' legislative powers, even when constitutions are readily available and easy to interpret, which is not always the case.[14] On top of this, an added dimension of complexity is created by the various mechanisms through which second chambers may block or delay bills, and the various mechanisms by which conflicts of this kind between the chambers may be resolved.

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

The table shows that just under half of elected second chambers - 21 - have an absolute veto power over normal legislation. That is, if the chamber rejects (or in most cases amends) a bill, the executive and first chamber have no way of imposing their will. In cases where the second chamber veto is absolute, it makes little sense to speak of the 'primacy' of the lower house. Such a statement would certainly not be recognised in the US, for example. Instead, the two chambers may be considered essentially 'co-equal'. Hence it is clearly not accurate to claim, as Lord Ashdown does above, that 'in no single case' does an elected second chamber challenge the primacy of the first chamber. Neither can it be said, in Nick Clegg's words, that the two chambers 'perfectly manage an asymmetry'. Instead they might be considered, at least on the important matter of government legislation, to be symmetrical.

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

	Parliamentary	Presidential
No override power	*Germany* (JC)[1] Italy Switzerland (JC) *Netherlands* [2] UK (unelected, Lords bills only) Zimbabwe*	*Algeria* (JC) Argentina[3] Brazil Chile (JC)[4] Colombia (JC) Dominican Repub. Haiti (JC) *Kazakhstan* Liberia Mexico Nigeria

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

		Palau* Paraguay[5] Philippines (JC) *Rwanda** (JC) USA (JC)
Joint sitting (A= by absolute majority, % = by supermajority)	Australia (A)[6] *India* *Pakistan* Romania (JC)	Bhutan Bolivia (A) Burma Uruguay (66%) *Uzbekistan** (A)
Supermajority	Japan (66%) *South Africa* (JC) (varies)[7]	*Belarus* (66%) (JC) *Burundi* (66%) (JC)[8] *Namibia* (varies)[9] *Russia* (JC) (66%) *Tajikistan* (66%)
Absolute majority	*Austria* Czech Republic Spain Thailand (JC)	*Afghanistan* (JC)[10] *Morocco* (JC) Poland
Normal majority	Belgium[8] *France* (JC) *Ireland* *Slovenia**[8] UK (unelected, Commons bills)	*Gabon* (JC) *Mauritania (JC)*
No clear upper house role	*Ethiopia**	

Key:
Italics denote wholly or mostly *indirectly* elected, others wholly or mostly directly elected.
JC = joint committee included within the conciliation process (see below for discussion).
* Based on limited information.
Excluded: Cambodia, Congo, Democratic Republic of Congo (no English-language constitution available), Sudan (operating under a 2005 'interim' constitution, which does not contain specific information on legislative process). Plus Egypt and Tunisia, as in Table 1.

Notes:

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

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

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

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

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

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

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

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

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

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

This kind of arrangement is particularly common in presidential systems, making up 16 of the 21 cases. Co-equality between the chambers is much less common in parliamentary systems. In the five cases where this does apply (in addition to the Lords' veto on Lords-initiated

legislation) some caveats should be noted. First, as already indicated, the German Bundesrat has a veto over only around half of government bills. Second, the Netherlands is likewise not a straightforward case, as here the second chamber has no power to amend legislation, but can only reject it. In practice this appears to be essentially a 'nuclear option', used very rarely, and instead the threat of its use may encourage the government and lower house to amend bills to meet second chamber concerns.[15] Third, for Zimbabwe only limited information was available. This leaves just two bicameral parliamentary systems - in Italy and Switzerland - where an absolute second chamber veto power definitely applies to all ordinary legislation, and may actually be used. We see therefore that the House of Lords' power over government bills initiating in the Lords is strong in international terms.

In all other overseas cases, including in the majority of parliamentary systems, there is some means for second chamber objections to government legislation to be overridden. Often, as in the UK on Commons-initiated bills, the second chamber may simply be overridden by a vote in the first chamber sooner or later. It is relatively common, however, for this to require some kind of special majority. In seven cases an absolute majority of first chamber members is needed to vote down second chamber objections, and in another seven a 'supermajority' of first chamber members (usually 66%) is required. This can present serious difficulties, since if the government controls less than two thirds of lower house seats it may effectively face a permanent and universal veto. For example in Japan there has been much instability in recent years caused by second chamber vetoes, and it has become necessary to form 'oversized majorities' (i.e. exceeding 50% of lower house votes) in order to ensure that the government has a second chamber majority.[16] Hence for these countries as well, Nick Clegg's statement that other countries 'perfectly manage asymmetry', and Lord Ashdown's suggestion that lower house primacy is unchallenged, appear inaccurate.

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

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

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

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

weak in comparative terms, this table makes the picture appear rather different, with the House of Lords at the 'stronger' end of the spectrum.

The first row in the table is not directly comparable with the rest, as it does not represent a specific time period, but a mechanism. Here a bill may pass without second chamber support, but only in a new parliamentary session. This is the mechanism that applies in the UK. The Parliament Acts require that a bill objected to by the Lords (and where the Commons is not prepared to compromise) must be reintroduced in the next session, with at least 12 months having elapsed since its initial Commons second reading. The Lords' delay power is often summarised as being 'around a year', but in practice it may vary substantially: from much less than a year following the Lords' intervention (if the bill was introduced in the Commons early in a session, and reached the Lords late[17]) to much more than a year (particularly in a long parliamentary session, such as the current session 2010-12).

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

In most cases in the table the mechanism for resolving disputes is more straightforward. In several, the constitution specifies some kind of minimum delay period which the second chamber may impose to disrupt legislation. But this delay period is often short. For example in Poland (although the chamber is directly elected, and the system presidential) the constitution states that the second chamber has only 30 days to consider legislation. If a bill is not passed within this period, it is taken as approved. If the second chamber raises objections within the 30 day period, these may be immediately overridden by an absolute majority in the lower house. In cases such as this the delay power of the second chamber is clearly far less than that enjoyed by the House of Lords. There are various similar examples, and others where no delay period at all is specified in the constitution (though some of these chambers in practice may get longer to consider legislation than Poland's 30 days). Only in India does the constitution specify a delay power of more than six months (after which a dispute can be resolved in a joint sitting), and in Thailand the delay period is slightly shorter, at 180 days.

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

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

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

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

Key:
As above, italics denote wholly or mostly *indirectly* elected, others wholly or mostly directly elected.
Bold denotes **presidential** countries, others are parliamentary.
JC = joint committee included within the conciliation process (see below for discussion).
* Based on limited information.
** For full details see previous table.
Excluded countries: as above, plus Ethiopia. NB Germany included even though it has a veto on some bills.

Notes:
1 Spain: Amendments overridden immediately by normal majority; vetoes overridden absolute majority, or normal majority after 2 months.
2 Belgium, Burundi, Slovenia: Can amend only, not reject bills.
3 Germany: Second chamber can veto completely on regional issues. On others, a 2/3 upper house majority may only be overridden by 2/3 lower house majority (or normal majority by normal majority).
4 Namibia: ordinary lower house majority overrides, except where second chamber vetoes a bill completely and by 2/3 majority, when 2/3 lower house majority required to override.
5 South Africa: On regional issues, 2/3, following a joint committee. On federal issues, normal majority, no joint committee.

Of course, a key question is not only what formal powers are enjoyed by a second chamber, but the extent to which these are in practice actually used. The House of Lords has over the past century not used its powers to anything like their full potential, largely because of the evident 'illegitimacy' of its membership (particularly when this was largely hereditary, pre-1999).[18] As argued by the joint committee on conventions, this may well change should the chamber's membership be reformed. In other bicameral states, it is generally the party balance of the second chamber with respect to the first which determines the level of conflict, rather than concerns about legitimacy (though in cases like the appointed Canadian Senate

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

legitimacy is important). Where both chambers are democratically elected, but differ in their partisan composition, the second chamber is less likely to exercise restraint over use of its powers, as some examples here testify. Hence many parliamentary systems that 'perfectly manage asymmetry' in fact do so through the second chamber having far more limited powers than exist in the UK. In other cases, as already discussed, relations are not always as harmonious as some contributors to recent debates have suggested.

The use of joint committees to resolve intercameral disputes

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

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

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

In systems where the second chamber enjoys an absolute legislative veto, any proposals emerging from the joint committee must of course be approved by both chambers. This is the case in several presidential systems, but also in Switzerland and Germany (on regional bills). In other cases, the first chamber has the final say if the second chamber rejects the joint committee's compromise (or if no such compromise was found). Here the second chamber's role may be anything from relatively weak to relatively strong. The table demonstrates presence of a 'French model', exported to three other countries with strong French influence: here the executive retains discretion not only to establish the joint committee, but also to invite the first chamber to approve the legislation alone if negotiations fail. This creates little incentive for first chamber members to compromise. At the other end of the spectrum, the second chamber's refusal to agree to a joint committee compromise can only be overridden by a two thirds first chamber majority: as in Russia, for example. This creates a far greater incentive to listen to second chamber concerns, as does the 180 day delay in Thailand. Other more unusual cases are indicated in the notes to the table.

In looking to overseas experience to inform debates on House of Lords reform, political actors in the UK might therefore consider whether some kind of joint committee arrangement for resolving intercameral disputes would be desirable. In designing such a system, however, the devil is in the detail. As well as the factors already indicated, in some cases, for example, the committee may be restricted to dealing only with specific disputed clauses, while in others it can find trade-offs in other parts of the bill. In some, the joint committee's proposals may be presented on a take-it-or-leave-it basis to the two chambers, and in others may be amended. These kinds of details can be critical to how such arrangements work.[19]

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

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

Key:
Italics denote wholly or mostly *indirectly* elected, others wholly or mostly directly elected. Bold denotes **presidential** countries, others are parliamentary.
*Based on limited information

Notes:
1 Afghanistan: if the joint committee agrees, the legislation passes straight to the executive for enactment. If it cannot agree, the bill is considered defeated but may be passed by the lower house alone in the next parliamentary session.
2 Romania: if the joint committee is unable to produce an agreement approved by both chambers, the matter is referred to a joint sitting
3 South Africa: on other bills no joint committee applies, and first chamber can overrule by normal majority.

Conclusion

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

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

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

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

24 October 2011

Written evidence from Joseph Corina (EV 59)

- I received a 1st class honours for a dissertation on House of Lords reform written at the Queen's University of Belfast. I have studied British Politics for six years and have been politically active for the same time taking a great interest in the constitution. I am making this submission as a citizen of the United Kingdom and all views expressed are those of myself.

Summary

- Constitutional change in the United Kingdom has historically handed power from a group or stakeholder that has too much to a group or stakeholder that has too little. The proposed reforms will take power from a chamber that uses soft power mainly amendment, that the elected officials find valuable and shift it to political parties that have a measly 15% trust rating among the public. **This is far from the Prime Minister and Deputy Prime Minister's claims that they are moving power from 'the centre to the people' as stated on page 5. They are moving power from others to political parties.**
- **The Draft Reform Bill does not provide sufficient explanation as to how electing the House will improve its ability to effectively scrutinise, amend and improve legislation.** Appointing only 60 members is not enough to cover the expertise the current House has and is neglecting the value of having part-time members of the House who continue to work, remaining in touch with the outside world, arguably unlike many elected politicians. The White Paper uses points 2 to 6 to articulate that the house would continue in the same role, it then uses points 7 to 141 spelling out the new plans with NOT ONE point on how an elected house would provide greater ability to fulfil its roles.
- The Reform of the House of Lords has been put together with political and ideological interests at heart and not with practical, logical ones. It is a shame that on the vital question of constitutional reforms, although the parties are in consensus on the issue, they still cannot think clearly about what is best for the country, instead choosing to further feather their own nests. This is shown in the second section explaining the ways in which the current reforms actually remove power from the people and give more to lobbyists and political parties.

Background

1. Changing the constitution of any organisation or state is a very serious and important change that must not be subject to party political posturing and it is vital that consensus be sought. This is reflected by the fact that many organisations require 2/3 of members present and voting to effect a constitutional change whereas for policy motions they only require 50% + 1.
2. If change is effected, the changing of the system of entry to the House of Lords will be the most fundamental and sweeping constitutional change that this country will have had since the Act of Settlement in 1701. With all three political parties in favour of at least a partly elected house, it is important to reflect on the fact that a large section of society would be wary of having two elected houses, dominated by the political parties, not least because of the brinksmanship witnessed in the United States during the summer of 2011.
3. Throughout the course of the current debate, the Deputy Prime Minister has used the Parliament Acts of 1911 and 1949 as his historical background. Before one discusses the

white paper and draft bill, it is necessary to understand the purpose of reform in the United Kingdom since 1215. There are five documents that are central to constitutional history since 1215, the Magna Carta [1215], the Bill of Rights [1689], the Act of Settlement [1701] and the first Parliament Act [1911]. Each act constituted a transfer of powers from a stakeholder in society that possessed too much to another that didn't have enough. The Magna Carta ensured that the nobles of the time had their grievances answered and, as they contributed to the kingdom, they received their rewards. The Bill of Rights in 1689 ensured that the crown, which until then had almost un-curtailed powers, was subject to the rule of law. In this document the foundations for British constitutional development were laid. Power was taken from the crown to the state an unheard of shift at the time of the document. The Act of Settlement in 1701 ensured provisions for an independent judiciary, putting the rule of law in the hands of an independent group rather than the whim of the monarch, a cornerstone of modern democracy.

4. As can be seen, the above acts provided for power to be taken from the crown to other stakeholders in society. By the 1900s, though, there was still an imbalance of power between the general public and the aristocratic class. In 1911, the Upper House was standing in the way of a number of bills which the elected government were trying to pass. In response to this and under the threat of a house flooded with Liberal peers, the Lords accepted that in future they would only be permitted to delay bills from the Commons and not to stop them altogether. This is a fundamental point to the current debate and one that is lost in the swathes of political posturing. The House of Lords in its current form does not constitutionally have the power to block legislation outright but only to delay it. Many claim that it stands in the way of legislation, 'killing it'. However it is not the Lords that in the majority of situations decide the fate of legislation but the government of the day that decides not to follow through with pushing legislation through the Lords. What is key is that the House of Lords cannot block legislation; it can only delay it rendering the argument of an unelected house 'blocking' blocking legislation invalid.
5. Today, part of the Liberal Democrat rhetoric stirs up ill feeling based on members of the Lords who have their seats due to birthright. This rhetoric is dishonest in that there are only 92 hereditary peers left. A seat in the House of Lords based on birthright is wrong. It is fact that your birth cannot be a validation of a person's ability to contribute to the expert debate in the Lords. That is the first point that there is real consensus on. Real consensus represents not just consensus of the political parties but around the country. The hereditary peers should be discontinued in a reformed house as, following the purpose of reform in the past, this would take power from a stakeholder in society that has unwarranted power.
6. Apart from the removal of the final group of hereditary peers, there is still much debate to be had on the future of the Lords. In the United Kingdom we have a bicameral parliament. The purpose of the House of Commons is to provide representation of the people via one member constituencies. This provides each citizen with an MP through whom they can voice their concerns and affect the political process. It is an agreed position that to have two houses that would serve the same purpose would be a waste of resources and would not be useful. So what is the purpose of the House of Lords?

7. The Draft Bill is completely correct in asserting the function of the Second Chamber as to "scrutinise legislation, hold the Government to account and conduct investigations."[1] The House of Lords is not a representative chamber and nor should it be, that is the purpose of the House of Commons. We are lucky to be in the unique position that we have a House that is largely un-politicised, that prides itself on reason over politics and on joined up thinking rather than political point-point scoring. The mature nature of debate in the Lords is spoken of proudly in comparison to the 'childish' bickering in the Commons.
8. The question that needs to be answered is not "how can we make the House of Lords more democratically acceptable?" but "In our democratic system, how can we ensure that the composition of the Lords is most consistent with the purpose that we have assigned to it?" If the purpose of the Lords was to provide a second, more proportional house to re-check legislation, election would be the correct answer, but this is not the case. At this point a comparison must be made. If one was to be appointing a new Chief Executive to a company, one would envisage having a free-thinking person with expertise in the area that the company operated who would scrutinise company policy and actions. If someone was to suggest that you elected a person to be CEO of a bank or a multi-national company they would be laughed at. "Apple has just elected its new CEO; he was a teacher and a trade unionist before he was elected to the position." It does not work. The system of selection does not fit the purpose of the position. So, to elect a House with the purpose of scrutiny based on expertise is absurd to say the least.

<u>The Roles and Functions of a Reformed House</u>

9. Before discussing the roles and functions of a reformed House, we must first understand what value the current House adds to the system of government in the UK. There are a number of functions of the House that are overlooked when debating the future of the Second Chamber. These are: the manner of debate in the House and the effect that politicisation of the house is having on the quality of debate; the wisdom and expertise of the membership of the House; the value of the committees of the Lords; the freedom that the Lords have, and use, to propose contentious bills or bills that there would be no political capital to be gained for a party by bringing forward. Finally, the Lords have the ability to slow down government legislation and force it to think again.
10. There is consensus that the Upper House is a revising and debating chamber. In its current form, debate is calmer and conducted in a more courteous and reasoned manner than in the Commons. Much of this is to do with the specificity of debate but also with the fact that there are many independent members who have earned their place in the House by carrying out high class research or serving in the public and private sector without being moulded by the Punch and Judy politics of the Commons. If the make-up of the House were to be changed to 80% elected the quality of the debate and the value and worth of the debate to

[1] Draft Reform Bill p.7

the legislative process would be diminished. In his first year as Prime Minister, David Cameron elevated 171 people to the Lords. The majority of these were ex-MPs or office holders from the main political parties. It is widely noted through the Lords and the media the effect that this mass elevation has had on the nature of debate in the Lords. The political wrangling notable in the Commons is seeping into the Lords and beginning to push scrutiny to the side and replacing it with politics. If there were 80% elected politicians this destruction of reasoned debate would only be cemented.

11. The high quality of debate in the House is so due to the expertise and experience of the membership. These attributes are personified by the Crossbench Peers. Lord Adonis has argued that argued that the independent members don't affect the outcome of many votes in the Lords, very few of them vote and that for this reason the House is weak.[2] To use this argument is to look at the work of the Lords crudely and suggest that the only important work they do is on the floor of the house. The fact that the House is so large is not to be laughed at by comparing it to the North Korean and Chinese Congresses, they are quite different indeed. Whilst the average working number of peers is just below 400 a large amount of members do not turn up for many debates. This is important because the Lords do not receive a salary but only expenses for each day they work, this is cost effective. For example, why would we want an ex-head of MI5 to be paid full time to sit through debates on health and education when their expertise is not of use to these debates? This system allows for members to only be paid and spend time in the House when their expertise is relevant. Secondly, it allows for members to keep in touch with their field by continuing working. This is especially important in areas such as the sciences in which knowledge moves on very quickly. If an expert in the internet became a full time member of the Lords, their expertise would be out of date within the first few years of their tenure. Having only 60 independent members would not give the House the benefit of the variety of expertise that it currently enjoys and would severely diminish the ability of the House to perform its function of scrutiny and review. Finally, to suggest that the House is weak is to ignore the 'soft power' and influence that the house enjoys over the legislative process. As Viscount Tenby explained "The House of Lords is an amending chamber, it doesn't make laws, it amends them."[3] There are very rarely fights between the Lords and the Commons and out of an average of 2,500 amendments per session 97% are agreed to by consent and without a division, accepted by the commons with government approval. To reiterate, that means that on average 2,435 are accepted by approval and 65 are pushed by a division. That rate of agreement is unrivalled in the western world and something that we should be incredibly proud of. The amending chamber works and the statistics above would imply that there is a vast amount of legislation that passes through the Commons without the required scrutiny because of the pressures of elected office. It also suggests that Members of the Commons are grateful for the input of the Lords with such a high proportion of amendments being taken on board. The value that the Lords add to the legislative process is truly great and to

[2] Intelligence Squared, *Verbatim Report: An Elected House of Lords Will Be Bad for British Democracy*, London, 2010, p.15

[3] Viscount Tenby on *The Lord's Tal*e, Channel 4, 1999.

implement such a sweeping change as is being suggested should be thought about very carefully.

12. The freedom of thought in the Lords, due to the lack of political party strangle holds on debates allows the House to gather vast quantities of expertise in a number of committees that do not exist in the Lower House. In the House of Commons the Select Committees are formed in line with government ministries. In the Lords they are established and disestablished based on current requirements or pressing issues. In terms of specificity, the Stem Cell Research Committee is a prime example, a committee that could not get the expertise required from the pool of elected politicians in the Lower House. Secondly, the European Communities Committee, made up of seventy members and seven sub-committees, is renowned around the European Union for its highly technical and extremely detailed research. Its regular reports on EU legislation are used by member-states across the Union and are far superior to those of the Commons committee which suffers from lack of time, interest and expertise. To elect an Upper House would leave many of the members of these committees unable to stand for election due to the physical requirements and with only sixty independent members to be selected for the proposed reformed House, many experts who supply their knowledge to this vital committee would be lost.
13. A final example of an extremely important function that the Lords fulfils that a politicised, elected chamber could not is that it forces issues onto the legislative agenda that, although they are important, provide either no political gain for the political parties or are too controversial for a political party to risk raising. A prime example of this was Lord Joffe's Private Members' Bill on assisted dying. His proposal brought the subject onto the political agenda and engaged both the pro- assisted dying lobby and the anti. The fact that the Lords considers every proposal suggested unlike the Commons and secondly, that Lord Joffe was free from party political and electoral ties allowed him to bring to the fore an issues that affects many people but that the elected House had failed to address.
14. It is vital that the above examples are remembered when we discuss the composition of the House of Lords going forward. The reformed chamber must fulfil the purpose of scrutiny and amendment and this purpose is the basis upon which we must create any new house. It has yet to be articulated by any party or lobby group how electing the Second Chamber will improve the ability of the House to perform its role. On the contrary I would suggest that it would hinder its ability to carry out its functions.
15. In order to legitimise the election of members of the Second Chamber there is one question that needs to be answered than until now has not been. **How does electing the House of Lords allow its members to fulfil the functions of scrutiny and amendment to a higher quality than is currently the case?**

<u>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.</u>

16. A problem with the government program for constitutional reform is that those composing it seem to believe that each part of our system is completely separate from the other integral parts. The voting system was put up for referendum without consideration of how this change would affect the other parts of the system. Lord Adonis asserts, "In a democracy,

those who make the law should be elected. It is as simple as that." Unfortunately that is not the case. The relationship between the two Houses has not been sufficiently addressed in the White Paper. The British legislative system is one that has grown over 800 years. Never in the past has there been such a sweeping change as the one that is proposed in the Draft Bill. In promoting the reasoning behind an elected house the government has articulated that elections would bring 'democratic legitimacy' the House of Lords. However it is naive to look at the House in isolation. It is the political system as a whole that must maintain democratic legitimacy not each section individually. It is possible that quite the opposite could happen by having two elected chambers, that democracy could be hindered by having two separately elected houses. There are a number of issues to be addressed relating not only to the relationship between the two Houses but also the possible effects that such a vast change could have on the political system as a whole. They are the potential for gridlock between the two Houses, as we have seen recently in the United States, and also the potential power this gives to pressure groups and large vested interests, diminishing the power of the people. Secondly, the possibility that the Upper Chamber, with a more representative electoral system, may claim more legitimacy than the Commons and would begin, over time to call into question the legitimacy of the primacy of the Commons. Thirdly, the divided accountability that would occur as a result of having two separately elected houses could lead to a situation whereby, the elected second chamber could propose an unpopular bill that is eventually brought into law. For example, it could be brought in by the Conservative Party in the Lords and forced through the Commons which could have a Labour majority. If this occurred the people could vote Labour out of office in the Commons for being the government of the day when this bill was passed even though they were not the party responsible for the bill in the first place. Finally, and this is key to understanding the support of political parties for reform. By electing the second chamber it is not, as is claimed, moving power from the centre to the people, but moving net power from independent members of a house to the three main political parties. It could be argued that the political parties, wittingly or unwittingly are deluding themselves if they believe that giving themselves more power over the British legislature is giving more power to the people.

17. There is, with two elected houses, the possibility for legislative gridlock. An Upper House with a majority opposite to that of the First Chamber could slow down legislation so much that it becomes unviable. As a House becomes more politicised it becomes more likely to flex its muscles within its powers. This fact was highlighted during the passage of the Parliamentary Constituencies and Voting Bill when filibustering was used by Labour Peers. If a Second Chamber becomes not only more politicised, but receives 'democratic legitimacy' due to a more proportional voting system, we could see a House that more and more causes the very real risk of legislative gridlock. This risk no more stark than when we examine the results of gridlock in the United States of America in the summer of 2011. At this juncture, there are a number of actors that can affect the legislative process by influencing members of the legislature. The most influential being the media and the £2 billion lobbying industry. If there is increased potential for gridlock between the two houses there is increased influence for lobbyists and decreased power for the voter, who does not exert influence at advantageous times of gridlock but only at time of elections. This would mean power moving further away from the people and closer to the lobbyists and the media.

18. It is a fact that the Single Transferable Vote (STV) is a more proportional system than the First Past the Post (FPTP) system used to elect the Commons. It is also a fact that the Parliament Acts prevent the Lords from stopping legislation and allows it only to delay it. However, in the current system it is widely recognised among member of the Lords and also scholars that because the Lords is not elected its members think long and hard before blocking legislation' preferring to amend and negotiate. The argument used for electing the Lords is that it is the most democratic thing to do. If democracy is the argument then, before long, members of an elected Lords will be crying democracy in another sense. They slowly use the fact that STV is more democratic than FPTP to assert their stronger legitimacy. It could be argued that the Parliament Acts defend against that but there is no one who can argue that members, sure of their superior legitimacy, will find other routes, before long, to undermine the Acts. An advantage of maintaining an appointed house in this case is that it acts to delay and not stop government legislation, being made to think again is not a situation that can be argued against. The end effect of this could be a realigning of power in which the Commons, the house elected by constituents to hold government ministers to account loses power to a more assertive house. This house may have members elected on a closed list system through which the people cannot decide who but what party gets elected. **It is vital that there is an open system of candidate election to stop yet more power moving from the people to the parties.**
19. The issue of divided accountability is well documented in Lord Norton's article, *Adding Value? The Role of Second Chambers*, in the Asia Pacific Review. Currently we do not have divided accountability to the electorate. It is undivided in the fact that if the voters do not approve of the government of the day, the government is voted out in an election and power shifts from the unfavoured party to the favoured one. The problem with divided accountability is that a party in the Commons that loses power may maintain a majority in the Lords. This could lead to a situation in which the newly elected government could not be in a position to rule due to a hostile Lords majority, a situation which could provide gridlock. This system will distort the simple system of politics that the people of the UK enjoy. It could be argued that the British people voted against complicating the political system with a vote against the Alternative Vote.
20. The election of the House of Lords will have a complicating effect on the political system. More importantly though it will move power towards the main political parties. A closed party list system is favoured by the parties because it leaves them at less risk to losing influence in the house. If there was to be an elected system in place, it must be the most open multimember constituency system to give the voters the most choice and power possible. For example, on a constituency level, a system the same as Northern Ireland's Stormont electoral system. In this system once a party has selected its candidates it is up to the electorate to choose in what order their candidates will place. **This system will mean that the parties will have to choose candidates with the electorate more in mind as it will be the electorate who chooses not the party who places first in the list.**
21. A vital point must be explored before concluding. In a pan-European survey conducted by Dalton and Weldon in 2005, *Public Images of Political Parties: A Necessary Evil?* This study found that, on average, over the preceding 10 years only 15% of people 'tended to trust' political parties in the UK. That is 85% who do not tend to trust political parties. That is a sad reflection on the political system on its own, but the fact that in the proposed Bill, the

political parties will shift yet more power to themselves can only have a negative effect on the views of the public. **These approval ratings show that it is vital that changes are put to the public in a referendum.** After all it is the political class that is only supported by a fraction of this country that is proposing the reforms. In order to win back the trust of the public after changing the number of MPs without a referendum it is vital to have one on the House of Lords.

Conclusions

- This paper asserts that constitutional reform in the United Kingdom has always been to take power from a stakeholder or group in society that has too much to a stakeholder or group that has too little; the purpose of reform should always remain so.
- The purpose of the House of Lords is to provide greater scrutiny, experience, revision and amendment to the British system and the House should be composed in a way that serves this purpose**. Form must follow function, the current proposals make no attempt to do this. The supporters of an elected house must articulate how ELECTION serves to improve EXPERTISE and SCRUTINY.** It should not be elected as there is already a sovereign, elected, democratic and political house in the Commons and to shift yet more power to the political parties would further reduce the dismal 15% tendency to trust ratings that the political parties currently sustain.
- Any constitutional reform in the United Kingdom should be put to a referendum. We are unfortunate that we do not have that right as our neighbours in the Irish Republic have. The political parties should lead the way in offering referendums as a way of improving trust and legitimacy. **Therefore there must be a referendum on any change in the composition of the House of Lords.**
- If there is to be an elected house. The system of election must be the most open, possibly a multimember open list as in Northern Ireland. **This would give the most power in an electoral situation to the people and not a party hierarchy.**
- It is correct for the remaining 92 hereditary peerages to be ended. Although the present holders should be grandfathered to help maintain the current manner of the house. Birth is as illegitimate as election for providing the expertise needed to proper scrutinise legislation.
- In a bi-cameral system there is no need for two elected houses, confrontation between the two **only provides increasingly common junctures in which lobbyists may influence the political process shifting power from the electorate to those with money.** If there are to be two houses the lower must serve to provide a government that produces policy and legislation, the higher must use its expertise and experience to scrutinise and help the lower house with its workload by amendment.

The Draft Bill has failed at providing a suitable alternative to the current House of Lords. As part of an unwritten constitution a sweeping change will have many unpredictable outcomes. There are many good characteristics and also many bad ones about the current house. However, we should seek to gradually change the house over time. The hereditary peers should be removed, a function of retirement should be provided for, the issue of the Bishops should be debated BUT REFORM SHOULD NOT BE RUSHED. The system as it stands is not broken, but it is also not perfect. However, under the current government reform is being rushed for political means and what

needs to happen is a much longer debate about each individual characteristic of the Lords. Many will say that this will take too long. But to rush constitutional change is to treat the importance of the constitution with contempt.

19 October 2011

Written evidence from Martin Wright—formerly director, Howard League for Penal Reform; policy officer, Victim Support (EV 60)

Elected for their expertise:

a proposal for reform of the House of Lords

The function of the upper house

1. Before considering the composition of the upper house, we need to be clear about its function. This paper assumes that the primary function is to be a reviewing chamber: the House of Commons expresses the will of the people, and the upper house goes over its legislation to make sure that it is workable, compatible with human rights, and so on. It may also have other functions such as initiating legislation, pre-legislative scrutiny, asking parliamentary questions and educating the public through well informed debate.

2. A reviewing chamber needs to be, as the Royal Commission under Lord Wakeham said in 2000, distinctively different from the House of Commons, and able to bring a wider range of expertise and experience to bear on the consideration of public policy questions. It should not be a politician-free zone, but also not a creature of the political parties or a home for yet another group of professional politicians.

Problems with geographical constituencies

3. Wakeham proposed that its members should be appointed by a commission, but that is widely considered to lack democratic legitimacy and to be exposed to the risk of political patronage. The current debate therefore assumes that the upper house should be wholly or mainly elected. However, this could have serious disadvantages.

(a) If elected on a similar basis to the House of Commons, it would be likely to duplicate it, and thus not serve its purpose of providing checks and balances.

(b) If elected on a different basis, such as proportional representation, there could be conflict over which House had more democratic legitimacy when they disagreed.

(c) In any case, if based in geographical constituencies, the candidates would be chosen in much the same way as for the House of Commons, by local or national political parties or by a party list system, which puts the selection in the hands of politicians and allows voters little choice. There would be no guarantee, or even likelihood, that these candidates would bring any wider expertise, beyond the skill, shared with MPs, in persuading people to vote for them.

4. This is by implication admitted by those who advocate a hybrid system, with 20 or even 50 per cent appointed, to make up the expertise deficit among elected members. That seems to be the worst of both worlds: the expert members would not be elected, and there would be too few of them to reflect the breadth of knowledge and experience required; the elected ones would not have the breadth of expertise that the House needs.

5. For all these reasons, a system producing an upper house largely on party political lines would be a serious mistake.

A way forward: elected *and* expert

(a) Electoral colleges

6. There is considerable interest, as Wakeham found (paragraphs 11.17-11.25), in finding a way for various specified vocational or other interest groups to be represented in the chamber. One proposal is for the Chartered Institutes and leading voluntary organizations to put forward persons of distinction from their profession or specialist field. Wakeham saw practical obstacles to this. It could be difficult to reach agreement on which sectors of society should be represented. It might not be appropriate to appoint particular office holders, who are often elected on an annual basis, and such posts may be in the gift of a small and unrepresentative group within the organization. If the organizations in question were required to observe specific standards of democracy in the appointment of their office holders, this could be seen as unacceptable intrusion into the internal affairs of those organizations. Perhaps the most significant objection is that those who do not belong to a recognised professional or vocational group would be disenfranchised.

(b) Constituencies of expertise.

7. It is proposed that these difficulties could be overcome if the interest groups did not select the members of the upper house directly, but would propose candidates from among whom the members would then be elected by the general electorate. The interest groups would thus work in a similar way to constituency committees which choose candidates for Commons seats (and would be no less democratic, since constituency committees are largely self-appointed).

8. The details could be arranged in different ways, but if for example the Senate (as it may be called) had 300 seats, these could be grouped in, say, 30 constituencies averaging about 10 seats. Relevant organizations in each field which could demonstrate 'pre-eminence, stability and permanence' would be invited to get together and make proposals for defining the constituencies, to a body similar to the Boundaries Commission; the groupings could be adjusted from time to time. They would represent the main fields of activity which governments have to handle: agriculture, commerce and industry, education, health, women's issues, the arts, sport and so on, but these groupings would also include important subjects on which expertise is needed such as statistics, climatology, geography, architecture, ethics. Politics would be included, as Wakeham recommended, and religion; some seats would also be allocated to regions of the country.

9. In each constituency, the relevant organizations meeting agreed criteria would select one or more candidates. To prevent powerful groups within professions from monopolizing the process, it would also be possible for independent candidates to stand; as a safeguard against frivolous candidates, there would be a requirement for a substantial number of sponsors, which would be more effective than a cash deposit.

10. As an election approached, 30 booklets containing all the candidates' professional CVs and other interests would be compiled and made available in post offices, libraries and on-line. Candidates would be asked to present their qualifications in a prescribed format, to make it easier for voters to compare them; the focus would be on their achievements rather than on promises. Voters could then select the constituencies of most interest to them and compare the candidates. On polling day they would decide in which constituency to vote,

vote for their preferred candidate at a polling station, and be marked on the voters' register in the usual way. Postal voting would of course also be an option.

Possible objections

11. (a) The necessity for voters to take active steps to find out about candidates might result in a low turnout; but if this meant that the upper house was elected by people who had given some thought and taken some trouble, it could be no bad thing.

(b). It has been suggested that each topic would be dependent on only one expert; but experts have interests in fields related to their own, in addition to their leisure activities, voluntary work and so on (which they could list in the election booklets). On many topics a house elected on a geographical basis might not have even one.

(c) It could be difficult to agree on a candidate for a particular seat; in that case, more than one candidate could be put forward, for the voters to decide. If they could not even agree on that, the seat would be left vacant.

(d) Wakeham suggested that it is demeaning to think of human beings as merely the sum of their 'interests.' This could be overcome by allowing each person, say, three votes, to reflect their work, leisure and family, and community interests.

e) There could be controversy about the allocation of the constituencies themselves. Requiring organizations to come together to make proposals to the Boundaries Commission would put pressure on them to agree among themselves. In most cases a win/win solution could be negotiated through mediation; there would be a procedure for dealing with any which could not be thus resolved.

Advantages

12. (a) Candidates would be selected by those who knew the best people in their field, and then voted for by universal suffrage.

(b) Politicians would be represented, but the nomination of candidates would not be in their hands, except in the constituency for political affairs, so that the House would not be dominated by party political rivalry.

(c) There would be a constituency for faith groups, where the Church of England would have a say, among others, in the selection of candidates, but not a disproportionate number of seats, and not necessarily a bishop.

(d) Organizations supporting the interests of minorities, people with disabilities and so on could group together to propose constituencies to represent them.

(e) This system would bring into the upper house people with expert knowledge and experience such as is possessed by few politicians; such people would be unlikely to offer themselves to the rough-and-tumble of the hustings, or to get elected if they did.

(f) All subjects relevant to government would be comprehensively covered in the upper house by design, rather than a random number of them by chance.

19 October 2011

Written evidence from North Yorkshire for Democracy (EV 61)

The following is a response intended for the Government consultation on House of Lords reform, to be included by Unlock Democracy in their compilation of responses (for which, thanks). House of Lords reform has been discussed within North Yorkshire for Democracy, but the following views have not been endorsed and should be seen as an individual contribution.

An opportunity for higher resolution, higher fidelity, representation of the electorate in the system of government.

The design of the reformed House of Lords presents an opportunity for better representation of the public which seems, unfortunately, to have been met with a singular lack of imagination. There are perhaps those whose vision for unlocking democracy goes no further than extending the extremely low resolution two party system, with its choice of just two political package deals, by giving a significant voice to a third and perhaps a fourth party.

Our paradigm for democracy is the ancient Athenian model, with direct participation of all citizens, allowing each a separate vote on every question. This may be considered impractical for our size of population, and might well have been so for Athens had it chosen to include non-citizens in the process. It might also be argued, in both cases, that there is not the degree of interest, or the leisure to reflect and become informed, for the general population to be involved in the detail of government. (Alternatively one might argue about cause and effect between not being consulted and not being interested).

For us, general participation on single issues is limited by practicality to very occasional referenda, and even then the practicality and effectiveness are questionable. One path that is open to us is to greatly increase the number of package deals on offer, giving each voter a better chance of finding a close match to his or her own position. Another is to break down the full range of political issues into a small number subject domains. Having a separate vote on each domain would allow the voter a large number of possible vote combinations, again allowing a much closer match to his or her own position.

The role of the House of Commons places major constraints on the way it is elected and operates. It has to support a single government, making it desirable that it be dominated by a single party bound by a single manifesto. It traditionally has a local constituency link, greatly limiting the range of positions which are likely to gain representation and fixing in advance the number of members to be returned. The House of Lords serves to complement the Commons, or in counterpoint to it, avoiding some constraints on its election and operation. Indeed it is rather important, with the introduction of an electoral mandate for the Lords, that there are very clear differentiators which prevent the two houses becoming rivals for the same role. Not serving to underpin the government allows the design of the Lords a greater flexibility which can be exploited in making it more representative.

System of Election

Better representation means returning members whose positions cover as wide a range and as fine a granularity as possible. Some may object that this would let in 'extremists'. But this misses the point. Democracy is not about the competence of the voters or the acceptability of their views. It is about inclusion and choice.

Achieving greatest variation suggests using a proportional system with as large a constituency as possible (i.e. a single, UK wide, constituency). Having within this a Party List system, even an open one, would tend to undermine the chances of individual positions being considered on their merits and could result in a large proportion of members being bound to conform to a group line on most issues.

Rejecting party lists, however, leaves a major problem of getting the voter to make informed and considered comparisons among a large number of individual candidates. He/she may be prepared to put in the time and effort to order his/her 1st and 2nd choices meaningfully, but it may be the allocation of the 53rd and 54th places which actually counts. To overcome this we need to look outside the box of conventional PR systems, such as STV, with their (in this case very long) listing of preferences followed by complex and to some extent arbitrary post-processing. (They take us very usefully beyond the effective 2 candidate limit of FPTP, but not into the hundreds.)

We can exploit the fact that there is no correct number of seats (the figure of 300 is an arbitrate one) and no constituency link driving that number. This allows us to define in advance the quota or threshold number of votes to win a seat. This can be based on the desired number of members and the expected turnout, but with no great problem arising if the outcome is different. As some people don't want a House of Lords, this actually affords an additional dimension of democratic choice, the option of returning fewer members.

We also have scope to use Internet voting, from home (at no greater loss of secrecy than with the postal vote system), from the public library computer network, or via computers in the conventional polling stations. This offers a system in which votes cast can be counted in real time. Coupled with the predefined quota, this would allow the system to recognise when votes for a candidate have reached that figure and stop accepting votes for that (now elected) candidate. (It would also warn voters to wait for confirmation that their vote has been accepted if they have tried to vote for someone who is close to the quota).

The significance of this is that the voter need only choose one of the currently remaining candidates and not concern him or her self immediately with hypothetical transfers of the vote if their candidate does well enough to be elected without it or badly enough to be eliminated. The options facing the voter may well not be the ones he/she had thought seriously about before the polls opened, suggesting the need for more time to consider them. Unlike elections to the House of Commons (determining the incoming government)

there is no pressure to get most of the results out quickly. There is no need for a deadline within hours or days of the start. Voters can be allowed to cast their votes, or to transfer them if their candidate is languishing short of the quota, at their leisure.

Nor is there a need to take the transfer process out of the voter's hands. If large numbers of votes remain with candidates who are not returned that represents a choice on the part of the voters.

Extending the process over days and weeks allows media attention to focus on the remaining candidates. This enables the choices made among the large number of options to be well informed and considered to an extent which would not be possible if they were made simultaneously.

There is of course some significance in the choice of whether to vote early or vote late. There may be some small tactical advantage in voting late and a considerable psychological advantage in voting early. But, importantly, that choice is made by the voter.

These innovations are offered not for the sake of innovation but so that the election of around 300 members can represent that many individual options rather than a small number of clone types in varying quantities.

Multiple (Parallel) Upper Chambers

We shall be electing representatives to speak and vote on our behalf in debates across the whole range of public affairs. If you could choose the person most suitable to represent you in each debate it seems highly implausible (unless you hold very stereotypical views) that you would choose the same person for each and every debate. Such a degree of choice may be impractical, but suppose we categorise these debates into half a dozen different subject domains, with some debates perhaps falling into more than one domain. Might you not want a different representative for each domain? Would that not potentially give closer representation of your views? Here we are seeking to design from scratch the most appropriate system for House of Lords. Why would you choose not to make it as representative as possible?

In a single 300 member chamber 300 different positions can be represented. Consider instead 6 parallel chambers of 50 members each, with each chamber dedicated to its own particular subject area. For a voter who considers one member in each chamber to be representing him, that amounts to 50 to the power 6 possible combinations. That's enough to represent a unique position for each UK voter. (In fact it's enough to represent a unique position for each person in the world, even if the population doubles.)

Under such a system we would no longer need to sacrifice our position on other subject domains in order to have influence on the domain which is currently of greatest importance to us. Everyone could have equal influence on all domains. This moves us on from sectional politics where single issue and often vested interest voters can dominate.

A fully or mainly elected House?

While it is of course desirable to bring wisdom and expertise to bear on issues of state, it is highly questionable whether these things exist in a pure form, independent of political philosophy or perspective. Even if they do, we could hardly rely upon those making appointments to a reformed House of Lords to be without such perspectives or vested interests. Even if we could assemble a selection of pure experts on a range of subjects, any topic discussed is likely to fall within the specialist field of only some of them. It is hard to see the special significance or virtue of their aggregate voting upon an issue which is outside the expertise of most.

A case can be made for the elected members of the reformed House of Lords to have easy access to the knowledge and opinions of some who are unlikely to seek or gain election to the House. But that is not to say that the views of these people should be weighed directly in the voting and decision taking of the House. If there are appointed members they should be non-voting members. But this role could equally be filled be guest speakers nominated by the House itself.

Tenure of Members

As pointed out by UD, 15 years seems rather a long time to go without renewal of mandate. Mandatory retirement after a single term seems unnecessary when it is possible to let the electorate decide.

Naming

It would be possible to keep the name House of Lords without its members being titled as 'Lord'. After all, members of the House of Commons do not carry the title 'Common'.

19 October 2011

Written evidence from Lord Grocott (EV 62)

You may recall that there was an exchange at Question Time in the Lords on the 3rd October between myself and Tom McNally on war powers.[1]

The issue I raised was simply this: the government is planning to formalise the powers of the Commons in respect of committing troops to conflicts overseas. For at least the past two conflicts - in Iraq and Libya - votes have preceded the commitment of troops. In the Lords, whilst it would have been perfectly possible and in order for us to express our opinion in a division, we decided not to do so, believing quite rightly, that decisions of this magnitude should be made by the elected House of Commons.

Should we go down the path of an elected second chamber, the problem on war powers is obvious. Without any change in our constitution whatsoever, an elected Lords would be entirely within its rights and procedures to express an opinion in a division whether or not to go to war.

The questions I would like your committee to consider are as follows:

1. How could you deny a democratically elected second chamber from expressing a view on war and peace.

2. If they are allowed to express a view, what happens if the Commons says go to war and the Lords says don't.

I attach for ease of reference the relevant pages from Hansard, together with a later written answer from Tom McNally on the same subject.[2]

19 October 2011

[1] http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111017w0001.htm

[2] http://services.parliament.uk/hansard/Lords/bydate/20111003/mainchamberdebates/part004.html

Written evidence from the Chief Rabbi, Lord Sacks (EV 63)

Introduction

1. The House of Lords is a fine institution in need of reform. In this submission I focus on one feature only of that reform – the appropriate role and composition of the "Lords Spiritual" in a morally and spiritually diverse society. The argument is set out in the following stages. First I give a brief Jewish perspective on state and society. Then I suggest its relevance to contemporary Britain. I next consider the role of the Church of England and the existing Lords Spiritual. I end with a proposal for broadening the composition of this group.

State and Society: A Jewish Perspective

2. The contribution of ancient Greece to our views of government is well known. Less well known is the influence, through the spread of Christianity, of the Hebrew Bible. Yet it was the Hebrew Bible – through the writings of such thinkers as Hobbes and Locke – which laid the foundations of modern, limited, constitutional government. In the words of Lord Acton, "the example of the Hebrew nation laid down the parallel lines on which all freedom is won".[1]
3. Three features of the biblical vision are especially germane to contemporary political-philosophical debate. The first is a distinction between **state** and **society** –and thus between political and civil institutions. The state is brought into being by a social **contract** (I Samuel 8 – where monarchy is created at the request of the people). Society is brought into being a social **covenant** (between the people and God at Mount Sinai; Exodus 19-20). Covenant is prior to contract. Right is thus sovereign over might, setting moral limits to the state. This is the origin of the concept of human rights.
4. The second is the **division and separation of powers**. In biblical times this was tripartite – kings, priests and prophets. Functionally, kings represented the institutions of state. Their tasks were defence and the maintenance of the rule of law. Priests were the religious establishment. Prophets were those who mediated between the immediacy of kingship and the eternity of priesthood. Their task was to read history in the light of destiny. They are the earliest known social critics.[2]
5. The third insight follows from the previous two. The institutions of state, for Judaism, cannot stand alone. They are predicated on society, which itself depends on the health of certain institutions: families, schools, communities, and the moral bond which links us to one another and to past and future generations. This is the covenantal, as opposed to contractual, dimension of our

[1] Lord Acton, *Essays in the History of Liberty*, Indianapolis, Liberty Press, 8.

[2] Michael Walzer, *Interpretation and Social Criticism*, Harvard University Press, 1987.

common life. It was the particular role of the prophets to insist that it is moral rather than military or economic strength that ultimately determines the fate of nations.

6. This proposition was put to the test. In the first and second centuries CE, after a series of disastrous confrontations with Rome, the Jewish people lost its Temple, sovereignty and land, and thereafter existed only as a diaspora until the rebirth of the State of Israel in 1948. For almost 1800 years Jewry survived, not as a nation-state, but as a series of communities whose central institutions were the home, the school, the synagogue and the moral-spiritual code of the Hebrew Bible and its later elaborations. Judaism is thus an unusual example of a civilisation that has existed, for the greater part of its history, without the instrumentalities of a state, by virtue only of the strength of its civil institutions.
7. These insights have taken on a new salience with the revival of interest in **civil society**. There are eras in which the keyword of politics is the **nation state**. There are others in which attempts are made to minimise the state and emphasise the **individual**. There are yet others - ours is one – in which people recognise the limits of both the state and the individual. The one is too big, the other too small, to solve certain problems. At such times, **intermediate institutions** such as the family, the educational system, and the community, occupy centre-stage.[3] These have always been at the heart of diaspora Jewish life. This is not to claim universal validity for Jewish approaches to these issues. It is simply to say that a Jewish voice has a contribution to make to debate and reflection on contemporary society.

Society: A Collective Conversation

8. How then to apply a covenantal perspective to constitutional reform? Societies change. One of the most profound changes in the West has been the move from society conceived as a monolith (one nation, one religion, one culture) to society as an arena of diversity. This began in the wake of the European Wars of Religion and has continued ever since, progressing from **toleration** to **emancipation** to **liberalism** to **pluralism**. But what binds a plural society? What sustains a sense of the common good? What legitimates institutions when morality itself seems pluralised and relativised?
9. One way of thinking about such questions is to reflect on the concept of authority. There were times when authority was predicated on the possession of power inherited (monarchic) or delegated (democratic), revealed truth (ecclesiastical), or wealth (aristocratic). These divisions are still reflected in the British constitution – in the form of the Sovereign, the House of Commons, and the Lords Spiritual and Temporal. The lacuna in this constitutional framework is a locus of authority appropriate to a plural society.

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[3] A full analysis is set out in my *The Politics of Hope*, London, Jonathan Cape, 1997.

10. Individuals enter the public square in two ways. The first is **as individuals** with needs, aspirations and rights; in a word, with interests. In democratic societies, politics is the institutionalised resolution of conflicting interests – aggregated in the form of political parties. The home of this process is the House of Commons.
11. But individuals also enter the public square **as members of families, communities, and moral and spiritual traditions** – institutions in which the "We" has primacy over the "I". These institutions are vital to our sense of identity. If they do not have a voice, people are left with the feeling that the public arena excludes some of their deepest commitments.[4] They are also the matrix of motives such as altruism, moral obligation, duties to society, respect for tradition and guardianship of the environment which can be marginalised in the adversary culture of political debate. They belong to the *covenantal*, as opposed to the *contractual*, dimension of society.
12. In a plural society, by definition, moral authority does not flow from a single source. Instead it emerges from a conversation in which different traditions (some religious, some secular) bring their respective insights to the public domain. The conversation can take many forms. Most are informal. By contrast, the significance of public, and especially parliamentary, institutions is that they are the **formalised arena** of public conversations. One of the questions to be asked of any set of constitutional arrangements is: what is the nature of the conversations they allow and encourage to take place?
13. One type of conversation is particularly important to a society that is diverse and undergoing rapid change. It concerns such questions as these: What kind of society do we seek to create and with what kind of citizens? What behaviour and which attitudes do we wish to encourage or discourage, and by what means – legislative or other? This is the **ongoing moral conversation** fundamental to the long term project of society. The state of moral thinking at any moment frames the environment of legislation and reaches into attitudes and dispositions far beyond the reach of legislation. It colours individual action and influences the direction of many groups throughout society.
14. This kind of conversation constantly takes place *within* groups (churches, synagogues and other religious and voluntary associations). However, it does not necessarily take place *between* groups. Yet there must be an arena where different groups meet if there is to be a **public moral conversation** – if, in other words, institutional reality is to be given to the idea of society as a "community of communities".[5]

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[4] See particularly the recent works of Yale law professor Stephen L. Carter – *The Culture of Disbelief, The Dissent of the Governed*, *Civility* and *Integrity*. Carter is one of several who have argued that the principled secularity of public debate in the United States alienates many, even most, citizens from the political process.

[5] See J. Sacks, *The Persistence of Faith*, pp. 84-94.

15. The significance of this conversation does not lie solely in the conclusions it reaches. It has two other consequences. The first is that the mere activity of bringing together diverse individuals and groups to reflect on moral issues is vital to sustaining a **shared language of values**. This is especially important when there is no longer an agreed locus of moral authority in society. Without a public arena of moral debate, a plural society rapidly fragments into a series of interest groups advocating their case in the minimalist vocabulary of "rights". This encourages conflict while eroding the richness of language within which a nuanced resolution might be reached. The classic case is the issue of abortion in the United States.
16. The other is **enlistment**, and this depends on the inclusivity of the conversation. A conversation that draws the many traditions represented in society into debates about its future, enlists those groups into the project of the common good. It provides them with "voice" – and "voice" is essential to loyalty,[6] that is, to a sense of ownership.
17. Unlike debates framed by conflicting interests, those generated by diverse traditions do not necessarily aim at the victory of one side over another. They may aim simply at mutual enlargement and the creation of a shared vocabulary of concern. A concept drawn from inter-faith relations is relevant here. Whereas in the Middle Ages encounters between faiths were marked by **disputation** (public trials in which Jews were invited to hear the truth of Christianity demonstrated), today they are characterised by **dialogue**. Dialogue does not aim at the victory of truth over falsehood, but at a shared process of speaking and listening in which we come to see ourselves as persons-in-the-presence-of-the-other. Shorn of its specifically religious connotations, dialogue is an appropriate model for an essential element in the public conversation. It emphasises what we share. Its premise is that we are enriched, not diminished, by diversity. It teaches us to speak to those we do not seek to convert but with whom we wish to live.
18. In short, a covenantal perspective on constitutional change directs our attention to the deliberative processes in state and society. These must include not only an arena in which conflicts of interest are resolved, but also one in which our several moral and spiritual traditions meet and share their concerns and hopes. The health of a free and democratic society is not measured by representative institutions alone. It is measured by the strength and depth of the public conversation about the kind of social order we seek to build.

Constitutionalising the Conversation

19. The appropriate home of covenantal conversations is the House of Lords. That is part of the role of a deliberative Second Chamber.

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[6] A. O. Hirschman, *Exit, Voice, and Loyalty*, Harvard University Press, 1970.

20. At present, in Britain, the public moral conversation is under-institutionalised. There is no arena that brings together the great faith traditions, along with the other sources of moral influence and wisdom in society. Such encounters as take place are random, spontaneous and disconnected. They have no official standing. They are usually reactive, and give rise to the phrase "moral panic". This is a lost opportunity. Ideally, Britain should have, within in its deliberative assemblies, a forum for ongoing moral commentary on both legislative proposals and developments taking place in society. This should be large enough to have a voice, but not so large as to constitute a veto. That would be at odds with parliamentary democracy.
21. Historically, the moral and spiritual voice of society was taken to be the Church of England. Hence the twenty-six bishops who comprise the "Lords Spiritual". At some stage, from the 1960s onwards, an attempt was made to find an alternative voice that would better represent a secular society. The preferred option (by way, for example, of Chairmanships of Royal Commissions) was often a professional philosopher, especially one working in the Bentham-John Stuart Mill traditions of utilitarianism and libertarianism. It was assumed that these traditions were best suited to the search for the right in a post-religious age.
22. Both models had great virtues and were right for their time. Ours, though, is a different time with different needs.
23. Christianity remains the majority faith. The Church of England remains the established church. These facts should continue to be reflected in a future Second Chamber. In my 1990 Reith Lectures I defended the existence of an established church in these words: "Our current diversity makes many people, outside the Church and within, feel uneasy with that institution. But disestablishment would be a significant retreat from the notion that we share any values and beliefs at all. And that would be a path to more, not fewer, tensions."[7] Establishment secures a central place for spirituality in the public square. This benefits all faiths, not just Christianity. It invests national occasions with an aura of sanctity, which is to say, a sense of the presence and sovereignty of God. This is the best defence against totalitarianism, the absolutisation of human rulers and institutions.
24. Each nation charts its own route to freedom, and that becomes part of its history. The United States found it in the Jeffersonian separation of Church and State. Britain found it in successive acts of emancipation and liberalisation, alongside an established church charged with the burden of generosity toward others. Throughout the twentieth century, Britain has remained a tolerant society while anti-semitism was rife in continental Europe, from the Russian pogroms to the Holocaust. The Church of England is part of that tradition of tolerance – and is more likely to

[7] *The Persistence of Faith*, 68.

remain so as an established church than if it were disestablished and turned into a more sectarian organisation.

25. Christian representation in the Lords should be broadened. To some extent this has already happened through the presence of the late Lord Soper, and now Baroness Richardson. However, the absence of a Catholic representative is conspicuous. Catholicism is part of the mainstream of British life. Catholic emancipation took place in 1829. It may be that there are compelling theological reasons for Catholic bishops not to take part in the Lords. If so, that fact must be respected and honoured. If not, a Catholic bishop – preferably the head of the Catholic Church in Britain – should certainly be included.
26. So too should representatives of the non-Christian faiths. Today they form a vital part of the text and texture of British society. Each has an important contribution to make to public debates and civic involvement. Their presence is essential if these groups are to feel that they belong and have a valued presence in the public square.
27. In this respect it is important to distinguish two things which are sometimes confused – the *defence of interests* and the *articulation of principle*. Minorities in Britain can be seen under different rubrics, as ethnic groups or as faith communities. "The Asian community" is an ethnic description. "The Sikh community" is a religious one. Sometimes ethnic and religious categories coincide, but they remain different ways of envisaging group identity. An ethnic group has interests it must defend. A religious group has principles it must expound. I have doubts as to whether ethnic groups as such should be represented in a Second Chamber. It is the task of Members of Parliament to defend the interests of their constituents, whatever their ethnicity. This is better than creating, in effect, a set of pressure groups in an Upper House – thus encouraging the view that only Asians can defend Asians, and so on. Certainly both Houses – indeed all national institutions – should be ethnically diverse. But there is a difference between diversity and representation. Minorities should be represented among the "Lords Spiritual" as faith communities, not as ethnic groups.
28. The principle is simpler than the practice. It is hard to define a faith community. Not all faith communities are formally organised. Some contain multiple strands and denominations. Many have no generally recognised national leader. Some leaders serve for relatively short periods, and are thus unable to provide the kind of long term presence a sustained conversation needs. There are no abstract principles that would yield an agreed formula for representation. Each is fraught with difficulties and is likely to raise conflicting passions and disappointed expectations.
29. Fortunately, the British constitution has never proceeded on the basis of abstract principles. The best approach is modest, informal and gradualist. Not simultaneously but over the course of time, other religious figures should be added to the Second Chamber, on the recommendation of the Prime Minister, using existing methods of scrutiny and consultation. Broadening the religious spectrum in the Upper House should be a background objective, not a formal programme, and

membership should *be ad personam*, not *ex officio*. Those chosen should become Life Peers, so as to encourage continuity of contribution.

Conclusions and summary

30. There is a vital role to be played by a more broadly conceived "Lords Spiritual". Reform of the House of Lords is the appropriate opportunity to create it. The Archbishops and Bishops of the Church of England should continue to be the majority presence as representatives of the established church. They should be augmented, over the course of time, by a small group of individuals drawn from the other Christian churches and from the major non-Christian faiths. Such a group would add greatly to the moral authority, imaginative reach and inclusive character of the House of Lords. It would constitute a forum in which the several faith traditions – so central to the identity of many Britons and to the collective memory of mankind – join their voices to the deliberative process of dialogue and debate through which a society renews itself and frames its collective future.

27 October 2011

Written evidence from David White (EV 64)

I would like to support the Election of the House of Lords (To be renamed the United Kingdom Senate) It should have 200 Members Elected in 10 Member Constituencies using the Single Transferable Vote elected by halves every 5 years. Members should have a ten year term. Senators should be allowed to have a Regional Office out of which they will all work. They will be allowed to represent Constituents from this office and from their Westminster Office. This will ensure minimal costs.

New Parliament Act to be created which replaces 1911 and 1949 Acts.

The Act should state that the House of Commons will originate all legislation and shall send Bills to the Senate for approve.

House of Commons is by simple Majority at all stages

	Senate
Approve Bill	Simple Majority
Amend Bill	Simple Majority
Insist on Amendment	50% +1 Senator (If Senate insists a second time then a Resolution Committee will be formed to seek a resolution)

The Senate may insist a further four times before a vote of 66%+1 Senator is required to continue.

If not achieved

The Bill will be passed for Royal assent after six months.

If achieved then the Bill will be frozen for six months and reconsidered by both Houses.

If the House of Commons insist the Bill will be passed for Royal Assent after a further six months if the Senate cannot gain 66%+1 Senator.

The Senate will have a Veto on all Secondary Legislation if 50% +1 Senator in the Plenary.

The Senate may veto Ratification of a Treaty if it votes for a Referendum.

Ministers in the Senate

Secretaries of State should not be Senators, not should Ministers but a new role of Senate Minister should be created for each Department. Deputy Senate Ministers may be appointed if the workload requires. The Leader of the Senate and the Government Chief Whip shall be of Cabinet rank and the Attorney General may sit in the Senate.

House of Lords "Expertise" & Bishops

It cannot be right a House of Parliament to be unelected and unaccountable to the people of the Country and no matter how benevolent and expert they feel. I do not think it appropriate for the Church of England Bishops to sit in the Senate.

Senate Committees

A Experts Panel should be created to appoint 5 Members to Senate Committees for their "Relevant Expertise" which must be up to date and reviewed. Bishops (with voting rights) will be appointed to a Senate Committee which will deal with Church of England Measures.

Supremacy of the House of Commons

I do not support the notion that the House of Commons, is supreme but the people are supreme and the rigour of a Parliament in which negotiation and debate between Houses is common then better legislation will be created if the process is created which allows the House of Commons to have their way after a certain period.

Senator Terms and Standing for the House of Commons

Senators should be allowed to stand for re-election but shall be debarred from standing for the House of Commons for two general Elections after leaving the Senate.

NO term limit.

Transitional Arrangements

Lords should be able to sit in the Senate with speaking rights until 1st May 2020 and shall lose their voting rights on 1st June 2015. Lords shall be enabled to attend the Parliament and shall have access all areas except the Senate Chamber. A Pension of £20,000 per year shall be paid to all Members of the House of Lords who retire before 1st September 2014(except Bishops). Retired Lords (prior to 1st September 2014) will keep their rights to access facilities of the House of Lords for five years. Except for offices, stationary, allowances, the Chamber and Library. This may be reviewed if it interferes with the operation of the Senate.

30 October 2011

Written evidence from Damien Welfare and the Campaign for a Democratic Upper House (CDUH) (EV 65)

Introduction

1. The draft Bill, and the commitment of the Coalition Government to the principle of democratic reform, are very welcome steps. The statement of the Prime Minister and Deputy Prime Minister,
that they are "fully committed" to holding the first elections to the reformed second chamber in 2015, is also welcome.

2. Democratic reform of the second chamber is central to improving the legitimacy and effectiveness of Parliament as a whole; which in turn has a vital contribution to make in improving the quality of government. Giving greater authority and legitimacy to Parliament as a whole could also play an important part in redressing public disengagement from politics.

3. The draft Bill builds on the significant work which culminated in the White Paper, *An Elected Second Chamber: Further Reform of the House of Lords*, CM 7438, July 2008 (the "2008 White Paper").

Summary of main points

4. This response covers most of the proposals, but concentrates on the following main points:

    a) the role and functions of the new second chamber make clear that, while important, its status would remain secondary to that of the House of Commons;
    b) the issues of democratic principle involved are fundamental, but also relate to how effectively the new chamber would carry out its role and functions;
    c) in order to ensure the primacy of the Commons, the use of a longstanding form of Resolution agreed between the two Houses, based largely on the existing rules and conventions, and possibly augmented by statute, can produce a ***permanent settlement between the two Houses***; whilst allowing for agreed changes via a process of review. These proposals are set out in paragraphs 55-64;
    d) ultimately, we have a choice as to the constitutional arrangements we make for the UK.

Role and functions of the second chamber

5. The **role** of the second chamber should be:

a. forming a revising chamber with the power to ask the Commons/Government to think again;
b. providing a forum in which the nations and regions of the UK are represented;
c. scrutinising Government, both as to detail and in relation to larger-scale issues;
d. inquiring into wider issues of national concern, which transcend party debate or raise issues outside politics;
e. acting as a constitutional "longstop" for the country.

6. Only the role of providing a forum in which the nations and regions are represented falls outside the role of the present House.

7. Expressing the role of the House, as an agreed part of a reform settlement, would form an important starting point for maintaining the primacy of the Commons.

8. The **functions** would follow from the role, and similarly form an important foundation for the relationship of the two Houses, as follows:

a. Acting as a revising chamber for legislation: this is the normal principal function of a second chamber in a bicameral system. It provides a process for the detailed scrutiny of amendments, and testing of the policy behind a Bill; and extends to asking the Government to think again by means of an amendment passed against it. This is conducted in a chamber where the position of the Government of the day is not in issue, and accordingly the political atmosphere is less intense. In addition, the present House considers and approves thousands of amendments made by Government to its own Bills each year; enabling officials to rethink the provision, and saving the time of the Commons in doing so;

b. Scrutinising or approving secondary legislation: the function of the House is to scrutinise secondary legislation, where Parliamentary approval or acquiescence is required, on the same basis as the Commons (ie acceptance or rejection, with no power to amend). The lack of a power to amend an SI is a significant constraint on the scrutiny conducted by either House. Suggestions are made below to amend the powers of the second chamber in this area;

c. Scrutinising the actions, policies or decisions of Government (or "holding the Government to account"): by oral and written Questions, or debates to which Lords Ministers or Whips respond; or statements delivered by those peers;

d. Undertaking inquiries and investigations: it is intrinsic to the nature of a second chamber on which the Government is not reliant, that inquiry and debate may more easily be concerned with larger questions which transcend government or party debate. Conversely they may also be concerned with detailed or non-political issues which would not warrant attention in the primary political forum of the country. The present House undertakes much of the Parliamentary scrutiny of the European Community, as well as much of the scrutiny of delegated legislation; notably in responding to points raised by the Merits Committee. More widely, its scientific and *ad hoc* select committee inquiries range across and beyond Departmental boundaries; in deliberate contrast to the Departmental focus of the Commons;

e. Acting as a constitutional longstop: notwithstanding the introduction of fixed five-year Parliaments,[1] the House of Lords retains under the Parliament Acts its power of absolute veto on a Bill seeking to extend the life of a Parliament beyond five years. [2] More generally, the House is widely recognised as having a legitimate interest in, and role in safeguarding, the constitutional arrangements of the country.

9. In terms of the primacy of the Commons, it is significant that the above list of functions does not include any of the following:

    a. determining (or having any role in determining) the Government of the day;
    b. providing the leadership of the Government of the day, or of the Opposition parties;
    c. controlling (or having any role in allocating) public income or expenditure;
    d. determining the final content of the Government's primary legislation, where it has been supported by the House of Commons;
    e. ultimately approving the secondary legislation proposed by the Government; or
    f. scrutinising public appointments.

[1] The Septennial Act 1715 was repealed by section 6(3) of, and paragraph 2 of the Schedule to, the Fixed-term Parliaments Act 2011.

[2] Section 2(1), Parliament Act 1911

10. The above list, of functions of the Commons in which the Lords have no effective role, underlines the secondary nature of the functions of the second chamber.

The democratic principle in the second chamber

11. There are four principal arguments of democratic principle for a second chamber which is largely or wholly elected.

(1) Legislators, and those scrutinising Government, should be elected

12. It is a fundamental principle in a democracy that those who participate in making the laws should be chosen by those who are governed; and that they should also be accountable to them. The same applies to those invested with the right to scrutinise Government, or to examine national issues, on our behalf. Ultimately, those who have a role as constitutional guardians should also be accountable to the electorate. As a nation, we have exported the democratic principle around the world, but until now tolerated its absence from part of the centre of our own political system. The onus is on those who argue that democracy cannot be introduced into the composition of the Lords to make their case, which they have not so far done.

13. The problem often claimed to arise with a democratic House - that it could challenge the Commons, or disrupt the balance between the two chambers - need not be the case. In all likelihood, the present rules and conventions, carried into the new system and adapted as necessary, would be sufficient to prevent a clash. A new settlement between Lords and Commons, however, agreed as part of the reform "package" can put the matter beyond doubt. This would strengthen both Houses of Parliament, by improving the quality, profile and confidence of their revision and scrutiny. It could also benefit the conduct of Government business, by enhancing the legitimacy of its measures once they have been approved.

14. With increasing recognition of the need to secure diversity in representation in the House of Commons, there would properly be an expectation that the make-up of an elected second chamber would come over time to be properly representative of the UK population as a whole.

(2) The second chamber should have the legitimacy to perform its functions effectively

15. The legitimacy arising from election is central to the proper fulfilment of democratic decision-making and scrutiny. At present we have a system in

which the views and decisions of one House of Parliament lack the legitimacy to give them weight within Government. In the 1980s and 1990s, the House often supported amendments to controversial bills on local government. Its lack of democratic or political legitimacy, however, meant that it could usually be ignored, unless some other political factor (such as Parliamentary time, or adverse publicity for the Government) gave its views weight within the Executive. The inherent merits of the argument, or the expertise of its members deployed in its favour, were not enough to make a significant difference.

16. The House has become more assertive since the departure of the majority of hereditary peers in 1999 (continuing a trend since the 1970s), but there is little to suggest that the position is greatly different. The largely-appointed chamber claims to be a House of expertise, yet this has little place in the argument when it seeks to persuade the Government of the day to accept its amendments.

17. The lack of legitimacy of the Lords weakens the House of Commons too, by denying to Parliament as a whole the standing of a democratic scrutiny body. Conversely, if Government were scrutinised by two democratic bodies, and its legislation revised and passed by two such bodies rather than one, its measures would gain in democratic legitimacy. The quality of legislation would also improve, from having been tested in a more accountable House to whose work greater public attention was paid.

(3) The second chamber should be a forum for representation of the nations and regions within the UK Parliament

18. On either an STV or an open regional list system, the elected membership of the second chamber would be drawn from either large constituencies with a clear identity in the region or nation concerned, or (in the case of Scotland, Wales and Northern Ireland) from those nations themselves. A role in representing the nations and regions within a UK framework could be significant, at a time when, for example, the position of Scotland within the UK is in issue; and there is also some pressure for a greater voice for non-metropolitan England at national level. An elected second chamber could provide a forum for those interests, in a different form than through inter-governmental processes. In the case of English regions or conurbations, the second chamber could provide a more consensual basis for representation than the abandoned proposals for regional government; with a focus on the impact of national policies and programmes within regions.

19. In devolved areas, both the role and the basis of representation would differ from that of MPs from those countries, the basis of whose legitimacy, as in the case of English MPs, is the direct representation of their constituents. They also have direct access to senior UK Ministers. This role is clearly different from a more general representative role in relation to a region or nation. The "West Lothian question" is due to be examined by a Commission being established by the Government, and expected to report after a relatively short period. The creation of a democratic second chamber will not in itself alter the issues raised by the present asymmetrical structure of devolution, but it could provide a new forum for the representation of views, and examination of common issues; and provide some "constitutional glue" within a UK framework.

(4) A democratic second chamber would enable Parliament to take a more integrated view of itself

20. Many members of the two Houses at present barely know each other. The respective cultures and procedures of each are little known to the other; and assumed to be very different. The introduction of a democratic House could transform the position, since the underlying basis of difference would largely fall away. This could only be welcome in terms of joint working and common understanding.

21. More important, it would assist Parliament to take a more integrated view of itself. On issues such as the correct pattern of scrutiny, the role of Parliamentary Questions, the right balance between Government and backbench business, or the desirable scope of Parliamentary privilege, a more concerted approach between the two Houses could only enable them to take a more rounded and integrated view of their respective functions. Put simply, the "divide and rule" approach to the two Houses, whereby Government plays off one against the other, would be harder to maintain. Government itself would have to develop a more unified relationship with Parliament, which would have the benefit that its positions were better understood.

Why appointment is unsatisfactory

22. Appointment obviously suffers from the obverse of the above features. An appointed House has no democratic legitimacy or accountability. It lacks the legitimacy to make its views count with Government, and thus to fulfil its key functions; largely because it does not *represent* anyone or anything. It is obviously not in a position to provide a representative forum for the nations

and regions. It has little prospect, furthermore, of developing integrated relations with the Commons, because of their different natures.

23. It suffers from one further basic disadvantage. Appointment is no substitute for election. The only way in which a person is truly representative of another is if they have been elected by them, for their views as much as for any experience or status they may bring to the role. Although their views may coincide on particular issues, a person who is poor, from an ethnic minority or unemployed will not necessarily share the views of another person in the same position. A person does not represent another simply by sharing social characteristics with them. When a person has been elected, moreover, the ordinary citizen has a claim on their attention, whatever differences they may have of political view or social background. The person who has been elected has placed themselves before the electorate and received their endorsement in preference to other candidates. It is the legitimacy and accountability which the process of election confers, not their social characteristics or identity, which make the elected person properly representative of the community he or she serves.

What does the primacy of the Commons rest on?

Present basis of primacy

24. Restrictions on the powers of the Lords rest on a mixture of statute, convention, and the Standing Orders of the two Houses.

25. It is often assumed that the Commons' superiority rests on the fact that they are popularly elected. In terms of day to day politics, this now represents the obvious difference between the two Houses; but the developing strength of the Commons long preceded the mass franchise, and the claim of the Commons to the primary role over the granting of money dated from the late 17th century.

26. The present relationship between the two Houses is based on a combination of:

(i) Important functions which only the House of Commons exercises;
(ii) Restrictions on the financial powers of the Lords;
(iii) Restrictions on the powers of the Lords over revising primary legislation; and
(iv) The powers of the Lords over approval of statutory instruments.

(i) Functions which only the Commons exercise

Formation and maintenance of a Government

27. The Government of the day is formed by the Leader of the party (or Leaders of the parties) who can, at the request of the Monarch, command the confidence of a majority of the House of Commons. The House of Lords has no role in selecting or maintaining the political party or parties in power; nor in removing them. No division, resolution, or debate within the House of Lords affects the Government's right to remain in power so long as it retains a majority in the Commons. This remains a convention, rather than a matter of statute. As suggested below, this convention could be agreed between the two Houses as part of the reform package.

Government sits mainly in the Commons

28. The Government sits largely in the House of Commons, apart from a small number of Ministers and Whips in the Lords. While Lords Ministers perform important roles in initiating and explaining Government business there, and responding to scrutiny, their legitimacy in Government (as opposed to their personal reputations in the House) do not depend on decisions of that House.

29. The Prime Minister of the day, and most senior Ministers, sit in the House of Commons. The last Prime Minister, the Marquess of Salisbury, to sit in the Lords left office in 1902. Apart from the possibility that Viscount Halifax would be appointed in 1940, the only recent example was the appointment of the Earl of Home, who relinquished his title and secured a seat in the Commons in 1963 in order to become Prime Minister. It appears inconceivable that a member of the second chamber could now serve as Prime Minister; and this could be made explicit.

30. In terms of senior Ministers, with the removal of the Lord Chancellor from the Lords, only the Leader of the House is required to be a member of the Lords. The present Cabinet includes only the Leader of the House, and the Minister without Portfolio (a Minister of State), as members of the Lords, out of 23 Cabinet Ministers.[3] In the present Government, there are 3 members of the House who are Ministers of State (out of 32, including Law Officers); 9 junior Ministers (out of 37); and 10 Whips (out of 27, apart from the Chief Whip). In all, there are 24 peers in Government posts, out of a total of 119; or 20% of the total number of Ministers and Whips in the Government. No more than 95

[3] *Ministers in the House of Lords*, House of Commons Library, August 2010

holders of Ministerial offices may sit and vote in the House of Commons.[4] There is also a statutory limit on the number of paid Ministers who can be appointed.[5] It could be agreed that no more than (say) 20% of Government Ministers or Whips could sit in the second chamber.

31. One possibility for expressing these restrictions could be to widen the Long Title of the draft Bill, in order to include new provisions:

    a. a requirement that a Prime Minister must on appointment (or possibly from shortly afterwards) be a member of the House of Commons;

    b. provision that no more than 20% of Ministers (or paid Ministers) may be members of the second chamber;

    c. a limitation on the numbers of members of the Cabinet, or Ministers of State, who could be members of the second chamber (effectively concentrating appointments in the second chamber on the lower rungs of Government).

32. Such provisions could be simply expressed, with minimal scope for judicial interpretation. Alternatively, all of the above could be set out in agreed Resolutions between the two Houses (see below).

(ii) <u>Restrictions on financial powers</u>

33. The Commons' control over finance was historically the most important. The point is often now obscured by the assumption that the main business of Government is its legislative programme. In fact, few of the day to day activities of Government rely on the programme. The main feature of the relationship between the two Houses, the settlement as to financial matters, is now taken for granted. The need in terms of reform is to confirm the same settlement, and make it explicit where necessary.

Money Bills under the Parliament Acts

34. Under section 1 of the 1911 Act, a Money Bill may be passed by the Commons without the assent of the Lords, if certain procedural conditions are met. A Money Bill is a bill which is certified by the Commons Speaker to contain only

[4] Section 2, House of Commons Disqualification Act 1975

[5] Schedule 1, Part V, Ministerial and other Salaries Act 1975

provisions dealing with taxation, debt payments, supply, the allocation of public income to spending, loans, or subordinate matters (section 1(2), 1911 Act). The Lord may discuss such Bills, or even in theory amend them, but no account needs to be taken by the Government of its amendments. These provisions are now wholly uncontroversial.

Bills of Aids and Supplies

35. The Lords' role in relation to financial matters has long been restricted to giving assent only. Peers can still in theory reject a Bill of Aids and Supplies (ie the modern Finance Bill or Budget; or the Consolidated Funds Bills, giving approval to public expenditure). They are debarred from amending them, by the longstanding claim of the Commons to financial privilege. In practice, the Lords invariably negative the Committee Stage of a Finance Bill or a Consolidated Fund Bill, so that the issue of amendments to those Bills does not arise.

Amendments infringing financial privilege

36. Where amendments have been passed by the Lords which the Commons consider infringe their financial privilege, by convention the Lords does not send back amendments in lieu which clearly invite the same response. The Joint Committee on Conventions[6] in 2006 (the "2006 report") recorded that some instances have taken place against the Clerks' advice. The Report confirmed the convention[7], and that this should not occur. This could be reaffirmed in agreed Resolutions of the two Houses.

Agreed resolutions on financial matters

37. starting point for a reformed House should be a clear understanding from the outset that it has no role in financial matters, other than possibly in offering advice or scrutiny (eg as to technical aspects of the Budget, by the Economic Affairs Finance Bill sub-committee). To supplement the 1911 Act, the convention as to Finance Bills and Consolidated Funds Bills should be covered by agreed Resolutions, so that they cannot be rejected, and the resolutions should also cover amendments in lieu which infringe financial privilege.

[6] Joint Committee on Conventions of the UK Parliament, session 2005-6.

[7] 2006 Report, paragraph 252

(iii) Restrictions on powers concerning primary legislation

Public Bills under the Parliament Acts 1911 and 1949

38. As the document accompanying the draft Bill states, the Parliament Acts provide the "basic underpinning" of the relationship. Section 2 of the 1911 Act provides for the Commons to pass a Public Bill with which the Lords disagree, other than a Money Bill or a bill to extend the life of a Parliament beyond five years, where the Commons have passed it again after a minimum of a year from its original Second Reading (and provided the second occasion is in a new session). The Speaker of the Commons is required to endorse the Bill with a signed certificate that the provisions of section 2 have been complied with. The Acts have not needed to be used frequently, and they express a consensus that the second chamber should have a delaying power only in an extreme case of disagreement, which is clearly appropriate in a new settlement.

39. A simpler 12-month delaying period would be better understood by the electorate. The effect of the Coalition Government prolonging the present session until Spring 2012 would have had the effect, should the Parliament Acts have needed to be used, of extending the period of delay until up to nearly two years. Setting the period of delay at approximately twelve months, where the session lasts more than one year, may be worth considering if the innovation of a two-year first session is to be repeated in future Parliaments.

Salisbury-Addison Convention

40. The Joint Committee on Conventions defined the Salisbury-Addison convention in its modern form, as follows:[8]

    a) a manifesto bill is accorded a Second Reading in the Lords;
    b) a manifesto bill is not subject to "wrecking amendments" which change the Government's manifesto intention as proposed in the bill; and
    c) a manifesto bill is passed [ie given a Third Reading] and sent (or returned) to the Commons, so that they have the opportunity, in reasonable time, to consider the bill or any amendments proposed by the Lords.

[8] 2006 Report, paragraphs 99-100.

41. The committee also identified a recent "practice" that the Lords will usually give a Second Reading to any Government bill, whilst pointing to possible exceptions.

42. The Proposals document accompanying the Bill does not refer to the convention. Instead, it states that there is a convention that the Lords "should pass the legislative programme of the Government which commands the confidence of the House of Commons"; and, also that "whether or not a Bill has been included in a Manifesto, the House of Lords should think very carefully about rejecting a Bill which the Commons has approved" (Proposals, paragraph 8). As a description, this goes too far in extending what is described as a convention (as opposed to a "practice") to all bills in a Government's programme; and without discussing exceptions. It also appears to be too limited, however, in not including the exclusion of "wrecking amendments" within the convention.

43. The historical circumstances which gave rise to the original compact have changed. There are also obvious problems with the scope of the "mandate" theory, as the 2006 Report discussed. As a working convention, however, it expresses in its modern form the principle that the main features of measures to which a Government has committed itself before the electorate, should be passed by the second chamber; without preventing the second chamber from suggesting amendments which do not change the policy intention, and provided these are proposed in adequate time for the Commons to consider them.

44. In short, the modern convention recognises the legitimacy attaching to the programme of a Government supported by the Commons, provided the broad outline of an individual measure has been put before the electorate. This is an acceptable restriction on the powers of the second chamber, and should remain a significant component of the relationship between the two Houses. It is not acceptable, however, to suggest that either the present or a reformed House should pass *all* bills introduced by a Government, irrespective of their lack of a mandate. In the case of a bill introduced without warning, or without any form of mandate, it would be important that the second chamber had a full opportunity to consider it, while having regard to the general direction of the convention. There can be no objection to expecting the House to "think very carefully" before rejecting any government measure passed by the Commons, but it would not be right to prevent it from doing so. It is suggested that a formulation along these lines could adequately be agreed, and be supported by resolutions between the two Houses.

Reasonable time

45. The 2006 Report recorded general agreement that the Lords should consider Government business in reasonable time, and that there was such a convention. There was no definition of "reasonable time", and no problem would be solved by seeking to define it; nor by imposing time limits on the Lords' consideration of bills. At the same time, the report pointed to an "inexorable rise" in the time spent on bills since the early 1980s.[9]

46. It seems clear that, if a reformed House were to make the passage of Government business impracticable through excessive consideration, it would be necessary to introduce an element of timetabling, in the same way as in the Commons. This possibility could be recognised in the reform "package", and provision made for the Government of the day to introduce such measures if defined criteria were met (eg a measurable increase in time taken for consideration in second chamber, without any exceptional circumstances). This step should perhaps follow, but not depend upon the outcome of, a report by a Joint Committee. The Lords have themselves considered timetabling; but whether or not self-regulation in its present form can be maintained, the prospect of timetabling at the behest of Government could be expected to encourage restraint. The convention, and this reserve arrangement, could likewise be set out in an agreement on the overall reform.

Exchange of Amendments

47. This area has seen remarkably few proposals for change, whether in the 2006 report, the 2008 White Paper or the current Proposals. This might be taken to suggest that the present arrangements are working effectively. There appears likely to be an undercurrent of concern, however, over whether a reformed House could seek repeatedly to insist on its amendments, and oblige the Government to concede important elements of its programme at the end of a session.

48. It is necessary for all two-chamber legislatures to develop mechanisms to resolve conflict over legislation. There is no fundamental reason why the UK Parliament should be unable to do the same. The present rules ultimately rest, in the case of Commons bills, on the Parliament Acts. If both Houses maintain identical positions twice each, a bill is treated as lost. To avoid this risk, each

[9] 2006 Report, paragraph 150

House has to amend its position at the second round of voting on a particular proposal. If this is done, it is possible for a number of rounds to take place.

49. A statement within a reform package, agreed by both Houses, could make clear the convention that the bill must pass within a reasonable time, and set down a desirable timetable or framework of steps. Such a statement could also emphasise the desirability of seeking agreement, and of avoiding the practice of "packaging" of amendments from the Commons.

50. Alternatively, the Houses could agree to revive the former practice of calling a **conciliation conference or joint committee** to seek agreement. In the early nineteenth century, where the House disagreed over amendments, a conference would take place; and if no agreement was forthcoming, the Bill would be lost, without a further opportunity for amendment on either side.[10] Such a process seems a more mature framework for discussion of differences in a legislature, than the present round of hurried late-night divisions; and with a greater bias to compromise. A conciliation committee could perhaps be called after three rounds of voting on an issue. It could have equal numbers of representatives from each House, but be chaired by an MP. Departmental civil servants (or the Minister) or outside groups could possibly be invited to give brief evidence and answer questions. This might be extended to the frontbench Opposition spokesman, or to other leading Parliamentarians involved.

51. More radically, a **limit** could be imposed on the number of occasions on which the second chamber could disagree with the Commons on a particular subject, after which the bill would be deemed to have passed (eg three or four rounds of voting). It would be necessary to allow sufficiently long intervals between stages to enable the issues to be adequately examined, and understood by the public. The Parliament Acts could be amended to produce a similar outcome. This proposal may be thought to tip the balance too much in favour of the Government of the day. A preferable alternative would be to combine the two approaches (ie strengthen the convention, and create a conciliation committee; but with provision for the introduction of reserve powers to limit the number of exchanges). This could be done either in the reform legislation, or via an agreed statement of conventions. In neither case, however, should it be introduced unless recommended by a Parliamentary

[10] A description is given in "Random Recollections of the House of Lords, from the year 1830 to 1836", by The Author of "Random Recollections of the House of Commons", (James Grant), Smith, Elder & Co., 1836, pages 26-7.

committee appointed to review the operation of the relationship between the two chambers, as proposed below (see paragraphs 59-60).

Conclusion on primary legislation

52. With a combination of legislation and agreed conventions covering the following areas:

    Commons' power to override the Lords over public bills

    Salisbury-Addison convention in modern form

    Reasonable time convention

    Conciliation process, or limit on stages of disagreement

    the balance between the two Houses in terms of primary legislation should be capable of definition as part of the reform settlement.

(iv) Powers concerning secondary legislation

53. The history of the House's occasional rejection of statutory instruments is well-documented. The 2006 Report concluded that the present convention was not that no statutory instrument should be rejected by the House; but that the House should not regularly reject them. In exceptional circumstances (of which it gave examples), it may be appropriate for it to do so.[11]

54. The committee considered that the Lords' powers in relation to statutory instruments were "too drastic"[12], and that this would not be the case if Parliament had a power to amend them. A power to amend would be highly desirable, and would improve the precision of scrutiny of statutory instruments. In its absence, however, a short delaying power (eg one month), after which the Government could re-present the same instrument if it considered this appropriate, would give the second chamber the power to cause Government to think again about statutory instruments, as well as primary legislation. If such a power were created, however, it should accompanied by a new agreed convention that, if re-presented in the same form, the instrument would be passed on the second occasion.

[11] 2006 Report, paragraph 227.

[12] 2006 Report, paragraph 233

New mechanisms for ensuring Commons primacy

55. The document accompanying the draft Bill does not (paragraphs 7-11), set out the full extent of the present restrictions on the House of Lords. It may be inevitable that a democratic second chamber would wish to use its powers more fully than the present House has done. It is also the case, however, that including in the reform "package": (a) a clear statement of the roles and functions of the two Houses, and of the balance desired; (b) possibly some further legislation; but, above all, (c) a clear expression by both Houses in agreed Resolutions as to the conventions governing how that balance is to be maintained in practice, would provide a firm and permanent platform on which to operate the new relationship.

56. In 1704 both Houses passed agreed resolutions limiting the scope of Parliamentary privilege, in recognition that privilege, while necessary to the functioning of Parliament, should not be misused. The resolutions agreed that: "neither House of Parliament hath any power, by any vote or declaration, to create to themselves any new privilege that is not warranted by the known laws or customs of Parliament". This agreed position has been observed for the last three centuries; and neither House could now abrogate it without the agreement of the other.

57. It is suggested that a similar model, of agreed identical resolutions passed by each House, should be employed in relation to the reformed second chamber. The resolutions themselves would be short, referring to an agreed statement as to the respective status, roles, functions, financial powers, and powers over primary and secondary legislation of the two Houses; and to any other relevant aspects of the relationship. The resolutions should also state that no amendment to the resolution of the second chamber could be made without the agreement of the Commons. The resolutions and statement would be promulgated in advance of the implementation of reform as a new settlement between the two Houses. They would be passed by the Commons and the present House of Lords, as part of the process of enacting reform; and its implementation should be made conditional on their passage.

58. The agreed statement would be drawn up by a further joint committee, and cover the matters identified above as to roles, functions and powers, including references to those in statute. (If this proposal were to find favour with this committee, it might wish to produce a draft). In the main, the statement would make express the present conventions, as identified in the 2006 Report, although with the changes outlined above (ie removing the theoretical power to reject a Bill of Aids and Supplies; and, creating a short

delaying power for statutory instruments). In relation to the exchange of amendments to bills, the statement could adopt the proposal above for a conciliation committee to meet after three rounds of amendment; with a reserve power to introduce an absolute limit on the number of exchanges before proceeding to Royal Assent, if recommended by a joint committee to review the relationship.

59. The latter committee would play a further important (and continuing) role in the relationship. It should oversee a system of independent monitoring and reporting to both Houses of facts and statistics on the operation of the second chamber (eg as to the number of amendments passed; or any statutory instruments rejected). The material recorded under this process would form the background to the operation of the agreed statement; this background being updated on a continuing basis. At the same time, the committee would have the task both of recording new conventions as they appeared to evolve; and of recommending to both Houses, after hearing evidence, that they agree to the adoption of further new conventions to assist the relationship. Once a new convention had been adopted by common resolutions, a description of it would be added to the statement forming the agreed conventions recognised by the two Houses.

60. The committee should also have the role of recommending whether to introduce reserve powers to limit the number of exchanges of amendments, as outlined in paragraph 51 above.

61. There may be advantage in placing more of the basis for the relationship into statute. Rules such as those suggested for the number of Ministers in the second chamber might most conveniently appear as amendments to the relevant legislation. Amendments could also be incorporated to Clause 2 of the Bill.

62. There could be some symbolic value in amending the Preamble to the 1911 Act, to make an express (but unenforceable) statement of the primacy of the Commons. This would relate to the intention expressed in the Preamble in 1911 to legislate in the future "for limiting and defining the powers of the new [ie popularly elected] Second Chamber".

63. One further proposal would be for both Houses to agree to the development of standing joint committees on cross-cutting topics (eg public health challenges such as levels of obesity; long-term demographic trends; geo-political developments of international significance over the next generation)

to promote a more integrated approach across Parliament as a whole, and to promote mutual awareness between the two Houses.

64. It is suggested that mechanisms and agreements along the lines proposed above would enable a permanent settlement to be set down, by means of resolutions giving effect to an agreed statement, and supplemented as appropriate by limited legislation. The operation of the relationship would be continuously monitored, and changes by agreement proposed to both Houses. No change to the resolutions would be possible, because of their terms, other than with the agreement of the Commons.

Factors relevant to primacy which are added by the draft bill

Single non-renewable terms of 15 years

65. The draft Bill proposes that elected members of the second chamber should have a single non-renewable term of office of three Parliaments, or normally 15 years, in order to enhance their independence and reinforce their distinctiveness from the Commons.[13] It is recognised that a cycle of three Parliaments would allow the replacement of members by thirds, and that this would prevent the majority of the House (or half, if elected in two tranches) from having a more recent mandate than MPs after a General Election. It would also make it difficult for one party to have an overall majority.[14]

66. It is, however, a fundamental weakening of accountability to have non-renewable terms. A period of 15 years is also extremely long in terms both of a mandate, and of keeping in touch with the electorate. A preferable alternative would be either to elect by halves for 10 years terms; or, if the retention of thirds is considered necessary for the reasons summarised above, to have 10 year terms under that cycle. Under the latter system, a member would be enabled to seek re-election, but not until the end of the Parliament after that in which he or she left the House (ie normally five years). This would also accord with the period after which it is suggested that a former member of the second chamber would be eligible to seek election as an MP. In effect, a politician seeking to return to Westminster would have a choice of pursuing selection for the first or second chambers (but not both).

[13] Proposals document, paragraph 24

[14] Proposals document, paragraph 25

67. As an illustration, if Member group A were elected in 2015, they would serve until the expected end of the Parliament in 2025. They would then leave the House for the following Parliament, but could seek re-election for another 10 years at the election due in 2030. In terms of the shape of the House, Member group A would serve from 2015 to 2025. Member group B would be elected in 2020, and serve until 2030, and then retire for 5 years. Member group C would be elected in 2025, and would serve until 2035, when members of group B would be eligible to stand again; and so on. At the election due in 2030, the members of group A could in theory all be selected as candidates, and returned for a second term. In practice, some members of group A might form part of a new group D, who would serve from 2030 to 2040.

68. This system of "staggered thirds, plus a gap", would serve the objectives of a long term (10 years), without making it so long as to render the element of accountability negligible. It would allow re-election; but only after a period away from the House. A need to undertake other activities in that period might be thought to be attractive, in terms of differentiating the memberships of the two Houses; and in encouraging people other than solely career politicians to seek elected membership of the second chamber. The same system of 10-year terms could apply to appointed members.

A 20% appointed element

69. CDUH has no position as between 80% and 100% elected membership, although the majority of its supporters would probably prefer a fully-elected House. My view is that an 80% elected House, with 20% of appointed Independent members, would be the preferable outcome.

70. There are three main advantages from retaining an appointed element. First, it would retain the benefit of expertise on a non-political basis. Second, it would further differentiate the memberships of the two Houses. The presence of appointed members, moreover, would make the House by definition less legitimate in democratic terms than the Commons; which would assist the perception of the correct balance. Third, the arithmetical effect of the presence of unelected Independent members would be to make it more difficult for one party to command a majority in the House; especially if elections were staggered as proposed.

71. The presence of Independents would also prove a more secure basis for the continued inclusion of Church of England Bishops in the House, in reduced numbers. I am personally supportive of this proposal, and would prefer if

other faiths or denominations were prepared also to propose small numbers of nominees to sit as part of the Independent element.

Qualification to value of expertise

72. Specialist independent knowledge, essentially from professional or academic persons, or persons with particular experience of a particular field, is valuable; but it is subject to a significant qualification, which also affects claims made for a wholly appointed House. Few people can claim serious expertise in more than one subject area. If there were, for example, six eminent doctors in the new second chamber, their contributions to debates on Health policy would probably be significant. Their enthusiastic participation in debates on Defence policy, however, might be less well-received. On each topic, there would no more than a small number of members amongst the Independents with relevant expertise. At that level, expertise can have a proper place in enhancing debate; but only if it is clearly seen to be an extra element, characteristic of a minority of the membership.

73. The present largely appointed House claims to be a "forum of expertise". The majority of its members have, however, been appointed for their political allegiance. Whatever skills or experience those members may also have in other fields do not constitute the reason for their appointment.

74. The example of the doctors points, however, to the deep-seated problem that would confront a wholly appointed House which was genuinely composed of experts. The reputation of the House in any given policy area would rest on the judgements of the small number of expert individuals. The House would be a fragmented body, with a patchwork of small groups of members qualified to speak only on their topic, and holding no collective view separate from that of those individuals. In those circumstances, the Government of the day could pursue its political objectives by default.

75. The proposal for a largely elected House, with a minority appointed element, offers the opportunity to maximise the contribution which expertise can make, in a manner which is proportionate to its value. It would also recognise the reality that the business of Government, and political choices, ultimately transcend in most cases the contribution of experts.

Salaries in second chamber

76. It would be logical, as proposed, to pay elected members of the second chamber a lower salary than members of the Commons. The reasons should

be stated publicly. While these include the lack of constituency duties, as suggested in the Proposals document, the main reason is the subsidiary status of the second chamber. The same approach should be taken to levels of allowances for staff etc.

Additional factors which could be added in relation to Commons primacy

Job description for members of second chamber; and, statement of its role and status

77. A job description for MPs, although beyond the scope of this committee's inquiry, would probably be popular with the public. A job description for members of the new second chamber could set out its subsidiary status, in terms of its role in revising legislation, scrutiny etc; and make clear that its members have no role in relation to the choice or maintenance of the Government of the day, finance etc. A simple statement of the role of the second chamber, widely publicised to enable the public to understand the new body at the time of elections to it, would assist in achieving the objective of making its subsidiary status into a recognised political fact from the outset.

Name of second chamber

78. The Government proposes to retain the name of the House of Lords, "at least for the purposes of pre-legislative scrutiny", and suggests that discussion of the name could be a "distraction from the more fundamental issues". A change of name could, however, be an opportunity to make clear that a new body has been created, in an evolution from the present House, and to make clear its subsidiary status.

79. The cross-party Committee apparently discussed a number of names, including "Senate"; which was also the proposal in the 2008 White Paper. Although acceptable, it perhaps does not sit wholly naturally as a counterpart with the "House of Commons". Alternatives such as "Second Chamber", or "Upper House", would chime more readily with the title of the Commons. It is well understood that in many systems the Lower House is the more powerful chamber. One possibility would be to introduce gradually the terms "Upper House", and "the House of Commons (the Lower House)".

80. The two main criteria for choice of a name should be that it is readily distinguishable from that of the House of Commons, whilst acknowledging the continuation of that name; and, that it is sufficiently descriptive of the second chamber that it would become recognisable over time without further explanation.

Other issues raised by the draft Bill

Timing of elections

81. The proposal to hold elections to the second chamber on the same date as a General Election is intended to maximise voter turnout, to minimise disruption to the work of the Commons, and to be efficient. The danger is that, if similar patterns of voting produced different outcomes (as could be expected as between a proportional system and first past the post) there could be criticism of the result produced by whichever system was perceived to be less fair. I have been concerned about this issue in the past, and advocated the use of an alternative cycle. In the context of the package of proposals as a whole, however, and in particular the proposal for staggered elections to the second chamber by thirds every five years, the current proposal, whilst not ideal, is acceptable. If, as suggested above in relation to Commons' primacy, the relative status of the two Houses can be made fully understood from the outset, their differing roles could in any event be expected over time to produce patterns of differential voting, from which no comparative conclusions could be drawn.

82. The preferable cycle would, nonetheless, remain in my view that of the five-yearly European Parliament elections, normally held in June; particularly if the voting system for the second chamber were to be open regional lists. The next elections to the Parliament are due in 2014, and thereafter in 2019. The European elections would thus, on the assumption of five year UK Parliaments from 2010, fall early in the fifth year of the UK cycle. Members of the second chamber would serve for the majority of the term of a Government, while the election would doubtless be seen as a forerunner of the General Election due less than one year later. It is objected that the turnout for the European elections is low. There is no reason in my view to assume that the turnout in elections for the second chamber would be poor, given their significance at national level; and if the new House were properly explained and publicised. A higher turnout in those elections could assist the level of participation in the European elections.

Electoral System

83. The voting system for the second chamber must differ from that of the House of Commons, to reflect their different roles. The modelling in the 2008 White Paper showed that both First Past the Post or the Alternative Vote would produce a significant possibility that the Government of the day could, if elections were held on the same day as a General Election, secure a majority

in the second chamber. It appears to be common ground that this would be undesirable. Both a list system (with open lists) and the Single Transferable Vote would allow large constituencies and provide for a spread of representation. There appears to be a consensus amongst reform proposals, shared by the cross-party committee, for either STV or open regional lists. The former has been the policy of the Liberal Democrats for the House of Commons, but the latter has not been proposed by any party for the House of Commons. For that reason, but also those given above in relation to the possible role of the House in a regional/national context, I would prefer a list system based on open lists; although either would be suitable.

Size of the House

84. It will be important that the new House has sufficient members to ensure a fair balance of political representation, and to fulfil its functions. The Campaign supported the proposal in the 2008 White Paper for an eventual size of 400-450 members.

Transitional arrangements

85. The Bill proposes the removal of one third of the present House at each election, under procedures determined by the House itself (Option 1). Other options in the Proposals document are for all present members to remain until the end of the Parliament immediately before the third election (Option 2); or, to reduce the House to 300 members at the time of the first election, of whom only 200 would be present Members (Option 3). The hereditary peers would have no separate right to remain for a period, although they could be amongst the transitional members.

86. The 2008 White Paper also proposed an option whereby the hereditary peers would leave when the final tranche of elected members arrived, with life peers remaining for life.

87. A preferable option would in my view be for the hereditary peers to leave when the first tranche of elected members arrives. It would represent a significant moment of change, and enable hereditary peers to leave with dignity, their places having been taken by elected replacements; arguably in accordance with the spirit of the Cranborne/Weatherill deal.

88. In the event that the departure of life peers by thirds was not attractive to them, they should be allowed to remain if they wish, whilst being encouraged

to consider resignation. The temporary large size of the House which would result for a period should not be seen as a barrier to reform.

Conclusion

89. We have a choice, as a society, as to what constitutional arrangements we wish to adopt. Once it has been demonstrated that an elected second chamber can work in a complementary relationship to the House of Commons, it is up to us to choose what is wanted, and how what has been chosen can be delivered; and then to pursue it positively.

31 October 2011

Written evidence from The Viscount Younger of Leckie (EV 66)

For the Attention of the Committee

I wish to submit my views on the future make up of the Lords for your consideration in your discussions on House of Lords Reform.

Elected or Appointed?

My strong preference is for an appointed and not an elected Upper House. A wholly or partly elected House of Lords would destroy the delicate and effective Constitutional balance between both Houses: the Commons as the Executive, where (soon to be) 600 Members are elected by the people, for the people; and the Lords whose prime role is to scrutinize and tighten legislation without the diversion of "vested interests" including being answerable to an electorate in constituencies around the UK.

There is no question that a new Lords or Senate made up of elected Senators would make for a less effective Upper Chamber: Senators would be too distracted by constituency demands, they would become too politicised (akin to MPs) and it would be necessary to pay salaries and allow for staff which would make for a more expensive alternative to the status quo.

It is important to decide what the appropriate method is for entry to the Upper House to ensure that its effective purpose is fulfilled within the Constitution. It is irrelevant and inappropriate to wholly change: to create an elected process just to appease the public in presenting on a platter a fully democratic system, which so demonstrably seems to be the case in the proposals outlined in the draft bill; from this direction there is no evidence of a public clamour.

Appointments Commission

To avoid any criticism of appointment by patronage where an Appointments Commission is a group made up of a small number of people, I believe there should be a panel system. This would involve a limited number of appointment panels set up to represent key sectors nationally in the UK: eg: industrial, financial services, agricultural, charitable, medical, sporting... to name a few. Names of potential members of the House of Lords could be submitted (with CVs and proposed party allegiance) to these panels for initial scrutiny. The Appointments Commission, made up of the Chairmen of each sector panel, would then decide who to appoint from a short-list.

I do not believe this would be either a lengthy or costly process. It would certainly be considerably cheaper than running full elections for the Upper House around the UK in constituencies (as at the General Election)

The result would better ensure a national coverage in the Lords in breadth and depth, by designated sector. It would have the broadest coverage in that any individual could be put forward for consideration to the sector panels which would then assess and select for consideration to the Appointments Commission. It is also highly relevant to appoint on the basis of seeking out the best people in terms of their expertise, sector or "issue" knowledge and not on the basis of geographical representation.

The question then arises as to who appoints the sector panels? I believe the government of the day must decide but there should be a process of cross party consultation and agreement of proposed names to avoid accusations of party bias or lack of balance.

Size of a future House of Lords

The House must be effective as a revising body; it needs to be full of enough peers at any one time who carry the depth and breadth of experience and knowledge necessary to scrutinize legislation whatever sector, ministry or subject is being debated or considered.

The current size at over 820 is untenable beyond the main reason of the strain on House of Lords facilities. Even at times of crucial votes and maximum whipping (excluding for this purpose the crossbenchers and Bishops) the House has barely reached 550. Consequently I believe the total numbers should not exceed 500.

The proposed figure in the White Paper states 300. I believe this is too low on the grounds that from this number it is likely that considerably less might appear at any one time due to illness, travel, or diverted by other business. This would be too low a number to provide the effective breadth and depth of scrutiny required, not least if there was business in the Chamber, Moses Room or elsewhere going on at the same time. A certain quorum of peers is required to ensure the full and effective work of the Select Committees and the All Party Groups.

In conclusion I therefore believe that 400 represents an optimum and appropriate number for the Upper House. I offer no solution as to how you proportion the numbers of peers on each bench, between parties and crossbench; however I am comfortable with the figure of 12 Bishops.

Length of Appointment

I do believe that it makes sense to appoint peers for a limited period. I see 15 years as reasonable (This view for appointment only, not election). This is on the basis that a contribution can be seen to be meaningful over such a period bearing in mind the longevity of certain issues debated or discussed. More importantly, it is highly desirable in the Upper House to have continuity for building a "library" of experience and knowledge; "people assets" are required in the Upper House over the longer term not just for scrutiny purposes but for process and procedural reasons.

On the basis there is a compelling argument for the "peer for life" decision. However it is not in the peers' interest, or in the public interest, for a peer to remain a member if he or she is unable to contribute through long term illness, old age, or permanent disinterest.

A Peer can withdraw from the House but in reality this rarely occurs. I suggest a more formal and pro-active approach, for clarity, as to who is a working member and who is not.

It makes sense to have a 15 year term after which each position becomes vacant. If the peer seeks to continue, the first stage is that all members of the peer's party (or crossbench) then vote (secret ballot) on whether the peer in question should remain - for a further 15 years; if so carry on as before. If unsuccessful then the peer has to retire and the appointments panel is consulted to fill the vacancy.

In this way there is no perceived ageism or automatic age threshold for retirement. For example, if a peer reaches, say 67, after a 15 year stint and is voted by his party (or crossbench) peers as fit to stand for a further 15 years (therefore up to age 82... and it is noted that there are a few vigorous 80 year olds in the Upper House!) then well and good.

Hereditary by-elections

I entered the House as a result of a successful hereditary by-election. Although I am grateful for this, and the enabling process, I recognise that reform is required in that the by-election process is an anachronism; if retained it would maintain, undesirably, the two-tier process of entry.

I believe that the Upper House was effective pre-1999 in that it was largely made up of Members in their place as a result of an inheritance, but nevertheless representing a considerable breadth and depth of experience and knowledge. We must now move on and the best way to replicate is to utilise and expand on the appointments principle and process.

I believe that, were the House to be elected, it would be a narrower and shallower house made up more of those seeking political careers and of those with more political backgrounds. In addition the danger is that candidates could be largely confined to only those comfortable in seeking election and running a campaign. The question has to be asked: how many of the candidates who should be on the short list would in reality present themselves if election rather than appointment was the chosen entry method?

Conclusion

I feel certain that a move to an elected House, with the ensuing upheaval and change of personnel, is not reform; it is the dismissal and consequent abolition of the Upper House; as such it is a dangerous experiment with our unique Constitution.

I believe that the provisions in the Steel Bill broadly reflect my views and this Bill represents the best measured and sensible way forward for reform at this time.

26 October 2011

Written evidence from the Earl of Sandwich (EV 67)

I have been in the House for 16 years and I cannot remember a single year of real stability, not one year in which I was able to look forward to remaining in the House and enjoying the privilege of membership. First there was the sword hanging over the hereditary peers, but soon afterwards it was dangling over life peers as well, and since 2000 we have all been threatened by a succession of committees and proposals or draft Bills.

My key point is that, while public opinion is tested in the media, our legislature should not remain, year after year, the constant target of our own members and parliamentary critics. It must be allowed to function. People must be able to look forward with some confidence if they are going to win the confidence of the nation and even more important, to perform efficiently all the duties in front of them.

This may sound like a cry for the status quo, but I have played a minor part in previous Bills and am on record as a moderate reformer. I would like to see incremental change. I am a supporter of the Steel Bill in its original form, and I attend meetings of the Campaign for a more Effective Chamber. I have strong views about the size of the House and would like to see a proper retirement scheme.

The atmosphere in the House today, during Lord Grocott's question about numbers, confirmed my impression of a lack of enthusiasm for wholesale reform, and this was borne out by the tone of Lord Strathclyde's responses.

I very much hope the Joint Committee will appreciate that it is in their power to end this process at the earliest opportunity and to recommend to the Government that whatever proposals they come up with are realistic, in the sense that they will actually come to fruition.

27 October 2011

Written evidence from Lord Rowe-Beddoe (EV 68)

I have some points for consideration by your Committee. Like some colleagues in the House, I was appointed upon the recommendation of the Appointments Commission under the "People's Peers" scheme, i.e. not upon the recommendation of any political party. Should future legislation produce a 100% elected Upper House, then clearly Independent Crossbenchers like me would be excluded from seeking election for reason of insufficient financial and organisational support.

A fully appointed House (but with reduced numbers) may be considered undemocratic but it certainly is legitimate - as has been the case for some 900 years. Surely the question to be considered is: "Does the House fulfil its function effectively in the governance of our country?"

A hybrid House cannot be a solution since the vote of an elected person would be perceived to be worth more than that of someone appointed; and a conflict will surely arise on the overriding issue of Commons supremacy. I do not believe that the actual effects of a partially or fully elected chamber are wanted by the House of Commons. There is no "settled view". Many MPs known to me have expressed strong opinions to the contrary. To quote Professor Vernon Bogdanor in *The Times* (18 August 2011),· not only will "the primacy of the Commons ... come under challenge", but "the draft Bill by contrast would transform the Lords from a revising to an opposing chamber."

Statements that have been made in regard to manifesto commitments in support of the draft Bill are incorrect, despite Coalition claims. For example, the manifesto of the main Opposition party specifically referred to a referendum being held following wide consultation on their proposed staged changes.

In conclusion, if abolition is truly desired (as the draft Bill infers) by the House of Commons (certainly I am totally unaware of any movement for reform from the electorate), then I respectfully submit that you would not, so to speak, start from here.

Since my schooldays I have had impressed upon me the virtues of an unwritten constitution. However, continuous changes to it (both minor and major) are increasingly made, with the majority of people blissfully unaware of them. Perhaps we should focus instead on the creation of a written constitution which will be a matter for extensive consultation, communication and public awareness, and referendum (one or more). The outcome of this would mean all members of the executive and legislature becoming transparently accountable to the people we represent, either directly or indirectly.

31 October 2011

Written evidence from Lord Bilston on behalf of an ad hoc group of Labour Peers (EV 69)

I am writing on behalf of an ad hoc group of Labour Peers whose views on House of Lords reform range from unicameralists , those wanting a fully elected second chamber and those wanting only modest changes to the current system. We are however in agreement about our concerns about the current draft bill.

The British Constitution is not codified and has generally evolved over time resulting in the checks and balances that now exist. Our first concern is a very fundamental one - that any change of such significance as that proposed in this bill will fundamentally alter the balance of power between the components of our constitution.

Many general statements have been made about the need to preserve the supremacy of the House of Commons. We agree with that intention but this proposed bill does not achieve this. Any legislation which deals with only one branch of our legislation is short-sighted and denies the inevitable consequences for the balance of power between the two chambers. Statements about the supremacy of the Commons are no guarantee that this can be protected. Moreover there is a naivety that somehow the conventions of Parliament can be underwritten by assurances given. This cannot be the case and both Lord Strathclyde and Lord McNally that relationships between the houses will continue to evolve.

If, as suggested, the new second chamber is to have a democratic mandate then it is inevitable that its members would use that mandate and assert and demand their rights and powers. If the electoral system and timing is different in the second chamber from the Commons then either house could, at different times, claim a more legitimate mandate and use that as good reason for frustrating the will of the other. The inability of Ministers to answer basic questions about the role of the second chamber in relation to matters of supply, votes on military action, and the role of ministers, shows the potential for stalemate between the houses.

Before any detailed proposals are drawn up for numbers in a second chamber, method of election or transitional arrangements, fundamental decisions have to be made about the powers of and relationships between the two houses. This cannot be done without a proper examination as such changes are a reform of Parliament and not just a reform of the House of Lords.

The new arrangements for more frequent boundary changes for the Commons (to be every 5 years) will lead to less continuity in the Commons which will contrast with the security and experience that members ofthe second chamber will enjoy, and will make it less likely that the second chamber will defer to the Commons as now. Elections to give democratic accountability and authority will increase the power of the second chamber and that power can only be at the expense of the Commons and create and intensify rivalries between the two chambers. At present the second chamber always acknowledges the supremacy of the Commons and accepts its role as a revising chamber. This would not, certainly over time, be the case with an elected second chamber.We do believe that the proper democratic mandate

is, and should remain with the House of Commons. That will be seriously threatened by the proposals in this bill.

We are also concerned about the scope for the courts to become involved both in the passage of the proposed bill and in future arbitration about the rights and powers of both chambers.

Members of the group have many other concerns but this question of the balance of powers is our paramount concern and we believe that legislation in advance of a proper examination of the role of each chamber would have far-reaching, and sometimes unforeseen, consequences as well as eroding the clarity of the democratic mandate of the House of Commons.

31 October 2011

Written evidence from Lord Cormack on behalf of the Campaign for an Effective Second Chamber (EV 70)

The Campaign for an Effective Second Chamber comprises almost two-hundred MPs and peers, drawn from, but not confined to, the three main parties as well as the cross-benches in the House of Lords. The group exists to make the case for reform of the House of Lords but is opposed to the Government's proposals for an elected second chamber.

The draft House of Lords Reform Bill is, in our view, fundamentally flawed. It is based on flawed premises. We address these briefly:

1. Election of the second chamber is the 'democratic' option. This premise is taken as given – so much so it comes close to being unstated – but is not self evident. Democracy lies in the elected House of Commons and the government it sustains. It is this power of the Commons that ensures we are governed democratically and to create an elected Lords merely confuses the present clear line of accountability to the people.

2. That it is 'the settled view' of the House of Commons that the second chamber should be elected. It is not clear how Members of the House of Commons in the last Parliament voted on one particular day, and one particular day only (7 March 2007), can be taken as a 'settled view'. This is a novel constitutional doctrine, with rather profound implications for the present Government relative to votes in previous Parliaments. It is also not clear why the vote of MPs on the subject in 2007 should be a 'settled view' when how they voted in 2003 is not.

3. That those who make the law should be elected. The House of Lords does not make the law. This is a crucial point since the House by itself cannot transact any measure into law. The ultimate say rests with the House of Commons. This not a semantic point but one of profound importance. The argument would have more relevance to the Supreme Court, which is a discrete body and as such can determine outcomes. Furthermore, many other unelected people contribute to framing of new legislation, including civil servants, parliamentary draughtsmen, and these days often outside bodies that are consulted. It is ultimately the House of Commons alone which decides the law.

4. That the case for an elected House is supported by the manifestos of the three main parties. This is to ignore the actual wording of the manifestos. They say different things. The Labour manifesto commits the party to holding a referendum. The Conservative Party commits the party to working towards achieving a consensus. (It is fairly clear that there is no such consensus.) Only the Liberal Democrat manifesto is unequivocal in its support for, and only for, a 100% elected second chamber.

We make these points to establish that the Draft Bill is built on tenuous foundations. The White Paper makes no sustained principled case for an elected second chamber. We do not believe Parliament should be invited to legislate on the basis of assumptions that are largely unstated and with which the Government has shown little or no willingness to address.

The relationship between the two Houses of Parliament is fundamental to how our political system works. The Draft Bill is, in our view, poorly drafted and generates more questions than it answers. These questions have not been answered by ministers in debates, but rather swept aside, Lord McNally suggesting that they are questions for the Joint Committee. They are questions which have not been addressed by the Government and so necessarily fall to be considered by the Joint Committee. There is little evidence of sustained preparation or of consultation. The assertion that the issue has been discussed for many years misunderstands the nature of the debate. The debate has tended to be at the level of detail and not principle. There have been myriad schemes for reform (one only has to look at the evidence submitted to the Royal Commission on Reform of the House of Lords) but the starting point has been the need for crafting a new second chamber and not the principles that would justify such action. Once the claim that electing the second chamber is the democratic option is shown not to be self-evidently true, then one has to go back to the drawing board.

In going back to the drawing board, one has to address the relationship between the two chambers. The starting point must be that form follows functions. This is a fundamental point that was recognised by those responsible for the Parliament Act 1911 and is embodied in the preamble to the Act. Any change of composition necessitates a revision of the powers of the second chamber. To adopt a Nelson's eye approach to the relationship – assuming that the functions will remain and be fulfilled as at present – cannot be basis for embarking on major constitutional change. The Parliament Act relates to the existing House, not to two elected Houses, but even if the Parliament Act were to remain as it stands, which could be regarded as profoundly undemocratic by the elected members of the second chamber and those who supported the method of election used for it, the conventions that have developed have done so to accommodate the fact of an unelected chamber. One cannot simply proceed on the basis that they will remain and that all will be well with the inter-cameral relationship.

How will any conflicts between the two chambers be resolved? Lord Ashdown, in the debate on the White Paper, asserted that the primacy of the Commons would be retained but then went on to suggest that an elected House may have been able to stop an unpopular war. These statements are not compatible. On the question on what would happen if the first chamber voted for war and the second against, Lord Tyler, on Lords of the Blog, has argued that the position would be

'whatever Parliament decides the law should be. I have long thought there was a case for putting a provision into law for a compulsory vote in the Commons on decisions about armed conflict. I think it unlikely that the Lords – particularly if only 80% elected – should have a veto on that, but the matter simply has to be judged one way or another, and put into law.'

But who judges? Rather than supporting the Bill, this rather makes the case that it has not been thought through. The argument of 'let's pass the Bill and decide later who gets to decide war' demonstrates the extent to which fundamental issues remain unresolved. The people of the United Kingdom have a right to know who will be deciding such issues.

This also leads to an over-arching question as to our constitutional arrangements. To what extent can the relationship between two elected chambers be accommodated within the context of our present uncodified constitution? The Joint Committee on Conventions made it clear that in the event of the second chamber being elected, the conventions governing the relations between the two chambers would need to be revisited.

These are profound questions on which the White Paper and hence the draft Bill are silent. The White Paper starts from a position that is untenable, inviting us to proceed on the basis of assumptions that are largely unspoken and, in our view, are largely untenable.

THE EXISTING HOUSE

We have addressed the issue of what is wrong with the White Paper and the draft Bill. We have not begun by addressing what is right with the present House. The House of Lords as it presently operates adds value to the political process. It complements the work of the House of Commons rather than seeking to challenge it. It fulfils tasks that the Commons may not have the time or political will to fulfil, enabling the Commons to focus on fundamental issues of principle and to act as the political cockpit of the nation, ensuring that the views of electors are heard.

The House of Lords is able to add value by virtue of the fact that it is composed in a manner that complements rather than duplicates the composition of the elected House. More than 20 per cent of the members – the cross-benchers – sit independently of political parties. Many members, not necessarily confined to the cross-benches, are appointed because of their expertise or their extensive experience. The absence of election tempers the effect of party conflict.

Election would change fundamentally the terms of trade between the parties, and the members, in the House and add nothing in terms of the functions of the second chamber. It would undermine the direct and sole accountability held by the House of Commons as the body through which Government is chosen and is answerable for public policy. Lord Howe of Aberavon has repeatedly asked the question, 'what benefit would an elected House deliver that is superior to that delivered by the existing House?' The answer is consistently avoided, with the Government falling back on the claim that election is necessary as the 'democratic option'. But what of the non-elected judiciary and, above all, what of the monarchy? Is their legitimacy vitiated by their not being elected? Once the claim that it is the 'democratic option' is dispelled, it then behoves the Government to answer Lord Howe's question. The answer may render the Bill unnecessary.

REFORM

We oppose the Bill because it would result not in reform of the existing House but its abolition. For the reasons detailed above, the case for such a radical step has not been made. We favour reform but reform that would enable the House to fulfil its existing functions more effectively. There is always scope for improvement. There are some provisions of the Bill that may be extracted and on which we believe a consensus may be mobilised. These mirror the provisions of Lord Steel's House of Lords Reform Bill. We recommend extracting those provisions and pursuing them independently of the contested provisions for election.

We recognise that some regard changes to the existing House as necessary but not sufficient. Others regard them as necessary and sufficient. What both agree on is that they are necessary. The Political and Constitutional Reform Committee of the House of Commons has recommended that the Government proceed with these provisions in the interim. We endorse the Committee's recommendations. This, at least, is one area where consensus may be found.

31 October 2011

Written evidence from Lord Grenfell (EV 71)

The question of democratic authority

In their Foreword to the Draft Bill, the Prime Minister and the Deputy Prime Minister write that *"The House of Lords performs its work well but lacks sufficient democratic authority"*, since *"those who make the laws of the land should be elected by those to whom those laws apply."* In other words, an unelected House of Lords cannot by definition claim the necessary legitimacy to legislate. This latter, very doctrinaire, position can and should be challenged. Why?

John Locke took the view that political legitimacy derived from popular explicit and implicit consent; that the government is not legitimate unless it is carried out with the consent of the governed. I entirely accept that, but I would argue that where the people are prepared to entrust a legislative function to a non-elected chamber of parliament, their consent to such an arrangement confers political legitimacy on that institution.

In an entry entitled *Political Legitimacy*, dated April 29, 2010, in the *Stanford Encyclopaedia of Philosophy*, the author, Fabienne Peter of Warwick University, observes that in contemporary political philosophy, not everyone agrees that democracy is necessary for political legitimacy. My own view is that it is not *always* necessary, and that the House of Lords is a case in point. I suggest that two of the several theories of political legitimacy explored by the author can usefully be considered when challenging the assertions in the Draft Bill's Foreword.

Under the theory of 'democratic instrumentalism', the definition of what is an ideal outcome provides the standard that determines political legitimacy. In other words, if democracy does not contribute to the identification and achievement of the best outcomes, it is not necessary for political legitimacy. Democratic instrumentalists argue that there is some ideal egalitarian distribution, and that the legitimacy of political institutions and of the decisions they take depends on how closely they approximate the ideal egalitarian distribution. For the democratic instrumentalist, and I quote from the Stanford entry:

"*If sacrificing political equality allows for a better approximation of equality overall, then this does not undermine legitimacy."*

Applied to the House of Lords, this might suggest that the outcomes delivered by an all-hereditary House could in theory have passed the political legitimacy test. That does not in itself invalidate a theory based on the quality of outcomes. It does, however, raise the question of whether, in the contemporary political environment, quality of outcomes is alone a sufficient justification for declaring democracy not necessary for political legitimacy. In my view it is not a sufficient justification by itself, but it is an indispensable half of a whole claim to political legitimacy. The other half is found in the so-called 'rational proceduralist concept' of democratic legitimacy which holds that the fairness of the democratic decision-making process is not sufficient to establish the legitimacy of its outcomes. I find that persuasive but would add that 'fairness' is nonetheless indispensable to establishing that legitimacy.

In seeking to apply the concepts of 'democratic instrumentalism' and 'rational proceduralism' to the political legitimacy of the House of Lords, it seems to me that that legitimacy derives from a marriage of the two. The legitimacy of the Lords scrutiny and revising role depends on both a set of procedural values and on the substantive quality of its outcomes. Its deliberative decision-making procedures, recognising the supremacy of the elected chamber, coupled with the high level of expertise provided by its composition, ensure respect for procedural values and encourage high quality outcomes.

I return to my opening argument that where the people are prepared to entrust a legislative function to a non-elected chamber, their consent to such an arrangement confers political legitimacy upon it. It seems to me to follow that unless and until it chooses to withdraw that consent, the chamber enjoys that political legitimacy. The Foreword to the Draft Bill seems to suggest that there can be no political legitimacy where there is a lack of democratic authority. I question this assertion on the grounds that if the House can demonstrate its political legitimacy in the terms I have used above, a claim that it lacks sufficient democratic 'authority' must surely fall.

That said, can the House of Lords make a persuasive case to the public for the House's continued enjoyment of that consent? I argued in the chamber on 29 June 2010 (at column 1693) that such a case could be made.

"*In simplest terms, the House of Lords seeks to meet the electorate's requirement that the legislation promised by the party that wins office is fashioned to the highest possible standard consistent with the will of the elected House, whose primacy we unquestionably acknowledge. With few powers to exercise, and rightly so, we Members of the Lords participate in the legislative process by drawing on our experience and applying our expertise to help ensure delivers to the people what it has the right to expect: high quality, implementable Acts of Parliament. It has yet to be proven to me that the fact that we are an appointed House disqualifies us from performing that crucial democratic function."*

I still hold strongly to that view while readily accepting that others take a different view. It is precisely because there are different views on what constitutes political legitimacy that I find the failure of the authors of the Foreword to recognise the existence of any other view than their own very unhelpful and not at all conducive to the pursuit of a profound and informed debate on the future of the House.

1 November 2011

Written evidence from the Archbishops of Canterbury and York (EV 72)

General principles

1. More than a decade ago, the then Archbishops' submission to the Royal Commission on House of Lords Reform said that **the test of reform was whether it would enable Parliament as a whole to serve the people better**. That has remained the consistent position of Church of England submissions since.

2. As with any constitutional change, it is important, therefore, that there is clarity over the problems that reform is intended to address and a reasonable measure of assurance that the proposed solutions will work and avoid unintended consequences. Fundamental changes to how we are governed should also command a wide measure of consent within the country as well as in Parliament.

3. In his initial response of May 2011 to the White Paper and Draft Bill the Lords Spiritual Convenor, the Bishop of Leicester, said: "***Some reform of the Lords is overdue***, *not least to resolve the problem of its ever-increasing membership. But getting the balance of reform right, so that we retain what is good in our current arrangements, whilst freeing up the House to operate more effectively and efficiently, is crucial.*"[304] In particular, the proposal to reduce the overall size of the House is welcome. But it is far less clear that wholesale reform of the House of Lords along the lines now envisaged gets the balance right.

4. For so long as the majority of the House of Lords consisted of the hereditary peerage there was manifestly a compelling case for reform. Whatever the arguments for appointment as against election there was no cogent case for a legislature where the hereditary voice was potentially predominant – indeed still around two-thirds of the total membership in 1997.

5. The 1999 legislation has, however, largely addressed that issue. The appointed component of the House has now increased from around a third in 1997 to around 85%. A case can certainly be made for completing the process of reform and ending the practice of reserved places for hereditary peers. Introducing retirement ages for appointed peers and the ability for them to resign also makes sense.

6. The more fundamental issue however, is the rationale for going beyond this and substantially reducing - or even abandoning - the appointed component in favour of a partly or wholly elected House of Lords.

7. We recognise both the nature of arguments for election motivated by concerns for democratic legitimacy, and the political consensus reflected in the 2010 General

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[304] *Statement on Government white paper on House of Lords reform*, 17/5/11, online at: http://bit.ly/l0oR2u

Election manifestoes. Any reform that enables parliament as a whole to maintain a wide and enduring level of public respect is likely to attract our support. However, the declared view of the three main parties that the Upper House should be wholly or mainly elected does not appear to proceed from any settled view as to the fundamental purpose of the second chamber of the legislature, what its powers should be and – crucially - what its relationship should be with the House of Commons.

8. The Church of England and its bishops claim no special expertise in relation to systems of governance. The sheer diversity of constitutional arrangements across the democratic world should, however, in our view, instil a sense of humility in relation to claims that any one approach is manifestly superior to another. It also makes us cautious of changes which derive their justification from abstract theory or supposed universal norms.

9. Constitutions appear to reflect the particular histories, cultures and circumstances of each nation. The fact that ours has evolved over a particularly long period is not an argument against its further significant evolution. But it does seem to us to create a presumption in favour of adaptation and specific reforms to address manifest problems rather than far-reaching changes which sweep away all the familiar landmarks.

10. At a time of considerable public concern over our national political life and the conduct of those who serve the nation in Parliament, it must at the very least be highly questionable whether a reformed House consisting very largely or wholly of those elected from party lists would increase public confidence in our constitutional arrangements, or be a recipe for effective and accountable government.

11. Nor at a time of great economic uncertainty, when very substantial sums are being removed from the public purse, does it seem easy to justify a salaried House at substantially increased cost to the Exchequer, in the process, depriving Parliament of the expertise (brought far less expensively) by a very substantial appointed component.

12. **In summary, if, as we believe, the second chamber should remain essentially a revising chamber and if, as we also believe, the primacy of the House of Commons is to be maintained, the argument that such a chamber can only be effective and have proper legitimacy if it is wholly or mainly elected is no more than an assertion**.

Powers, Functions and Legitimacy

13. In their speeches in the House of Lords on 29th June the Archbishop of York and the Bishop of Leicester argued that there was a compelling case for retaining a second chamber that, both in its powers and composition, was distinctive from the House of Commons.

14. The Archbishop of York identified three objectives for the second chamber: **to ensure the just use of power entrusted to the government of the day,** which

necessarily commands a majority in the House of Commons; **to ensure true and impartial accountability**; and **to represent the breadth and diversity of civil society and intellectual life.**

15. Consistent with this, the Bishop of Leicester underlined the crucial role of the second chamber in scrutinising and revising government legislation with a degree of independence not possible in the House of Commons.

16. It seems to us that reforms which bring the second chamber further under the control of the main political parties, especially if the governing party or coalition can rely on a majority in the second chamber, will inevitably damage the independence of the House of Lords and its ability to require governments to think again about specific legislative proposals.

17. There are several conclusions that could fairly be drawn from the claim made in that debate that over the past five years some 40% of the legislative amendments passed by the Lords against the advice of the Government have subsequently passed into law. They do not include casting doubt on the effectiveness of the present House of Lords as an effective second chamber.

18. The objective embodied in Clause 2 of the draft bill- to maintain the present relationship between Commons and Lords- seems to us to be right but inconsistent with the rest of the legislation. Once the second chamber were granted electoral legitimacy- not least under a proportional system which many would see as conferring greater democratic legitimacy than the first past the post system- the two Houses would over time increasingly find themselves in conflict with each other. In this respect we concur with the relevant conclusion of the November 2006 report of the Joint Committee on Conventions, chaired by Lord Cunningham.

19. Moreover, it seems to be the common experience with all legislative assemblies created in recent times (the European Parliament, the devolved bodies) that the moment their members are elected they demand more powers. The Royal Commission expressed its strong opposition '*to a situation in which the two Houses of Parliament had equivalent electoral legitimacy. It would represent a substantial change in the present constitutional settlement in the United Kingdom and would almost certainly be a recipe for damaging conflict.*'[305] Whatever reservations there might now be about the specific proposals of the Royal Commission, its conclusion on this point seems to us compelling.

20. Speaking in the Lords in 2009 the Bishop of Liverpool described the value of the present arrangement in the following way: "*We need to recover the unity of Parliament in the constitutional debate—two Houses, but one Parliament: a Commons that is elected and with the authority of having the last word, and a revising Chamber to advise, revise and refine the legislation….A mutuality between the two Houses, each distinctive in character and composition but mutually*

[305] 11.6, *A House for the Future*, report of the Royal Commission on the Reform of the House of Lords (2000)

dependent, the elected looking to the other for the wisdom of experience, the appointed deferring to the elected and acknowledging their authority to have the last word as the voice of the people: one Parliament of two Houses under the Crown, as a sign that our own accountability is in two directions; below to the people, above to the source of our moral intuition."[306]

21. **We are concerned that the proposals in the Draft Bill may, by leading inevitably to a more assertive approach to conflict and disagreement with the Commons, make it harder for the institution as a whole to sustain the trust and confidence of the electorate**. The then Bishop of Durham, also speaking in the Lords in 2009, said: "*Legitimacy does not arise just from having people vote for you. Legitimacy is also sustained by doing the job and being trusted. Public consent and approval can come through the ballot box, or in other ways. When you do not get the second form of legitimacy, sustained trust, people lose interest in the first, the ballot box."* [307]

22. Selection as a party candidate for election to a second chamber of the kind proposed in the draft bill would in all probability become a consolation prize for those who failed to gain selection for a seat in the House of Commons. Whilst the provision in Clause 55 to introduce restrictions on former members being elected as MPs is a useful guard against the use of the House of Lords as a springboard to launch a bid to become an MP, the lack of any similar restrictions on MPs seeking to stand for election to a reformed House of Lords is notable. It is not clear what substance there is to the assertion in paragraph 146 of the White Paper that the reformed House of Lords should "*attract individuals with different qualities from members of the House of Commons*".

Other provisions in the draft bill

23. The proposal to establish a **statutory Appointments Commission** to appoint non-party political members of the Lords is welcome. Our support for this measure dates back to the Church's response to the Royal Commission in 2000.

24. Whilst we understand the rationale for the powers in Part 5 of the Draft Bill to enable the Prime Minister to appoint Ministers to a reformed House of Lords supernumerary to overall numbers, it is crucial that such powers are used sparingly and not as a means to ensure majorities in the Upper House. **There is a case for inserting a maximum number in the bill for Prime Ministerial appointees rather than leaving this for secondary legislation.**

25. Retaining the peerage as an honour and breaking its link to membership of the second chamber seems right.

26. We note that the White Paper leaves the question of identifying the best **transitional arrangement** between the existing and reformed House of Lords to peers to decide collectively. Of the options set out, we believe that on balance the one used in the Draft Bill is the most preferable, though we have some points of detail in relation to the transitional arrangements for the Lords Spiritual (see Annex).

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[306] Lords Hansard, 11/6/09, Col. 760

[307] Lords Hansard, 11/6/09, Col. 765

27. We note the **disqualification provisions** in Part 7 of the Draft Bill. The serious offence condition in Clause 47 sets a sentence of more than 12 months as the bar for disqualification. This seems too high in the interests of retaining public confidence and propriety.

28. We welcome the measures in Part 8 that allow for the **expulsion, suspension and retirement of members of a reformed House of Lords**. Lords Spiritual have advocated for the early and separate adoption of similar provisions by Government, the speedy introduction of which would be in the best interests of both the House of Lords and Parliament more widely. In that regard we would suggest that the Private Member's Bill of Lord Steel (which also contains provision to end hereditary peer by-elections) is worthy of Government support.

29. If fundamental rather than evolutionary reform of the House of Lords is to be examined, the question of civil society representation does, in our view, require closer deliberation than is evident in the Draft Bill and White Paper. The need is to see how this might be further broadened. It is significant that the Lords already does well across a range of diversity indicators, particularly when compared with the Commons. As the Bishop of Leicester said in his response to the publication of the Draft Bill: "*at its best the House of Lords is uniquely a national forum in which the voices and concerns of all strands of civil society can be convened and heard*." [308]

30. The White Paper and Draft Bill focuses in large part on questions of election and appointment, predicated on existing systems of party political representation. If there is to be far reaching reform, we would wish to see wider exploration of the possibilities for parliament to increase the breadth and diversity of representation by civil society and intellectual life.

31. Responsibility for ensuring a breadth of civil society representation is already a matter for the existing Appointments Commission. It may become harder for civil society bodies in the voluntary, community and charitable sector to have a voice in parliament if the proportion of appointed members is to be so radically reduced.

32. The rooted presence of the Church of England in every community of England and its committed membership of nearly one million regular weekly attendees give its bishops personal access through their diocesan networks to a wider spread of civil society organisations and experience than many other comparable public figures. That informs the distinctive role they are able to play as Lords Spiritual and underpins the willingness of the Established Church to continue to make a contribution to a reformed Upper House in which there should continue to be a voice for civil society.

The Lords Spiritual and religious representation

33. **We welcome the proposal in the White Paper and Draft Bill for continued Spiritual representation and a role in a reformed House of Lords for the Church of England as established by law (paragraph 92 of the White Paper). We also wish to see, through the appointments process, the presence of leaders from other denominations and faiths**.

34. Speaking in a parliamentary debate on House of Lords reform in 2007, the Archbishop of York described the constitutional and historical place of the Lords

[308] *Statement on Government white paper on House of Lords reform*, 17/5/11, online at: http://bit.ly/l0oR2u

Spiritual as follows: "*The Queen in Parliament is sovereign, but is also Queen in law, in council, and in the Executive. That is the constitutional Arrangement…The Lords Spiritual remind Parliament of the Queen's coronation oath and of that occasion when the divine law was acknowledged as the source of all law. We do not see ourselves as representatives, but as connectors with the people and parishes of England. Ours is a sacred trust—to remind your Lordships' House of the common law of this nation, in which true religion, virtue, morals and law are always intermingled; they have never been separa*ted." [309]

35. By their presence and in leading the House in prayer at the start of each sitting, the Lords Spiritual are a reminder of the historic understanding that, as a people, we are still governed 'by the Queen in Parliament under God'. Their presence is a further reminder that our key constitutional institutions, the monarchy, our systems of justice, education, healthcare and our charitable sector were all shaped by the Christian tradition.

36. While much voluntary and charitable activity takes place under the auspices of the large service-delivery (and now largely secular) charitable organisations, a substantial proportion of voluntary and community activity in this country continues to be carried out under the auspices of the Church of England, other Christian denominations and other faiths.

37. There is therefore a compelling case for maintaining within the second House the presence of religious leaders who can speak for that substantial part of civic society, as well as contribute thoughtfully on matters of ethical importance..

38. The trend towards increasing engagement and participation by Lords Spiritual in the day to day business of the House - identified in our submission to the 2008 White Paper - has continued in recent years. At present Lords Spiritual are to be found on four parliamentary committees, including the Joint Committee to which this submission is made.

39. Whilst the Lords Spiritual are bound together by their collective identity as bishops of the established Church of England, they come to parliament not as peers but through their historic identity as independent 'Lords of Parliament'. There is no 'Bishops' Party' and whilst bishops take advice, no whip is either imposed or observed that binds their activities to the expressed view of their diocese, the General Synod or Archbishops' Council.

40. On legislative matters Lords Spiritual are as much to be found taking divergent views as uniform ones – and the parliamentary record shows that they will speak and vote accordingly. As the Lords Spiritual do not conceive of themselves as a 'bloc', or behave as one, there has been only a handful of occasions when, in very close votes, their votes have been decisive.

[309] Lords Hansard 13/3/07, Col. 580.

41. The number of Lords Spiritual has remained constant at 26 since the Diocese of Manchester Act of 1847, but that number has, over time, represented a varying proportion of the total membership of the House as its size has ebbed and flowed. Before the introduction of life peers in 1958 it represented just over 3% of a total House of around 800. By 1999 it was a mere 2%, but following the removal of most of the hereditaries it rose again to 4.2%. Since then it has gradually declined as the size of the House has increased.

42. Through its established position, and through generations of hard work building bridges inside and between mixed communities, the Church of England is a key agent of interfaith dialogue and cooperation in all the major cities of England. The Government-backed Near Neighbours programme is both an acknowledgement and a consequence of the value and strength of those networks. Many leaders of other faith communities value the fact that we have an established Church with a role in Parliament. The Lords Spiritual also fulfil an important role in the legislature as an enduring voice for the concerns of people of all faiths, especially at a time of increasingly secularising currents in our public institutions and services.

43. Ever since our May 1999 submission to the Royal Commission chaired by Lord Wakeham, the Church of England has, however, been consistent in its view that an increased presence from other denominations and faiths would be welcome in a reformed House of Lords.

44. In 2000 the Archbishops endorsed the view of the Royal Commission that there should be broader denominational and faith representation in the House of Lords, and in their response to the 2003 Government consultation explained some of the rationale: "*in an era of growing interest and concern about relations between faiths, their approach to moral and ethical issues and their impact on the modern world, the House of Lords has considerable potential as a forum for serious and well-informed debate on these matters."*[310]

45. Like the Commission - and successive Government documents – we acknowledge that providing reserved places for formal representatives of other denominations and faiths would be problematic in practice. But **we believe that there is a strong case for placing the Appointments Commission under a duty to ensure, among other things, the presence of those from across the United Kingdom who have or have had senior responsibility in churches and faiths other than the established Church.**

46. If, as successive governments have accepted, there is a continuing benefit to this country in having an established Church, the presence of the Lords Spiritual in the House of Lords is one of the most important manifestations of that special relationship between Church and State.

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[310] Response from the Archbishops of Canterbury and York, on behalf of the Church of England, to the Consultation Document "Constitutional Reform: next steps for the House of Lords", December 2003.

47. The Church of England, by law established, holds central to its mission a commitment to minister to the whole community, to people of all faiths and none. According to Professor Tariq Modood: "*the minimal nature of the Anglican establishment, its proven openness to other denominations and faiths seeking public space, and the fact that its very existence is an ongoing acknowledgement of the public character of religion, are all reasons why it may be far less intimidating to the minority faiths than a triumphal secularism*."[311] Whilst in his submission to the Royal Commission, the Chief Rabbi, now Lord Sacks, said *"disestablishment would be a significant retreat from the notion that we share any values and beliefs at all. And that would be a path to more, not fewer, tensions. Establishment secures a central place for spirituality in the public square. This benefits all faiths, not just Christianity*."[312]

48. The established status of the Church would not be at an end if the Lords Spiritual no longer had a place in parliament but its character would be significantly changed and weakened.

49. Some consequential issues would also have to be addressed. Since 1919 the Church of England has, through its own national legislature (now the General Synod) had power to pass Measures which, once they have obtained Parliamentary approval and Royal Assent, have the equivalent effect to Acts of Parliament. Draft Measures are scrutinised by the Ecclesiastical Committee of Parliament, consisting of 15 members of each House, and are then submitted to the House of Commons and House of Lords for approval.

50. In the Commons the relevant motion is then moved by the Second Church Estates Commissioner – traditionally a member of the governing party who is appointed by the Queen and must be a communicant Anglican. In the House of Lords the relevant motion is moved by one of the Lords Spiritual.

51. More detailed comments on Part 4 of the draft bill, paragraphs 91-103 of the White Paper and paragraphs 194-226 & 488-492 of the Explanatory Notes are in the attached Annex.

6 October 2011

[311] Tariq Modood, "Establishment, Multiculturalism, and British Citizenship", *Political Quarterly*, 65 (1994),

[312] Written submission to the Royal Commission on the Reform of the House of Lords by Dr. Jonathan Sacks, Chief Rabbi of the United Hebrew Congregations of Britain and the Commonwealth (1999).

Annex: The Lords Spiritual – Detailed Comments

1. **We agree with the proposals in the Draft Bill (Clause 65 (3)) that the Lords Spiritual should continue to be diocesan bishops of the Church of England.** This is both a continuation of a longstanding constitutional arrangement and a reflection of the historic settlement that bishops come to the House as individual Lords of Parliament and not formal 'representatives of the Church of England'.

2. The ambiguity in the definitions contained in paragraphs 91 and page 8 of the White Paper is not entirely helpful (they say respectively: "*Although historically they sit as independent members of the Lords they are widely regarded as representatives of the Church of England*" and "*in the reformed House of Lords, there would be up to 12 places for representatives of the Church of England*").

3. We welcome the proposed continued parity between the rights and powers afforded to the Lords Spiritual and those enjoyed by all other members of the House, appointed and elected. The Lords Spiritual are committed to playing a full and active role in the life and work of the House and this will enable that role to be performed to its fullest potential.

4. **We agree that, as with the proposal for Government Ministers in the Lords, the numbers of Lords Spiritual should be supernumerary to the overall size of the House.**

5. The Draft Bill proposes that after all reforms have been completed the House should contain 12 Lords Spiritual, with the reduction from the present 26 being introduced in three stages across the transitional period. The draft bill proposes that 12 would comprise five "Named Lords Spiritual" (those who have existing membership of the Lords by virtue of their occupancy of senior sees, namely the two Archbishops and the Bishops of London, Durham and Winchester) and seven "Ordinary Lords Spiritual" (diocesan bishops of the Church of England).

6. In both our response to the Royal Commission and to the 2008 White Paper, we expressed our view that any reduction in the number of bishops below 20 would pose difficulties in terms of maintaining current levels of service to the House. It would place greater burdens on the remaining bishops in balancing their diocesan and parliamentary responsibilities, necessitate a change in the seniority system by which bishops come into the House, and require an overhaul of the duty bishop system that has been in place for over a century.

7. However, given the proposed reduction in the size of the House we accept that these difficulties will have to be faced and that the Church of England will have so to arrange matters that 12 of its bishops will be able to serve the reformed House effectively.

8. We note that the White Paper (paragraph 12) states that "*the Government expects members of the reformed House to be full-time Parliamentarians*", but also the passing reference within the explanatory notes (paragraph 490) to the membership of the Lords Spiritual being "*both ex officio and part-time*".

9. We believe that, alongside the professional full-time politicians, there should be ample room within a reformed House of Lords for a significant number of members who are informed by a diverse range of outside experiences and interests. We hope that a reformed House along the lines proposed would continue to respect and understand that many amongst its number, including bishops, will continue to have regard to their significant outside commitments – and that this should be considered a positive attribute for informed parliamentary debate.

10. We support the continuation of the principle that translation from one diocese to another should not affect a Lord Spiritual's continued membership of the House.

11. We agree with the Draft Bill's proposal (Cl. 26) that there continue to be a distinct category of Lord Spiritual (described as "Named Lords Spiritual") with membership linked to occupancy of a senior see. We agree that Named Lords Spiritual should continue to receive a writ of summons automatically, mirroring the present arrangement.

12. **We have more doubts whether continuing with the arrangement of five reserved places for the occupants of the senior sees would still be right for a Bishops' Bench rather less than half its former size**.

13. Occupants of senior sees inevitably have greater competing outside commitments than other bishops, and in the interests of maximizing the continued effectiveness of the service that the Lords Spiritual offer parliament there may be a case for a greater proportion of the membership of the Bishops' Bench to be drawn from the numbers of the other diocesan bishops (categorized as "Ordinary Lords Spiritual").

14. We recognize that this is a matter on which the Archbishops, Lords Spiritual and wider Church would wish to reach a settled view before a final figure for Named and Ordinary is commended to the Government. But we note that there are three Lords Spiritual (the Archbishops and the Bishop of London) who are members of the Privy Council and one alternative to the provisions in the draft bill would be for these three sees to be Named, leaving nine places to be filled from the other 39 English diocesan sees.

15. The Draft Bill proposes that the reduction from 26 to12 Lords Spiritual should be introduced over the two transitional periods, with 21 bishops entering the first period, 16 entering the second and 12 entering all subsequent parliaments. Clause 30 (7) prevents the Church replacing any of the Ordinary Lords Spiritual during the transitional periods unless a failure to do so would result in the total number of bishops falling below 12.

16. The Government has proposed that the present number of 26 Lords Spiritual would reduce to not more than 21 at the beginning of the reform process, not more than 16 at the end of the first Parliament and not more than twelve at the end of the second Parliament. Given the pattern of episcopal retirements in recent years the inevitable effect of Clause 30 (7) would be to hasten the timescale in which that baseline of 12 would be reached.

17. As an illustration, in the years 2006 - 2011 there were 20 departures from the Bishops' Bench, 18 of which would be categorized as from the 'Ordinary Lords Spiritual'. The combined transitional period outlined in the Draft Bill is for a maximum of ten years.

18. Clause 30 (7) could therefore mean a more rapid transition from the current to the reformed House for the Lords Spiritual than for those on other benches. This is probably an unintended consequence of what the Government has proposed and, without changing the overall numbers, we believe that some greater flexibility over the transitional mechanism may be needed.

19. The White Paper and Draft Bill (at Clause 27) place a requirement on the Church of England to make the selection of diocesan bishops to serve as Ordinary Lords Spiritual "*in whatever way it considers appropriate*".

20. 27 (7)-(9) sets out a mechanism by which the Church of England's choices would be formally notified; namely by requiring the Secretary General of the General Synod to notify the Clerk of Parliaments before the beginning of each electoral period (or as soon as practicable if during an electoral period) who the Church had selected as its Ordinary Lords Spiritual for the next Parliament.

21. **We agree that it is sensible for the legislation to specify a notification mechanism and not to seek to prescribe the mechanism adopted by the Church for making appointments from among its diocesan bishops.**

22. These provisions would afford the Ordinary Lords Spiritual the opportunity to consider the natural break offered by 5-yearly elections to the House, to decide whether to continue their membership into the next electoral period, or whether to resign their membership of the House at that point (whilst potentially continuing as a diocesan bishop).

23. They would also provide the Church with the ability to select diocesan bishops for membership of the House on the basis of a range of factors including, though not exclusively, any particular expertise, national roles held within the Church, diversity of Spiritual representation, the requirements of the diocese, and geographical variation.

24. The method by which the Ordinary Lords Spiritual would be selected requires further reflection on the part of the Archbishops, Lords Spiritual and the wider Church, given

that the inevitable move away from the present, automatic, seniority based system raises a number of important issues.

25. At Clause 28 (1) the Draft Bill proposes that going in to the first transitional period, a person can only be selected as an Ordinary Lord Spiritual if "*immediately before the relevant Parliament is dissolved, the person is entitled by virtue of being a bishop to receive writs of summons to attend the House of Lords*".

26. Going in to the second transitional period the Draft Bill states at Clause 28 (4) that Ordinary Lords Spiritual must be drawn from the existing pool of Lords Spiritual. After the transitional periods, in a fully reformed House of Lords, there is no requirement for the seven Ordinary Lords Spiritual to be drawn from those already sitting in that capacity in the preceding parliament. The effect of this is to afford the Church of England thereafter the opportunity to determine which seven diocesan bishops will make up the Ordinary Lords Spiritual at the beginning of each parliamentary term, for the duration of that term.

27. Given the intention expressed in Clause 27 (6) and elsewhere to allow the Church of England to determine its own method of selection for Ordinary Lords Spiritual for each coming parliament in a fully reformed Upper House – and replacements for those that retire or resign mid-term – **there is a case for affording the Church the broadest possible choice from among its diocesan bishops at an earlier opportunity than at the end of the two-term transitional process.** This would require the removal of Clause 28 (4) and clarification that Clause 28 (1) referred to all diocesan bishops and not simply existing Lords Spiritual.

28. This would enable the Lords Spiritual in the transitional parliaments to be selected from the widest possible pool of those who were diocesan bishops at the time. This could be of particular significance that if the General Synod were to approve the present draft legislation to enable women to become bishops.

29. We agree with the proposal that in a fully reformed House of Lords and during the transitional periods Ordinary Lords Spiritual should be permitted to retire from the House of Lords whilst continuing as a diocesan bishop of their see.

30. **We agree that Lords Spiritual should not receive a salary** given the special (ex-officio and part time) status of the bishops in the House. We agree that Lords Spiritual should continue to be allowed to claim reimbursement for expenses necessarily incurred in the course of their parliamentary duties.

We agree that the Lords Spiritual should be subject to the same disqualification provisions as other members of the reformed House of Lords. We question whether the exemptions proposed by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension are necessary. We did not seek them and unless there are legal or constitutional reasons of which we are not aware, we believe that the Lords Spiritual should be in the same position as other members of the House on these matters.

Written evidence from Lord Low of Dalston CBE (EV 73)

1. The question of function is prior to those of powers and composition. The principal function of the House of Lords is to act as a revising chamber. Though mindful of the many other issues on which the Joint Committee is seeking evidence, I just want to address one question - how to achieve a composition which is most appropriate for a revising chamber. It is submitted that the qualities required are more those of expertise and experience than the more nebulous quality of representativeness, and that these are more likely to be secured by a system of appointment or selection than one of democratic election. It's more like choosing the best person for the job - the person whose skills and experience best match those required - than electing someone to represent you.

2. That being the case, I would be relatively content for the method of recruiting to the second chamber to remain broadly as it is. But it is argued that there is a problem of legitimacy. I think this is more a matter of perception than reality. The bases of legitimacy mentioned in the last paragraph are not inherently better or worse than one another, they are just different. Whether they are better or worse depends on the purpose for which they are being employed. It is my contention that a method of appointment or selection is more fit for purpose if it is the members of a revising chamber you are selecting. However it is clear that the idea of election has gained a certain momentum, and it is the purpose of this submission to suggest a method of recruitment to the second chamber which, if an alternative to the present system is to be recommended, would combine many of the attractions of a system of election with those of appointment by formalising and greatly broadening the appointment process.

3. But first, the inappropriateness of the present system of election for Parliamentary elections using geographical constituencies, even if modified - perhaps especially if modified - to incorporate an element of proportional representation, cannot be emphasised too strongly. It would tend to throw up the same kind of career politicians who stand for the Commons and not those with the kind of expertise and experience being sought for the second chamber. The Lords would soon become more politicised and lose some of the qualities for which it is currently particularly valued: No single party holds sway there, members are more independent-minded, and debates are, as Wakeham put it, “less adversarial, better tempered and better informed” as a result. If the same system were to be used as is used for electing the Commons, the Lords would tend to duplicate the Commons and thus not add value. There would for the first time be the possibility of “turf wars” at constituency level between MP's and peers, and if a different system of election were used, especially if it involved an element of PR, the Lords could soon begin to rival the Commons' primacy.

4. I would propose a system of electoral colleges covering the main branches of civil society - what might be termed “constituencies of expertise” - the law, medicine, the arts, sport, education, the armed services, business, trades unions, the third sector and so on. They could nominate direct to a reformed House of Lords or, as I believe happens in Malaysia, they could submit their nominations to a statutory appointments commission which would make the final selection. The latter method would probably be preferable in order that nominees might be independently and impartially vetted to

ensure that they are fit persons to be appointed. The commission would have the task of determining the constituencies of expertise and which organisations should have nominating rights within them. They should also validate against agreed criteria the procedure which nominating bodies employed for arriving at their nominations. The new system could be phased in in much the same way as the Government proposes for its system based on elections. The constituencies of expertise would nominate a third of the candidates to which they were entitled every five years until they reached their total entitlement. They would then continue to nominate a third of their entitlement as a third retired every five years in order to achieve a system of staggering or rotation.

5. I have not gone further in elaborating my proposal here without knowing whether it is likely to evoke any interest, but it would not be difficult to do so if there were to be a positive response either from the Joint Committee or from Government, when questions such as the size of the House and the number of constituencies would have to be gone into. The most authoritative indications to date have not been very encouraging: The Wakeham Commission was initially attracted, but gave up in view of what it regarded as insuperable practical difficulties. The Constitution Unit at University College London have been similarly dismissive. But I think there is more to be said for the proposal than these authorities allow. Sir John Major gave his support to the central idea behind constituencies of expertise when he spoke to crossbench peers a couple of years ago. When challenged on grounds of practicality by a member of the Wakeham Commission, he said he wasn't convinced. He said he didn't think it could be beyond the wit of man to come up with a workable scheme, and neither do I. Take the question of determining the constituencies of expertise. The House of Lords Library has a classification of peers between 1958 and 2008 in 19 categories (see appendix 1). We could do a lot worse than use this as a starting point.

6. There is more interest out there than it seems people are aware of. In 2008, Frank Field MP produced a pamphlet entitled "Back from Life Support: Remaking Representative and Responsible Government in Britain" which adumbrated a scheme along very similar lines to that advocated in this submission. Although it is still very sketchy and has to some extent been overtaken by events, I attach the key extract at appendix 2.

7. The organisation Respublica has advanced proposals for a scheme which is a third elected, a third appointed from civil society and a third nominated by political parties. This would have the disadvantage of a hybrid model in creating what would almost certainly be seen as two tiers of members, with implications for the legitimacy of close votes where the appointed members appeared to determine the result. But I mention it to draw attention to the diversity of thinking which exists as an alternative to the Government's which deserves to be taken account of. I have also received a number of thoughtful submissions from members of the public urging an alternative to the traditional election in traditional constituencies.

8. I am also aware that the Joint Committee has received two further submissions in a similar vein - from John Smith and Martin Wright. My ideas are closer to those of Mr Smith than those of Mr Wright, which I think create another complex layer of administration in trying to bring the general public into voting, ask too much of voters and for these reasons do verge on the impractical. But the submissions of Mr Smith

and Mr Wright do enable me to make a couple of other points:

8.1 I have deliberately spoken of "expertise and experience" as the qualities which qualify a person for membership of the second chamber. By experience I really mean experience of government, and this is important. There is some tendency for people to speak as if the ideal House of Lords would be a politician free zone. I do not take that view. I think the peers who come to the House after a career in politics, often at the highest level, contribute a vast amount to our debates and we would lose it at our peril. It is just one of the many merits of Mr Smith's proposal that he recognises this and in fact proposes a "Parliamentary College" twice the size of all his other colleges except his General College.

8.2 We should not delude ourselves that a system of the kind I am suggesting makes universal suffrage in nominating to the House of Lords possible. But in being much more broadly based and diversified than the present appointments process it goes much further in the direction of popular involvement than anything we have known to date.

9. I hope the Joint Committee will give serious attention to the unsuitability of "traditional" electoral systems for populating the House of Lords and to proposals for alternatives based on the "constituencies of expertise" idea, and that it will have things to say about them should a system of election be decided upon. I can only speak for myself of course, but I should be happy to come to meet the Committee to discuss the proposals contained in this submission if that were thought to be helpful, and it seems to me that a session involving Messrs. Smith and Wright as well as myself could well make a very useful session.

11 November 2011

Appendix 1: Categorisation of Peers

The following 19 categories are used to classify existing peers in the House of Lords Library Note Peerage Creations, 1958-2008 (LLN 2008/019)

Background	Description	%
Finance	Banking, insurance, accountancy etc.	3
Industry	Senior position in the manufacturing or service industries	11
Media	Senior executive position in television, radio, newspapers, publishing, advertising, public relations or other media organisation	4
Land etc.	Landowner or farmer	1
Academic	Academic (including scientists but excluding those specialising in law or engineering etc. - see below)	7
Teaching	Teacher or other worker in the education sector (not higher education)	1
Medical	Medicine, nursing and associated professions	3
Military	Serving member of the regular armed forces	2
Civil Service	Senior diplomat or civil servant	5
Legal	Judge, solicitor, barrister, or academic specialising in law	5
Journalism etc.	Journalist, writer or broadcaster	1
Engineer etc.	Engineer, architect, surveyor or similar (or academic specialising in these areas)	1
Arts	Musician, or visual and performing arts	1
Voluntary	Voluntary or charitable work	3
Trade Union	Trade unionist	4
Local government	Local politics or administration	4
Other public sector	Public sector position not covered above (includes membership of quangos)	3
Politics	Member of parliament or involved in political activity (but not at a local level only)	39
Other	Miscellaneous (including widows of prominent persons, and retiring senior church figures) or no stated occupation or activity	3

Appendix 2

Extract from "Back from Life Support: Remaking Representative and Responsible Government in Britain"
By Frank Field MP

"There is general consent that the lords should be elected, but the Government is understandably anxious that an elected body may begin seriously to challenge the supremacy of the Commons.

"Here then is a three point programme of reform. The first is that the powers of the Lords should be enshrined in legislation and a key point of that legislation should be to formalise the position of the Lords as an inferior chamber in power to those exercised by the House of Commons. Second, in such legislation, a revised Lords needs to be given clearly the powers that Bagehot gave to the Monarch. It should have the right to be consulted, the duty to advise and similarly be charged to warn the Commons on proposed legislation. Third, the Lords should become the depository once again of group interests in our legislative system.

"Until recently two groups interests were formally represented in the Lords. The Lords of Appeal form the first group. This group is to be moved from the Lords into a UK supreme court. Existing members, who are life peers, will remain in the House, but new Lords of Appeal will not be made life peers. The loss of this legal expertise in probing and amending legislation will be huge. The other group represented in the Lords comes from the 26 Anglican bishops who by virtue of their office have seats in the upper chamber.

"The representation of these two groups should become the prototypes for increasing group representation in our society. A radical Lords reform would be based on seeking the representation of all the major legitimate interests in our society. There would be the need, of course, to establish a reform commission whose duty would be to begin mapping out which group interest should gain representation, and at what strength. So, for example, the commission would put forward proposals on which groups would have seats to represent women's organisations and interests, the interests of trade unions, employers, industrialists and businesses, the cultural interests of writers, composers and communicators, the interests of the professions including those involved in health and learning. The representation specifically of local authority associations would ensure that the different regions of the country have voices in the upper chamber. And so the list would go on with the seats for Anglican bishops shared between other denominations and faiths.

"The commission's second task should be to approve the means by which each group elects or selects its own representatives and would then have the duty to review the lists. The commission should be encouraged to approve a diversity of forms of election. Some groups may involve the whole of the membership in a selection process. Others might adopt a form of indirect election. The commission's task would be to ensure that, whatever method is proposed, it is one with which the overwhelming majority of the members are happy."

Correspondence between the Chairman and the Attorney General on the applicability of the Parliament Acts (EV 74)

Letter to Lord Richard from the Attorney General – Rt Hon Dominic Grieve QC MP, 7 November 2011

Thank you for letter of 25 October attaching a copy of a letter from, and motion tabled by, Lord Morris of Aberavon. Lord Morris is of the view that the Committee and the House of Lords would benefit from the advice of the Law Officers on whether the Parliament Acts could be used to enact legislation which provided for a change of the composition of the House if the House refused to give its approval to such proposals.

In my view it is somewhat premature for the Committee to seek advice of this kind. The prelegislative scrutiny being conducted by the Committee is far from finished. Accordingly no Bill containing the Government's final proposals has been introduced into Parliament. And, not least, there has been no rejection of these proposals by the House which would require consideration of the Parliament Acts.

In any event, I am not sure that it would be appropriate for the Law Officers to advise the House on matters such as this. As Lord Morris will no doubt remember well the Attorney General wears a number of hats. My role as legal adviser to Parliament is residual and limited to the giving of advice in relation to the constitution of and the conduct of proceedings in the House, the conduct and discipline of members and the effect of proposed legislation. These restrictions are well established and reflect the risk of a conflict of interest between my role as adviser to Parliament and my primary duty to advise the Crown (that is, Her Majesty's Government) on legal questions. Accordingly, I do not believe that it is appropriate for the Law Officers to advise Parliament on issues relating to the Government's legislative programme.

Moreover the House is able to draw upon a large body of expert legal opinion. There is no shortage of previous Law Officers & Lord Chancellors, retired Law Lords and notable constitutional lawyers who will be able to assist the House in the consideration of this issue. Any advice I would give would just be that - advice - with no special standing in the House beyond any view expressed by any other learned member.

A copy of this letter goes Lord Morris, the Advocate General for Scotland and Mark Harper.

Letter to The Attorney General, Rt Hon Dominic Grieve QC MP from Lord Richard, 25 October 2011

I am writing in my capacity of Chairman of the Joint Committee on the draft House of Lords Reform Bill.

The Committee has received a letter from Lord Morris of Aberavon, a copy of which I attach. The letter should be read in conjunction with the motion which Lord Morris has tabled. It appears in the Lords Business paper, without a day, and is in the following terms:

"Lord Morris of Aberavon to move to resolve that this House instructs the Clerk of the Parliaments to seek the advice of the Attorney General on whether a Bill which provided for a change in the composition of this House, and in respect of which the provisions of section 2 of the Parliament Act 1911 had been complied with, would, having received Royal Assent, be an Act of Parliament and be capable of having legal effect."

The Committee have agreed that I should ask you for any observations which you may care to make on the points made in Lord Morris's letter.

c.c Mark Harper MP, Minister for Political and Constitutional Reform

Letter from Rt Hon Lord Morris of Aberavon KG, QC to Lord Richard, 17 October 2011

In my contribution to the debate on "Reform of the House of Lords" I quoted a number of Law Lords who had raised doubts as to how far one could define the subjects that were not amenable to change under the Parliament Acts.

I concluded that "The weight of opinion, despite reservations and concerns, may well lead towards recognising a considerable supremacy for Parliament....The issue may be whether there are exceptional circumstances which are so fundamental that even a sovereign Parliament cannot act. Lord Hope had said "The courts have a part to play in defining the limits of Parliament's legislative sovereignty"."

This is the very issue that causes me concern - the possibility of the matter being litigated in the courts, probably to the highest level.

Inevitably this would lead to the perception of the politicising of the courts. As in the American Supreme Court the history, track records and expression of earlier views would be closely scrutinised whenever new appointments are made to the Bench. It may never happen, but it is a danger that I would be most anxious to avoid.

Hence I am concerned to see the Law Officers' opinion, should you seek it, as I hope your committee will. My motion on the Order Paper for the House to debate the seeking of such an opinion still stands.

I have been asked who might be the respondent to any action. From memory in the absence of any other respondent, I believe the Attorney General takes on this role. This is what happened in the "Fox Hunting" case Jackson and others (appellants) v Her Majesty's Attorney General (Respondent).

cc: Mr. Rhodri Walters, Clerk to the Committee

Written evidence from Jesse Norman MP (EV 75)

It is widely recognised that the House of Lords needs reform. The House of Lords Reform Draft Bill correctly describes the House of Lords as "a vital part of our constitutional arrangements". But the Lords as an institution is not working as well as it should, and there is a clear case for thoughtful reform, covering issues such as the ending of elections for hereditary peers; the introduction of retirement ages; a more independent process of political patronage; and removal of peers who have committed serious criminal offences. A more radical approach would also separate the award of a peerage from membership of the upper house. The present Bill covers all of these areas.

However, there have also been serious concerns about the proposal in the Bill to make the Lords into an elected upper House. Critics have claimed that election will change the membership and method of selection of the upper house, and its powers and functions. On this view, what emerges will not be a revising chamber, as at present, but a House of Commons writ small. The additional legitimacy of the new upper chamber as an elected House will encourage it to oppose the Commons; the conventions between the Houses will fundamentally change; and the constitutional balance of the past 100 years will be undermined, and perhaps destroyed.

It is thus of great constitutional importance that the Joint Committee review these issues, and seek to address them. In particular, there are several key matters which I would request the Committee to examine, and take expert advice and if necessary evidence on:

1. **Whether the changes to the second chamber are likely to affect the status of that chamber as a House of Parliament** or the existing relationship between the two houses (White Paper, para 7).

2. **What the status will be of the relevant conventions and statutes governing the relationship between the new Lords and the Commons.** The Bill incorrectly regards the conventions and statutes as constitutionally final, without recognising that they themselves rest on assumptions about the relatively greater legitimacy of the Commons, assumptions which the Bill if enacted would undermine (para 8).

3. **Whether 300 is an appropriate number of members for the new Upper House**; and in particular, whether the 60 appointed members will be sufficient to cover the range of expertise and skills currently commanded by the Lords (para 16).

4. **What the likely effectiveness will be as a revising chamber of a wholly or partially elected upper house.** The Deputy Prime Minister said in testimony to Lord Pannick (Select Committee on the Constitution, 18 May 2011) that no external research had been taken on international experience in this area. This gap needs to be filled.

5. **How many times and under what circumstances the existing House of Lords has rejected an amendment or a bill, only to accept it later on the basis of the greater legitimacy of the Commons.** The Deputy Prime Minister did not answer this important question in testimony to Lord Goldsmith (Select Committee on the Constitution, 18 May 2011). Again, this gap needs to be filled.

6. **Whether a member of the new chamber could in principle become Prime Minister (or a Cabinet minister)**; whether this should be democratically acceptable; and if not what measures should be included to prevent it from occurring. The Bill does not consider this possibility at all. Yet it is evident that the modern convention that the PM should be drawn from the Commons will be thrown into doubt by an elected Upper House. This raises the further possibility, for example, that a PM from the Upper House with a 15 year term could have entirely different priorities to those of a Cabinet drawn from the Commons.

7. **Whether and to what degree any of the party manifestoes in the 2011 election in fact supported the specific proposals contained in the Bill; or whether any proposals were specifically ruled out at any stage by the parties.**

8. **What the total likely cost will be of the new house.** The new members will be elected by constituencies that are twice the size of existing parliamentary constituencies. This means their constituency expenses are likely to be significantly higher than those of MPs, perhaps even than MEPs (who have relatively small postbags). The staffing budget for an MP is £115,000, and for an MEP, £222,000. How high will or should the staffing budget be for the members of the new Upper House? What about other budgets?

9. **What electoral spending limits are likely to be applied to the new members' constituencies**. This issue is of obvious importance to the democratic process. The limit for MEPs is £45,000 per person during the long period of the election. What will or should it be for the new members of the upper house?

10. **What the status of women and minorities will be within the new house.** In the recent past the Lords has been more representative of women, ethnic minorities and disabled people than the Commons. It is therefore possible, even likely, that an elected upper house will revert to levels of representation of women seen in the Commons. Is there relevant domestic and international experience which bears on this issue?

11. **Whether the proposed changes may deter good candidates from trying to become members of the Upper House.** The Bill does not consider this issue at all. Yet at least 80% of its members will have to stand for election; they will be paid c. £60,000 per year over a 15 year term, likely to fall during the highest earning years of their lives; they will be full-time; and they will be expected to make a 15 year commitment in advance. It is very likely, therefore, that many of the better candidates will be put off from applying.

23 November 2011

Written evidence from Martin Limon (EV 76)

There is a need to thoroughly reform Britain's archaic parliamentary system not just the House of Lords. The United States with a population of 312 million people has 535 members of Congress (100 Senators and 435 Representatives) to represent their needs. In the UK there are 650 members of the Commons and 789 members of the House of Lords to represent the needs of 60 million people. The 'over representation' at Westminster is both inefficient politically and wasteful economically since there is a financial cost to the taxpayer in paying MPs salaries and expenses and in paying the expenses and allowances of the Lords.

Devolution of power to Scotland, Wales and Northern Ireland has revealed just how flawed the present system is. Why is it that Scotland, Wales and Northern Ireland have their own assemblies but England does not? Why is it that the Scottish Assembly is able to grant 'privileges' to its citizens that are denied to the English who have no assembly: examples

1. Scottish students attending Scottish universities pay no tuition fees but English students going to English Universities have to pay £9000 a year.
2. Residential care for the elderly in Scotland is free but the elderly in England have to sell their homes if they need residential care.
3. Bridge tolls (eg. Forth Bridge) have been abolished in Scotland but not in England (eg. the Humber Bridge).

Britain needs a written constitution with national assemblies for **all the constituent nations of the UK (including England).** At Westminster there should be an English Assembly (on the lines of the Scottish Assembly) for purely English domestic matters and a UK Parliament for areas like foreign policy, UK taxation, EU affairs and UK defence.

An elected House of Lords would be unnecessary if the reforms suggested above were implemented. It is affront to democratic principles that in the 21st century there should be an unelected House of Lords at all. Why should any peer have a say in the passing of legislation when they have not been elected by the voters of the UK? It is fundamentally wrong that many who sit in the House of Lords owe their presence there to the patronage of the government. For too long the House of Lords has been seen as a way to reward people for 'loyal service' in the House of Commons or elsewhere. Many people were horrified that the former Speaker of the House of Commons (Michael Martin) was made a member of the House of Lords after his attempts to 'cover-up' the MPs expenses scandal. Why should John Prescott have been made a 'lord' simply because of his service as a member of the House of Commons; he had spent most of his career as an MP criticising the House of Lords and calling for its abolition!

I would like to see the complete abolition of the House of Lords as a prelude to having a written constitution (as mentioned above) with clearly defined powers for:

1. Assemblies in England, Scotland, Wales and Northern Ireland.
2. A UK Parliament for UK issues of defence, EU affairs, foreign policy etc.

However as in interim measure I would support the idea of a **wholly elected 'revising chamber' of Parliament** composed of one hundred directly elected representatives. These should be chosen at the same time as the General Election that elects the House of Commons.

15 September 2011

Written evidence from Theos (EV 77)

1. Introduction

a. Theos is a Christian think tank which carries out research into the role and place of religion in society. Though we have worked with a number of churches and other faith groups, we are not aligned with or funded by any particular denomination. We do not represent the views of any faith institution.

b. We operate on the principle that religious voices should be given a fair hearing in the public square, for reasons set out below. Our key piece of work on the issue of 'religious representation' in the House of Lords (*Coming off the Bench: The Past Present and Future of the Religious Representation in the House of Lords*, 2007) endorses the Wakeham Commission's recommendation of a reduction in the number of bishops in a reformed second chamber and the addition a broader religious element that reflects the increased religious diversity of the United Kingdom.

c. This submission outlines how that recommendation might be explored in the context of the Draft Bill.

2. The principle of religious representation

a. We recognise that some groups argue that there is no positive case for a religious presence in a reformed chamber. Against this argument we observe that:

i. The religious demography of the nation is increasingly complicated, but it is still the case that a significant part of the population not only identifies with a religious tradition, but practices a faith. The British Social Attitude Survey reports that 21% of the population attends religious services or meetings once a month or more, and 49% claim a religious affiliation. These figures equate to approximately 32 million and 14 million people respectively. In comparison, the Labour Force Survey suggests that 26.6% of the labour force is in union membership (6.5 million), and it is estimated that well under five hundred thousand people are members of political parties.

ii. There is strong evidence to suggest that religious affiliation correlates with high levels of social capital. Research into the UK Citizenship Survey and the European Values Survey data sets shows that religious people in the UK are more likely to volunteer regularly in their local community; to feel a greater sense of belonging to their local community and Britain; to have higher levels of trust in other people and social

institutions; and to feel that they can influence decisions locally and nationally.

iii. The House of Lords often debates issues of deep moral import. Given the long history and broad extent of religious traditions within Britain, it is important that they are present and visible as participants in such contentious debates.

iv. It is often argued that the presence of the Church of England bishops is anachronistic and that any religious presence at all would be internationally anomalous. The relationship between religion and state in every country round the world, including those in apparently secularised Western Europe, is complex, intertwined and the result of years (centuries) of history particular to that nation. In Western Europe alone, there are instances of multiple established churches (e.g., Finland), of states collecting church taxes and paying clergy (e.g., Denmark and Iceland), along with various other arrangements (Norway, Greece, Switzerland). It is simply wrong to say that the UK position is somehow aberrant. We should not seek to imitate some theoretical, abstract, model of alleged church-state neutrality, but rather to work within the boundaries of the traditions and existing social conditions that are particular to the UK.

3. **The existing arrangements**

a. The factors outlined above do not mean that there should *necessarily* be religious voices – whether Church of England bishops or otherwise – as of right in any reformed second chamber. However, to provide space for such voices is entirely within the logic and the spirit of the Draft Bill as it stands. It would also align with public support for a second chamber which includes independence, expertise and the ongoing presence of figures who would not ordinarily seek election.

b. The bishops currently provide a service to the House which is deep but narrow. On the one hand, they bring a degree of 'connectedness': through an early ministry in parish life, the life of their diocese/region, the broader life of the worldwide Anglican Communion, and through working closely with civil society organisations, locally and nationally. On the other hand, and while there is evidence of increased activity, most participate in the House infrequently. Quite legitimately, their proper focus is their pastoral ministry in their own community. Members of the Committee will know that this means that the Lords Spiritual do not and could not act as a 'religious party' in the House. They do not tend to vote in numbers, and when they do they are often found in different lobbies. They have only affected the outcome of divisions in very rare cases.

c. On this point, it seems to be that a majority of the work in the House of Lords is done by less than half of the bishops. The Church of England's work in Parliament would not, therefore, unduly suffer if their numbers were reduced to 12. It may be that they could fulfil a similar level of activity with an even smaller number, provided that the remaining bishops were given the appropriate level of support in their Diocese. We acknowledge, however, that there are practical considerations which must be borne in mind (for instance, daily prayers and the passage of Church of England legislation). Similarly, their number should not be so small as to force them into acting simply as bishops to the House of Lords: it is advantageous that they retain strong diocesan links and carry out work beyond Parliament.

d. Public opinion polls – specifically the 2010 ICM poll for the Joseph Rowntree Reform Trust – have been cited in support of the removal of the bishops from the House. We note that other polls have shown public views to be fairly evenly split on the issue (e.g., a 2007 ComRes poll for the BBC). Here, in the event that the episcopal presence was to be maintained, 65% thought that the entitlement to sit in the upper chamber should also be extended to non-Anglican religious leaders.

4. **A broader religious presence**

a. The bishops of the Church of England are unusually, but not uniquely, well placed to serve in a House that offers independence and expertise. Leading religious figures (e.g., Lord Sacks and Lord Singh) are offered seats in the House of Lords under the ordinary criteria of the Lords Appointments Commission (though all parties in the appointments process could be encouraged to be more proactive when it comes to similar candidates).

b. The existing arrangements are ecclesiologically and theologically appropriate to the Church of England, since its place is founded both on the historical and symbolic link between church and state, and on the substantive contribution that the bishops have been able to make over time. These arrangements clearly do not pertain to other religious traditions. Not only do they have different internal structures but also different understandings of the proper relationship between church and state. Roman Catholic Canon law prohibitions on clerics taking up positions in legislative assemblies are a case in point.

c. Therefore, the question of what mechanism could be deployed in order the select broader religious representation is clearly a vexed one. It is our view, however, that this is a *practical* difficultly, rather than one that in *principle* should prevent a broader religious presence in the House.

i. In the first instance, it is probably misguided and unnecessary to approach this on a principle of seeking to create a socially reflective religious presence in the House of Lords.

ii. It seems wise to adopt a more flexible approach in which the Appointments Commission takes the lead. It would rarely be appropriate to have religious appointees who, like the bishops, would take their seat *qua* a senior clerical position, though some non-Anglican Christian denominations might more naturally produce figures of internal authority. Nevertheless, the existing approach of the Appointments Commission – which in many ways could be described as acknowledging the way in which some religious figures command broad public respect over time – could be formally acknowledged and strengthened.

iii. Beyond this, we see several ways in which the Bill could be shaped. One way forward would be to approach each five-yearly round of appointments with an explicit intention to see religious traditions represented in the wider appointed portion of the House, separately from the 12 (or potentially fewer) positions for the Church of England Bishops. Another would be to reduce the number of bishops still further (perhaps to 8, including London, Canterbury and York for the sake of the symbolic connection with a further 5 selected from the wider pool) and to have the remaining supernumerary 'Lords Spiritual' positions filled by the Appointments Commission with a mix of individuals from non-Anglican Christian communities, and then prominent lay figures from religious minorities.

5. **Concluding points**

a. The Draft Bill and White Paper suggests that the 12 bishops should be selected by the Church of England, but without specifying a mechanism. We recommend that the Committee should give further consideration to this issue. Transparency of process is clearly an important test for any remaining appointed element.

b. The Establishment of the Church of England is an important background concern. Clearly, the presence of the bishops in the House of Lords is not a necessary condition of Establishment. However, it is clearly part of the 'ecology' of Establishment. There is no groundswell of opinion amongst religious minorities for an undoing or substantial renegotiation of this relationship. Indeed, anecdotal evidence strongly suggests that religious minorities in the UK are particularly keen on the visible presence of religious figures qua religious figures in the House of Lords, and this is key to

remember in the attempt to create a fair, responsive and representative second chamber.

24 November 2011

Written evidence from the National Secular Society (EV 78)

1. The National Secular Society (NSS) is a not-for-profit non-governmental organisation founded in 1866. It promotes the separation of religion and state, and seeks a society where law and the administration of justice are based on equality, respect for Human Rights and objective evidence without regard to religious doctrine or belief.

2. We welcome the opportunity to respond to the Draft House of Lords Bill. The NSS takes no position on the question of whether the reformed upper chamber should be wholly or mainly elected. Our response focuses solely on the role of bishops in the House of Lords. We attach as an appendix the report we prepared on Lords Reform in relation to the current review.[313] It was sent to the Deputy Prime Minister Rt Hon Nick Clegg MP, The Cabinet Office and the House of Lords Reform Team in December 2010. We ask that this be accepted as supporting evidence to our submission.

3. The NSS promotes secularism as the best means to create a society in which people of all religions or none can live together fairly and cohesively. A key objective of the NSS since its inception in 1866 has been to oppose all forms of religious privilege. We are therefore very disappointed by the Draft Bill's proposals to provide continued places for bishops of the established Church in a partly appointed House.

4. We argue that the retention of reserved places for Church of England bishops in a reformed House of Lords is grossly undemocratic; the bishops' only qualification is not personal merit, but that the Church appointed them. On the strength of this, they are able to argue strongly and vote for the Church's self-interest – whereas in other walks of life, those with a vested interest generally abstain from voting for matters where they have a self-interest[314]. Their continued presence is also a manifestation of the disproportionate, entrenched power and privilege of the Church.

5. Academic research commissioned by the National Secular Society reveals that the United Kingdom is unique among Western democracies in having ex-officio

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[313] Lords Reform: Why religious representation should be removed from the House of Lords http://www.secularism.org.uk/uploads/lords-reform.pdf

[314] For example Lord Avebury pointed out in the Education Bill debate where the bishops were obstructing some relaxation of mandatory Collective Worship that it was no coincidence that England and Wales are the only countries with mandatory (daily) collective worship in community schools and that the House of Lords is the only legislature with *ex officio* clerics. HL Deb 18 July 2011, cGC372.

religious representation in its legislature, a fact confirmed by Lord Strathclyde in a PQA: "The House of Lords is the only legislature that includes ex officio representation of clerics".[315] The vast majority of Western democracies have abandoned all links between Church and State, with no discernible adverse consequences.

6. Independently published research shows long term and steepening decline in church attendance. Normal Sunday attendance in Britain is projected by Christian Research[316] to drop by 2020 to 4.2% of the population, less than 1% of which is attendance at the Established church. These statistics cast doubt on claims that the bishops speak for any significant constituency, indeed perhaps even for those in Anglican pews. Since the trend away from organised religion is predicted to continue, the role in Parliament of any religious representatives will become increasingly irrelevant and unjustifiable. Nor should it be overlooked that the bishops are all male and middle class, and almost exclusively white. And none are from dioceses in Wales, Scotland or Northern Ireland. We also reject the self-serving idea they promote that they provide a moral perspective on matters of ethical importance on behalf the religious and non-religious alike, regardless of their location.

7. In March 2010, a survey conducted by ICM Research[317] showed that three-quarters of the public and 70 per cent of Christians believe it is wrong for bishops to have reserved places in the House of Lords.

8. The results of the Consultation Responses from the *House of Lords — Completing the Reform* (2001) showed an overwhelming majority against Church of England bishops sitting as of right. It concluded: "Calculating on the basis that those who want an all-elected house do not want bishops (or anyone else) sitting as of right gives an 85% majority against the formal representation of the Church of England.

9. It is vitally important that the reformed Second Chamber should not have any specific religious representation whether *ex-officio* or appointed, whether of Christian denominations or any other faiths. The presence of religious leaders amounts to double representation of religious interests as many temporal peers already identify themselves as being religiously motivated.

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[315] HL Deb, 1 July 2011, c484W

[316] Source: Religious Trends 7, 2007/2008 publ by Christian Research derived from Table 12.6.2

[317] http://www.ekklesia.co.uk/content/survey_on_bishops_icm.pdf

10. We are therefore pleased that the Draft Bill contains no proposals to extend religious representation in the Lords to other denominations/religions. The NSS believe such a move would not only be unworkable and unpopular, but it would also carry a high risk of creating resentment in minority communities that are already sensitive to discrimination, were they not to be represented. There is a real slippery slope problem in that there is no obvious point at which to stop extending representation - and there will be pressure from sub groups within minority religions. The more faith groups acceded to, the less representative the slimmed down second chamber would become.

11. If proposals were made to extend religious representation to other faiths through the appointments process, there are serious questions about the extent to which such leaders would be representative of the group they purport to represent. Opinion polls conducted during the Pope's visit to the UK in 2010 showed that Catholic bishops are at almost complete variance with Catholics on the same social issues where they seek most strongly to exert their influence. Only 4-11% of Catholics polled agreed with the bishops' position on contraception, homosexuality and abortion.[318] Similar arguments would equally apply to minority faiths' leaders. Within religions, there is a whole spectrum of belief and practice. Treating such groups as homogenous can be particularly detrimental for women and sexual minorities.

12. In line with proposals for a reduction in the size of the second chamber, the Draft Bill proposes that the number of reserved places for Church of England archbishops and bishops should also be reduced, from 26 to a maximum of 12. In an upper chamber of 300 members this represents an increase in the proportion of bishops. The NSS regards this as unacceptable. We note that the Wakeham Commission sought in 2001 to justify a reduction by ten of the number of archbishops and bishops on the manufactured and grossly inaccurate basis of the Church's claimed "membership" of 25million, based on baptisms. The Church's actual membership is one twentieth of this number. In any event, if size-of-membership were a valid criterion for seats in the Lords, many other organisations (religious and non-religious) could equally claim such privilege.

13. The Draft Bill proposes that the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester retain their right to hold a seat in the House of Lords as of right under the Bishoprics Act 1878. The Government proposes that the remaining 7 places would be selected by the Church of England. We regard this as a disturbing development and maintain that the Church should not gain any greater freedom over the appointment of its nominees.

[318] YouGov / ITV Survey Results, Sample Size: 1636 Catholic Adults, Fieldwork: 31st August - 2nd September 2010

14. We are concerned that such a proposal could herald the introduction of specifically appointed bishops – in effect full time professional lobbyists not just with access to ministers but with power to call them to account – who would be expected to intervene much more than the present bishops and create a new voting bloc. It is likely they could at times hold the balance of power. Under such circumstances this undemocratic group might be able to dictate the parliamentary agenda and therefore be in a position to make their own demands, particularly on contentious social issues.

15. We are also very concerned about the exemptions proposed by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension. This proposal would mean that in the most serious of matters, bishops will be accountable to the Church rather than Parliament. We oppose this unjustifiable privilege and recommend that if seats are to be reserved for bishops in a reformed House, they should be accountable to Parliament in the same way as other members.

16. We believe that the proposals contained within the Draft Bill concerning the Church of England bishops represent a missed opportunity for real modernisation and enhanced democracy. Britain is already the only western democracy left that reserves seats for clerics in its Parliament – elsewhere only theocracies have such arrangements. The proposals for their retention will inevitably give rise to calls for representation to be extended to other denominations or faiths – a move we regard as deeply undesirable and entirely unworkable.

17. We therefore urge the Committee to reject the Draft Bill's proposals to retain the Bench of Bishops. With a view to creating a more democratic chamber, we ask the Committee to ensure that reserved seats for Church of England Bishops are completely removed from the House of Lords.

15 November 2011

Appendix

The compelling arguments against religious representation in the Lords on the grounds of practicality, democracy and equity are expanded upon in our report *Lords Reform: Why religious representation should be removed from the House of Lords.* http://www.secularism.org.uk/uploads/lords-reform.pdf

Written evidence from the Rt Hon Lord Higgins (EV 79)

The fundamental argument made in favour of an elected House of Lords is that it would make our political system "More democratic." This is implied falsely. Our system is already 100% democratic. That democracy rests in an elected House of Commons. Having the House of Lords elected would not increase democracy in the UK one iota.

What it would do is divide the democratic mandate between the two Houses and if, as the bill suggests, the second chamber were elected on the basis of PR the second chamber would (Mr Clegg appears to believe) have a firmer basis than the Commons.

Apart from the false "democratic" argument it is difficult to think of any advantage an elected second chamber would have over a House of Lords reformed on the basis of the "Steel" Bill.

SO, the first simple, time saving and economic recommendation the Joint Committee should make is that the Draft Bill should be dropped forthwith and the Government should take over the "Steel Bill" instead

It has however been asserted by some supporters of the draft bill that a change to an elected House of Lords is already the "settled view" of Parliament. This overlooks the fact that Mr Straw in advance of the vote in the House of Commons stated it would be an "indicative vote". It was only after the vote it was said to be other than that.

Secondly, the votes themselves suggested that a majority of Conservative Members in the House of Commons did not agree with the Official Conservative policy and a majority of Labour Members did not agree with the official Labour policy. Disagreement between the respective front benches and back benches has been a feature of all debates. Despite protest, membership of the cross party committee referred to in the Foreword to the Draft Bill did not include any back bench members.

In considering the future of the draft Bill the Joint Committee will need to examine the extent to which it reflects discussion and agreement between the front and backbench members of the various political parties in both the Commons and Lords.

Finally the Joint committee will surely need to take into account the fact the composition of the House of Commons has changed substantially since a vote on House of Lords reform was taken. The present House of Commons has no "settled view" on the subject. But recent discussion on the Draft Bill suggests that the number against it has increased and is increasing.

The Joint committee will appreciate that while it is difficult to think of any arguments (other than the false democratic one) in favour of the draft bill there are many against it.

The Bill proposes there should be no change in the Powers of the proposed elected House of Lords or its relationship with the House of Commons. This is completely in conflict with the

unanimous recommendations of the "Cunningham" Report on the Conventions between the two Houses (on which I served), That Report made it clear that the powers and other conventions would have to be adjusted if the House of Lords were elected. Regardless of this the Draft Bill proposes we go ahead and change the composition of the Lords before, consideration of the second chamber's powers and purposes. This is surely the wrong way round. The question of Powers needs to be dealt with before we legislate on composition.

The Joint Committee will be aware of the many other arguments against the Draft Bill including the loss of expertise and experience in the second chamber, the loss of Members' independence and the increased power of the whips, the increased cost to the taxpayer, even though the proposed size of the second chamber would be too small for it to fulfil its role as a specialist revising chamber. Conflict between members of the two Houses in their constituencies and the danger of conflict and gridlock between the two Houses,

None of this is to say that the House of Lords does not need reform. On the contrary, the need for reform is urgent and ought not to wait. The Steel Bill has received an unopposed Second Reading in the Lords but it needs Parliamentary time. The Government should take it over without delay. It would be helpful if the Joint Committee puts this first on its agenda.

12 October 2011

Written evidence from Michael Winters (EV 80)

Executive Summary

There are three main 'themes' in this paper:

A. The impact of party loyalty in the House of Lords should not be increased merely as a result of Lords Reform. Indeed it might preferably be reduced.

B. The proposed reduction of the membership of the Lords - to 300 in the case of the elected members - is too severe. It would change their style and working practices, and it unlikely that merely 300 members would be able to perform their duties as well as would be wished.

C. A consideration of the timing, the preparations and the voting practices at General and By-Elections in the Lords.

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General Intentions

1. I am completely in agreement with the general intention that the style, the procedures and the influence of the House of Lords ("the Lords") should, for the most part, continue as at present. This general intention colours all the comments made in this paper.

2. My second most important general intention is that the influence of the party system in the Lords should continue to be not so great as in the House of Commons ("the Commons"). At the present time, in order to be able readily to reach decisions, the Commons have a party-driven eyeball-to-eyeball confrontational system (much to the anguish of the Speaker on the occasion of 'Prime Minister's Questions'). By way of contrast, the Lords are able to exert influence by introducing cross-benches, by having a significant proportion of the membership who reject party affiliation, and accordingly by having a more 'shoulder-to-shoulder' style of debate, less dominated by 'the party line'. Indeed it not uncommon for a loyal party member to abstain or even to vote against the party's official view.

Number of Members

3. At present I believe that there are 650 members of the Commons and I have recently been told by the House of Lords Reform Team that there are over 800 members of the Lords. It has been decided that the number of Commons members

should be reduced by nearly 10% to 600. What would therefore be a reasonable number of elected members of the Lords to have in the future, bearing in mind the declared intention of continuing unaltered the present duties and working relationship between the two Houses? Reducing the number of Lords' members in proportion to the reduction in the Commons gives a figure of about 750. Allowing for the intention of having a number of appointed members brings the figure for elected members down to about 650. The figure of 600, the same as for the Commons, seems to be the natural choice.

4. It is difficult, therefore, to see how a figure of 300 could be considered; it is tantamount to be saying that the existing membership has been working only at half-strength. Certainly there have always been a number of peers who have been 'non-working', and who have become members of the Lords only through heredity. Many of these have already left, and the current reduction in numbers is, I believe, primarily aimed at the remainder. It can be seen, moreover, that over recent years whenever the relationship between the two Houses has been under review, reference has been made to the supremacy of the Commons over the Lords, and the necessity for it to be maintained. The opportunity is then taken to nibble away at any apparent advantage held by the Lords over the Commons. On this occasion it may be thought to be more a gulp than a nibble.

5. In absolute terms, what number of members would be chosen as being able properly to scrutinise each item of legislation which has originated in the Commons? This 'nominal' figure needs to make allowance for absences due to sickness, resignations, holidays etc., as well as time for research, re-education and so on. Finally, the first primary intention is that the 'style' of the Lords should continue much as before. Considering the matter afresh, it would be difficult to believe that the number '300' would even be a possibilty. Even a reduction from 800+ to 600 seems severe, and one which might influence the general mood and style of the House.

6. Personally, I believe that a chosen nominal figure lower than 600 would make the Lords 'inefficient' in its work of scrutinising and improving the draft legislation initiated by the Commons, and would also change the general relationships and style of working in the Lords. However, this may well not be the final choice on the matter, so in the later section of this paper, which is concerned with the practical arrangements for elections, I put forward alternative plans for 600, 450, 360 and 300 members.

Frequency and Timing of Elections

7. It is proposed that (in order to reduce costs) General Elections in the Lords should be held at the same time as those in the Commons. I think that this would be a mistake. The 'business' of a Commons General Election is, to a very significant extent, based on the battle between the parties. It permeates every aspect; how the candidates describe themselves (even to the colour of their rosettes); the voting papers; the analysis of the results; the reports and comments of TV and the press; the composition of the new government, and so on. If the Lords General Elections

were held on the same dates, it would be inevitable that the results there would similarly be analysed by party. However, I firmly believe that the influence of party membership should not be increased in the Lords as a result of Lords Reform. Indeed, I would prefer that there should be some reduction in 'party' influence.

8. In detail, it is proposed that partial (ie 'staggered') General Elections should be held every 4 years, that these would not be varied by a possible variation in the timing for the Commons, and that to reduce costs they should be held at the same time as other elections. The question is - how could these desired elections take place at a time other than at the same time as General Elections in the Commons?

9. Fortunately, such 'staggered' general elections are held every 4 years (on the first Thursday in May) to elect County Council councillors, and it would seem entirely reasonable to synchronise with them. It would also be possible to synchronise with the county councils not only General Elections but also (again on the first Thursday in May) Bye-elections which had resulted from death or resignations which had occurred more than 6 months before that date.

Practical Details for Elections

10. There are 600 constituencies for the MPs of the Commons. For Lords elections, and assuming that there are to be 600 elected members of the Lords, these 600 Commons constituencies would be 'clustered' into 200 Lords Constituencies ("LC"), each of which would have 3 Lords MPs.

11. In every fourth year, on the first Thursday in May, one of those three Lords MPs would stand down, and there would be a staggered General Election. (at which the standing-down MP could stand for re-election, provided that he has not already served as a Lords MP for 12 years. Furthermore, any MP would be required to stand down when he has served as a Lords MP for 12 years.

12. In each intervening year on the first Thursday in May there would be a by-election in each LC where there had been a vacancy for more than 6 months. .

13. Physically each LC is enormous. To assist the electorate in having information regarding the candidates, and also to give an independent non-party candidate a reasonable opportunity for election, the Returning Officer would produce a booklet, in which each candidate would be given two pages (1200 words?) to describe himself. A copy of this booklet would be sent to each household. In the booklet, the relevant political party (if any) of each candidate would not be listed in the Contents Page, but could be mentioned by the candidate in his own two pages. This booklet would be financed out of the candidates' deposits, the remaining balance being returned to the candidates after the election.

14. The above paragraphs are based on the assumption that there would be 600 Lords MPs. The following shows the figures for alternative numbers.

Number of Clusters	Number of constituencies in each Cluster	Total number of Lords MPs
100	6	300
120	5	360
150	4	450
200	3	600

Voting System

15. Currently it is proposed that 'Proportional Representation' would be introduced for Lords Elections. I feel that this particularly inappropriate, firstly since it results in some individuals becoming members not as a result of the votes of the electorate, but because of the choice made by the party hierarchy. Secondly it increases the influence of party loyalty during the normal working of the House. Finally it becomes difficult if not impossible for independent candidates to be elected.

16. In order to concentrate the electorate's attention on the individual rather than the party, I would prefer the 'Alternative Vote' system to be used. However, I recognise that this unlikely to be acceptable to people generally because of the recent disappointing discussion and referendum on the subject.

17. I would prefer a much simpler version of the AV method. I have seen it used in practice, but I am afraid I do not know its name, if indeed it has been given one! Voters are asked these 2 very simple questions:

    A. Here is the list of candidates. Who would you like to be elected?
    B. If he became too ill to be elected, who would be your second choice?

    The first choices would get a count of 2, and the second choices a count of 1. All very simple and easily understood.

18. Perhaps the Appointments Commission might be authorised and instructed to 'try out' various systems in the next few elections, so that the final decision could be taken with the benefit of experience.

8 October 2011

Written evidence from Christine Windbridge (EV 81)

General comments

Rationale

Most independent reviews and studies agree that some reform of the House of Lords (HoL) is needed. Common among the conclusions are a reduction in numbers, removing hereditary peers, and strengthening the HoL Appointments Commission.

It appears that the committee responsible for this Draft Bill has taken these recommendations, with others, and bolted on the concept of a mainly (or wholly) elected second chamber in the name of democratic authority solely. I would be surprised if evidence is available that suggests the public are so consumed by an unelected HoL that they will gladly pay an unknown amount to enable a second chamber of elected party members to scrutinise the best efforts of the first chamber of elected party members.

By fixating on elections at all cost, by looking only in one direction and disregarding 100 years of its own history, it is unsurprising that this White Paper is heavy on procedure but light on reasoning.

Unicameral vs. Bicameral

There is no better advocate for a bicameral system than this Draft Bill. It is of a standard that no one could be left in doubt that a second chamber, with a specific remit to scrutinise and revise, remains vital.

Elections

No evidence is offered that demonstrates the public benefit of a bicameral system in which both chambers are elected. Indeed, the general public have yet to show any sign of great interest in the notion that the HoL should be reformed, let alone elected. (Hansard records that, as of 18 August 2011, there have been 65 responses from the public to this White Paper.)

Should the public notice, they might be puzzled that the proposed form of democratic authority removes by-elections due to the system of PR, removes the right to an HoL general election if the HoC has more than one in two years, and provides that the will of the second chamber be ignored, as and when. It is reasonable to ask what calibre of candidate will be attracted to these terms, and why anyone should vote for them.

Electoral System

At the top of the proposals, a key feature is the imposition of a different voting system for the HoL to that used in the HoC. Clearly, this was hurriedly inserted after the results of the referendum on AV were known; perhaps the Liberal Democrats should be asked how they square their manifesto pledge to introduce STV for HoC elections with their White Paper commitment to STV in the HoL.

Mandate

From the start, misleading statements purporting to have a popular mandate have emanated mainly (but not uniquely) from the proponents of the Bill. Below are the relevant quotes of the 2010 manifestos from the three major parties, and from the Coalition Agreement:

“We will let the people decide how to reform our institutions and our politics: changing the voting system and electing a second chamber to replace the House of Lords…We will ensure that the hereditary principle is removed from the House of Lords. Further democratic reform to create a fully elected Second Chamber will then be achieved in stages…We will consult widely on these proposals, and on an open-list proportional representation electoral system for the Second Chamber, before putting them to the people in a referendum. “
The Labour Party Manifesto 2010

“We will work to build a consensus for a mainly-elected second chamber to replace the current House of Lords, recognising that an efficient and effective second chamber should play an important role in our democracy and requires both legitimacy and public confidence.”

The Conservative Manifesto 2010

"Replace the House of Lords with a fully-elected second chamber with considerably fewer members than the current House."
Liberal Democrat Manifesto 2010

"We will establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation. The committee will come forward with a draft motion by December 2010. It is likely that this will advocate single long terms of office. It is also likely that there will be a grandfathering system for current Peers. In the interim, Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election."
The Coalition: our programme for government

Yet, the foreword to the White Paper claims:

"At the last election, all three main political parties were committed to reform of the House of Lords. "

This is disingenuous.

In a parallel approach, the term 'settled will' of Parliament has been bandied around despite the lack of a vote in this Parliament for HoL reform. If left unchallenged, a worrying precedent will be set that gives a Government implied consent to cherry pick results from a previous Parliament.

Salisbury Convention

It is my understanding that the Salisbury-Addison convention does not apply to a coalition agreement although, as Baroness D'Souza noted in November 2010, conventions can develop.

The proposals include 12 seats reserved for bishops. Since they are in addition to the 300 seats reserved for other Members the target of an 80% elected HoL can never be met, whether a Government chose to appoint Ministers outside of the 300 or not. Of course, this would apply to 100% or any other ratio. Moving such Members to the appointed component would not only dilute this element but would necessitate re-writing large parts of the Bill.

The Salisbury convention should not apply to this Bill as it stands.

Costs

No estimate is offered for the increased running costs of a new HoL and the timing of this Bill is completely out of step with the prevailing mood of the public, facing severe cuts and general uncertainty, and coming straight after the debacle of Parliamentary Member's expenses.

It is inconceivable that MPs will wish to be associated with this Bill if they value their seats.

Observations on specific proposals

The aims of this Bill may be summarised thus:

- At least 80% of House of Lords (HoL) members must be elected;
- The system of HoL elections must be different from House of Commons (HoC)
- The number of members will be set at 300;
- All members will receive pay and pension benefits in addition to the existing system of allowances;
- The Government fully endorses the existing role, functions, responsibilities, and status of the current HoL and seeks to retain these benefits.

Below, specific details are considered on most of the individual proposals (though sometimes grouped), in the same order as they appear in the White paper, bearing in mind the aims above. Proposals that are devoted to procedure have generally been passed over.

Functions, and Powers (Items 2-6, and 7-11)

The Government indicates that there should be no changes to existing functions and powers of the HoL.

Although democratic eligibility is the Bill's central plank, the less than democratic conventions and relationships between the two Houses are to be retained, in order to preserve the predominance of the HoC. In particular, Item 8 explicitly warns the existing HoL not to reject a Bill which has been endorsed by the HoC, "…whether or not a Bill has been included in a Manifesto…", a reference to the Salisbury convention.

Size and Composition (12-23)

The increasing number of Members in the HoL has come under some fire, as exemplified by Meg Russell, UCL Constitution Unit, in her paper, "*House Full: Time to get a grip on Lords appointments",* April 2011. Along with 18 other renowned experts in the field one of her researched recommendations was to set the overall number to 750 Members, and so the Government's arguments used to set the number to 300 are curious.

For every person who criticises the size of the HoL, at least one other will criticise the lack of real world experience in the HoC. The proposal used recent figures to show that the average daily attendance was 388, roughly half of the existing total, leading to a guess that 300 would be "about right" given that the new intake would be full-time. By using back-of-an-envelop arithmetic the value of having the current wide range of experience and expertise will be reduced rather than concentrated. Is it the intent of this Bill to rely on the wisdom of the HoC, or bring in external advisors, or hope that voters operate as a hive and choose the best of the diverse every time? And what does full-time mean, given that their time-table correlates largely to the amount of business of the HoC? Will Government be under an obligation to set a maximum amount of legislation per session? Will wash-up's be the norm rather than the exception, a device of weakness rather than strength?

Item 22 specifically asks for views on the balance of elected and appointed members. A wholly elected HoL is not available due to the inclusion of Church of England bishops (Item 91).

Term, and Timing of Elections (24-25, and 26-27)

Democracy requires some form of individual accountability which is difficult to achieve if Members are permitted to serve only a single term. A term is defined as three 'normal' Parliaments, an implied total of 15 years, in order to attract able people, and to reduce the chance of a Government having a majority in both Houses. Item 25 assumes that an overall majority would be undesirable in the HoL: between 1979 and 2010 there was one change of governing party in the HoC, with more landslides than simple majorities. Together with the landslide rejection of AV an overall majority is demonstrably popular.

However, a Parliament may not last five years. In addressing this issue (Item 27), skipping elections on the basis of unfairness to Members reads as the needs of Members should override the wishes of voters. If there are consecutive short Parliaments the composition of the new HoL is much less likely to meet other criteria of the Bill, such as is suggested in Items 25 and 26.

Item 56 indicates that appointments by HOLAC will only be recommended after the results of elected members are known. Currently, the time between recommendation and appointment is indeterminate,

and Item 59 proposes that this will not change. Common sense would suggest rather than leave the chamber short of Members, that those due to be replaced stay on until all appointments are resolved. However, this could create new problems in cases of suspension or vacancies, and the exact date when a Member would be eligible to stand for election as an MP.

Electoral System (28-34)

This section, taken together with others, is a tangle of contradictions in relation to the status of new Members: it is not clear if they will be representatives of a district or representatives of the HoL. Item 30 discusses the 'democratic mandate' while Item 32 stress the importance of a 'personal mandate'. (Item 111 also denies that Members will have constituency duties, but Item 52 does not want voters to be under-represented.) Item 32 also expresses the desire that political allegiances should be secondary to that of candidates yet Item 28 states that PR systems are "designed to ensure" the PR of parties. Item 33 dismisses other PR systems because STV gives more power to the voter but elsewhere (Item 8, for example) there are many instances where the Paper makes clear that a vote for HoL elections will carry less weight than a vote in an HoC election. Returning to the intention that Members should be full-time in Westminster, we might assume that, after all, Members will not directly represent their voters, an interesting interpretation of democratic authority.

It should be noted that if Members are representatives of districts, this will introduce the HoL to new concepts, such as the West Lothian question at a time when the Act of Union could be vulnerable, and issues over party membership including how Sinn Fein should be accommodated.

The conclusions in Item 34 are the written equivalent of a Gallic shrug.

Women in Parliament (48-49

Although there is evidence to support the claim that women are more likely to be elected under PR than other voting systems, many more could be in Parliament now if there was genuine will from those who have the power to appoint. It is a pity that the 'opportunity to consider' doesn't appear in the Bill; taken together, Items 55 and 59 rather suggest the opposite.

Franchise (50-51)

On the back of this response, I would like to widen the discussion to investigate the disenfranchisement of British ex-pats after an arbitrary 15 years away from the homeland. Most ex-pats have no intention of discarding their passport simply to vote in another country. There are several non-contentious ways of resolving this bit of British idiosyncrasy.

Transition (69-86)

Item 11 acknowledges that a 'delicate balance' currently exists between the two Houses, one that has evolved over their time yet transition will progress over three elections, between six and 15 or more years (if Item 27 remains unchanged). However, the consequences of several short Parliaments from 2015 are not addressed and since, in the event that this happens, we could assume that the country would be, at the very least, unsettled.

Hereditary Peers, Church of England Bishops (87-103)

The arguments presented for retaining or abolishing reserved places in the HoL are inconsistent with modern values and laws of equality. If there is a constitutional issue which causes bishops to be accepted then their right to vote in the HoL should be removed.

No provision is made should the Church of England change its own rules which may impact further on this Bill's generous permit to self-select.

Remuneration, Salaries, Allowances, Governance, Pensions, Tax (104-124)

Since it is not clear whether new Members will be representatives of a district or the HoL, it is not clear whether new Members should have a lower, higher, or the same salary and conditions as MPs (Item 111). By extension, whether new Members will be entitled to an allowance for second homes will depend on whether they have responsibilities to their district.

There is no indication as to the future of Cranborne money and the possible extension of the more lucrative Short money to cover both Houses. The choice of the electoral system will have an impact.

Expulsion, Resignation, Recall (125-139)

Item 131 intends there to be no time limit for suspension of a Member, presumably on full pay. No reason is given to change the existing rules. It is not clear if time under suspension would be counted towards a Member's allotted term.

Disqualification – 140-150

Item 141 allows for a convicted person to become a Member if they served up to and including one year in prison only. Rehabilitation must continue to be one of the primary aims of justice yet this clause is contentious for a number of reasons.

- it makes no distinction of the crime committed – a sentence of up to two years (assuming 50% time served) covers too wide a range of criminal acts
- there is no provision for disqualification during the licence period
- there is no provision on special cases such as IRA convicts
- Presumably, HOLAC would be expected to gain knowledge of past criminal activity before recommending appointments, as Item 55 sets out:
  Since 2001 HOLAC has made recommendations on merit and against set criteria which include personal qualities of integrity, independence and the highest standards of public life.
  But similar information would not be available to the electorate.

There are likely to be other issues but this small selection should be sufficient to include safeguards that put the public first, not the candidates. At least two other options are available: disqualify for all criminal convictions regardless of time spent in prison or not, or provide that candidates must publicly declare all convictions prior to election or appointment.

The Explanatory Notes (461-473) discusses some of the points above, and considers the impact of the European Human Rights Regulations but I disagree with the conclusions. In particular, by qualifying a convict based only on time served rather than the crime plus time served ignores the whim of the judiciary.

My personal preference is to give HOLAC or voters the responsibility of testing qualification by ensuring candidates declare all wrongdoing, both civil and criminal, prior to selection. Non-disclosure would result in automatic suspension or recall.

7 October 2011

Written evidence from David Le Grice (EV 82)

Purpose of the Upper House and need for elections

The purpose of an upper house as I see it is so that its members can concentrate on legislation without having to worry about constituency work and since they have such direct and considerable influence over legislation more so than that which some people like to accuse trade unions big corporations and media moguls of having, it makes sense that they have some sort of democratic mandate.

It may prove beneficial if the Upper House were given the power to work with the government to improve finance bills. If this caused concern over primacy then the House of Commons could be given the power to vote to proceed on finance bills without the Upper House's consent without any waiting period.

That said, I think maintaining the primacy of the House of Commons is only important because people have decided it is, the first parliament act at least was intended as a quick fix and was never meant to apply to an elected house. To my mind the best way for the differences between the government and the Upper House to be resolved would be through referendum or for a bill to be delayed until after an election although I'm not sure whether such a change would be considered.

Appointments

If there are to be any appointments to the upper house then the appointments commission would have to make sure that it appoints people from as diverse a range of backgrounds and expertise as possible and that no background has noticeably greater representation than any other as that would make the house bias on certain issues; I currently get the impression that a disproportionate number of peers are businessmen for example. I'd personally prefer that all members had a mandate at any rate.

Bishops

I don't understand why the bishops should remain; they are just as much an anachronism as hereditary peers as they would not be there by virtue of being English Anglican Bishops and not elected or chosen independently on merit. I can't think why the established church needs to send people to speak let alone vote in the upper house and I shouldn't think that there is anywhere else in the world (except perhaps Iran but I haven't checked) where this is the case. Furthermore reserving seats for Church of England bishops in the legislature amounts to four types of discrimination, these being discrimination based on nationality (No bishops representing Scotland, whales or northern Ireland), religion, sexuality (No practising homosexuals) and gender. It's not as is you'll go to hell for removing the bishops from the Upper House.

The church can always make representations to parliament and the government and if necessary a member of the upper house can be appointed to liaise with them as I believe is done in the House of Commons.

Ministers

It would be very undemocratic to allow the prime minister to appoint members to the upper house and the limit may become seen as a target by some administrations if they had any trouble with the upper house.

It would not be a problem if they were not entitled to vote or could speak and introduce legislation without being members of the Upper House (but still members of the government) as is the case in some other legislatures such as the Danish Parliament; apart from being more democratic this would also avoid placing unnecessary restrictions on the prime ministers ability to choose ministers.

Vacancies

It would be completely wrong if someone were elected by voters largely based on their party affiliation only for them to be replaced on death or retirement by someone from another party.

Irish and Northern Irish MEP's will produce a List of people to succeed them should they die or retire and I think the same system should be adopted here.

Electoral system

I think the constituency sizes proposed are too small electing close to seven people would be just about ok especially with STV though I would prefer the number were closer to twenty (though this would require open lists and thresholds). I especially don't like the idea of having three seat constituencies' and am not too keen on four seats either. Neither size delivers terribly proportional results in European elections (in Whales, the North east and Northern Ireland) as the parties represented have the same number of seats each and they don't allow representation for all major parties. Indeed a three seat constituency in Northern Ireland would prevent nationalist representation by shutting out the SDLP. Smaller constituency's also make the electoral process more intimidating because there would be more attention and pressure placed on a parties candidates if only one or two were likely to win and they may need to campaign within the major shopping areas of major population centres.

I think it would be especially important to have larger constituencies if an open list system were used as more votes would otherwise be wasted on vote surpluses and minor parties under such a system. Alternatively one could consider the proposed reforms to the Finnish parliament which has open list districts but their seats would be assigned to make the to ensure representation was in line with the national vote, such a system would of course need national and or constituency thresholds to be imposed. Another alternative would be to have vocational constituencies which people would join when they register.

I also think that the minimum number of three seats if adopted should only be permitted if national boundaries necessitate it in boundaries should be redrawn if a constituency's allocation is reduced to this number due to population changes.

Of course in order to have more seats in some Celtic constituencies them one would have to elect more of the houses members have a larger house than proposed, elect in halves instead of thirds or over represent them; I personally wouldn't mind any of these though preferably not the later.

If the committee parliament or the government is tempted to have more than 300 members in the Upper House for this or any other reason (the average attendance is close to 400 at the moment) then I say do it even if some complain as you can't put a price on democracy.

Ballot papers for Upper House elections will need to be randomized and possibly candidates listed by party. This is especially important for STV but it would also allow simpler ballot papers for an open list as there would be no need to provide an option of voting for a party and encourage people to express their opinions of the candidates before them. Whichever system is used it would be a good idea to switch to the same one for European elections both to trial it and so that voters can get used to it.

10 October 2011

Written evidence from John Wood (EV 83)

I attach a paper which demonstrates that the proposals in the draft House of Lords Reform Bill are unsatisfactory, even by the Government's own criteria, and that the only acceptable method of selecting members for the reformed second chamber is random selection from the electoral roll. In essence, this is because random selection is the only method of selection that is capable of meeting the four key principles expounded in the white paper 'An Elected Second Chamber: Further reform of the House of Lords' (Cm. 7438). I present the relevant principles below, with the important requirements italicised for clarity:

- members of the second chamber should be elected on a *different representative basis from members of the House of Commons*;
- members of the second chamber should be able to bring *independence of judgement* to their work;
- the second chamber should take account of the *prevailing political view* amongst the electorate, but also provide opportunities for independent and *minority views* to be represented.

Full details of why random selection is the only method of selection that can satisfy these requirements are in the attached paper.

A further reason for preferring random selection is that such a chamber is a microcosm of the UK electorate and thereby enhances the capabilities of the chamber to fulfil its three essential roles: to research, review and revise proposed legislation. Such a chamber possesses a property that no other method of selection can provide: an unrivalled breadth and depth of understanding of the UK population's needs and of the effect of legislation, proposed or revised, on the population. This breadth and depth of knowledge and experience also act as counterweights to the increasing professionalisation of party politics, which has led to members of the House of Commons coming from an narrow range of politically active families with a limited range of life experiences. Again, further details on these features are in the attached paper.

Finally, whatever options for reform are considered desirable, it is essential that the UK electorate has the final say in a referendum, which should involve selection from a list of options (including random selection) rather than merely a simple yes or no to a pre-determined choice. Reform of the House of Lords is a major constitutional change and requires the endorsement of the UK electorate. After the recent referendum on the relatively minor matter of the Alternative Vote, it would be invidious if the UK electorate were not offered a referendum on the much more important question of reform of the House of Lords.

Random Selection for House of Lords Reform

The white paper 'An Elected Second Chamber: Further reform of the House of Lords' (Cm. 7438) presents four key principles for reform of the House of Lords:

2. members of the second chamber should be elected on a different representative basis from members of the House of Commons;
3. members of the second chamber should be able to bring independence of judgment to their work;
4. members should serve a long term of office; and
5. the second chamber should take account of the prevailing political view amongst the electorate, but also provide opportunities for independent and minority views to be represented.

This paper demonstrates that random selection from the electoral register is the only method of selection that is capable of meeting all these four principles. Two later sections present additional evidence that random selection enhances the ability of the second chamber to perform its roles and helps to counteract the deleterious effects of the increasing professionalisation of politicians.

The Four Key Principles

The third principle in the list above is not relevant to the comparison considered here, so discussion is confined to the other three principles. Relevant phrases in the restated principles are highlighted in bold to indicate the points for the discussion.

- Members of the second chamber should be elected on a **different representative basis** from members of the House of Commons.

  Different representative basis?

  Elected members will, by and large, belong to the same political parties that are represented in the House of Commons, will have similar political views and will have been selected as parliamentary candidates because of those views. Even if they are avowedly independent and are not subject to party whips, their views will therefore be similar to those of members of the House of Commons and, consequently, they will not add much value to the legislative review process. The representative basis of this method of selection is merely a slight variation on the method used for the House of Commons and is hardly different at all. Appointed members will, to some extent, bring different perspectives on legislation because of the varying skills and experience for which they are selected. However, their selection will still be subject to political choices, even if only to ensure political neutrality, and controversial selections are likely to be avoided, thus limiting the range of opinions brought to the chamber. Elected and appointed members will predominantly have the same personal characteristics as current members of the House of Commons and life peers, who are all mainly male, middle aged and middle class, with heavy representation of the journalistic and legal professions, again limiting the difference in representative bases between the two chambers. By contrast, random selection from the electoral register is clearly a different representative basis, in the widest possible sense, and it ensures the greatest possible variety of views and opinions, skills and experiences, many of them not currently represented in Parliament and not likely to be represented under the draft Bill's proposals.

- Members of the second chamber should be able to bring **independence of judgment** to their work.

  Independence of judgment?

  As discussed above, elected members will, at the very least, be constrained by the policies of the political parties they belong to, especially as their adherence to these policies would have been an important criterion in their selection as parliamentary candidates. Appointed members, too, will be limited in the independence of their views because of their appointment process, which will have taken their political views into account. An example of this lack of independence can be seen in the USA Supreme Court, whose nine judges are appointed for life and are, nominally, completely independent of any external influence. However, their actual appointment is highly charged politically, with the result that judges appointed by Republican presidents tend to have similar views, judges appointed by Democratic presidents tend to have similar views and these two sets of views are often different. Because of this political bias in the appointment process, able, independent-minded Supreme Court candidates who are not obviously conservative or liberal tend not to be appointed, thereby restricting the range of independent thought in the Supreme Court. A similar effect would apply to a reformed House of Lords whose members are elected or appointed. Only random selection from the electoral register guarantees complete independence of judgment between the selected members, both during and after the selection process, with the result that it provides a much wider range of views and opinions than is possible from the election and appointment processes.

- The second chamber should take account of the **prevailing political view** amongst the electorate, but also provide opportunities for independent and **minority views** to be represented.

  Prevailing political view?

  As noted above, elected and appointed members' political views are constrained by their membership of political parties, their specific skills and experiences and the processes by which they are selected. They are therefore unlikely to respond quickly to changes in the prevailing political view amongst the electorate and the process proposed in the draft Bill for

regular, partial replacement of members in the chamber will improve this only to a limited degree. However, members chosen by random selection from the electoral register are, in microcosm, the electorate. This will ensure that the legislative process responds quickly, even immediately, to changes in the prevailing political view amongst the electorate.

Minority views?

Again, as noted above, the processes of electing and appointing members, as described in the White Paper, are not effective in ensuring representation for minority sections of the population or, indeed, for minority political views in general. It is possible to make these processes more effective in this regard by actively promoting the election or appointment of sections of the population deemed to be inadequately represented but this is subject to three major defects:

- it is dependent on the political parties and the appointments commission encouraging the selection of members from under-represented sections of the population – this is by no means guaranteed;
- it can only improve representation for those sections of the population deemed to be under-represented but cannot guarantee fair representation for these sections of the population and cannot guarantee that other sections of the population, not subject to special treatment, are fairly represented;
- members selected as representing particular sections of the population will be constrained in the views and opinions they can present by the perception that they should represent those particular sections in aggregate, thus limiting the range of views being expressed under the pretence that any particular section of the population contains a uniformity of opinions.

Only random selection from the electoral register can guarantee that all sections of the population are fairly represented and that there are no constraints on the expression of minority views, whether within or between different sections of the population.

Roles of the Second Chamber

The white paper (Cm. 7438) specifies the three roles of the House of Lords as: “scrutinising legislation, holding the executive to account and investigative work”. Random selection from the electoral register would enhance the second chamber's capabilities in all these roles, as described below.

Scrutinising legislation

For social and economic legislation that affects the daily lives of UK citizens, the members of a randomly selected chamber would be able to assess the specific effect of proposed legislation on themselves, their family and friends. This would provide a deeper and broader assessment of the legislation on the UK as whole relative to the assessment possible by an appointed or elected chamber, whose members would come from a much more narrowly defined section of the UK population and would not be able to provide as deep and accurate an assessment of the effect of the legislation on other sections of the population.

Holding the executive to account

As well as enhancing the capability to assess the effects of proposed legislation, the members of a randomly selected chamber would also be better able to identify omissions, misguided policy goals and other flaws in legislation than an appointed or elected chamber because they can bring a greater variety of perspectives to the task. Their particular sets of knowledge and experience give them insights that might not be available to an appointed or elected chamber, whose members are selected from a similar class of people to members of the House of Commons and are therefore less able to identify the particular errors and omissions that MPs are prone to.

Investigative work

Investigative work can take many forms but the particular form that a randomly selected chamber can enhance is fact-finding, to establish conditions in the country and the opinions of the population. There are two main tools for this purpose: social surveys and

focus groups. Surveys have the advantages of a large sample size, so that their results are an accurate representation of the state of the population, and the capacity to cover a wide range of topics. However, it is expensive and inconvenient to probe deeper into the findings through dialogue with respondents. Focus groups cover that aspect of fact-finding, as well as allowing speculative exploration of policy proposals, but their conclusions may not be accurate representations of the wider population, partly because of the small sizes of these groups and partly because of possible bias arising from guidance by facilitators. A random selection of, say, 300 electors would provide an excellent compromise between surveys and focus groups, providing a sample size that is large enough to be reasonably accurate but small enough to allow debate and dialogue, essential functions of the second chamber. Such a chamber would be much more effective in this role than an elected or appointed chamber, whose members can only speculate about what the population might think or the population might want.

Professionalisation of Politicians

The professionalisation of politicians is apparent in two ways: the disproportionately large number of MPs who are related by blood or marriage (for example: brothers; father and son; husband and wife); and the growing number of MPs who have little experience of working life outside parliament or party politics (including, for example, the current Chancellor of the Exchequer and the Foreign Secretary). Such professionalisation has advantages. Politicians with these kinds of background are familiar with the rough-and-tumble of political debate, with policy issues and with the workings of parliament, all of which are very useful for parliamentary work. However, this narrow base of experience means that they are less familiar with the myriad aspects of social and economic life that govern the daily life of UK citizens. A randomly selected second chamber can counteract this by providing a wide range of in-depth knowledge and experience covering all aspects of social and economic life. An elected or appointed chamber can only provide this counterbalance to a limited extent because of the narrow class of people available for such election or appointment, particularly with regard to elected members, whose experience of life is likely to be as narrowly based as that of members of the House of Commons.

9 October 2011

Written evidence from Lord Luce (EV 84)

I am a supporter of the Campaign for an Effective Second Chamber and of their submission to the Joint Committee on the draft House of Lords Reform Bill.

I have only one additional point to make. The Coalition Government have made it clear that, in proposing a largely Elected Chamber, there is no intention on their part to change the current powers and responsibilities of the House of Lords as a Revising Chamber. However the Government has not demonstrated how an Elected Chamber would perform these responsibilities better than a reformed Appointed House. I should make it plain, as I did on Second Reading, that I am in favour of a substantially reformed Appointed House of which the Steel Bill incorporates some of the required provisions for reform.

May I ask the Joint Committee to give priority to a full analysis as to whether a reformed Appointed House or a substantially Elected House is best equipped to carry out the current powers and responsibilities of the House of Lords? I suggest that this is the salient aspect that needs assessing by the Committee before any other proposals in the draft Bill are examined.

14 October 2011

Written evidence from the Electoral Commission (EV 85)

The Electoral Commission is an independent body set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process.

Our principles for elections and party finance are:
- Trust
- Participation
- No undue influence

Our key objectives are to ensure:
- Transparency in party and election finance, with high levels of compliance
- Well-run elections, referendums and electoral registration

This submission sets out our initial views on the Government's Draft House of Lords Reform Bill and White Paper. The question of whether or not there are elections the House of Lords, and on what date they might take place, are clearly matters for Parliament. Our aim in providing this briefing is to advise the Committee of any issues or risks we believe are relevant to the delivery of the elections and should therefore be part of the Committee's consideration of the Draft Bill.

1. Combination

1.1 The intention is to hold a House of Lords election at the same time as a UK Parliamentary general election, but that only one-third of representatives would be elected at any one time. No Lords election would take place if a general election was called within two years of an election to both Houses.

1.2 We believe there continues to be a need for comprehensive research to be carried out in order to ensure there is a robust evidence base to inform decisions about the timing of future elections.

1.3 The Commission has previously noted that 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; the Commission has urged Government and Parliaments to look into this issue in more detail and is willing to assist where appropriate.

2. Allocation of representatives

2.1 The Draft Bill envisages new Lords constituencies being established. It is suggested that an independent committee of experts be formed to decide which counties should be combined to form these constituencies, with European Parliamentary regions used as a starting point.

2.2 Once established, the Commission would be responsible for allocating Lords to each region so as to produce the most equitable distribution. There would be a minimum of three Lords per region and the Sainte-Laguë formula would be used, as with the allocation of Members of the European Parliament (MEPs).

2.3 The Draft Bill also gives the Commission the responsibility to conduct a review after every third election to the House of Lords and, if necessary, to make a recommendation that restores equality as far as possible between the districts.

2.4 This would be done by ensuring the ratio of voters to representatives was as nearly as possible the same in all districts, using the Sainte-Laguë formula, which is widely accepted as the fairest way of conducting distributions of this kind.

2.5 The relevant Minister would be required to present the Commission's recommendations to Parliament in the form of secondary legislation, requiring the approval of both Houses. This process is similar to that already used for the European Parliamentary elections and the resource implications for the Commission are minor.

3. Effective coordination of new elections

3.1 An important factor in the delivery of well-coordinated and well-run polls will be clear legislation. We continue to highlight our firm recommendation following problems with the Scottish Parliament elections in 2007 that the rules relating to any elections must be clear from at least six months in advance. This is so that campaigners, Returning Officers and the Commission are not left with uncertainty about their respective roles and responsibilities and can undertake the necessary planning and preparation.

3.2 If the first elections are to be held on 7 May 2015 then all the rules must be clear by 7 November 2014. However, if the Commission is expected to complete a full assessment of how the Peers should be allocated across the country then primary legislation will need to be in place well before that so the Commission has the relevant powers, and sufficient time, to complete the review.

3.3 Thought will also need to be given about how to ensure that the underlying framework for the elections is in place to ensure a consistently good service for electors - particularly when constituencies will cover larger areas, which might include a number of different local authorities.

3.4 Individual Returning Officers would be responsible for the conduct of the poll within each constituency, but the Government should also consider what arrangements might also need to be put in place to ensure an appropriate level of coordination and consistency in administration between constituencies.

3.5 The Government should consider whether existing models for coordination and accountability – including the Convener of the statutory Electoral Management Board in Scotland, the Greater London Returning Officer in London or Regional Returning Officers for European Parliament elections – could be used for elections to a second chamber, or if there are other options for monitoring and intervention to ensure appropriate standards of performance if necessary.

4. Implications for public awareness activity

4.1 We note the proposal to hold the elections to the House of Lords under the Single Transferable Vote (STV) system.

4.2 As voters outside Scotland and Northern Ireland will not be familiar with the STV system we would consider that a public awareness campaign would need to be undertaken. This would serve two purposes: first, to raise awareness that elections are taking place and second, to provide voters with information on how to participate, to ensure that they are able to cast their votes with confidence.

4.3 The cost of a public awareness campaign will depend on the level of activity undertaken. The Commission discusses its proposed campaigns with the Speaker's Committee each year, and seeks specific Parliamentary approval for funding on the basis of what the Committee agrees to.

5. Political donations and spending rules

5.1 The White Paper proposes that the controls on donations and loans to members of the reformed House of Lords, and on spending by parties and candidates in respect of elections to the reformed chamber, should be based on arrangements for MPs and elections to the House of Commons, subject to changes arising from the Government's intention to reform the rules on donations and party funding generally.

5.2 It is clearly sensible that the rules relating to elections to the reformed chamber should be consistent with those applying to elections to the House of Commons and other major elections. The existing rules on national campaign spending by political parties and non-party campaigners will presumably apply to elections to the reformed House of Lords in any event (subject to changes arising from the Government's reforms to the rules), since these elections will be held at the same time as elections to the House of Commons.

5.3 However, if the first election to the reformed House of Lords is to take place in 2015 as the White Paper proposes, it is important that the detailed rules that will apply to that election (and to the 2015 election to the House of Commons) are confirmed in good time before campaigning begins. This timetable needs to allow time for the Commission to prepare guidance for candidates and parties once the legislation is passed. We note that the Government has not yet brought forward proposals to reform the current rules, pending the completion of a review of party funding by the Committee on Standards in Public Life which is now expected to report this autumn.

5.4 It will take some time for any significant changes to the current rules to be developed, considered by Parliament and brought into force. There is the potential for much confusion if the Government seeks to reform the existing rules and to legislate for these new elections at the same time. We therefore ask the Government to set out a clear and realistic timetable for finalising the rules that will apply to the 2015 elections as soon as possible.

5.5 When it comes to consider the detailed spending rules for the reformed House of Lords, Parliament will no doubt wish to consider whether the rules that apply to other elections may benefit from amendment to reflect the specific nature of these new elections. For instance, if the new elections use the STV system provided for in the draft Bill, it may be appropriate to consider whether the current rules on candidate spending, which were developed in the context of 'first past the post' elections, should be amended to reflect campaigning tactics that are likely to emerge in high-profile STV elections, such as candidates using their campaign materials to promote others as second-preference choices.

12 October 2011

Written evidence from Mr Norman Payne via his MP, Annette Brooke (EV 86)

I have been contacted by one of my constituents, Mr. Norman Payne, who has written to express his concerns about the Government's proposals on Lords Reform and specifically on the issue of Bishops sitting as of right in a reformed chamber.

My constituent holds that the present proposals on Bishops do not simply maintain the status quo but give even more privileges to the Church of England, some of which even the Archbishops of Canterbury and York have strongly opposed in their submission to the Joint Committee, stating that the Church of England did not seek exemptions proposed 'by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension'.

Mr. Payne writes that the United Kingdom is the only democratic country to give seats in its legislature to religious representatives as of right, and he believes that having any reserved places for Bishops in Parliament is unfair, unequal and against the aims of a more transparent and legitimate second chamber.

The new proposals, which in effect create a new largely independent and largely unaccountable, place for the Church of England in Parliament, are unnecessary, and even the Church of England leadership, think they go too far.

My constituent has asked that I pass his views to you and I shall also be sending a copy of this letter to the Joint Committee.

24 November 2011

Written evidence from Edward Choi (EV 87)

I would like to comment regarding the proposed House of Lords reforms. I believe that there should not be any radical reforms to the House of Lords. The House of Lords have been an important part of the British political (and legal) heritage for many years and is an important part of the British culture. Any reforms would destroy part of the English/British culture.

The House of Commons is already an elected legislature. The House of Lords and the monarch have long been a protection of the constitution, although lately that view has been largely disputed. Through most of England's history, England (and Britain) had succeed with the current structure. The focus was not solely on an elected parliament, but a combination of an elected house and other protections. A reform in the way the government is currently proposing seems to be "Americanizing" the British system. The American system is where everything (including judges) is elected, that is not the sole system every country should operate. There are, of course, positives and negatives to each system which should be analyzed. Preserving our culture, and keeping a system that works simply makes sense. It's a system where there is democracy and where there are protections in place.

Unlike the elected House of Commons, the term of peers in the House of Lords is longer. It allows peers to view issues long term, and not just with a view to the next election. Without elections, peers in the House of Lords would not be as focused on personal interests for the next elections, as does the House of Commons. That is important. The House of Lords can be used to correct the short-sighed House of Commons and provide some longer-term insight into matters, as does the monarch.

Should House of Lords reform go through, I would strongly recommend preserving Church of England representatives in the house. This nation is a Christian nation and had been that way throughout its history. Long battles have been fought to preserve this, and this tradition and protection should not be destroyed. I do not believe other faiths should be represented as the Church of England is the national religion. This view is in line with many other countries where a dominant religion is in place. Preserving and building upon our Christian heritage is important both culturally and spiritually.

29 November 2011

Written evidence from the Venerable Seelawimala, Head Monk, London Buddhist Vihara (EV 88)

On behalf of the Buddhist community in the UK, I would like to make the following views known to the Joint Committee. We are particularly concerned that there is a proposal to reduce the number of members who currently represent the faith communities of the UK (the Lords Spiritual) from 26 to 12. Although the present Lords Spiritual represent the Church of England, we feet' that, as the U.K. is now a multi-faith society, the reformed House of Lords, should more accurately reflect this change. It is vital that the Lords Spiritual should (in the words of the Archbishops of Canterbury and York) ensure that "there is a place at the table for the perspective of faith, and that through that presence the concerns of all those who profess a faith can be guaranteed a fair hearing in the legislative process". If the Lords Spiritual are reduced in number to just 12 members, then the faith communities will have just a 4% representation in the new House of Lords. This can hardly be said to be guaranteeing a fair hearing in the way that we all would wish. In short, we feel that the Lords Spiritual should not be reduced in number but should more accurately represent the views of people of all faiths in the UK.

10 October 2011

Written evidence from Lord Desai (EV 89)

1) I have been in favour of an elected House of Lords ever since I joined in 1991, if not before. I wrote a Fabian pamphlet on this topic along with Lord Kilmarnock in 1996. (*Destiny Not Defeat*, Meghnad Desai and Alistair Kilmarnock, Fabian Pamphlet 1996). I prefer 100 % elected House but will settle for 80 % if that is the majority view.

The two issues which I wish to address are the Primacy of the House of Commons and the Method of Electing Members for the Reformed House of Lords.

Primacy of the House of Commons

2) A principal difficulty with the present draft Bill concerns the Primacy of the House of Commons. Let me first say that in my view the primacy is a historical accident of the second chamber being unelected and unrepresentative. If the Second Chamber were to be elected—substantially or wholly—the primacy of the House of Commons cannot be taken for granted. Even asserting the primacy in the Bill as has been done in Clause 2 is not sufficient. In our unwritten Constitution, such a provision can be overturned by a future Parliament. Some lock-in device such as exists for the Septennial Act needs to be used. During the passage of the legislative and Regulatory Reform Bill 2006,lord Norton introduced an amendment characterising certain laws as 'a measure of constitutional significance' and introduced a Schedule listing such measures which were ring-fenced from any ordinary legislative procedure which could amend them or repeal them. Some such device may have to be used to guarantee the primacy of the House of Commons.

Method of Election:

3) The principal objections to an elected House have been that an elected House:

> a) will challenge the House of Commons, especially if its members are elected by PR which many, though not everyone, think is more legitimate than First Past the Post (FPTP) which has been just lately confirmed by the Referendum as the chosen method for the House of Commons;
>
> b) will not have the range and quality of the present part—appointed part—hereditary House. Mention is frequently made of the members of the Royal Society, the British Academy, the Medical faculties who are currently seating in the House; and
>
> c) that those who do run for election to the new House will be not of the quality which there is in the House of Commons. This sentiment is often expressed in a general doubt about the quality of anyone who would run for the new House.

4) I would like to argue that these objections are not frivolous though at the end of the day I would not let them negate the validity of the reform. Yet it is possible to suggest a new method of representation which will at the same time preserve the principle of an elected

House, make it representative but not allow it to question the primacy of the House of Commons.

5) The way to do this is to go away from the territorial basis of electing the House of lords members. By a territorial basis I mean any arrangement based on the electoral register and the locality of the voters with one member for every 78,000 voters as under the most recent legislation This is the basis on which the House of Commons members are elected. A European Parliament constituency is just a multi member version of this arrangement. Having PR and dosed or open lists does not alter the territorial basis of the elective principle.

6) The British citizen has many identities whereby he/she may be represented and not just residence. One very important one which has emerged in the last two decades is nationality.UK now consists of four nations:·England, Scotland, Wales and Northern Ireland. Three of them have devolved parliaments with varying powers While UK is not a federation, the national dimension does not have a formal representation anywhere. Of course, the difficulty is that the one non-devolved nation—England is too large a unit compared to the other three. It would be unfair on strict federal principles to give equal representation to each of the four nations. There is a way around this objection.

7) There are ten regions in England but they have been reluctant to choose regional autonomy. Yet we could use the thirteen constituent 'regions'—three devolved nations plus ten English regions as a basis for representation in the reformed House of lords.

8) If we are to adopt the region as a unit of representation, an important principle would be that each region has identical number of members regardless of population size. This will supplement the one person one vote and one member for 78,000 voters for the House of Commons. If the reformed House has 300 members then we can have, say, 260 or 20 from each region as elected from the region. If 400 then 27 per region gives us 351. The remaining seats can be filled in other ways which I come to below.

9) The election can be direct or indirect. It can be as in the election for Scottish Parliament on a top-up principle in the national election or at the time of elections for the European Parliament. The list must be for the whole region rather than for separate constituencies. Another alternative would be to have indirect elections whereby locally elected members - local councillors in English regions, members of the devolved Parliaments in the three nations could elect the members after inviting candidates to run.

10) As to the objection about the high quality of scientists etc, professional societies—The Royal Society, the British Academy, BMA, TUC, CBI, the law Society, the Bar Council, could be the electorates from which a member each can be chosen. The final list of professional bodies will need debate but the principle will be that the professional body elects one of its own. If the 'regions' take up 260/351 seats, the remaining 40/49 could be elected from professional bodies. We have a precedent in Universities seats for the House of Commons which were only abolished after the Second World War

11) Thus we have an elected House of Lords where the majority are elected on a regional basis and a minority are elected from specialist bodies. This will allow The House of lords to perform a unique function representing regional interests as well as making specialist professional expertise available for legislation.

6 December 2011

Written evidence from Professor Jonathan Tonge (EV 90)

The impact of the Single Transferable Vote in Northern Ireland

Introduction

This evidence is submitted in response to a personal request for a submission, received from the Clerk of the Joint Committee on the Draft House of Lords Reform Bill on 24 November 2011.

I was asked to outline how the use of the Single Transferable Vote has impacted upon:

- the composition of the Northern Ireland Assembly;
- its diversity;
- public participation in voting;
- the extent to which voters give support to candidates outside
- their 'main' political party; and
- the chances for independents to get elected.

I provide some commentary on each of these aspects, as follows:

1. The composition of the Northern Ireland Assembly

1a) The use of STV offers fairly impressive proportionality in terms of the relationship between party first preference vote shares and seat shares in the Assembly. Table 1 indicates the degree of proportionality of the Assembly in terms of proximity of party vote shares to Assembly seats.

Table 1: Party first preference vote shares and seats held in the Northern Ireland Assembly 2011

Party	First preference vote share %	Assembly seats	Assembly seat share %
DUP	30	38	35
SINN FEIN	27	29	25
SDLP	14	14	13
UUP	13	16	15
ALLIANCE	8	8	7
GREEN	3	1	1
TUV	3	1	1
INDEPENDENT	2	1	1

1b) This proportionality is even more important in the Northern Ireland case than for other legislatures, given the region's troubled political history. It is essential that both of the main communities (i.e. Unionist and Nationalist) receive Assembly representation appropriate to their electoral mandate.

1c) Moreover this broadly proportional representation within the Assembly determines the number of Executive places and committee chairs held by parties, under the d'Hondt formula, which takes account of the total votes won in relation to number of Executive seats (the increasing divisor as parties are allocated ministries or chairs). The Executive is required by law to be cross-community in composition.

1d) The turnover of Assembly members is fairly high. 25 of the 108 Assembly members elected in 2011 were new. At the previous election in 2011, 29 members were newly-elected.

1e) STV was deliberately chosen for Northern Ireland to ensure a high degree of proportionality in a divided polity. It has operated there since 1973, long before the establishment of the Northern Ireland Assembly under the 1998 Good Friday Agreement. Alternative have been considered, but have been deemed unsatisfactory. These alternatives are:

1f) *Party list STV*. The public are able to choose individual candidates under the PR-STV system used. During the troubled early years of the Northern Ireland Assembly, with the Ulster Unionist Party divided over the merits Good Friday Agreement, some commentators advocated party list systems, to allow the parties to choose the candidates, with electors only voting for parties. Party leaderships would then 'insert' their preferred candidates into the Assembly according to the party's vote share, eliminating 'mavericks; or hardliners. This is not a desirable method, in that ideally electors ought to be able to rank candidates as well as

parties. If applied to elections to the House of Lords, it would lead to the domination of elections by party machines.

1g) *Alternative Vote (AV)*. This would require single member constituencies, with the successful candidate achieving 50 per cent +1 of the vote to be elected. It would have the advantage in Northern Ireland of requiring candidates to appeal across the ethno-national divide for support in constituencies where there was a fairly equal mix of Unionists or Nationalists. However, such areas are uncommon and single member constituencies would arguably lead to the under- (or non-) representation of the minority community. Moreover, AV would be very disproportional and would require small constituencies to create a sizeable Assembly.

1h) *Additional Member System (AMS)*. The Scottish and Welsh models would mix FPTP and regional lists. This is less likely to produce the high level of proportionality evident under STV and would lead to underrepresentation of unionist or nationalist minorities in parts of Northern Ireland.

2. The diversity of the Northern Ireland Assembly

2a) The binary divide between Protestant-Unionist-British and Catholic-Irish-Nationalist and the need to ensure adequate representation of both traditions has tended to absorb attention at the expense of a focus upon other aspects of diversity. Ethnic minority communities are very small, albeit growing, in Northern Ireland. The first ethnic minority candidate was elected in 2007 (for Alliance) and she remains the solitary representative drawn from an ethnic minority.

2b) The most striking under-representation is that of women, who formed only 17 per cent of candidates in the 2011 Assembly election. Table 2 highlights the lack of Assembly representation for women and compares this to the position under the Additional Member System used for elections to the Scottish Parliament and National Assembly for Wales. The Northern Ireland Assembly under-representation of women is worse than that found in the House of Commons, where women form 22 per cent of the legislature.

Table 2 Women's Representation in the Devolved Parliaments and Assemblies, 1998-2011

% Women as % of elected body	1998/99	2003	2007	2011	Average
Northern Ireland Assembly	13	17	17	19	17

Scottish Parliament	37	40	33	37	37
National Assembly for Wales	40	50	47	43	45

2c) Tables 3a and 3b indicates the gender breakdown in terms of candidates and those elected, within the five main parties, to the Northern Ireland Assembly in 2007 and 2011.

Table 3a Election of Male and Female Candidates from the five main Northern Ireland Assembly parties, 2007

Party	Males elected	Females Elected (and as % of party's elected representatives)	% Female candidates fielded by party as % of all party's candidates	% Female candidates successful as % of total female candidates	% Male candidates successful as % of total male candidates
DUP	33	3 (8%)	13	50	83
SINN FEIN	20	8 (40%)	24	45	71
SDL P	12	4 (33%)	40	29	57
UUP	18	0 (0%)	3	0	49
ALLIANCE	5	2 (40%)	39	29	42

Table 3b Election of Male and Female Candidates from the five main Northern Ireland Assembly parties, 2011

Party	Males elected	Females Elected (and as % of party's elected representatives)	% Female candidates fielded by party as % of all party's candidates	% Female candidates successful as % of total female candidates	% Male candidates successful as % of total male candidates
DUP	33	5 (13%)	16	71	89
SINN FEIN	21	8 (28%)	31	73	88
SDLP	11	3 (21%)	14	75	46
UUP	14	2 (13%)	11	67	56
ALLIANCE	6	2 (25%)	32	29	40

NB The three other candidates elected – one Green, one TUV and one Independent were all male.

2d) As can be seen, the percentage chances of election for women candidates fielded in 2011 improved markedly on the 2007 position. Within the largest two parties, male candidates have been more likely to be elected than female candidates, but this was not true of other parties in 2011. The percentage of women elected, at 19 per cent of the Assembly, was slightly higher than the percentage of women candidates fielded.

2e) There is some evidence that party vote management is more likely to facilitate the election of male candidates at the expense of women candidates fielded by a party. Controlling for other factors, electoral preferment for male candidates is marginal. There is no evidence of women candidates being less likely to receive lower preference vote transfers, controlling for party.

2f) Evidence from the Irish Republic's deployment of STV has been contradictory. One study suggests that, controlling for other factors, male candidates are 2 per cent more likely to be preferred, but this is contradicted elsewhere.[1]

2g) The specific workings of STV in Northern Ireland are not responsible for the dearth of representation of women, relative to the Scottish Parliament and Welsh Assembly which utilise the Additional Member System (AMS) and regional lists. However, central or regional control of party lists of candidates under AMS allows greater opportunity for a more appropriate gender balance of candidates to be imposed by party leaderships.

2h) Given that peers are not representing a constituency, Regional List systems might be a mode of election under STV for the House of Lords. If parties exercised strong controls in terms of diversity, including gender, in selecting the candidates for party lists, it is possible that the legislature formed under STV could be representative.

2i) In Northern Ireland, under STV, party selection of candidates is localised. Women have been consistently under-represented as candidates for the Unionist parties, where an informal 'tradition' of male dominance and gender division of roles has been perpetuated. This position is less acute amongst nationalist parties and amongst the non-bloc aligned Alliance Party. There is no logical electoral barrier deterring parties from selecting women candidates.

[1] For the 2 per cent claim, see Schwint-Bayer, L., Malecki, M. and Crisp, B. 'Candidate Gender and Electoral Success in Single Transferable Vote Systems', *British Journal of Political Science*, (2010) 40.3, 693-709; For the neglible gender impact claim, see Laver, M. Galligan, Y. and Carney, G. (1999) 'The Effect of Candidate Gender on Voting in Ireland', *Irish Political Studies*, 1999, 14, 118-22.

2j) The lack of gender diversity/equality stems from attitudinal issues within some political parties – which might at worst be seen as antediluvian and at best be seen as a legacy of male dominance – rather than as a product of systemic failings associated with STV. The problem is thus largely one of party candidate 'supply' rather than systemic failings attributable to STV. The problem of women's under-representation under STV is also seen in the Irish Republic, where women's representation has never exceeded 15% in Dail Eireann, again through party disinclination to select women candidates.

2k) Institutional barriers within the Northern Ireland Assembly may also be evident, in that a 'male culture' dominates, potentially deterring women candidates, although this is unproven and requires further research.

2l) The 2010 ESRC Northern Ireland election survey found that only 2 per cent of the electorate disagreed with the proposition that 'there ought to be more women elected to the Northern Ireland Assembly'. Ten per cent believed that 'a woman candidate will lose votes'. Thirty-eight per cent believed that parties should use quota systems to bolster the number of women candidates, with only 4 per cent disagreeing, but the largest single category of respondents neither agreed nor disagreed with the proposition.

3. Public participation in voting

3.1 Turnout in Northern Ireland elections has been relatively healthy in all forms of election and there is little variation according to type of election. As Table 4 shows, turnout under STV for Northern Ireland Assembly elections average has been respectable for the range of contests under that system. Assembly and local elections yield turnouts comparable with those for First Past The Post (FPTP) for Westminster elections held in Northern Ireland.

Table 4 Average turnout by election type in Northern Ireland, 1998-2011

Election	Voting system	Average Turnout (%)
Assembly	STV	62
Council	STV	61
European	STV	51
Westminster	FPTP	63

3.2 Table 5 shows that turnout under STV for Northern Ireland Assembly elections is higher for those conducted under AMS for the other devolved legislatures (and the Assembly is less powerful than the Scottish

Parliament). It would be considerably over-claiming for STV to suggest that high turnouts are consequential upon the deployment of STV. What can be said however is that there is no evidence that STV deters electors, compared to other electoral systems.

Table 5 Average turnout in devolved elections 1998-2011

Election	Voting system	Average Turnout
Northern Ireland Assembly	STV	62
National Assembly for Wales	AMS	43
Scottish Parliament	AMS	53

3.3 It should be noted that turnout is falling sharply in Northern Ireland elections (down 9 per cent from 2007-11), but this may be due (ironically) to the calmer political atmosphere rather than knowledge deficit in respect of the voting system. Turnout also fell at the last FPTP election.

3.4 Over 80 per cent of votes are used to elect the six members representing each constituency. There is considerable voter choice, with 14 parties fielding candidates in 2011 and 218 candidates standing (both these figures fell from 2007).

3.5 STV does not eliminate wasted votes. Nationalist votes in, say East Belfast, or Unionist votes in West Belfast are invariably wasted, as are many for candidates beyond the main parties. Nonetheless there is high vote utility.

3.6 Voters in Northern Ireland are uncertain over whether it would ever be desirable extend STV to Westminster elections. Asked in the 2010 Northern Ireland election survey whether 'the voting system for Westminster elections should be changed from FPTP to STV', only 24 per cent supported the idea, although a majority of respondents were undecided.

3.7 One aspect of STV in Northern Ireland which has elicited much criticism has been the length of Assembly election counts. These have taken two full days on each occasion, due to a) the nature of STV and the need to transfer votes b) verification of ballots c) staff absences and d) poor procedures.[2] This has been frustrating for the electorate and for candidates and care needs to be taken in the event of any STV election to the House of Lords that appropriate procedures are in place to effect a

[2] http://www.electoralcommission.org.uk/__data/assets/pdf_file/0012/141222/NIA-election-report-final-web-no-embargo.pdf

speedy counting process, to maintain interest in outcomes. There is also a need for clarity in terms of the provision of information to the public regarding the transfer of lower preference votes from elected and eliminated candidates.

3.8 The government should consider carefully whether to hold any STV election to the House of Lords at the same time as an election or referendum requiring a different system of voting. The 2011 elections required 3 ballot papers (Assembly and Council, both STV) plus the AV referendum ballot paper. The number of Assembly spoilt ballot papers in almost doubled from 6,382 in 2007 to 12,369. This higher figure in 2011 represented almost 2 per cent of ballots and was three times higher than the figure for the 2010 general election in Northern Ireland, when only one election took place. Almost half of spoiled ballots were ineligible because more than one first preference had been entered.

3.9 The use of different electoral systems on the same day, if STV is deployed for contests to the Lords on the same day as local or general elections, might also add to the length of count. The Northern Ireland STV experience suggests that the count is lengthy regardless. As noted above, the 2011 Assembly election count was accompanied by a) an AV referendum count and b) a local election count which began after the Assembly count. This required separation of ballot papers.

3.10 Despite impressions to the contrary, the 2011 count, although far too long, was not actually greater in length than the 2003 and 2007 Assembly counts, which were also accompanied by local election counts.

4. The extent to which voters give support to candidates outside their 'main' political party

4.1 In Northern Ireland the vast bulk of votes remain 'in-bloc'. Voters tend to give lower preference votes to other candidates from the same party for which they expressed their first preference. Where this does not occur, voters are very likely to transfer their voters to the other parties within the unionist or nationalist bloc. This is shown in Table 6, examining the first and most recent Assembly elections.

Table 6 Lower preference vote transfers, Northern Ireland Assembly elections 1998 and 2011

Party	1998	1998	2011	2011
	To other candidates from same party	To Unionist candidates	To other candidates from same party	To Unionist candidates

DUP	81.2	97.8	73.8	96.8
UUP	73.9	90.5	73.6	96.2
		To Nationalist candidates		To Nationalist candidates
SINN FEIN	75.1	88.4	76.6	94.1
SDLP	84.9	85.1	73.8	86.6

4.2 As can be seen, there is very little sign of electoral thawing in Northern Ireland, in terms of propensity of Unionist first preference voters to offer lower preference transfers 'across the divide' to Nationalist candidates. Nationalist voters are similarly disinclined to transfer to Unionist candidates.

4.3 The continuing rigidity of Northern Ireland's ethnic divide in fostering such electoral polarisation may make it a poor guide to the propensity of voters to switch to other parties under STV. A better indication of the likelihood of voters to switch party allegiances down a ballot paper may be found in other STV contests, such as Scottish local elections.

5. The chances for independents to get elected

5.1 The dominance of ethnic bloc voting alignments and of the parties identified with those blocs mean that it is difficult (Alliance apart) for non-nationalist or non-unionist independent candidates to be elected. The main four unionist and nationalist parties provided 62 per cent of candidates in 2011, with Alliance candidates providing a further 10 per cent. Smaller parties and independent candidates comprised the remainder.

5.2 Only one Independent was elected in 2011; likewise in 2007.

5.3 Fifteen independent candidates stood in 2011, with only one elected (who was a previous Assembly member).

5.4 The best-performing independents tend to be those who have been previously elected to the Assembly, but have been deselected by a party or resigned. Indeed half of the first preference votes awarded to independents in 2011 went to such 'retread' candidates The number of independent candidates fielded represented a big drop from the 28 of 2007, partly reflecting the dominance of the main bloc parties.

5.5 Importantly however, it would probably be far less difficult for independents to be elected in a less ethnic-aligned and party-dominated system, given the large number of candidates (6) elected for each of the

18 constituencies, requiring a low quota of votes (one-seventh of votes cast, plus one vote; 14.3 per cent).

5.6 The financial barrier to independent candidates standing for the Northern Ireland Assembly is lower than in the other devolved nations, with only £150 having to be lodged. This is returned if the candidate achieves one-quarter of the constituency quota. A £500 deposit is required for the equivalent elections in Scotland and Wales. 56 candidates lost deposits in the 2011 Northern Ireland election, but three-quarters of total candidate deposits were returned. The issue of the size of deposit for candidates for the House of Lords may be an issue requiring consideration if 'frivolous' candidacies are to be deterred.

6. Summary of findings and recommendations

6.1 STV has provided a highly proportional Northern Ireland Assembly, in terms of the legislature's composition reflecting the choices of electors. On these grounds, it seems reasonable to recommend its use for elections to the House of Lords.

6.2 Healthy turnouts have been recorded under STV in Northern Ireland elections, comparable with those under FPTP Westminster contests and better than devolved elections under AMS. Lack of knowledge of STV has not been a factor cited by non-voters as a reason for not voting. Spoilt ballots are uncommon. Again, these factors provide reassurance in terms of prospective use for elections to the House of Lords.

6.3 Point 6.2 notwithstanding, use of different voting systems on the same day is inadvisable. The number of spoilt ballots rose appreciably to over 12,000 when STV Assembly and Council elections were held on the same day as the AV 'Yes/No' referendum.

6.4 The legislature elected under STV in Northern Ireland has produced the greatest gender imbalance of any legislature in the United Kingdom. However, this owes little to STV and much to party selection of male candidates. Whilst candidate selection is clearly a matter for the parties, the issue of representativeness ought to weigh as heavily as proportionality.

6.5 One of the few aspects in which STV has struggled for credibility in Northern Ireland has been in respect of the length of election counts. Adequate provision would need to be made for elections to the House of Lords to prevent 48 hour counts, which are regarded

as unsatisfactory by candidates, electors and electoral workers alike.

6.6 Other STV contests in less polarised polities should be used to judge the propensity of voters to switch party allegiances in lower preference votes. Northern Ireland is still very divided electorally and may be untypical in the way in which lower preferences remain largely 'in-party' and, if 'straying' at all, remain overwhelmingly in-bloc. Electoral Spring, if defined as widespread cross-community voting, has yet to arrive in the region.

6.7 Independents struggle to be elected to the Northern Ireland Assembly due to the party and ethnic bloc loyalties of the electorate. Those independents elected or polling well sometimes have clear previous party/bloc association. However, the low quota (only 14.3 per cent of the vote) in multi-(six) member constituencies required for election means that it ought not to be unduly difficult for independents to be successful. 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.

6 December 2011

Written evidence from the Hansard Society (EV 91)

The Hansard Society believes the draft Bill is in many ways a missed opportunity; whilst the composition and form of election or appointment of members to a new second chamber are crucial, the Bill is also an opportunity to think about the powers of the House of Lords and whether these too should be revised in any way.

Powers

It is not axiomatic that electing a majority or all members of the Upper House will result in a future constitutional clash with the House of Commons due to Peers asserting an equal democratic mandate. The House of Lords has gradually become more assertive over the last decade but this has been largely in relation to the executive. 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.

However, it should not be assumed that the current conventions that have circumscribed the role and powers of Peers previously will necessarily be accepted in the future should a reformed House be wholly or largely elected. The applicability of the Salisbury Convention has already been the subject of debate in recent years and particularly so since the formation of the coalition government and the merging of manifestos to create a programme for government. By their nature conventions change over time and have force only if their nature and intent are clearly understood and accepted and only for as long as those concerned are willing to observe them. Whether elected Peers in the future choose to do so may be dependent on specific political circumstances, the evolving relationship with the executive, and the changing tide of public opinion.

The Hansard Society has previously recommended that a comprehensive review of the legislative powers of the executive and Parliament be undertaken with a view to drawing up a concordat which clearly sets out where key powers lie, and clarifies the relationships between, and responsibilities of, the executive, the legislatures and the courts.[1] Such a review would embrace a study of the relationship between Westminster and the other legislatures in the United Kingdom, and with the courts and supra-national institutions such as the EU. Whilst not in any way underplaying the challenges that negotiation and adoption of such a concordat would pose, it would nonetheless be a very serious demonstration on the part of both Parliament and government that they recognise that the current way in which law is made is deficient; that they are committed to the process of reform; and that they are determined to ensure everything possible is done to assure the making of better law in the future. 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.

The proposed full-time, 15-year term length for elected Peers allows for a long-term perspective. As such, consideration could have been given to what opportunities this long-term focus would provide to broaden the legislative and policy scrutiny work of the House of Lords and to ensure that any gaps

[1] A concordat of this kind has also previously been recommended by the Conservative Commission to Strengthen Parliament in 2000 and the Power Inquiry in 2006.

in the scrutiny landscape are filled. For example, the Hansard Society has previously highlighted the weaknesses in financial scrutiny undertaken by Parliament. While continuing to respect the financial precedence of the Commons, a reformed second chamber could play a more active role in carrying out financial scrutiny, for example in the area of tax administration, following up recommendations of the Public Accounts Committee, and in the area of post-legislative scrutiny.[2] Similarly, the House of Lords could contribute to improved scrutiny of EU-related legislation.

Size, composition and term length

We contend that it is a basic democratic principle that the public should have an opportunity to elect and remove from office those who make the laws of the land. As such, the shift from what is now an appointed Upper House to one that is elected is one that we support. However, there are a number of unanswered questions and contradictions in the government's proposals that need to be addressed.

It is unclear how the Government has arrived at the number of 300 Peers to sit in a reformed Chamber (nor how they decided on 12 seats for the Church of England Bishops as opposed to the current 26). The size of the Chamber should be determined in relation to its role and function; there must be enough members to ensure that their roles – to debate, scrutinise and revise – can be carried out effectively. Previous proposals for House of Lords reform over the last decade have variously suggested an Upper House of between 350 and 600 members.[3] The draft Bill will provide for a Chamber that is significantly smaller. It may be that 300 members is sufficient, but this cannot be tested unless the government makes clear upon what basis it has reached this determination. At present, for example, there are 28 committees in the House of Lords (domestic and select committees) each generally with between eight and 12 members. Additionally, Peers are also required for service on joint committees of which there are currently 10 in existence. Of course, some members can serve on more than one committee but these figures suggest that more than two-thirds of the membership of a revised House will be involved in committee work. On top of this, time for legislative scrutiny and participation in general debates and question time must also be provided for. These figures would suggest that, particularly at key times in the legislative timetable, the capacity of the House might be stretched.

The proposal for a 15-year, non-renewable term does not sit with the principle that the public should have an opportunity to both elect and remove those who govern us; it provides for democracy but not accountability. A term of 15 years' duration might be said to be a justifiable compromise given the movement away from the life-long terms currently accorded peers. However, it is significantly beyond international norms; terms in other legislatures tend to be no more than eight years in length at most.

Nor can it be assumed that the independence of members will be enhanced because they will not face election. Although it is true that the House of Lords has become more assertive over the last decade, nonetheless this should not be overstated: on most issues those members aligned to a party in the current, unelected House will tend to vote with their party group. Members are freer to assert their independence than MPs – for example, because of the absence of whipping or the pressures that can

[2] See A. Brazier & V. Ram (2006), *The Fiscal Maze: Parliament, Government and Public Money* (London: Hansard Society), pp.57-59.

[3] The Wakeham Commission recommended approximately 550 members; the 2001 White Paper proposed 600 members; the Public Administration Select Committee suggested 350 in 2002; the cross-party group on House of Lords reform opted for 385; and the 2008 White Paper recommended 435.

be applied through local constituency party members – but on most issues they still tend to take their party's line. It is likely that the pre-disposition of members to vote with their party will therefore be at least as great, and probably more so, in a full or predominantly elected House regardless of whether or not the members face a future election. There is also a risk with the use of the STV system – which grants great influence to the party managers in relation to candidate selection – that socialisation into party norms and expectations will be reinforced very early on.

The government's proposals assume that the size of the constituency, the use of the STV system, and the long non-renewable terms, coupled with the different role and function of the House of Lords, will prevent newly elected Peers coming into conflict with MPs at a constituency level. These will certainly be ameliorating factors but it should not be assumed that Peers will not face pressures from the general public to provide a local constituency-style service and from their party to do the same in order to support and supplement party campaigning activity. There has been an explosion in the amount of constituency casework being dealt with by MPs in recent years and what the public generally say they want from their elected representatives is a 'local' focus. 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. Evidence from Scotland and Wales, for example, would suggest that regional list members face an equally demanding case-load as that of constituency members; constraints on constituent access associated with large constituencies are also now readily transcended by online access to representatives via email and social media.

Appointments

The inclusion of appointed members in a reformed House is predicated on the value associated with the assumed independent expertise of many members of the current House. There is no doubt that many cross-bench peers do make an important and valuable contribution. However, what is meant by expertise and what range of expertise is desired in a reformed House – and therefore should be sought by the Appointments Commission in the future – should be subject to careful consideration and perhaps definition. Expertise suggests a degree of in-depth knowledge and experience in a particular area. However, expertise has a sell-by date; if members do not refresh and renew their knowledge and skills their expertise will not necessarily be current and therefore relevant to the work of the House. Moving to full-time, 15-year terms may not allow members to sustain their level of expertise if they are unable to practise their profession. The expertise of current members also applies to distinct, often niche areas of knowledge and experience and is therefore applicable to certain pieces of legislation but not necessarily the full gamut of legislation being dealt with in the House. Finally, recent research on the professional backgrounds of the current members of the House of Lords suggests that the expertise in the House is still drawn from a quite narrow range of specialisms, dominated by those from representative politics, the law, academia, business and finance. Expertise is much more sparse in areas such as planning and surveying, engineering and architecture, primary and secondary education, local government administration, and science (outside higher education).[4] If expertise is valued such that 60 members are to be appointed on the basis of expertise, then more detailed consideration should be given to what is meant by expertise, in what areas, and how this is to be sustained by members over the period of a 15-year term.

[4] See M. Russell & M. Benton (2010), *Analysis of existing data on the breadth of expertise and experience in the House of Lords: Report to the House of Lords Appointments Commission* (London: Constitution Unit, UCL).

The differing qualities required of MPs and Peers

The government claims that the role and function of the Upper House – as a scrutiny and revising Chamber – should 'attract individuals with different qualities from members of the House of Commons'.[5] On this basis, to prevent Peers using their seats in the House of Lords as a launch-pad for election to the House of Commons, the Bill contains provisions for a time restriction to disqualify Peers from being elected to the Commons for a specific period after they cease to be members of the Upper House. However, the government does not propose that a similar restriction should be imposed on MPs to prevent them standing for election to the House of Lords. If the qualities that are sought in Peers are different from those of MPs – as the government's own argument explicitly suggests – then such a restriction would surely be equally desirable. While surveys of public attitudes suggest that the public support a shift to an elected Chamber, they do not want it to replicate the House of Commons. They want elections to the Upper House but do not want to vote for the current political class. Given that the proposed electoral system places significant influence in the hands of party managers, (as they will be able to exercise control over the composition and ordering of candidates on the party lists), such a restriction might therefore be a valuable mechanism to ensure that the membership of the Upper House remains demonstrably different from that of the Commons. As increasingly hollowed out institutions with declining membership and activist bases, this will, of course, present huge challenges to the political parties. However, it might serve to force them to think more radically about how, and from where, they recruit candidates for the House of Lords, thus providing the necessary catalyst to force the parties to do more to broaden the nature of representation.

Ministers

The Bill as currently drafted would confer on the Prime Minister an unfettered power to appoint as many ministers to the House of Lords as he or she might wish. The provision that requires these ministers to leave the House upon ceasing to hold ministerial office will ensure that the numbers do not accumulate significantly but, dependent on their number at any one time, they could, in certain circumstances, upset the balance of power within the House. Gordon Brown, for example, appointed nine such Peers to be ministers during his administration, some of whom served for only short periods of time. At present, 22 ministers outside Cabinet are based in the Lords. Previous proposals have suggested that a cap be placed on the number of ministerial appointments that can be in existence at any one time but the government proposes only that these should be of 'a limited number'. This issue should be revisited to provide greater definition and clarity as to what constitutes 'a limited number', thus guarding against the possibility of future abuse. Additionally, given the potentially controversial nature of this provision and the lack of scrutiny generally accorded to delegated legislation, the detailed arrangements to implement this should be set out in the Bill itself.

[5] HM Government (2011), *House of Lords Reform Draft Bill*, Cm 8077, p.28.

Women in Parliament[6]

The UK trails in international league tables of women's political representation. The proposed STV electoral model does have greater potential than other voting systems to improve women's representation and diversity. However, evidence from other legislatures (for example, in the Scottish Parliament) demonstrates that this alone is not a guarantee of such improvements nor of their sustainability; additional positive action measures are also required.

Reform of the House of Lords offers a once in a generation opportunity to increase the presence and voice of women in the Upper House. As such, the Bill should be amended to require the political parties to ensure the selection of equal numbers of women and men as candidates for election to the new Upper House and the Appointments Commission should be statutorily required to appoint equal numbers of women and men in the event that a hybrid House is agreed. Consideration should also be given to the effect that the right of ministerial appointment and the allocation of 12 ex-officio seats for Church of England Bishops – currently reserved seats for men – will have on equality and diversity of representation in a reformed Chamber.

Are the public interested in reform of the House of Lords?

If the Bill passes, a substantial public education campaign will be needed to inform voters about the role and function of the House of Lords and the process of election (and/or appointment) to it in the future. The Hansard Society's annual *Audit of Political Engagement* demonstrates that public knowledge about and interest in the issue of Lords reform is low. In 2010 only 14% of the public said they had discussed reform of the House of Lords with family or friends in the last year or so; it was eighth on a list of constitutional and political reform issues discussed, behind, for example, the EU, party funding, devolution and the electoral system. Twelve per cent of the public said they thought the House of Lords was elected and 14% said they didn't know.[7] Similarly, in the 2008 *Audit*, only 26% claimed to know 'a great deal' or 'a fair amount' about the issue of Lords reform. Thirty-six per cent said they were dissatisfied with how members of the House of Lords were chosen, 13% said they didn't know how they were chosen and 33% were ambivalent about the issue (neither satisfied nor dissatisfied). But only 16% said it was one of their top two or three priorities for constitutional change; much greater priority was accorded to reform of the Human Rights Act, party funding, membership of the EU, and the right of Scottish MPs to vote on English issues in the House of Commons.[8]

Additional reforms needed

There is a risk that in the debate about the long-term future of the House of Lords the opportunity to deliver tangible and important reforms prior to 2015 may be lost. There is much scope for improvements to the current size, composition and procedures of the House and these should not be forgotten. The core proposals contained in Lord Steel's Private Members' Bill, and the reports of the

[6] The Hansard Society is a founding member of the new Counting Women In (CWI) coalition of democracy and women's organisations campaigning to improve the representation of women in British politics and public life. Other founding members are the Centre for Women and Democracy, the Electoral Reform Society, the Fawcett Society and Unlock Democracy. CWI has submitted evidence to the Joint Committee separately; our recommendations here reiterate those of the CWI coalition.

[7] Hansard Society (2010), *Audit of Political Engagement 7: The 2010 Report* (London: Hansard Society).

[8] Hansard Society (2008), *Audit of Political Engagement 5: The 2008 Report* (London: Hansard Society).

Leader's Groups on Members Leaving the House and on Working Practices should be implemented as soon as practicably possible. The latter in particular will provide for important changes in the way in which the House functions, enhancing its ability to carry out its legislative scrutiny function. The fact that the composition of the House may change significantly after 2015 should not be used as an excuse to allow the House to remain unreformed in the interim.

31 October 2011

Written evidence from Lord Sudeley (EV 92)

In Lords Reform we have recently been landed with the adolescent thinking of Clegg's Bill. In all the discussion which has followed the eviction of most of the hereditaries in 1999 there has I believe been quite insufficient consideration of how the Cranborne Deal allowed this tragedy to happen; or for that matter of all the sound old arguments which lie so easily to hand for the re-instatement of the hereditaries. Enclosed therefore is my modest attempt to remedy this deficiency, appropriately published in the *Quarterly Review* which from the early 19th century has been an organ for the expression of the Old Tory as opposed to the Whig political point of view. It is a long time since I abandoned the shades of my ancestor Charles Hanbury-Tracy, elevated to the peerage as Lord Sudeley at Queen Victoria's Coronation less on the consideration of the merit he deserved of being Chairman of the Commission which selected Barry's design for our new Houses of Parliament than for the support which he could give to Melbourne's shaky Whig administration.

The format of the Quarterly Review required me to shorten my original version rather drastically, so I am putting as written evidence to Lord Richard's Joint Committee those important points which I had to leave out- why bishops as well as judges should be left in the House of Lords; how no douceur was offered to the evicted hereditaries of the kind which is given to retiring MPs or to those of long service in industry; how legally with the eviction of most of the hereditaries the Government was skating on very thin ice; and the hard evidence we have of corrupt new life peers charging money to the pressure groups they represent as happens in Russian Parliaments.

9 December 2011

Written evidence from Professor Andrew Le Sueur (EV 93)

Please find attached six memoranda from first year LLB students studying public law at Queen Mary, University of London. Encouraged by the Study of Parliament Group, students were set as their first written assignment the task of producing a submission to the Joint Committee. The six attached are a sample of those which received first class marks and the submission is made with each student's consent.

9 December 2011

Memorandum from Cecilie Rezutka

INTRODUCTION

In reforming the House of Lords, it is vitally important to maintain its independence. This element is an essential prerequisite to the Chamber's institutional function to be a forum of debate, to scrutinise primary and secondary legislation and to hold ministers accountable.

1. Why the Ratio of the Appointed Members Should Be Increased

1.1 Independent members have always played an important role in the House of Lords and currently, the third largest fraction in the House of Lords is the Crossbenchers.[1] Leading political experts emphasise that it is they who by exhibiting a form of expertise and outlook, different from the elected politicians', have been providing for a balance in the Chamber preventing it from becoming a mirror image of the lower house[2] and contesting its primacy. Due to the independents' bolster, no party can have a majority in the House of Lords so that the Chamber is less likely to become either the "rubber stamp"[3] of the government or an "opposition Chamber"[4], thus accounting for a constructive instrument of scrutiny. I therefore submit that the model of a hybrid Chamber be adopted.

1.2 Appointing 20% of the members as independents is in my opinion not fully sufficient to constitute an effective balance and elections to the House of Commons have produced very few independent MPs[5]. Likewise, there is no reason to assume that the elections to the House of Lords will produce any significant number of independents. The ratio proposed might therefore not be strong enough as to uphold the fundamental basis of the Chamber's system, creating a political imbalance.

1.3 Whilst enhancing the principle of a democratically legitimate Chamber, the number of appointed members of the House of Lords could be increased from the proposed 60 to 100, in order to act as a fully sufficient bolster to the 200 elected members as set up by the Draft Bill[6], who have a party political background.

2. Advocating a Hybrid Chamber

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[1] Parliament, < http://www.parliament.uk/mps-lords-and-offices/lords/lords-by-type-and-party/> accessed 23 October 2011.

[2] M Russell, *Reforming the House of Lords* (1st edn, Oxford University Press 2000) 248, 299.

[3] Great Britain, *The House of Lords: Reform* (The Stationery Office (TSO) 2007) 27.

[4] Russell, *Reforming the House of Lords: reform* (n 2) 299.

[5] E.g. only one in the 2010 and two in the 2005 UK General Elections.

[6] House of Lords Reform Draft Bill, May 2011, s 1(3).

A reformed House of Lords should be a Chamber "with which [the public] identify and which also meets high standards of performance"[7].

2.1 Identification with the reformed House of Lords

2.1.1 The concern commonly expressed in respect of a mixed Second Chamber questions its unity.[8] With the democratically elected members deriving their legitimate basis from the support of the electorate, how can a constructive collaboration be enabled? In my opinion, the Draft Bill provides an ideal framework.

2.1.2 Firstly, by commanding the House of Lords Appointments Commission to make public and to regularly review its criteria for nomination[9], the Draft Bill enlarges the degree of transparency and clarity and enables the public to understand the basis on which a member has been appointed. Furthermore, its politically diverse composition[10] makes the Commission an independent and unbiased body capable of assessing candidates competently against its criteria of nomination and making recommendations to the Prime Minister.

2.1.3 Secondly, members are to be recommended by the Commission "on merit on the basis of fair and open competition"[11].

Rendering outstanding services to society, which will be traceable by the public, will offer a sufficiently democratic background and will constitute a legitimate basis for the appointed members. Recent appointments by the Commission have led the media to call those appointed "People's Peers"[12] to demonstrate the identification of the public, thus accepting their legitimacy, while on the other hand there was some press criticism that the "People's Peers" were not "ordinary" enough.[13] I regard this criticism as inappropriate. The selection on the grounds of ordinariness rather than on merit renders the established democratic basis void. It is their merit to society as a whole which makes the appointed apt for the duty, not the belonging to a class of

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[7] A Kelso, Reforming the House of Lords: Navigating Representation, Democracy and Legitimacy at Westminster, *Parliamentary Affairs,* (vol. 59, No.4, 2006) 566.

[8] Russell, *Reforming the House of Lords: reform* (n 2, 4) 325.

[9] House of Lords Appointments Commission, *Criteria Guiding the Assessment of Nominations for Non-Party Political Life Peers,* <http://lordsappointments.independent.gov.uk/selection-criteria.aspx> (last updated: 18 April 2011) accessed 23 October 2011.

[10] The House of Lords Appointment Commission comprises one member of the three largest political parties each, three without any political affiliation and the Chair.

[11] House of Lords Reform Draft Bill, May 2011, s 24 (1).

[12] House of Lords, *House of Lords Briefing, Membership: Types of Member, Routes to Membership, Parties & Groups,* (2009), 3.

[13] BBC News <http://news.bbc.co.uk/hi/english/static/in_depth/uk_politics/2001/open_politics/lords/peoples_peers.stm> accessed 28 October 2011.

"ordinary" people. Furthermore, a high standard debate clearly has its source in the independent educational and experiential background of its debaters.[14]

2.1.4 The Commission is already bound to promote politically independent candidates.[15] [16] I would therefore consider it to be appropriate for the Draft Bill to contain a clause formally committing the Commission to encouraging gender and religious diversity as well.[17] This incorporation into the Bill would further increase the identification with the people although not making any controversial specifications from the outset.

2.1.5 Through the framework set out by the Draft Bill, it is evident that both the elected and the appointed members of the House of Lords would originate from different, but both democratic foundations.

2.2 A Chamber for "Meet[ing] High Standards of Performance"[18]

2.2.1 In order to maintain the members' "independence of mind"[19] to ensure a continuingly high standard and freedom of speech, I suggest that a minimum age requirement of 35 years be imposed on both elected and nominated members. This will make it more likely that new members of the House of Lords have a considerable degree of experience of life and a well-established occupational background.[20] They will be of a sound character and more inclined to make their voice heard rather than submitting to populist or party views. Not only will this enable a detailed scrutiny of legislation, but it will also enable a constructive contribution to the law-making process on the part of the members of the reformed House of Lords.

CONCLUSION

The reform of the House of Lords should improve its deficiencies and adapt it to the requirements of our time and the modern values of our society. Therefore, democratisation has to take place providing for large parts of the Chamber to be elected. This measure, however, should not undermine its well-established functional framework. A hybrid Chamber with a one third ratio of appointed members will create a balanced, legitimate and solid institution. To further increase public identification with the Chamber, the Appointments Committee should be obliged to encourage gender and religious diversity. Finally, I submit

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[14] Parliament, Report of the Leader's Group on Working Practices, *Holding the Executive to Account,* s 20. <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13605.htm> accessed 25 October 2011.

[15] House of Lords Reform Draft Bill, May 2011, s 24 (1).

[16] The House of Lords Appointments Commission, <http://lordsappointments.independent.gov.uk/selection-criteria.aspx> (last updated: 18 April 2011) accessed 23 October 2011.

[17] Kelso, *Parliamentary Affairs,* (n 7) 565.

[18] A Kelso, *Parliamentary Affairs,* (n 7, 16) 566.

[19] Russell Reforming the House of Lords (n 2, 4, 8) 301.

[20] Great Britain, *The House of Lords: reform* (n 3) 45.

that a minimum age requirement of 35 years be imposed on all members to maintain the Chamber's high level of expertise and independence.

Memorandum from Dimo Manov

1. Reform of the House of Lords has been on the political agenda of the ruling parties for more than a decade now; but with the House of Lords Reform Draft Bill published by the coalition government, a conclusion to this saga appears to be in the foreseeable future. This memorandum sets out to examine two of the key aspects of this Bill, namely the size and the electoral system of the reformed House of Lords. It is essential that we analyse these aspects while keeping in mind the government's intention to 'instil greater democracy'[1] into the second chamber, as well as the principle that the House of Commons is the pre-eminent chamber. I will briefly explain the government's proposals and argue that the most appropriate option is an indirectly elected upper house without any appointed members whatsoever.

2. The government's proposal to reduce the size of the House of Lords falls in line with the global tendency that the upper house should be smaller than the first one. Commentators often regard this as a beneficial factor which facilitates debates, improves the work of committees and makes the members work more closely by creating a less adversarial atmosphere. [2] While this change in the composition of the chamber will generally improve the quality of the work done by it, there appear to be some fallacies with the proposed inclusion of 60 appointed members and 12 Bishops. The idea of a mixed chamber involves having groups of members who enjoy different degrees of democratic legitimacy. This creates the risk that a vote carried by a group with a lesser degree of democratic legitimacy would be seen as less valid. [3] This used to be the case with the votes of the hereditary peers, which were regarded as having less weight than those of the life peers, as the latter group was considered to be more legitimate. Another problem with a mixed chamber might occur if the elected members are equally split between their party allegiances. In that case, all the power would be in the hands of the appointed members who lack the legitimacy of their elected colleagues. Therefore, a wholly elected second chamber appears to be the more appropriate option.

3. Another important element of the composition of the reformed House of Lords is the voting system by which members will be elected. Currently, the House of Commons is elected using first-past-the-post voting, which is not a proportional electoral system and which facilitates a majority government. Thus, it would seem sensible if the second chamber was elected via a proportional system, such as the Single Transferable Vote since this is likely to result in no party having a majority. Consequently, the second chamber will represent different interests from the House of Commons. Distinct composition is often seen as one of the three essential features of an effective second chamber[4] – the other two being power, which Denis Carter points out is already considerable,[5] and perceived legitimacy, which will eventually be achieved by the introduction of an element of election. There is a major obstacle to the use of a proportional voting system, however. In order to preserve the primacy of the House of Commons, the principle of representation of the second chamber has to be of lesser validity than the one used for the first one.[6] If this is not the case and the

[1] HM Government, House of Lords Reform Draft Bill, 2011, p. 6

[2] Russell, M. (1999), 'Second Chambers Overseas', The Political Quarterly, 70, p. 412

[3] Bogdanor, V. (1999), 'Reform of the House of Lords: A Sceptical View', The Political Quarterly, 70, p. 380

[4] Russell, M. (2003), 'Is the House of Lords Already Reformed?', The Political Quarterly, 74, p. 314

[5] Carter, D. (2003), 'The Powers and Conventions of the House of Lords', The Political Quarterly, 74, p. 319

[6] Bogdanor, V. (1999), 'Reform of the House of Lords: A Sceptical View', The Political Quarterly, 70, p. 375

second chamber is elected by some form of a proportional representation, should there be a clash between the two chambers, the House of Lords will demand that they should prevail, because they are even more legitimate than the lower house, which is elected by the presumably less representative first-past-the-post voting system. In addition, it is questionable whether a directly elected upper house, particularly one elected on a proportional system, would be satisfied with remaining subordinate to the House of Commons for long.[7] The directly elected second chamber of the Czech Republic is an example of an upper house with relatively weak powers; however, the situation there has proven to be unstable with Senators demanding similar powers to the members of the lower house.

4. For these reasons, an indirectly elected second chamber representing territory, as opposed to individual voters, would be more appropriate because it is less likely to challenge the government and will give the devolved governments formal access to the legislature. [8] This is particularly important in times when devolution has taken place and turned the UK into a 'quasi federal'[9] state, as this may help to hold it together. Moreover, the distribution of seats in second chambers based on territorial representation would be very useful in retaining the primacy of the House of Commons, as it is generally the case that an equal number of seats is given to each territorial area regardless of its population. This 'reinforces the less democratic and more subservient nature of the upper chamber'[10] and in that way, makes it less likely that it will be considered more legitimate than the first one. In the case of the UK, election of the members of the reformed upper house could be carried out by assembly members, and where assemblies do not exist the electoral college may consist of councillors. Meg Russell also suggests the use of a mechanism which will guarantee that the political balance mirrors that of the region at the last general election. Perhaps another argument in favour of this system would be that it decreases voter fatigue by reducing the number of elections.

5. In conclusion, whereas creating a proportionally elected second chamber might result in it being more democratic and representative, this will put at stake the pre-eminence of the House of Commons. Therefore, choosing indirect election as the method of gaining entry into the reformed House of Lords is the more appropriate option, as it will ensure the primacy of the lower house while still making the upper house more democratic and representative than at present.

[7] Russell, M. (1999), 'A Directly Elected Upper House: Lessons from Italy and Australia', London, Constitution Unit, p. 11

[8] Bogdanor, V. (1999) *Devolution in the United Kingdom*, Oxford, Oxford University Press, p. 285

[9] Hazell, R. (1999), *Constitutional Futures*, Oxford University Press

[10] Russell, M. (1999), 'Representing the Nations and Regions in a New Upper House: Lessons from Overseas', London, Constitution Unit, p. 14

Memorandum from Iulia Miruna Anghelescu

1. This submission is concerned with clause 2 of the House of Lords Reform Draft Bill, entitled General Saving and it aims to analyse the impact of the reform on the prerogatives of the Lords. The view I take is that it would be highly problematic to reconcile the new, more legitimate composition of the Lords with the existing restrictions upon its powers. The existing conventions and the prospects of development are also approached from this perspective. Lastly, I am of the opinion that the function of the Lords to act as a chamber of experts should be preserved at all costs, which again constitutes a delicate issue under the provisions of the Bill.

SUMMARY OF EVIDENCE

2.1. The primacy of the House of Commons is supported by democratic legitimacy and should by no means be contested.

2.2. However, the reform is likely to have as a consequence an increased difficulty in exercising this primacy, as a result of powers of the Lords being inevitably increased.

2.3. It would be for the Lords and the Commons to decide whether they wish to maintain the existing conventions or not, not for the Bill to make such provisions.

2.4. Ultimately, the functions of the Lords, which are of great importance to Parliament, would be under threat of not being as well performed as in the past, with the introduction of elected members.

EVIDENCE

3.1. *Is the House of Commons still to remain the primary Chamber?*

3.1.1. Lord Windlesham wrote in 1975 that the House of Lords "should not attempt to rival the Commons. Whenever it has done so in the past it has failed"[11]. The desire that these powers should remain unchanged is perfectly understandable. Most Bicameral systems are defined by one main chamber proposing legislation and a second one, scrutinising the bills proposed by the other, not rivalling it. "The House of Lords is not suddenly going to change all that. It will always accept the primacy of the elected House. It will always accept that the Queen's Government must be carried on."[12]

3.2. *Are the powers of the Lords likely to remain unchanged?*

3.2.1. Historically, the main claim which entitled the House of Commons to be the more legitimate of the two chambers was its composition. The elected members were (and still are) considered to be direct representatives of the populace. It was precisely this aspect of composition which justified the status of the House of Lords as a Second Chamber having less power than the Commons. It would therefore appear as contradictory to claim that there would be no change in power once the composition has been considerably altered. It follows that, once the House of Lords is constituted on a more legitimate basis, a tendency to voice disapproval or to scrutinise Bills more often seems to be the inevitable consequence, even if the Commons still remain the primary Chamber.

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[11] *Politics in Practice* (London, Cape, 1975) 137

[12] Lord Strathclyde, Politeia Lecture*, Redefining the Boundaries between the Two Houses,* 30 November 1999, pp 8-9.

3.2.2. The House of Lords has adopted a policy of self-restraint, choosing to censure itself, as a non-elected House. However since the House of Lords Act 1999, "the Lords have become much more assertive, and more willing to reject secondary legislation."[13] This clearly shows the effect of increasing the legitimacy of the House of Lords and suggests that the possible outcome of the Lords being reformed would be similar in the case of primary legislation, only that the impact would be much greater.

3.3. *How would the Salisbury–Addison convention evolve under these circumstances?*

3.3.1. "There is a deeper philosophical underpinning of the Salisbury Convention which remains valid. This arises from the status of the House of Commons as the United Kingdom's pre-eminent political forum and from the fact that the general elections are the most significant expression of the political will of the electorate."[14] Indeed, the practicality of this convention is not to be challenged.

3.3.2. Nevertheless, Viscount Cranborne acknowledged in 1996 that were the Lords to be reformed, the House might choose to renounce the doctrine[15]. It is therefore their "choice" what they would wish to do after the reform. In my view, the government cannot impose the applicability of an uncodified convention in an Act of Parliament. A convention is by definition a mutual agreement, exercised by the parties because they feel it is the right way, under the specific historic or political circumstances. My suggestion would therefore be that the reference to conventions, as appears in paragraph (1) subparagraph (c) be struck down from the Bill.

3.4. *What would be the functions of the Lords?*

3.4.1. The Lords may not be representative of the people stricto sensu, as being elected by the people, but they are representative as a class of experts, being therefore able to represent the country's interests by making use of their expertise. One example is their activity related to scrutinising EU legislation. "Because of the system of nominating to life peerages men and women of eminence, the Lords contains experts in almost every field of European Union activity (…). The scrutiny provided in the House of Lords European Union Select Committee, (…) has proved to be perhaps the most effective in the European Union." [16] This reputation of professional excellence would be under serious threat should part of the members be elected, as they would mainly be politicians, lacking specialist knowledge in other fields.

3.4.2. Ultimately, reform is meant to be synonymous to improvement. The improvement is not only achieved by increasing democratic appearances, but also (and most importantly) by increasing efficiency. Loss of expertise should not be the price paid for democratising Parliament.

CONCLUSION

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[13] Vernon Bogdanor, *The New British Constitution* (Hart Publishing 2009) 151

[14] Wakeham Report (January 2000)

[15] Politeia Lecture, 4 December 1996

[16] Vernon Bogdanor, *The New British Constitution* (Hart Publishing 2009) 166

4. Even though the need for reform is acknowledged, the fact that, for one hundred years, Governments have been reluctant to “finish” Mr Asquith’s business is illustrative of the delicate problems such a reform would pose. Whatever the course of action might finally be, I am of the opinion that the Lords should preserve their main function as a chamber of experts, for that is most relevant contribution they can make to Parliament. Although the Bill expressly states that this would be the case, past evidence appears to show the contrary.

Memorandum from Benik Reef

SUMMARY OF EVIDENCE

- Bishops in the House of Lords are unrepresentative of public opinion and multicultural Britain.
- The draft bill is reinforcing an outdated system by continuing to provide automatic seats for Church of England Bishops.

EVIDENCE

1. I wish to put forth my opinion that there should not be "reserved places for Church of England Archbishops and Bishops"[1] in the House of Lords Reform Bill. I shall put forth my argument as to why this should be amended with the support of various relevant academic authorities.

Representation

2. The first issue in regards to Bishops in the House of Lords is that of representation. It might make sense for the Bishops to be representative of both the public and of religion as a whole. However, it is clear that they fail to be representative of either and should therefore no longer be automatically included in the second chamber on the grounds of this assumption. It would be inaccurate to suggest the public supports reserved places for Bishops in the House of Lords. An ICM poll taken in March 2010 conclusively reflects this view. The poll showed that when asked; "Do you think it is right or wrong that some Church of England Bishops are given an automatic seat in the House of Lords where they can vote on laws?"[2] 74% of those surveyed believed it was "wrong." Even more interesting is that 70% of those surveyed who identified as Christian believed it was "wrong". The survey findings do not imply that if elected the Bishops are "wrong" to have a seat, rather that it is not right for them to get their seat automatically. The ability for those who are a named Lord Spiritual or an ordinary Lord Spiritual to bypass democratic elections or fair appointment systems entirely should be removed from the bill. This provision is simply not supported by the general public and therefore cannot be representative of the will of the electorate.

3. As representatives of faith it would be reasonable to assume that the Bishops in the House of Lords are representative of the UK's religious beliefs. However this is not the case. Due to Britain's growing multiculturalism it is no longer accurate to represent only one faith in the UK legislature and claim to be representative of religious belief in the UK as a whole. Philip B. Kurland stated that "Religious freedom must mean that whatever special place on religion may have in the eyes of God, all religions are equal in the eyes of the law."[3] Applying this principle to

[1] House of Lords Reform Bill, Page 22

[2] http://www.ekklesia.co.uk/content/survey_on_bishops_icm.pdf; Q.3; page 12

[3] P. Korland, "*The Religious Clauses and the Burger Court*" (1984) 34 *Catholic UK Review* 1, 3, quoted in R. Ahdar and I. Leigh, "*Religious Freedom in the Liberal State"* (Oxford: OUP, 2005), p.14

the UK legislature, it is clear that religion is far from equally represented. Only the Church of England is represented in the positions of Lord Spiritual. The Constitution Unit at University College London addressed this issue of religious representation in a study in 2002 by stating; "It is widely acknowledged that the representation of only one religious group in a multicultural Britain is outdated."[4] In respect of this it is clear that providing automatic seats to Church of England Bishops only is religiously unrepresentative. Anna Harlow, Frank Cranmer and Norman Doe described this as "privileged representation" and "that the presence of bishops in the House of Lords violates [Kurland's] principle"[5] as mentioned above. Ultimately this amounts to a system which is biased towards one religion to the extent where it no longer represents the UK population's diverse religious beliefs. The House of Lords Reform draft bill offers an opportunity to amend this system but instead has failed to do so. Either religious leaders across all faiths should be appointed fairly (and perhaps proportionally) through the House of Lords Appointments Commission[6], elected, or there should be no formal place for religion in the second chamber. It would be contrary to tradition for the latter option to be implemented but it is fully within reason to implement either election or appointment by committee, given that the mechanisms are already provided for in the bill. This approach is supported by the report given by the House of Commons Public Administration Select Committee, which quoted by Frank Cranmer, John Lucas and Bob Morris in 2006 stated; "It is of course the case that distinguished senior figures in the Church of England (and other religious bodies) will be considered for membership of the second chamber through the appointment process (and they should be free to stand for election). This appears to us to represent the fairest approach. (House of Commons 2002: 35)"[7] Ultimately, the provision of automatic seats to Church of England Bishops is neither representative of the will of the public nor representative of multi-faith Britain.

Outdated System

4. The second issue regarding the place of Bishops in the House of Lords provided by the draft bill is that it merely reinforces an outdated provision which holds little practical relevance. This is a common theme that runs through most, if not all, academic literature on the presence of Bishops in the House of Lords. Janet Lewis-Jones described the UK as the "only Western democracy in which the church still has seats in Parliament"[8] This out of place provision in our modern world has been described as anachronistic[9] or an anachronism.[10] It is even

[4] The Constitution Unit, University College London, "*Comparative Study of Second Chambers"* (London: University College, 2002), p.35, quoted in Cranmer, Lucas and Morris, "*Church and State"* (2006), p.21.
[5] Anna Harlow, Frank Cranmer and Norman Doe, "*Bishops in the House of Lords: a critical analysis*" P.L. 2008, Aut, 490-509
[6] House of Lords Reform Draft Bill; section 16; page 10
[7] Frank Cranmer, John Lucas and Bob Morris, "*Church and State: A mapping Exercise"* (April 2006)
[8] Janet Lewis-Jones, "*Reforming the Lords: The Role of the Bishops*" (1999)

[9] Morris (ed.), "*Church and State in 21st Century Britain: The Future of Church Establishment",* 2009, p.239
[10] Frank Cranmer, John Lucas and Bob Morris, "*Church and State: A mapping Exercise"* (April 2006)

apparent to some Bishops inside the House of Lords who were interviewed by Anna Harlow, Frank Cranmer and Norman Doe that this is the case. One of which viewed the presence of bishops as "more decorative than [they] like to think"[11] It is clear that the provision for Bishops should be amended in order to bring the House of Lords into the 21st Century, with many political commentators and perhaps some Bishops in agreement on this. There is no reason why tradition should compromise the legitimacy of the second chamber.

5. Overall, it is apparent that the provision of automatic seats given to Church of England Bishops set out in sections 26 and 27 of the Draft Bill is in need of amendment. Whilst Archbishops and Bishops of the Church of England may have a right to sit in the second chamber they should not be given this privilege automatically. They should have to be subject to the same formal appointment committee process or stand for election as any other member. The mechanisms for these appointment procedures are provided for in the draft bill. There is a strong case against Bishops having a place in the House of Lords entirely on the grounds that they cannot claim to be representative of the public or Britain's variety of religious faiths.

[11] Anna Harlow, Frank Cranmer and Norman Doe, "*Bishops in the House of Lords: a critical analysis*" P.L. 2008, Aut, 490-509

Memorandum from Mrs Kim Variş

This submission will concentrate on the Government proposal that in an 80% elected reformed House of Lords, there would be up to 12 places assigned for representatives of the Church of England. I oppose this measure for the reasons outlined.

1. Executive Summary

1.1 The stated aim of House of Lords reform is to make the House of Lords visibly more democratic. Providing automatic rights for Church of England representatives to sit as ex-officio members, is in principle, contrary to this aim.

1.2 The historic right, in the form of the Bishoprics Act 1878, for certain representatives of the Church of England (namely the two Archbishops and the Bishops of London, Durham and Winchester) to sit in the second chamber is acknowledged. Repeal of this law would be required to sever the entitlement and it is recommended that this forms part of the second transitional period.

1.3 Removal of guaranteed places for Church of England representatives in the reformed House will not lead to the exclusion of moral or ethical considerations from debate or banish input from religious representatives in legislative discourse.

2. Outline

2.1 In clause 1 of the draft Bill there is provision for gradual reduction in the number of Lords Spiritual. As Bob Morris[12] asserts "It is not about the number or proportion of bishops themselves but whether the legislature should have any corporatist component." To preserve places as of right for any group within the House of Lords is to place them in a privileged position which is at odds with the aims for a more democratic second chamber. In his article on the "high" establishment he cites the UK as the only "sovereign democratic legislature that retains automatic religious representation as of right." The current model is not one that has been widely upheld and there is now real scope to improve upon it. As Javier Garcia Oliva[13] suggests in his article on the relationship between Church and State "Our democratic credentials are more important than loyalty to the past"

2.2 Wider involvement of representatives of other faith groups through reserved places in the House of Lords does not improve the democratic position. As pointed out in the article *Bishops in the House of Lords: A critical analysis*[14], from a study in 2002 by the Constitution Unit at UCL, the practicalities of widening religious representation in a reformed second chamber would be problematic. Singling out representatives of the other main religions to take up positions may prove divisive and could potentially lead to a sense of further marginalisation amongst some excluded religious groups.

2.3 The statutory consequences necessary to remove the Lords Spiritual who hold a named office as outlined in clause 26 has already been recognised. With regard to the first and second transitional periods identified in clause 28, the following changes are recommended. That in the first transitional period the number of Lords Spiritual is confined to the five who hold the said named offices by law. As part of the process of the second transitional period, the repeal of the law in this area should be reviewed and if enacted would end the places apportioned to representatives of the Church of England in the reformed House of Lords. As

[12] The Future of High Establishment Ecc. L.J. 2011, 13(3), 260-273

[13] Church, State and establishment in the United Kingdom in the 21st century: anachronism or idiosyncrasy P.L. 2010, Jul, 482-504

[14] Bishops in the House of Lords: A critical analysis P.L. 2008, Aut, 490-509

Morris says, changes to the relationship between Church and State do not require "some single, climactic intervention (for example, disestablishment) but, rather, an intelligent process of mutual adjustment."

2.4 In her article *The place of representatives of religion in the reformed second chamber*[15] Charlotte Smith points out that "there are already many adherents of different faiths sitting in the second chamber. These individuals do not divest themselves of their faith and religious values upon entering the House." Members of the reformed House of Lords, be they appointed or elected, will by nature of the pluralistic society from which they come have religious and spiritual persuasions of various complexions or none at all. In a civilised society a broad spectrum of views is desirable to enhance debate. It is not only appointed religious representatives who are equipped to provide this moral or ethical direction.

2.5 From the results of a questionnaire answered by Bishops in the House Of Lords, Anna Harlow reported in her article (as above) that the respondents unanimously stated that their diocesan work took priority over their Lords work. At the time of the questionnaire none were House of Lords Committee members. Understandably, for some, their work commitments placed a constraint on their House of Lords activity. The contributions of the Bishops to debates however, is generally appreciated and well regarded from within the House as mentioned by Baroness Berridge during the House of Lords Reform debate on 22nd July 2011 "I am impressed by the Lords Spiritual, who bring a sense of service to their community and a spiritual, moral and ethical perspective that enhances the independent nature of debate"[16] as well as by many external commentators outside of it. In a reformed House, Bishops would have more time available to provide valuable expertise and insight to legislative discourse via committee forums, along with other religious representatives. It would also remain the case that retired bishops could stand for election or be appointed under the new system. The difference being that in these instances contribution would be based on credentials rather than as under the previous system – purely by virtue of their position.

2.6 In summation I will use the words of Frank Crammer[17] in his paper on Church State relations in the United Kingdom "Although the political debate surrounding establishment has ebbed and flowed, the experience of the last twenty years would suggest that successive governments have not regarded the radical reform of church-state relations as a high priority and that evolutionary change is much more likely than drastic surgery." The main point is that the special position that the representatives of the Church of England hold must be given further serious consideration within the framework of the reform proposals if the ambition of greater democracy in the new House is to be achieved.

[15] The place of representatives of religion in the reformed second chamber: P.L. 2003, Win, 674-696

[16] Hansard 22nd June 2011: Column 1345 to 1346

[17] Church State relations in the United Kingdom: a Westminster view Ecc. L.J. 2001, 6(29), 111-121

Memorandum from Daniel Shintag

SUMMARY

1.1. In pursuance of the objectives stated in its Programme for Government,[1] the current administration has set out the tentative details of a reformed House of Lords in the *House of Lords Reform Draft Bill*,[2] in reaction to which I am pleased to present a number of comments and suggestions, as summarised below:

1.1.1. Despite the perceived importance of conferring democratic legitimacy upon the upper house, one should not neglect other core issues such as the exact significance of the upper house's role, and how an elected membership may influence it.

1.1.2. Having established that the upper house's unique role lies in undertaking scrutiny and providing sound, non-partisan advice, and that, as such, it differs markedly from the lower house, one must cautiously weigh the pros and cons of changing its composition in such a profound manner.

1.1.3. Further democratic reforms are likely to be a constant source of friction between the two chambers. In order to preserve its distinctive role, the House of Lords should be reformed into a wholly-nominated body, whose members will be appointed based on objective selection criteria of merit and public distinction, and who will represent the broadest possible spectrum of professional and cultural life and expertise.

EVIDENCE

A STRONGER HOUSE?

2.1. Conventional theory claims that legitimacy comes with election,[3] a position which, in recent times, has given rise to an apparently 'unBritish' drive to alter the House of Lords' mainly-nominated composition,[4] and to introduce an upper house whose member body is mainly or wholly elected. These intentions have been set out in the *House of Lords Reform Draft Bill*, under the assumption that this will increase the upper house's democratic legitimacy[5] and strengthen Parliament as a whole.[6]

2.2. It has been argued, however, that the House of Lords, in its post-1999 form, has already become more assertive and more confident.[7] Moreover, further

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[1] Cabinet Office, *House of Lords Reform Draft Bill* (White Paper, Cmd 8077, 2011) 5

[2] House of Lords Reform HL Draft Bill (2010-12) 8

[3] Meg Russell, 'A Stronger Upper House? Assessing the Impact of House of Lords Reform in 1999 and the Lessons for Bicameralism' (2010) 58 Political Studies 866, 869. For competing political theories about demarcating and quantifying the strengths and weaknesses of upper houses, see also Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (Yale University Press 1984); Arend Lijphart, *Patterns of Democracy* (Yale University Press 1999); George Tsebelis *Veto Players: How Political Institutions Work* (Princeton University Press 2002)

[4] Lord Cooke of Thorndon, 'Unicameralism in New Zealand: Some Lessons' (1999) 7 Canterbury Law Review 233

[5] *Draft Bill* (White Paper) (n 1) 29

[6] ibid 6

[7] Hugh Bochel and Andrew Defty, 'Power without Representation? The House of Lords and Social Policy' (2010) 9(3) Social Policy & Society 367, 368-9

democratic reforms will likely lead to an even stronger and more active upper house[8] and to clashes between the two chambers: the proportionally-elected Lords could claim that they are more democratically 'valid' than the MPs in the Commons, elected via the 'first by the post' system.[9] Hence, a PR voting system is likely to become a burden on the Commons, as the Lords gradually become more confident in their better democratic mandate.

A WEAKER HOUSE?

3.1. Additional to the possibility that an elected House of Lords may claim greater legitimacy than the House of Commons, the introduction of a mainly or wholly elected element to the upper house could also dilute its influence on several fronts.

3.2. First and foremost, an elected membership will blur the lines between the Commons and the Lords in terms of member composition[10] and self-perception: replacing appointed members by politicians might create a clone of the Commons.[11] Secondly, an all-elected upper house will pose a serious disincentive for non-political experts and professionals, many of whom may not wish to join the grim fandango of popular elections.[12] In the case of a mainly-elected upper house, the percentage of apolitical bright minds is likely to drop significantly.[13] Consequently, the wide variety of expertise currently available through the House of Lords will itself become decimated, in correlation with the significantly cut number of appointed members. Thirdly, the disappearance of said expertise will severely hinder the reformed House in fulfilling its most important tasks: scrutiny and expert, non-partisan advice.[14]

3.3. Some doubts exist about the actual breadth of expertise available in the House of Lords. For example, peers are not always deeply knowledgeable about their own party's policies and forthcoming legislation; many are seen to be disconnected from real-life problems experienced by constituents;[15] and, indeed, expertise in various areas may be found in the Commons too.[16] Nevertheless, there appears to be support for the view that the House "has an alternative and more broadly-based perspective on the development of public policy."[17]

IMPORTANT QUESTIONS

4.1. I have tried to devise appropriate solutions to what has been called the "Upper

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[8] Vernon Bogdanor, 'Reform of the House of Lords: A Sceptical View' (1999) 70(4) The Political Quarterly 375, 377

[9] ibid 375; the Draft Bill (n 2) s 7(3) provides for a Single Transferable Vote system for the reformed House of Lords

[10] Lord Bingham of Cornhill, 'The House of Lords: Its Future?' [2010] PL 267

[11] Gavin Phillipson, '"The Greatest Quango of Them All", "A Rival Chamber" or "A Hybrid Nonsense"? Solving the Upper House Paradox' [2004] PL 352, 353

[12] Bingham (n10) 268-9

[13] Bogdanor (n 8) 379

[14] Bingham (n 10) 268

[15] Hugh Bochel and Andrew Defty, 'A Question of Expertise: the House of Lords and Welfare Policy' (2010) 63(1) Parliamentary Affairs 66, 78-9

[16] ibid 81

[17] Phillipson (n 11) 358

House Paradox",[18] by answering a few crucial questions:

4.1.1. Has the Government actually conducted research into the perceived public legitimacy of a so-called 'House of Experts'?[19]

4.1.2. Is it wise to focus solely on democratic legitimacy (which is already given full and legitimate representation within the primacy of the Commons), thereby losing the distinctive advantages offered by an all-nominated House?

4.1.3. Is it reasonable to sacrifice expertise and alternative viewpoints for the sake of electoral appeal, without consideration for any other broader issues?

4.2. As Russell suggests, perhaps a change in perception is needed, for "legitimacy can be influenced by other factors aside from democratic election, including party balance."[20]

RECOMMENDATIONS

5.1. Guided by the above questions, I would recommend the following measures.

5.1.1. Firstly, the Government should backtrack from its emphasis of democratic legitimacy as the sole criterion for a reformed House and instead adopt a more comprehensive standpoint, as befits the mores of our era. In this "antipolitical age",[21] with faith in politicians at abysmally low levels,[22] the public is highly likely to accept that scrutiny and control of the Government and the Commons may be exercised by an upper house populated by members who have different, broader perspectives as well as no political aspirations.

5.1.2. Subsequently, the Government should consider an upper house which is even smaller than the reformed House as envisaged by the Draft Bill, a House that would operate mainly in the form of small, task-oriented committees (thereby greatly expanding the role of the current select committees), comprised solely of persons nominated based on distinction and public merit.

5.1.3. Finally, the criteria used by the appointing body must be broad enough to include as many experts from as many different professional and cultural fields as possible, so as not to leave the reformed House in the hands of "lawyers, company directors, former MPs and academics" and address the lack of "doctors, social workers, teachers and farmers".[23]

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[18] ibid 352

[19] See Russell (n 3) 876 and footnote 17 for public survey results about the current House of Lords

[20] ibid 882

[21] Russell (n 3) 882

[22] 'Trust in Professions 2011' (*Ipsos MORI / British Medical Association*, 27 June 2011) <http://www.ipsos-mori.com/researchpublications/researcharchive/2818/Doctors-are-most-trusted-profession-politicians-least-trusted.aspx> accessed 30 October 2011; John Curtice and Alison Park, 'British Social Attitudes 26th Report - Latest Report on Trust in Government' (National Centre for Social Research, April 2010) <http://www.natcen.ac.uk/media-centre/press-releases/2010-press-releases/british-social-attitudes-26th-report--latest-report-on-trust-in-government> accessed 30 October 2011

[23] Emma Crewe, *Lords of Parliament* (Manchester University Press 2005) 35; Donald Shell, *The House of Lords* (Manchester University Press 2007) 66; both works referenced in Bochel and Defty (n 15) 79

Supplementary written evidence from Mr Mark Harper MP (EV 94)

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

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

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

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

14 October 2011

Supplementary written evidence from Mr Mark Harper MP (EV 95)

Letter from Mr Mark Harper MP to The Rt Hon the Lord Richard (Chair) following his oral evidence on 17 October 2011

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

You asked for details of the size of the House under our proposals for the transitional period. I attach a paper which sets out our assumptions on the 3 options in the White Paper for the number of peers who would remain during the transitional period.
Oliver Heald asked about the link between the age of members of the House of Lords and their attendance. We do not have readily available information on this issue. We do have information on the age profile of the current House of Lords provided by the Library. This is attached. I have asked officials to undertake a more detailed analysis of the attendance statistics and will write again to you with that information.

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

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

7 November 2011

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

Transitional arrangements

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

Transitional arrangements on House of Lords reform

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

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

Option 1 (Government's preferred option)

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

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

6. The number of hereditary and life peers in the present House of Lords is 804[405]. Only one of the 804 is not entitled to receive a writ of summons as a serving MEP. Assuming that there is no change in the number of peers entitled to receive a writ of summons between now and introduction of the draft House of Lords Reform Bill in the House of Commons in the second session of the current Parliament, a maximum of 535 existing members would be entitled to sit in the first transitional period, and 268 in the second transitional period.

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

Option 2

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

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

9. Over the past 10 years a total of 188 hereditary and life peers have died[406]. Over a similar period the number of hereditary and life peers in the House of Lords has averaged 705[407]. This represents an average death rate of 2.67 per 100 peers each year. If this rate of attrition stays constant there would be 701 transitional members remaining at the start of the second transitional period. There would be 613 immediately before dissolution of the last Parliament of the second transitional period, who would all cease to be members the following day.

10. The figures do not take into account any members leaving under the resignation provision in the draft Bill. Additionally the rate of attrition may in reality be higher in the second transitional period as the average age of peers increases. The current average age of members of the House of Lords is 69[408]).

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

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

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

Option 3

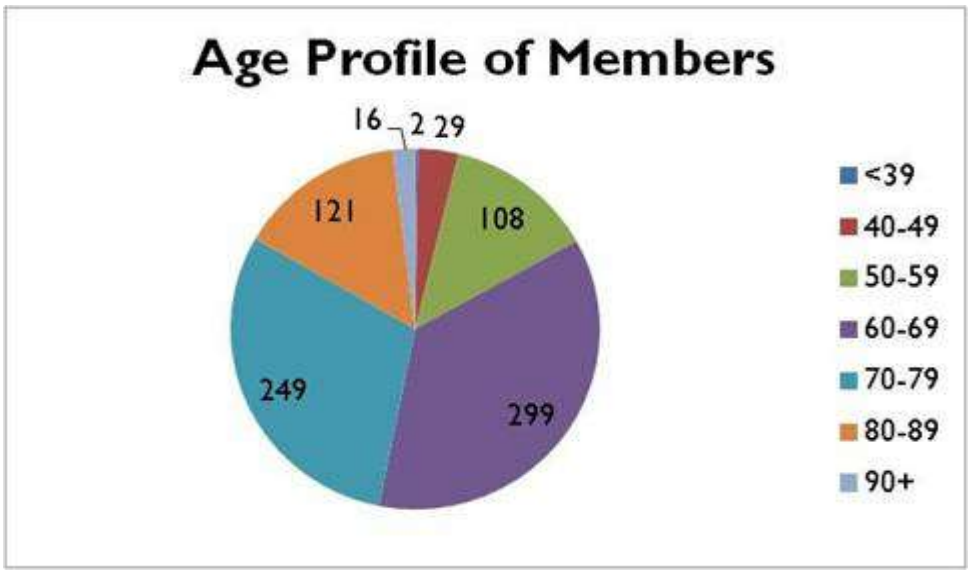
11. 200 members of the existing House of Lords would remain at the time of the first election to the reformed House of Lords. They would be reduced to 100 at the time of the second election. All would leave on the day of dissolution of the last Parliament in the second transitional period.

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

Cabinet Office
November 2011

Age ranges represented in the House of Lords.

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



The information is correct as of 12/10/2011.

Source: House of Lords Library

Supplementary written evidence from Mr Mark Harper MP (EV 96)

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

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

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

8 December 2011

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

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

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

Total Membership end June 2011
Actual Numbers

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

Percentage of members of each party group in each age range

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

Breakdown of Peers recording a zero attendance

Actual Numbers

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

Percentage of members of each party group in each age range

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

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

Actual Numbers

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

Percentage of members of each party group in each age range

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

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

Actual Numbers

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

Percentage of members of each party group in each age range

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

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

Actual Numbers

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

Percentage of members of each party group in each age range

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

Written evidence from Lord Peston, The Rt Hon the Lord Barnett, and Baroness Gould of Potternewton (EV 97)

We must start by saying how much we appreciate the difficulty of the Committee's task especially with the need to maintain objectivity.

It is by no means clear what the objects of the draft bill are. One purpose of the Committee must be to establish what they are and to assess them.

The authors of the Bill have not thought through the central problem of the powers of the House of Lords (HoL), let alone the more difficult one of the relationship between the two houses. It is obvious if a substantial elected element is included in the new HoL; they will demand more powers and will not regard themselves as subservient to the Commons. All this will be complicated if a non elected element (not least the bishops) remain.

Our central view of a reformed house is that it should be wholly appointed. In addition, a much smaller house is needed. We recognise that it is not easy to devise a way of getting from here to there, especially as the powers that be continue to create more life peers. This is a task that the Committee itself must undertake.

If the new HoL is wholly appointed, its central role must be one of scrutiny with powers and conventions much the same as now. This is the only way that the House of Commons can retain its primacy.

It is naive to believe that future Prime Ministers would give up their power to appoint new peers.

As an example of the nonsensical nature of the draft bill is the fifteen year electoral proposal. No possibility of re-election means there will be no accountability.

Since we do not favour elections, the electoral system is irrelevant. What is relevant is the devising of a system of moving to a smaller appointed house, and a workable retirement scheme for this house. We understand that the Government has already declared that there should not be a financial incentive for existing life peers to retire. If they wish to be taken seriously on this aspect of their proposals, they should think again.

No priority should be given to bishops or other religious leaders; their membership should be decided on individual merit and usefulness like every member. Obviously, there will be Ministers appointed in the HoL. Existing hereditary peers should stay but not be replaced. Appointed peers should continue to receive allowances as at present, adjusted by a suitable index to maintain relative real value.

If newly appointed peers later on are to be encouraged to retire later on, then consideration of a financial incentive scheme cannot be avoided.

For the appointed house we favour the Parliament Acts will still apply. For an elected house they will be irrelevant.

11 October 2011

Written evidence from Lord Cobbold (EV 98)

I am one of those who believe that the House of Lords as presently constituted performs a valuable function made possible by the unique experience and expertise of its members, which is available for the scrutiny of new legislation while always acknowledging the ultimate supremacy of the House of Commons.

The House is in need of some reforms but the proposals in the draft bill amount to abolition rather than reform.

An 80% or 100% elected chamber or senate would inevitably threaten House of Commons supremacy and I find it hard to believe that individual members of the present House with their special experience and expertise would be keen at their time of life to stand for election to the proposed senate.

This is not to say that the present House is not in need of any reform. I strongly support Lord Steel's bill, the contents of which will be familiar to your Committee. There is only one area on which I would like to comment.

The bill calls for the size of the House to be reduced from its present level of around 800 to achieve a membership not exceeding that of the House of Commons. This is a major adjustment which would need to be spread over a transitional period of at least five to ten years. For the future, I do not believe that numbers of members can be managed on a voluntary retirement basis and I would favour a fixed period of service of 20 years.

20 October 2011

Further written evidence from Lord Cobbold (EV 98a)

Further to my submission of 20th October I attach a copy of the Amendment I submitted to the Steel bill committee which suggests a possible programme for the reduction in numbers of existing members of the present House[409]. The atmosphere and character of the present House would be preserved during the transitional period.

26 October 2011

[409] http://www.publications.parliament.uk/pa/ld201011/ldbills/008/amend/ml008-i.htm

Written evidence from Mr Harry Lees via his MP, Andrew George (EV 99)

I am writing as your constituent to express my concerns about the government's proposals on Lords Reform and specifically on the issue of Bishops sitting as of right in a reformed chamber. I urge you to make representations on my behalf opposing the proposals to the Deputy Prime Minister Nick Clegg MP, who is leading work on Lords Reform, and to the Joint Committee which is scrutinising the draft Bill.

The package.of proposals on Bishops do not simply maintain the status quo but give even more privileges to the Church of England—some of which even the Archbishop of Canterbury, Rowan Williams, and the Archbishop of York, John Sentamu, have strongly opposed in their submission to the Joint Committee, stating that the Church of England did not seek exemptions proposed 'by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension'.

Ours is the only democratic country to give seats in its legislature to religious representatives as of right, and I believe that having any reserved places for Bishops in parliament is unfair, unequal and against the aims of a more transparent and legitimate second chamber. The principal objection to the Lords Spiritual is having clergy sitting ex officio in parliament. The government's new proposals in effect create a new, largely independent, and largely unaccountable, place for the Church of England in parliament. That these are so outrageous and unnecessary, is just another reason to object to proposals for retention of automatic seats for Bishops.

20 December 2011

Written evidence from Philip Bradshaw (EV 100)

The Government has said it welcomes the views of members of the public. The following concerns reform of the House of Lords.

Background

13. Several points are widely expressed on radio and television by academics and politicians or in the comment columns and the letters pages of newspapers by journalists and members of the public.

These are:

- The decision making machinery of the lords should accurately reflect the political opinion of the electorate.
- The lords should be a 'revising' chamber and not challenge the authority of the Commons.
- To fulfil a revising function effectively, membership should have technical expertise in a wide range of specified fields.
- Members should not be 'career' politicians.

Problem

14. Most suggestions for the makeup of the lords are for different proportions of elected and appointed members. But they risk compromising either making decisions reflecting the will of the electorate (if the proportion of appointees is too high) or the technical expertise desirable for a 'revising' role (if the proportion of elected members is too high).

Proposal

15. A solution would be a lords in which:

(a) All members are appointed by an independent appointments commission charged with ensuring membership overall has technical expertise in specified fields, and a sufficient spread of political opinion. All members (say 500 to provide the necessary expertise and political spread) may 'speak' and serve on committees.

(b) Voting is restricted to a minority of members (say 100), nominated for each party, by all members taking that party's whip in the House, in proportion to the votes cast for the party in the most recent general election. No party receiving votes from less than 1% of the *total electorate* has a vote. The number of 'cross bench' votes is proportional to the proportion of the *total electorate* that does not vote in the election. (For an election in which Labour receives votes from 24% of the *total electorate,* Liberal Democrats 13%, Conservatives 25%, and Greens 2%, giving a turnout of 64%, the voting members of the Lords would include 24 Labour members, 13 Liberal, 25 Conservatives, 2 Greens and 36 cross benchers).

(c) To avoid voting and non-voting members being considered 'first and second class citizens', voting membership could last a year (say) and be rotated through those holding each party's whip, with similar provision for cross benchers (and accepting the extent to which rotation is possible will depend on the number in the Lords accepting a party's whip and the number of voting members that party is allocated).

(d) Prohibiting ex members of the Commons from entering the Lords, and restricting the length of time members can serve in the House (say to 10 years), would militate against 'career' politicians serving in the Lords.

Transition

16. Smooth transition to the new system could be achieved by gradual introduction of new appointees over a period of years equal to the period of office for members. For a 10 year period of office in a reformed Lords of 500 members the procedure is thus:

Current members of the Lords are divided into tenths according to length of service. The longest serving tenth retires and is replaced by 50 new appointees. This continues for 10 years when all members will have been appointed under the new system. Thereafter, 50 members leave each year and are replaced by new appointees.

17. Gradual transition means:

- Recent appointees to the existing Lords serve for a useful length of time in the new Lords before having to stand down.
- Knowledge and experience of parliamentary procedures amongst membership of the Lords as a whole is retained.
- The effects of teething problems in the new appointments system are minimised.

Advantages

18. This system for reform of the Lords has the following advantages:

(a) The Lords cannot legitimately challenge the Commons because its members are appointed.

(b) The decision making machinery of the Lords—the voting members—is based on proportional representation and reflects the political opinion of the electorate.

(c) Members have the spread and depth of technical expertise needed in a 'revising' chamber.

(d) The independence of the appointments commission fosters a Lords free from Government patronage.

(e) Excluding ex-members of the Commons, and a set period in office for Lords members, recommends the system to an electorate still disillusioned with career politicians after the MPs 'expenses scandal'.

Conclusion

19. A reduced House with members (500) appointed by an independent appointments commission for a limited term (10 years), and with a small voting membership (100) representing parties by reference to their proportion of the votes cast in the most recent general election, satisfies criteria for a reformed Lords frequently advocated in the media by people from all walks of life.

20 December 2011

Written evidence from James H Davies via his MP, Yvonne Fovargue (EV 101)

I am writing as your constituent to express my concerns about the government's proposals on Lords Reform and specifically on the issue of Bishops sitting as of right in a reformed chamber. I urge you to make representations on my behalf opposing the proposals to the Deputy Prime Minister Nick Clegg MP, who is leading work on Lords Reform, and to the Joint Committee which is scrutinising the draft Bill.

The package of proposals on Bishops do not simply maintain the status quo but give even more privileges to the Church of England - some of which even the Archbishop of Canterbury, Rowan Williams, and the Archbishop of York, John Sentamu, have strongly opposed in their submission to the Joint Committee, stating that the Church of England did not seek exemptions proposed 'by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension'.

Durs is the only democratic country to give seats in its legislature to religious representatives as of right, and I believe that having any reserved places for Bishops in parliament is unfair, unequal and against the aims of a more transparent and legitimate second chamber. The government's new proposals, which in effect create a new largely independent, and largely unaccountable, place for the Church of England in parliament, are unnecessary, and even the Church of England leadership think they go too far.

I urge you to make my concerns known in parliament in whatever ways you are able.

20 December 2011

Written evidence from the Rt. Hon Lord Maclennan of Rogart (EV 102)

In a recent five-year period 40 per cent of the amendments to legislation passed by the House of Lords against the initial wishes of the government were ultimately accepted by the government. Such outcomes have rarely been subjected to criticism and, no doubt, justify the accolades of the present Prime Minister and his Deputy that "The House of Lords works well…and its existing members have served the country with distinction." The question, which must, therefore, be answered about the Coalition Government's proposed changes in the composition of the House of Lords, is: "How will the proposed new second chamber work better than the present one?"

1. The central thrust of constitutional reform over the past decade or so has been to redistribute power and to strengthen the checks and balances of our Parliamentary democracy. The continuance of this process is the real opportunity to be pursued in pushing forward further Parliamentary reform, including the reform of the composition of the second chamber. As the proposals stand, however, they would fall far short of securing these purposes.

2. The paradox at the heart of the Coalition Government's proposals is the assertion that "the powers of the second chamber and, in particular, the way in which they are exercised should not be extended." What, then, is the point of the proposed changes? The compliment is paid to the House of Lords that it has "served the country with distinction". Its "lack" to which the Government draws attention is "sufficient democratic authority"; but it is proposed that the Lords, having been given sufficient democratic authority, must do no more and do it no differently.

3. The over-riding purpose of reforming the House of Lords should be to enhance its capability, and that of Parliament as a whole, to serve the public needs. An interactive dialogue between two chambers of Parliament allows issues considered in one to be raised in the other; mistakes and oversights can be recognised before legislation is enacted.

Parliamentary workload

4. There is another compelling argument for giving legitimacy by direct election to the second chamber and that is to enable the workload of Parliament to be spread across the two chambers. The House of Commons is heavily over burdened. The advent of IT has added greatly to the accessibility of MPs whose duties are, properly, seen as being to represent every interest touched by Government and the public authorities. The increase in the constituency workload is matched by an increase in MPs' direct engagement in oversight of the executive through membership of the growing number of departmental and other standing committees of the House. The increase in the volume of legislation brought to Parliament also bears down heavily on its Members and the consequent increasing practice of timetabling legislation in the Commons does result in matters being less considered there and, not infrequently, passed to the Lords without full scrutiny of all clauses of bills. The time is surely ripe to acknowledge that spreading responsibility, even primary responsibility, across two elected chambers would help to ensure better governance by enabling both Houses of Parliament to focus their attention and, in combination, to scrutinise more effectively the wide spectrum of public decision making. There might, for example, be sense in retaining the primacy of the House of Commons over money bills but also in giving primacy to the second chamber to scrutinise legislative proposals from the European Union. Either chamber could oversee prerogative powers of appointment and treaty ratification.

5. Regrettably, these opportunities are not opened up by the Coalition Government's proposed reform of the House of Lords. Indeed, they are explicitly blocked. The Coalition "does not intend to amend the Parliament Acts or to alter the balance of power between the Houses of Parliament."

Thus, even the delaying power of a second elected chamber would not be increased. It must be doubted that an elected second chamber would agree to play second fiddle for long. It can be reasonably anticipated that, just as there has been continuing tension between devolved governments and central governments over the distribution of power between them, there would be conflict almost immediately about the limited scope of the second chamber's powers initiated by those legitimately elected to serve in it. For example, the conventions that have normally constrained the House of Lords from rejecting secondary legislation, which has been approved by the House of Commons, would be seen for what they are – conventions capable of being overturned. The proposed bill does not resolve questions of the relationship between the two chambers. It could entrench conflict and perhaps strengthen the arguments for abolishing the House of Lords altogether. One only has to look to Scotland, where the SNP has become - in Lord Hailsham's phrase - an 'elective dictatorship' (it has an overall majority in

the Scottish Parliament) with no effective check upon its executive power to realise the danger in Westminster moving towards a unicameral system.

Size and composition

6. The public is unlikely to welcome the election of more than one thousand representatives to the two chambers of the Westminster Parliament. That would result from the addition of 350 elected members of the reformed second chamber, as adumbrated in earlier proposals, to the existing membership of the House of Commons. That would far exceed the size of bicameral legislatures in many larger countries. The Senate of the United States and the Bundesrat of the Federal German Republic are highly effective bodies both with substantially smaller full-time membership. The relatively small size of those chambers would seem not to diminish their standing.

7. To command attention the improved chamber needs to be eminent as well as legitimate. A smaller reformed chamber with real and discrete powers should more readily attract the calibre of candidate required to improve the quality of governance. In Germany the upper chamber has approximately 11 per cent of the membership of the lower chamber. In the United States the upper chamber has approximately 23 per cent of the number of the lower chamber. For the United Kingdom with its smaller size perhaps the proportions might fall nearer the lower end of the range to, say, 15 per cent, or 111 members. Such a change would, of course, directly impact upon the capability of the reformed chamber to replicate the full scope of work of the House of Lords. First, as in the present House of Commons, new members would mostly be generally informed rather than particularly experienced, and there would inevitably be many issues for consideration beyond the direct knowledge of any of the members. Second, elected members will be representative of their electors and must take account of their views. But given constraints on time, the delegation of constituency work to appointed staff would be unavoidable, expensive and probably not wholly satisfactory to the public. Arguably, the proposed duration of an elected term - 15 years - also diminishes the extent to which an elected member of the second chamber will be truly accountable.

8. The future of the United Kingdom is now in question, and the reform of the upper house presents an opportunity for binding its four constituent nations more closely together. A reformed House of Lords will, of course, be elected, but the example of the US Senate could provide a model for giving Scotland, England, Wales and Northern Ireland more equitable representation and thus addressing the problem that representatives from England will always dominate in an elected chamber.

9. Those who advocate the election of the second chamber must face up to the huge changes which it would make to the performance of its roles. The inescapable loss of expertise and experience, which would flow from the abolition of a deliberately appointed chamber, ought to be addressed by those of us who favour an elected second chamber. The dilemma is how to retain for Parliament as a whole the advice of the senior, meritorious, knowledgeable and widely experienced people who have justified the recent work of the House of Lords in the UK's democratic decision-making.

A Council of State

10. A possible contribution to answering this conundrum would be to recognise the case for the appointment of a Council of State comprising a membership drawn from those who are recognised to have achieved eminence and who have made a contribution across a wide range of positions in civil society. The role of the Council of State would be, in particular, to provide for pre-legislative scrutiny, possibly including hearings, on government legislation. It might also engage in post-legislative scrutiny to offer advice on outcomes. Their input into legislation would be provided for in the timetabling for the consideration of bills, but the role would be advisory, including proposing, or offering advice on, amendments, but with no power of decision or to obstruct the will of either elected chamber.

11. Sitting on a continuing basis, such a Council of State would have an identity and the gravitas to draw public and parliamentary attention to issues and possible resolutions of problems which otherwise might not be considered in the hurly-burly of political life. To keep the Council refreshed there should be a rolling membership, which should be properly staffed and remunerated. The term of appointment, however, should be long enough to ensure stability and continuity of operation. The late Lord Bingham, in a recent book, *Lives of the Law: Selected Essays and Speeches: 2000-2010* (Oxford 2011), suggested something very similar, although he called it a 'Council of the Realm'.

The virtue of evolutionary constitutional change is often extolled by British commentators. The package of proposed reforms of the House of Lords gives little real hint of the direction towards which the UK's Parliament might tend. It might indeed, due to its ineffectuality, lead to unicameral government. In other countries such as Sweden and New Zealand this is now the norm. But such a development in the UK with our propensity to promote central control, fortified by an electoral system which does not tend to spread power across parties, could lead to a dangerously unchecked presidential system.

Lord Robert Maclennan is co-chair of the Liberal Democrat Parliamentary Policy Committee on Constitutional and Political Reform.

21 December 2011

Written evidence from St Philip's Centre (EV 103)

I write to offer a contribution from St Philip's Centre in relation to the Government's proposals to reform the House of Lords.

St Philip's Centre is a charity set up in 2006 and is rooted in the multi-faith environment of Leicester, the UK's most ethnically diverse city outside of London. We have a sustained, professional track record of promoting positive community relations through our religion & belief training, interfaith dialogue groups, social action activities and organisation of community events. We resource the operation of the Faith Leaders Forum which is chaired by the Bishop of Leicester, Rt Revd Tim Stevens and our Centre Director, Revd Canon Dr John Hall, is the chair of the Leicestershire Inter Faith Forum. We are members of the Inter Faith Network UK and connected to a vast range of representative organisations which work with different faith communities. St Philip's Centre was formed as part of the Church of England's Presence and Engagement initiative and so has a wealth of experience in this regard too. We therefore believe that we are well placed to offer a contribution to the consultation on House of Lords reform particularly the debate in relation to the representation of faiths other than the established church.

I pay tribute to the work of the Bishops in the House of Lords and this experience should be retained where possible in the new arrangements. Their contribution is a critical ingredient in our democracy and the Church of England has played an important role in providing a platform for other faiths to engage with public life. The current Near Neighbours project, delivered through the Church of England's parish networks in four areas of England is a prime example of this.

There are a number of issues to bear in mind in this consultation. The House of Lords' role to offer a check and balance to our system of government is critical. Whilst recognising the need for reform, I acknowledge that there is a wealth of experience in the House which must be retained through other means including membership of possible House of Lords expert groups. An effective chamber must include a healthy portion of elected but also appointed figures who are experts on the ground.

With this in mind, it is vital that any faiths representation in the revised House of Lords, is done in an engaging and effective manner and not tokenistic. There may be an urge to fill some of the places for other faiths with religious clerics. I would warn against this because quite often, community advocates have a much better grasp of local issues than the clerical hierarchy. The Joint Committee must resist the temptation to simply appoint those who in their view are the nearest equivalents to Bishop's in the other faiths. The reason being that the dynamics of other faiths is much more complex than this including in many cases, the absence of clear structures.

The role of a member of the House of Lords will also not only include participating in debates on religion but other vital areas such as health, education, law and order, the economy and foreign affairs. Therefore people with a wider range of skills and abilities are required if we are to have an effective and high quality chamber.

Another important point is to consider the creation an independent, expert appointments body which itself proposes nominations and indeed invites nominations for possible candidates. The body should also verify the candidates in terms of their track record, experience and commitment. It may be helpful to acquire references from public bodies such as local authorities and the Police to determine

the suitability of nominated candidates particularly in relation to their work with faith communities other than their own and also working across internal schools of thought and/ or sectarian divides. All too often in public life, there is a tendency to acquire the voice of one faith community which inevitably results in the acquisition of people who are not rooted on the ground, possess a sectarian view however subtle, do not have a strong track record of working positively on integration issues and a poor grasp of wider issues.

The Joint Committee should reflect closely on the geographic spread of members. Those who are London based or work for national 'representative' organisations often have an advantage. Once again this needs to be avoided.

For there to be an effective second chamber, the proposed reduction to 300 members needs to be reconsidered. The new chamber needs at least the same numbers as the House of Commons because their Lordships would not only represent territories across the UK but also communities of interest. Therefore in order to have a robust and challenging chamber, numbers must not restrict the possible benefits of input and experience. However, this does not preclude as stated earlier, the creation of a new, 'lower-tier' of membership through select committees where members of the House of Lords could be joined by expert practitioners to scrutinise legislation. This may be a method to ensure that there is a continuous expert contribution to our democratic system.

I applaud the efforts of the Joint Committee to undertake this immensely significant task and offer my assistance in whichever manner that is required.

10 January 2012

Supplementary written evidence from Dr Alan Renwick and Professor Iain McLean (EV 104)

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

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:

1. they allow voters the option of casting a simple party vote;
2. 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.[1] 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.[2] 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 (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

[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).

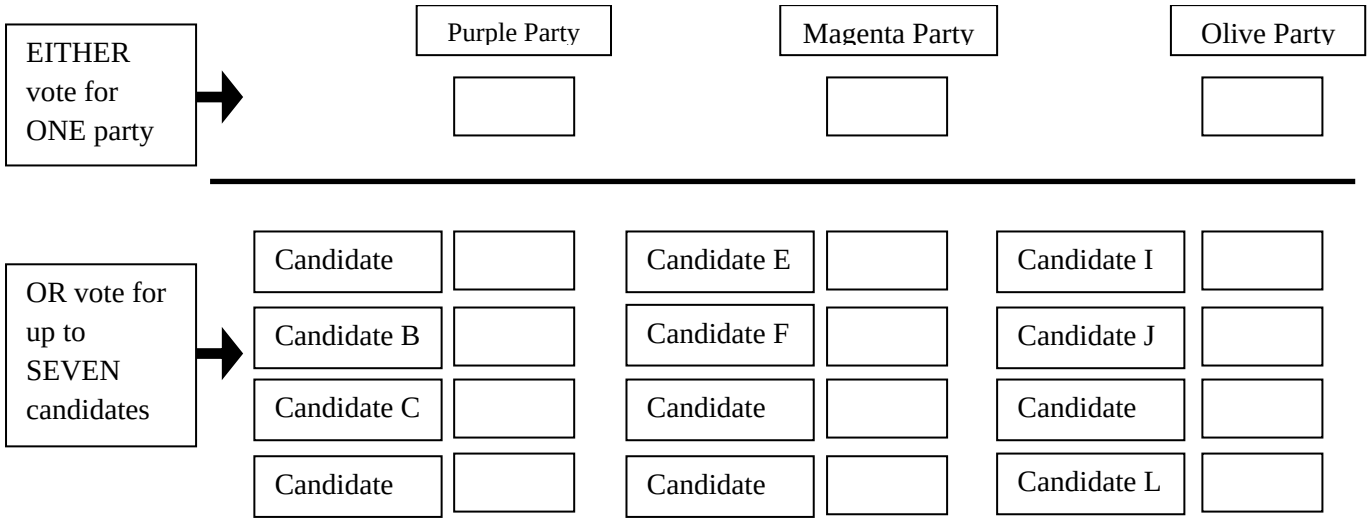
The first system would give voters as many votes as there are seats available in their region. Voters could cast these votes in either of two ways: either by placing an X next to a party (in which case all their votes would count for the party's preferred list order; or by voting for up to seven candidates. 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.

Illustrative Ballot Paper Layout

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

1. 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;
2. 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.



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 2/3 of a vote and the second preference 1/3. If a voter expressed three preferences, these preferences could yield, respectively, 4/7, 2/7, and 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.[3]

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. The instruction on the ballot paper might be as follows:

> 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.

Committee on Electoral Matters of the NSW legislature reviewed the new arrangements in 2005 and expressed satisfaction with them.[4]

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.[5] The Government rejected this proposal, however, saying it believed that such a change was "likely to

[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.

result in increased complexity and possible confusion for voters, leading to a potential increase in the level of the informal [i.e., invalid] vote".[6] 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 in the number of invalid votes.[7] 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.

[6] Government response to the report cited in note 4, p. 18.
[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.

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.
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,[8] 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.[9]

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, 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.

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[8] Australian Electoral Commmission, www.aec.gov.au.

[9] 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.

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.[10] 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 intra-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 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?

[10] 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).

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.

11 January 2012

Further written evidence from Unlock Democracy (EV 105)

Selected submissions from the Unlock Democracy e-consultation on House of Lords Reform

1. Submission from J. Chadwick

I welcome reform of the House of Lords, which is long over-due and make the following comments:

The current membership of the House makes it unwieldy, expensive and unrepresentative of modern society and therefore I support the proposed reduction to 300 members.

As currently constituted, membership of the House does provide it with a wide experience, especially from people who have held high office, and so I support its proposed constitution of 80% elected and 20% nominated members. The nominated members should comprise those such as ex-Government Ministers, Chiefs of Armed Forces and Police Commissioners, together with other suitable people (but excluding hereditary peers) who can bring useful experience to inform the legislative process.

Reserving twelve places for bishops would maintain an anachronism and I strongly oppose this proposal. The established Church no longer has the position in society it held in the Middle Ages, and it does not reflect the current make-up of our society, which I believe is predominantly secular. Parliament should therefore be secular and bishops should only have seats if they are elected to them.

Election to the House of Lords should be for ten years. This would ensure that it lasts during the lifetime of two Parliaments and so should ensure some continuity. A longer period, such as the suggested fifteen years, gives the electorate less opportunity to exercise its democratic rights.

The current naming of Parliament as the Houses of Lords and Commons is no longer relevant in our more egalitarian society and so Parliament should be re-named. My preference would be for the House of Representatives instead of House of Commons and the Senate for the House of Lords.

Although not part of the current consultation, I would like to add that the current House of Commons is seriously bloated and should be reduced in size by at least half.

19 September 2011

2. Submission from Roger Sibley

Roger Sibley

REVISED FOR MS WORD v2007 format JAN. 2012

Reform of Parliament Section

Britain is not great, nor a first division European country. It has been in ever steeper decline for over 30 years. This deterioration has continued through Parliament after Parliament, Conservative and Labour and now looks set to be just as bad under this Coalition.

Our system of government is the problem. It is clearly incapable of delivering sound governance or good strategic long term planning.

Parliament is a sham democratic institution, an obsolete dysfunctional government system ill matched to what is needed.

The very principle of opposition and adversative debates is antiphase with sound council, careful deliberation and good judgement.

Reform of Parliament

Introduction

Now is the time for the decades overdue total reform of our failed Parliament. We must replace the corrupt two party dominance, the five year focus, the feeble legislative scrutiny, and the puerile behaviour and rank bad manners of the House of Commons with a dignified and intellectual chamber focused on sound long term governance. We must turn the House of Lords into a powerful elected Upper House of non partisan professional expertise with the democratic authority to amend, block, and propose legislation. We must check the power of Ministers.

For far too many generations Britain has suffered incompetent Labour and Conservative administrations arrogant in their misplaced belief that they have delivered anything other than a disaster. The national wealth has been squandered. The nation is on the brink of economic and social collapse. Britain slides ever further down every EU league table where it is desirable to be near the top and vice versa. The United Kingdom is no longer a guaranteed stable entity.

Prime Ministers Question Time is an unedifying spectacle where the PM and Leader of the opposition diminish themselves in rude, and petty point scoring. Statesmanship is seldom if ever seen.

All of this is accompanied by boorish and loutish noise from the back benches. This trivial behaviour is symptomatic of the shallow intellectual input that makes the House of Commons unfit for purpose. The hypocrisy of the pretence of politeness by addressing each other with archaic and frequently inappropriate terms of honourable underlines the falseness of this poor apology for government.

Democracy is visibly destroyed in this chamber.

The House of Commons needs melting down, removal of the slag, and forging anew to make a powerful council where Ministers have to present a strong case for approval and no votes are given automatically, but are freely given without fear or favour.

There must be a radical transformation of the way both Houses of Parliament wield power, vote, amend and proposes legislation. There must be a sizeable attendance for a vote to be taken, and a minimum majority that prevents votes being carried by a narrow margin. First Past the Post is fit for neither legislative action or electoral representation.

No other major industrial economy has had a worse century than Britain; seen so much of its technological, industrial, and educational advantage lost or destroyed; given away so much control of key energy and transport infrastructure to companies that are themselves allowed to be freely bought and sold on world markets as if they were irrelevant to national security and prosperity. Britain has allowed its housing stock to become unaffordable for young people to buy or rent. Education standards are low. Britain is a failing nation.

Parliament is the problem.
The nation has fouled its institutions with a suffocating culture of prescriptive procedures, codes, policies and slip shod entangling legislation. These have undermined personal judgement and responsibility from the highest levels of government down through the structure of every branch of authority and on into much of industry and commerce.

Section 1

1. Parliament itself is the biggest national problem.

Parliament is the root of the national problem. It is a failed institution completely unsuited to delivering sound government direction and competent legislation, no matter who is in power. Until this is recognised and put right, the putrid barrel will carry on rotting any good apples present.

The House of Commons is no advert for good government. Debates are shallow, often with not even a minimal level of respect for constructive ideas - the poor attendance during many debates shows how little the members regard the value of listening to each other, let alone intelligently weighing the strength of arguments. It is sham democracy, how else could a system be described that has whips bribing, threatening and corrupting individual responsibility and judgement.

There is no motivation to speak in the national interest, or to examine alternative ideas or look at potential flaws in proposed legislation. The nation glimpses this truth at Prime Minister's Question Time and other broadcast occasions.

The quality of debates in the House of Lords is on a much higher level, but with no real power and membership being a jumble of archaic rights and political gifts, this upper chamber is itself a sham democratic institution, a chimera of responsible governance obscuring the reality of Ministers and legislation being beyond the Lord's control.

Section 2

2. Aims of Reform and modernisation of Parliament:

1. Representatives in BOTH HOUSES to have the power to effectively propose, amend, scrutinise and block legislation and the duty to wield that power in the best interests of the country.

2. Effective checks, and balances on the appointment and power of Ministers

3. Electoral system that reflects votes cast.

4. Protection from corruption and lobbying by powerful vested interests.

5. Greater transparency and accountability of decision making.

I propose the following suggestions to meet these aims:-

3. **House of Lords Reform (Senate)**

upper house name 3.01

Name changed to Senate

function 3.02

Function to propose alternative or amended bills in order to improve upon bills introduced into the lower house (Commons). To have the power to block legislation by voting it down. To vet and approve Ministerial appointments, To show no Party political affinity or preference.

Oath of allegiance 3.03

On election all members of the Senate will swear an oath of allegiance to act in the best interests of the nation, to uphold the UN Charter and the Bill of Human Rights, and to use their best judgement when voting in order to uphold these principles. In addition all members must resign from political parties and organisations and swear on oath that they have done so. Every Senator to declare under oath that they have no direct or indirect financial benefit derived from family assets placed or routed through listed Tax Havens.

membership 3.04

Former Prime Ministers, former Chancellors and former Foreign Secretaries to automatically become voting members without election, subject to their renouncing Party Political membership and allegiance.

Senators 3.05

The Senate must reflect the primary Sectors of the United Kingdom. To this end there will be 15 Senators with recognised expertise in each of Agriculture, Banking, Defence, Economics, Education, Environment, Commerce, Health, Judiciary and Law, Local Government, Social Security, Science, Technology, and Transport - (210 expert Senators in total) They are not attached to constituencies. These experts may not be currently employed, or receive any payment for any activity directly connected to their area of expertise, - pensions excepted.

Representatives 3.06

In addition there will be 5 constituency members for each of the geographic countries and regions making up the UK: Scotland, Wales, Northern Ireland, Channel Islands, SW England, SE England, Midlands, East Anglia, NW England, NE England. (50 constituency Representatives)

age restriction 3.07

Senators and Representatives must have a minimum age of 40 and maximum age of 70 at election

election term 3.08

Senators and Representatives will serve for 10 years before re-election. (There will need to be transition arrangements when introducing this system to take account of the overlapping election terms - *see 3.09*)

overlapping terms 3.09

Every even year one fifth of the elected members in each category will face re-election, that is 3 expert Senators from each category, and 1 Representative from each Geographic Region.

Senator candidates 3.10

For each Senator vacancy there can be no more than three candidates whose names go forward to the election process. Each Sector will set up a selection committee to represent important subsets such as Research Institutes, Universities, relevant

commercial organisations, professional organisations, emergency services and the armed services. Their role will be to nominate candidates and short list down to the three names that will go forward as candidates for each of their Senator Sector vacancies.

Representative 3.11

For each Representative vacancy there can be no more than three candidates whose names go forward to the election process. Each Geographic Region will set up a selection committee to represent Local Authorities, Regional Development organisations, National Parks, farming, fishing, and tourism. Their role will be to nominate candidates and short list down to the three names that will go forward as candidates for each of their Representative vacancies.

voting format 3.12

The voting format will be listing candidates in order of preference

voting eligibility 3.13

All voters must have their principle residence within the UK and have UK tax domicile status in order to qualify for a vote in the election of Senators. All voters must have their principle residence within the Geographic Region and have UK tax domicile status in order to qualify for voting in the election of Representatives.

campaign broadcasts 3.14

In a pre election period over 14 days one Senator Section would broadcast an Election programme on BBC terrestrial television each day, repeated the next day on BBC national radio. In each of these broadcasts the 3 prospective Senators for each vacancy in the Sector would have 5 minutes each in which to make their case for election.

Similarly on the 15th day, the Geographic Regions would broadcast an Election programme on BBC terrestrial local television each day, repeated the next day on BBC local radio. The three prospective Representatives for each vacancy in the Geographic Region would have 5 minutes each in which to make their case for election

broadcast booklet 3.15

A printed copy of the broadcasts to be made available at Public Libraries, and on a dedicated election web site 30 days prior to the election.

Each registered voter will receive two weeks prior to the broadcast period an election booklet listing the candidates in the same order as they will appear on the election voting slip, Sector by Sector followed by the Geographic Region Each candidate will have a reference number to aid identification. There will be space for the voter to make notes against each name to aid their voting on polling day. These election booklets will closely match the format of the voting slips, so that voters may watch or listen to the broadcasts, make notes at the time, and easily transfer their preference order from the booklet to the voting paper if they wish to do so.

In this way a long list of candidates covering the 15 sectors would be manageable.

Ministerial rights 3.16

The serving Prime Minister or one other Government Minister has the right to speak in the Senate to open a debate but may not vote

Minimum majority vote 3.17

Votes in the House will not be carried without a minimum majority of 40.

Minimum quorum 3.18

A minimum of 170 members must take part in a vote for it to be valid.

4. House of Commons Reform

Oath of allegiance 4.01

On election all MP's will swear an oath of allegiance to act in the best interests of the nation, to uphold the UN Charter and the Bill of Human Rights, and to use their best judgement when voting in order to uphold these principles. Every MP to declare under oath that they have no direct or indirect financial benefit derived from family assets placed or routed through listed Tax Havens.

Fixed Term Elections 4.01

The members of the House of Commons will serve for a fixed term of 5 years commencing on the first Monday in June, elections being held on the last Sunday in May. Every MP to declare under oath that they have no direct or indirect financial benefit derived from family assets placed or routed through listed Tax Havens.

Annual State opening 4.02

On the second Thursday in October there will be a state opening of Parliament with the sovereign's speech setting out the legislative program for the year, starting with any unfinished legislation carried over from the previous year unless the government has chosen to withdraw it.

Ministerial Appointment 4.03

Each June the Prime Minister will come to the House with a list of any changes to Ministerial appointments. Any Minister who has not completed 3 full years in the appointment will not be eligible to serve in any new appointment until 2 full years have elapsed. (Shuffling Ministers destroys accountability and expertise.)

Abolition of Opposition 4.04

The concept and title of Opposition is outdated and is no longer suited to effective government, if it ever was. The House of Commons should be a scrutinising council where proposed legislation is improved in the national interest without partisan interests. It should have a powerful leader who is not a government minister.

Abolition of Whips 4.05

Whips - The name says it all. Coercion in any form to sway the way members of the House of Commons vote is a corruption of the purpose of Parliament. Whips must be abolished. Every Member of Parliament must be free to vote according to their judgement and conscience as to what is in the best long term interest of the country.

Minimum majority vote 4.06

Votes in the House will not be carried without a minimum majority of 40.

Minimum quorum 4.07

A minimum of 340 members must take part in a vote for it to be valid.

Electronic voting 4.08

Electronic voting. All members present will electronically sign in. The numbers present in the House to be visually displayed on an indicator. All present at the time of a vote must do so. They are there to take decisions - not to prevaricate. The numbers for and against to be visually displayed so that it can be seen that all have voted. Voting record printed out and archived for 10 years.

Form of address 4.09

Government Ministers will be addressed by their name and title of Office. All other Members will at all times be addressed by their names and title. No more meaningless addresses such as

honourable.

Committees 4.10 House of Commons Committees to have the power to call Ministers to attend and to subpoena ministerial documents. As a sanction they should be able to dismiss a minister if carried by a two thirds vote of the committee. (Disputes over whether information can or cannot be disclosed on national security grounds to be decided by a standing House of Commons Security Panel) Committee members to be chosen for subject expertise, not party allegiance.

Public Inquiries 4.11 All Public Inquiries and Royal Commissions to deliver their full reports to a House of Commons Security Committee within 20 days of any Minister receiving a copy. Within a further 20 days the Security Committee must deliver the full report to the House of Commons Library and to the National Media, excepting any sections removed by that committee on national security grounds. The Security Committee must attach to the report a declaration that the report being released to the public is in full, or if elements have been deleted on the grounds of national security, whether or not the decision was unanimous, and the time scale sanctioned for the individual deleted elements to remain secret.

5. Palace of Westminster

New Parliament 5.01 A new Parliament building with circular debating chambers is highly desirable - the Palace of Westminster is not suited to true democracy - it should only be used for ceremonial and special occasions - it should earn its keep as a museum and tourist attraction.

Term of Ministers 5.02 Ministers to hold only one portfolio in any 3 year period, unless moved to replace another Minister who has died in office or resigned from Parliament. (If they are not good enough to remain in post for 3 years, they should not be appointed to another position in the same Parliament. (It is ridiculous the way some posts are swapped without the office holder being there long enough to gain any expertise or useful influence)

Prime Minister Questions 5.03 PMQ To be abolished. This appalling excuse for scripted taunts is not at all compatible with the serious conduct of the nations affairs and in most cases destroys any notion that the participants have the intellectual qualities worthy of high office.

6. Honours

Abolition of archaic titles 6.01 No more Lords, Knights and other archaic titles.

No more medals referring to a non existent empire.

Honours in good time 6.02 Greater emphasis on rewarding merit when it is due, not decades after the event when the recipient is geriatric.

True appreciation 6.03 Honours to carry annual tax free gratuities of £10,000 RPI index linked for recipients with income less than 1.5 x the national average. (Show some real appreciation of less privileged citizens giving outstanding service to the nation)

7. Party Funding

End of donor influence 7.01 Raising millions of pounds from supporters can only be expected to deliver corrupting influence on the process of government.

End of marketing 7.02 It would be best for Taxation to pay for election campaigns but not at the current grossly extravagant levels. It is not in the national interest to have politics marketed like a consumer item.

Expenditure caps 7.03 The only sensible solution is to reform the way campaigns are conducted so that expenditure can be capped at a much lower level.

There is no necessity for marketing dross, posters, multiple newspaper advertising, or jetting around the country for media exposure. See Election Campaigns for how they can be run and paid for without unnecessary advertising, marketing and other irrelevant use of media.

8. Election Campaigns

For Parties with 10 or more elected MPs:

General Election

Election Broadcasts 8.01 Three General Election debates on national BBC TV and national BBC Radio by the party leaders. (This should be a service condition in the BBC Licence and be funded by the TV licence)

Fifteen short daily General Election debates on national BBC TV repeated on national BBC Radio by party representatives (ministers and shadows) dealing with a different government department each day. (This should be a service condition in the BBC Licence and be funded by the licence)

Three General Election debates on regional BBC TV and regional BBC radio by candidates from the region. (This should be a service condition in the BBC Licence and be funded by the TV licence)

Election Web Site 8.02 A single General Election web site where the parties are required to post their national policies and full manifesto. All data referred to must also be in the public domain and its source identified. There should also be regional and constituency pages. (Paid for by the Electoral Commission)

Election Manifesto 8.03

One manifesto statement limited to 3000 words for each party, to be placed in a single common election supplement contained within national newspapers specified by the electoral commission. (Paid for by the Electoral Commission)

Limits and exclusions 8.04 One manifesto statement limited to 3000 words for each party candidate, to be placed in a single common election supplement contained within a local newspaper specified by the electoral commission. (Paid for by the Electoral Commission)

No other election advertising, leaflets, or broadcasting allowed.

..... continuation Limits and exclusions

An absolute limit on all other expenditure of £2000 per party in any single constituency.

A limit of £50,000 in total for all the expenditure on visiting constituencies within England and Wales by the Party Leadership, and a further £20,000 for visiting Scotland and Northern Ireland.

A ban on using helicopters and other non scheduled public transport aviation except for remote communities beyond 8 hours journey time from London.

Additional Annual Broadcasts Funded by the TV Licence

Annual broadcasts 8.05

A Party Political Programme 30 days before the budget on national TV and National Radio in which each Party with 10 or more MP's has a 5 minute slot.

A Party Political Broadcast 30 days after the budget national TV and National Radio in which each Party with 10 or more MP's has a 5 minute slot.

A Party Political Broadcast in January on national TV and National Radio in which each Party with 10 or more MP's has a 5 minute slot to set out their views on the priority issues for the year ahead.

For Parties with 9 or less elected MPs

8.06 Web Site

A single web site where these parties may list their policies. Limited to 5000 words for each party. (Paid for by the Tax Payer)

8.07 Other limits and exclusions

No other advertising, leaflets, or broadcasting allowed during the election period.

An absolute limit on all other campaign expenditure of £2000 per party in any single constituency.

A limit of £10,000 for all expenditure on visiting constituencies within England and Wales by the Party Leadership, and a further £5,000 for visiting Scotland and Northern Ireland.

One manifesto statement limited to 3000 words for each party candidate, to be placed in the same local newspaper common election supplement referred to above. (Paid for by the Electoral Commission)

9. Postscript

It is quite difficult to think of all the details that would make a reformed system of UK government workable, but I am certain that nothing less than a wholesale adoption of radical changes to the purpose, conduct, procedure, membership and functions of both Houses of Parliament is required.

I commend these ideas as a starting point for the renewal of Parliaments authority, and purpose to move it into the 21st Century.

9 September 2011

3. Submission from Philip Cook

I would prefer a wholly elected House of Lords. However, I understand that this may not be politically acceptable to the Government.

Therefore, 20% appointed would be acceptable to me as a compromise. I do not like the idea of these appointments being made mainly by the Government of the day. Appointments should be made by outside bodies, and should represent a wide sweep of political, cultural, and religious views.

The current House of Lords has many wise members, I expect. However: it has powers beyond its democratic remit; and has on occasion exercised these powers with aggressive negativity.

19 September 2011

4. Submission from Vernon Moat

There should be no judges, politicians, bankers, hereditary peers, political appointees or industrial/business power brokers.

Corruption, immorality and social irresponsibility has wrecked democracy in this country.

You have sold our heritage to the highest bidder (EU & stock exchange) in the name of the false God of economy.

You have left the people of Britain in a country they no longer recognise.

You have created a society built on corruption & greed with economic expansion your only goal.

And the people you should have served & protected, you used as pawns, fodder for the international companies to steal from with impunity as you failed to legislate against the corrupt and the ignorant.

How do you find people with basic common sense honesty & integrity when power corrupts everyone who touches it?

You need people with objective thought not manipulators and compromise experts.

But it does not matter who you put in place if they are not covered by the same laws as the population.

You have created a political elite that is living on BENEFIT just the same as the unemployed but they are such a self important and egotistical group that they think they are better than the rest of British people.

These people are public servants who have been corrupted and who should be put in court for their dealings. But they are outside of the law.

In fact nothing which they do is illegal because they omitted to legislate against their own corruption and those of their corrupt affiliates.

They just get paid off and promoted for disastrous errors.

If you do not bring JUSTICE to the public service and make them serve with integrity and honesty the system will corrupt whoever you put in place.

15 September 2011

5. Submission from Barry Cash

"There is nothing" someone famous once said "which is entered with more enthusiasm and left with more disenchantment than the reform of the House of Lords". Let's risk it!

Why have a second chamber at all? In the United Kingdom the upper house exists for purely historical reasons and the reason for reforming it is because it is un-elected and therefore unrepresentative. Many democracies have two elected chambers, but what is the point? If they are both elected to represent geographical constituencies at the same time then surely they will have a similar composition? What will two chambers represent that is not represented by one? If they are elected at different times then they may represent a different consensus of public opinion and be different. How is that an advantage? Imagine a House of Commons with a Labour majority and an elected upper house with a Tory majority. Would anything ever get done?

I am a firm believer in the value of democracy. We cannot all have our own way but in a free and tolerant society we should all have our say. But do we? In the forty years I have been able to vote, I have been represented by an MP that I have voted for only since 2005. This is not just because MPs are almost exclusively chosen from just three political parties. It happens too many of us simply because we live in a "safe seat" and don't vote for the incumbent.

Supposing you could vote for anyone, not just the people on the ballot paper? Who would you choose? If you're a devout Christian or Muslim you would probably choose a representative who shared your faith. A member of an Ethnic minority would choose a fellow member. For others a fellow professional would be an obvious choice. The list is as long as your imagination. Instead of registering electors according to where they live why not register them according to their most important interest?

The reason why I am an elector in Bristol West is historical. In the past it was not possible to communicate with a group of people over large distances. So it made sense to choose a representative with your neighbours. Nowadays television makes it almost impossible to get people to a local public meeting but easy to talk to the nation. There is simply no need to restrict our choice of representative in this way.

This would not lead to the country being governed by the "Fox Hunters party" or mean that the Minister of Transport would be drawn from the "Wheelchair users Forum". The Government would still be drawn from the unchanged House of Commons but representatives in the Lords would be able to input their minority's views when legislation was sent to the Upper Chamber.

Every Church of England Bishop can sit in the Lords and put the church's view on Bills. Under my system the number of C of E representatives would depend on that Church's popularity in the community, as would the number of Catholics, Jews, Muslims, Sikhs etc. Obviously, this is a fairer system.

How would it work in practice? Every registered elector would be sent a form asking which "constituency" they wished to vote in. They could either choose from a list of established constituencies or suggest one of their own plus a second choice from the list. A computer would count the number of people who wished to vote in each and create the right number of constituencies. There would probably be several dozen constituencies for pensioners but only one or two for Sikhs for example. If there weren't enough electors to make a constituency then they would be allocated to their second choice.

Once the constituency list was announced potential candidates would put themselves forward in the same way as they do now. We already ask candidates for a deposit so there is no reason why they couldn't be asked for the cost of a list of electors in the constituency. They would need this to send their manifesto to the electors. Come the election everyone could be sent a postal vote or if that is thought to be insecure a polling card with the constituency on it and they could vote in the normal way at a local polling station.

There would be no risk of people standing just to get on the Westminster gravy train. Members of the House of Lords don't get paid, they just get expenses. Of course some idiots are bound to make fun of the whole thing by choosing "Jedi Knights" for their constituency, but so what? There are lots of idiots around. They deserve some representation.

15 September 2011

6. Submission from Adam P. Green

1. No Religious Representatives: In a secular society religion should have no position of authority over people, or the running of that society. Religion is a matter of spirituality

whereas the running of a country is a matter of organisation, management and informed policy. These skills are not the province of the spiritual but that of the scientific.

2. More Scientific Representatives: Science has a great deal to offer the government in terms of informing the policies which run our country, and guide our interaction with the natural world. It strikes me as odd that there are so few scientifically trained minds in politics because the training scientists receive grants skills that are readily transferable to the political arena. The key one of these is problem solving.

3. No Appointments: Surely an ideal system would look at problems with an objective view so that the facets of that problem can be broken down and understood in a concise and unbiased manner. If this is the case then appointment of politically biased representation in the House of Lords is a bad idea because this situation naturally lends itself to biased decision making and foul play. Therefore all members of the second chamber should be voted in by the public so that biased appointments by MPs, and other political groups, are avoided. I would go further and restrict the allowed number of representatives from political parties and make most of the seats available only to non-political candidates (from science, healthcare, education etc.).

14 September 2011

7. Submission from David Martin

With reference to the consultation exercise on proposals to reform the House of Lords, I would comment as follows:

1. It is to me a matter for great shame that the upper house of the UK's legislature still, in 2011, has a hereditary element.

2. If the House of Lords remains as a senate (see 3 below) I would not be averse to the 80/20 split; I think the opportunity to nominate e.g. distinguished public servants and representatives of professions, trade unions and churches (the major ones) could be retained provided the majority of the membership is elected.

3. I think that reform of the House of Lords (definitely needs a new title) provides a wonderful opportunity to complete the reforms initiated, but at half-cock, with the devolution settlement of 1999. At present the principle legislative assembly of the United Kingdom, i.e. the House of Commons spends most of its time on matters which affect only England or only England and Wales. MPs representing constituencies in Scotland, Wales and Northern Ireland attend, as they must, but have little interest in most of the issues discussed. Sometimes they are whipped by their parties to vote on matters which have no effect on their constituents, which is manifestly wrong.

Why not therefore reconstitute the H of C as the English Parliament, which it is in practice for most of the time? Then the House of Lords, in which case it would have to be 100% elected, could become the Federal Parliament of the UK and deal with all pan-national matters. I accept that this is a revolutionary proposal, but I think a revolution, preferably a bloodless one, is what the UK needs if it is to escape the complacency which is the bane of its existence and indeed if it is to survive in the face of the strong drive towards an independent Scotland.

22 September 2011

8. Submission from David Roberts

The House of Lords in its present form makes us a laughing stock in the world.

Not only does it have members whose qualification is solely that they hold a certain position in a religious organisation, there are increasing numbers appointed simply because they give large amounts of money to political parties.

The politicians who appoint them seem to have no shame, and the numbers keep on rising, now more than 800.

How can we hope to be taken seriously when we point the finger at other countries and presume to advise them about good governance?

The membership should be wholly elected and greatly reduced in number.

The chamber should not be called the House of Lords and members should not be Lords or Ladies.

All these questions should be decided by a referendum of the whole electorate.

1 October 2011

9. Submission from John Norton

I believe that it is totally unacceptable that, in the twenty-first century, the vast majority of members in one of the houses of the British Parliament are either appointed life peers or hereditary peers who, once they take their seats, hold them for life. The only members of the House of Lords who aren't appointed for life are the bishops and they are automatically replaced by another bishop once they retire.

There are other reasons why the current make-up of the second chamber is completely unacceptable: -

- Life Peers are people, in the main, who have been nominated by the leaders of the various political parties. Often they are retiring, or defeated, Members of Parliament,

retired senior civil servants, retired senior members of the armed forces or, members of the judiciary. The peerage is often given as a reward for "serving their country" but most of these people had extremely well paid jobs and generous pensions, so it is completely inappropriate to also given them a seat in parliament where, once ensconced, they can't be removed. Even worse, is the nomination for a life peerage, and therefore a vote in parliament, of rich people who have made financial contributions to a political party.

- Hereditary Peers, who are nearly all men, hold their seat by 'right of birth' or are elected by their fellow hereditary peers.
- Church of England Bishops are representatives of just one branch, of just one religion of only one country of the four countries that constitute the United Kingdom of Great Britain and Northern Ireland. I've noted that one of the reasons given for justifying seats for bishops in the upper chamber is that the Church of England is the established church, but that's only true in England. It's not the establish church in Northern Ireland, Scotland or Wales. I cannot see any justification for awarding seats to only one particular brand of Christianity in only one of the nations that make up the United Kingdom. After all, the second chamber is part of the British parliament, not an English parliament.

Although I very much favour a second chamber that is much more democratic than the present House of Lords, I do not want to see all the members of the second chamber being professional politicians under the control of party whips. I believe there is a strong case to be made for a number of independent crossbenchers. Ideally I'd like about a third of the members of the house to be appointed representatives, but will settle for 20% of the seats if that's the best offer available.

I believe that the appointed seats in the upper house should be distributed and allocated to various special interest categories (e.g. the arts, science, engineering, education, business, trade unions, charities, professional bodies and, possibly, the armed forces) and that members should be nominated by a number of central/professional bodies (e.g. CBI, TUC, GMC, Royal Society, major charities). All nominees would have to be scrutinised by, and approved by, an independent appointment panel. I would expect all appointed members to sit as independents and not be subject to party whips. I can see no justification whatsoever for reserving a number of seats for Anglican bishops.

Therefore I would like to see a reformed second chamber:-

- Consisting of 80% elected members and 20% appointed members.
- With the elected members sitting for two parliamentary terms and be elected by some form of proportional representation.
- With the appointed members only being allowed to hold their seats for a maximum of two parliamentary terms.
- Having a procedure in place to remove both elected and appointed members should the electorate or nominating body think it appropriate.

I appreciate that it might take a number of years to implement and complete the reform of the House of Lords. Therefore, I believe that as a first, and immediate, step, the following changes should be implemented this parliament: -

- Allow existing peers (both life and heredity) to formally retire from the House of Lords
- Set an age limit, say seventy-five, by which all existing peers must retire
- Phase out the heredity peers from the upper house by not electing replacements as the existing heredity peers die (or retire)
- Phase out the so called "Lords Spiritual"
- Stop the almost automatic awarding of life peerages to people who retire from certain posts in the civil service, the judiciary, the armed forces and to certain former government ministers.
- Enable members of the House of Lords who acquire a criminal record to be expelled from the house (and to lose their peerage)

Finally, I believe that since all the major political parties support reform of the House of Lords, without necessarily saying what form that reform should take, then the leaders of all the major parties at Westminster should give an undertaking not to put forward any more nominations for Life Peerages. Therefore, if nothing else, the number of peers in the House of Lords will slowly (very slowly) whittle down to a sensible number.

30 September 2011

12. Submission from Harold Young

I have given a lot of thought to reform of the House of Lords over many years and welcome the chance to help to "make a difference".

The Basis for reform.

My ideas are aimed at a range of factors which I think should be brought into the discussion process. These are:

1.Voter participation in the electoral process. Voter participation is falling and attempts to make the voting process easier is at best avoiding the real problem and at worst, encouraging casual voting without any real thought behind voting intentions. I think we should aim at bringing back the notion that voting is a privilege and a responsibility not to be taken lightly.

2. There is a general belief among the electorate that voting is increasingly a waste of time because the political parties take only passing heed to the views of the electorate and are increasingly disingenuous about what they are saying. For example (and I do not aim this as a criticism of the Lib-Dems in particular but of the parties in general) the Lib Dems, in expressing a view about Gordon Brown's decision not to hold a referendum on the recent

treaty, stated that there should be a full-blown referendum on our membership of the EU. Yet in a recent vote in Parliament, not one single LibDem member took the chance to vote for that, when it was offered. Such actions lead to voter distrust and reform should therefore be aimed at improving ethical standards in Parliament.

3. There has been talk in recent years, mainly from the LibDems that the House of Lords be organised on a regional basis. I disagree with that proposal on the basis that the constituency voting system for the House of Commons goes some way to reflecting that view already and that therefore more would be gained by reforming the Lords on an entirely different basis.

4. The nature of political parties makes it impossible for almost every voter to think he is voting entirely for what he really wants. Rather he is voting for a package, parts of which he might not like and in the worst case, he is voting for a party which he dislikes the least.

5. Finally we have the issue of remoteness. Even if we solved the problems described in "2." above, voters feel their vote counts for too little to be of value. Reform should aim at improving the value of a vote. In addition a vote does not contain much meaning, other than to say " I voted Labour" or " I voted Tory". We do not know what a voter really voted for and what were the issues which made him vote a particular way.

I would like to see reform which addresses all these issues in some way.

My proposal.

The existing chamber consists of what might be described as different "estates". We have Law Lords, inherited Lords, Lords Spiritual and life-peers chosen by Governments. The idea of this has come to mean that a degree of professional non-party understanding will hopefully be brought to bear on legislation brought forward by the Government in the hope of improving legislation. Sadly, and I refer to peers chosen by the Government, this has proved not to be the case. The example of one Lord trying to excuse himself for taking money to bring forward amendments to proposed legislation, by declaring that he did not know he was doing anything wrong, is a sad indictment of where we have come in the years since the War.

However the idea itself should not be ditched simply because it has been abused by successive Governments. Rather it should be taken out of the reach of Government. I believe strongly that a house of constituent "estates" could be set up which would enormously improve the quality of legislation and address most, if not all of the issues I have set forth in the first section of this letter.

The Proposal

- Set up a series of "estates" to represent all the important sections of social, commercial, industrial, legal, financial, accounting and audit, regional, historical, military, political and

religious life. (If I have left out an important section, I feel sure that the gap would be filled.)

- I intend the historical "estate" as a repository for the inherited lords, some of whom have an extremely deep commitment to their country arising out of their own historical status and which we should not simply cast aside.
- Assign a number of seats to every "estate".
- Set up a college for each estate representing the bodies making up that "estate". For example The Society of Motor Manufacturers and Traders (SMMT) would be one of the members of the "estate" representing the "Estate" for Industry.
- The members of each college would be responsible for putting forward a list of members totalling at least twice the number eligible for a seat in the Lords.
- The general public would have the right to (say) three votes for members of a maximum of three "estates" in which they have a particular interest. (I leave the decision re the best voting method – AV, STV etc - in such a scenario to the experts.) In addition I feel some mechanism should be found to allow people fulfilling certain eligibility criteria within an "estate" should have an automatic extra vote within that "estate". For example an active qualified lawyer would have an automatic fourth vote to be used in the legal "estate", having already contributed to the choice of candidates in that "estate".
- Establish a set of high ethical standards from the outset whereby expulsion would be the only punishment.

How do these proposals address the issues stated at the outset?

- Voter participation - I believe that originality of these proposals would create a great deal of interest among the more thinking electorate. Taken together with the House of Commons it offers a kind of matrix structure in parliament, similar to that often found in larger companies. By allowing active participants within a particular category or "estate", the right to a fourth vote, we give the voter a sense of privilege at qualifying to vote.
- Voting is a waste of time - by limiting the vote to what interests the voter the most, he is given the chance to concentrate on what he really wants and where he thinks he has something to contribute. In those areas his vote would count for more than his vote for a House of Commons member. In addition members would not be card-carrying members of political parties. Voting would no longer be a waste of time in the eyes of the electorate. This would give added weight to the choices made, eliminating the notion of "party hacks", at least in the upper house.
- A non-regional basis membership of the Lords. – the criteria proposed establish a quite new basis of voting, recognising to some extent and building on the existing categories of members in the Lords. This matrix system would in turn foster a more cohesive system of working together for the nation as a whole.
- Voting for what one wants rather than against what one doesn't want – the proposal, I believe, addresses this issue adequately.
- The value of a vote – by limiting the votes allowed to those things which interest the individual voter, the proposal improves the competence of a vote and therefore its value to the final result. The result of the vote can be analysed much more readily into

something really meaningful. That in turn would limit the scope of Government to ignore the will of an "estate" and thereby improve the accountability of Government.

I wish you all the best in your deliberations.

20 September 2011

Written evidence from Lord Dubs (EV 106)

I am sure you have been inundated with submissions so I shall make this very brief.

Like everyone else, I believe the functions of a second chamber should be resolved before its composition can be determined. As a minimum we need a new Parliament Act which works in both directions and procedures whereby subordinate legislation can be delayed for, say, three months, to make the Commons think again, once.

I contend that every appointment system is flawed. Therefore I believe the key point of an elected chamber is accountability and this means members being able to be re-elected and for shorter terms, coinciding probably with General Elections. Being elected for one lengthy 15-year term is therefore not satisfactory.

It is true that the Lords as at present composed has experts within it. However, as one real expert said to me, their expertise gets out of date as a member of the Lords ceases to be active in his or her field. In any case, experts tend only to take part in debates or Bills within their area of expertise, whereas a second chamber needs people who will do work on a wide range of legislation. The world's foremost expert on, say, nuclear physics, is no better qualified than the rest of us on unemployment, social security, foreign policy, immigration or the economy. Elected members would inevitably be engaged in a wide range of issues and legislation.

I think the maximum size of an elected house should be 300-350. The electoral system should be STV using the old European constituencies, i.e. 7 parliamentary constituencies electing 3 or 4 members each. That means a list system would be unnecessary. Titles should be abolished. Members of the second chamber should be entitled to vote in General Elections.

Above all, the supremacy of the House of Commons must be maintained and there must be some legislation or codifications to ensure that is the case.

20 December 2012

Written evidence from Professor Robert Hazell and Joshua Payne (EV 107)

Lessons from European Parliament elections about open and closed lists and STV

Submission to Joint Committee on Lords reform by Prof Robert Hazell and Joshua Payne, Constitution Unit, UCL, January 2012

This note has been compiled by Joshua Payne, graduate of Essex University, with help from 30 academic experts across Europe. We are very grateful for their help

Background

As part of their plans for reform of the House of Lords, the coalition government are considering proposals on the electoral system for an elected second chamber (Cabinet Office 2011: 13-16). The principal choice lies within list systems of PR, including STV, open lists and closed lists. There is academic literature about the theoretical differences between these systems, but rather less about how they operate in practice. One of the best forums for studying how the different kinds of list systems work in practice is the European Parliament, which provides a wide range of different experience.

The EU stipulates that countries must use proportional representation, but there is immense variation within the broad category. Some countries (like Great Britain) use closed lists, in which voters can vote only for a party, not individual candidates. Some use open lists, allowing voters to choose between individual candidates. STV is a particularly open type of open list. Some countries use semi-open lists, restricting voters' individual preferences in different ways.

This note covers several aspects of how the electoral systems for MEPs work. The most important is how countries count individual and party votes; but it also covers gender balance, and by-elections. We make several arguments. First, political culture is the strongest determinant of how much voters utilise preferential voting, instead of simply voting for a party list. Second, the benefits of STV may be exaggerated. Third, division of the country into regions for voting by regional lists needs special care.

The note makes frequent reference to 'preferential voting', a feature of open list systems. A preferential vote allows an elector to choose between individual candidates of the same party, or to change the rank order in which they are listed on the ballot paper. Voters can mark their preference in different ways, circling the names, marking them, or writing in the candidates' electoral numbers.

Closed lists

Closed list systems are those where the parties put forward a list of candidates in their own rank order, and where voters are unable to express any individual preferences. Given that voters can only choose a party, the voting procedure can be simple. Closed lists are used in France, Germany, Great Britain, Greece, Hungary, Portugal, Spain, and Romania (Estonia switched from open to closed lists for the 2009 election, but there are now moves to switch back. Finland has also seen demands for a switch from open to closed lists). The member states with closed lists elect just over half of the 736 MEPs. A candidate must appear high up in the party's ranking to obtain a seat. Just how high will depend upon the party system, i.e., the pattern of party competition and one party's chances of success relative to another.

Structuring choices

Even where preferential voting is possible, it is standard practice for voters also to have the choice of endorsing a party's list as a whole. Only in Finland are voters constrained by having a preference vote for a candidate and no other option. Studies have considered, as a central question, how often the preferential vote option is used (Seyd 1998: 4-6). This is affected by two other things: whether parties can present their candidates in rank order on the ballot paper; and whether there is a threshold. In most countries parties use their own rank order; but in Finland, Luxembourg and Cyprus names appear in alphabetical order. Likewise, the STV countries - Malta and Ireland - stipulate unprompted, alphabetical ordering.

Finland, Luxembourg, Italy, Latvia and Cyprus are at one end of the spectrum of open list systems, in that preference votes are fundamental to the count, but in all cases except the Finnish it is still possible just to select a list. In these five countries, those candidates who receive the most preference votes become MEPs. Each vote for an individual candidate becomes slightly more influential, in the contest between candidates of the same party, when more voters decide to back an entire list instead.

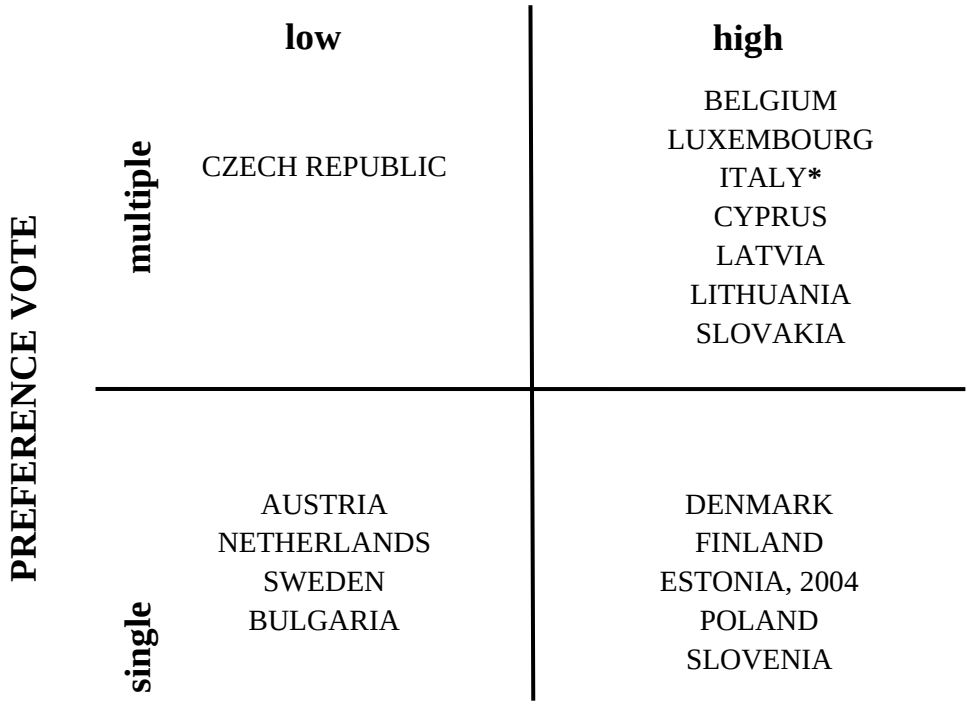
In other countries, preference votes are less powerful. One reason for this is a different counting method, which involves a threshold. A threshold for preference votes applies in the Netherlands, Belgium, Denmark, Sweden and Austria. For example, to achieve election as an MEP an Austrian candidate must obtain no fewer than 7% of the votes for their list. This use of restrictive rules is one factor which influences voters' ability to change the parties' rank order.

Overall, in Western and Northern Europe, it is uncommon for candidates to win a seat owing to preference votes upsetting the parties' rank order. In Austria, this applied to only one candidate in the two last European Parliament elections; in Sweden, to two candidates in 2009; and in the Netherlands, to three candidates in 2009. The Italian experience is more mixed, partly because there is no threshold for preference votes. The Danish system has a more restrictive threshold, yet Denmark also defies the overall pattern since it is more common here for voters to achieve a change of order. Political culture and socialisation play a strong role in determining how effectively voters can and will use preference votes.

Open lists

The majority of the EU member states use the open list system. They are more numerous than the closed list countries but smaller in size. Figure 1 below classifies them along two key dimensions. Voters can have a single preference vote, or more than one. The second dimension - 'impact' - is a measure of how much electors can, as discussed above, disrupt a party's rank order (or express a meaningful choice where the order is alphabetical).

FIGURE 1: TYPOLOGY OF OPEN LIST SYSTEMS



** In Italy a voter can have 1, 2 or 3 preference votes, depending on the region they live in.*

Previous studies have argued that open lists generally make little difference. Voters can still vote for a list as a whole, and previous studies have shown that many voters do (Seyd 1998: 4-6). But Seyd was only able to consider Western Europe. 2004 saw the entry of the Eastern European countries into the EU, and in these countries voters are considerably more likely to use preference votes. For example, in Poland, the second best position for a candidate to be is last on the list, rather than second. A large number of voters deliberately select the candidate least favoured by their party.

The experience of other East European states has been similar. In 2009 the Slovakian electorate made considerable use of its ability to disrupt the parties' order of candidates, "declassifying" candidates at the top of the list and moving up many of those in the lower positions (Henderson 2009: 10; Macháček 2009: 65). It is not safe to conclude that preferential votes are not worth giving to electorates because they might not use them. There is a big difference in the extent of their use between Western and Eastern Europe. Sometimes preferential votes are inconsequential as voters give them to candidates at the top of parties' rank order. This suggests that variations in political culture explain the differences -'culture' affects how much voters in a country trust parties' own decisions about their figureheads.

The Single Transferable Vote (STV)

European Parliament elections do not provide extensive evidence on the use of STV. There are only three cases to examine: Malta, the Irish Republic and Northern Ireland. Together, these countries elect only 20 out of the 736 MEPs. Under STV, voters indicate their favour for candidates by numbering them 1, 2, 3 etc. in order of preference. They can number all their preferences for candidates of the same party (very common in Malta), or split their numbering between individuals with different affiliations (more common in Ireland). One important issue is the number of candidates each party offers relative to the number of seats the party is contesting. In Ireland parties always put

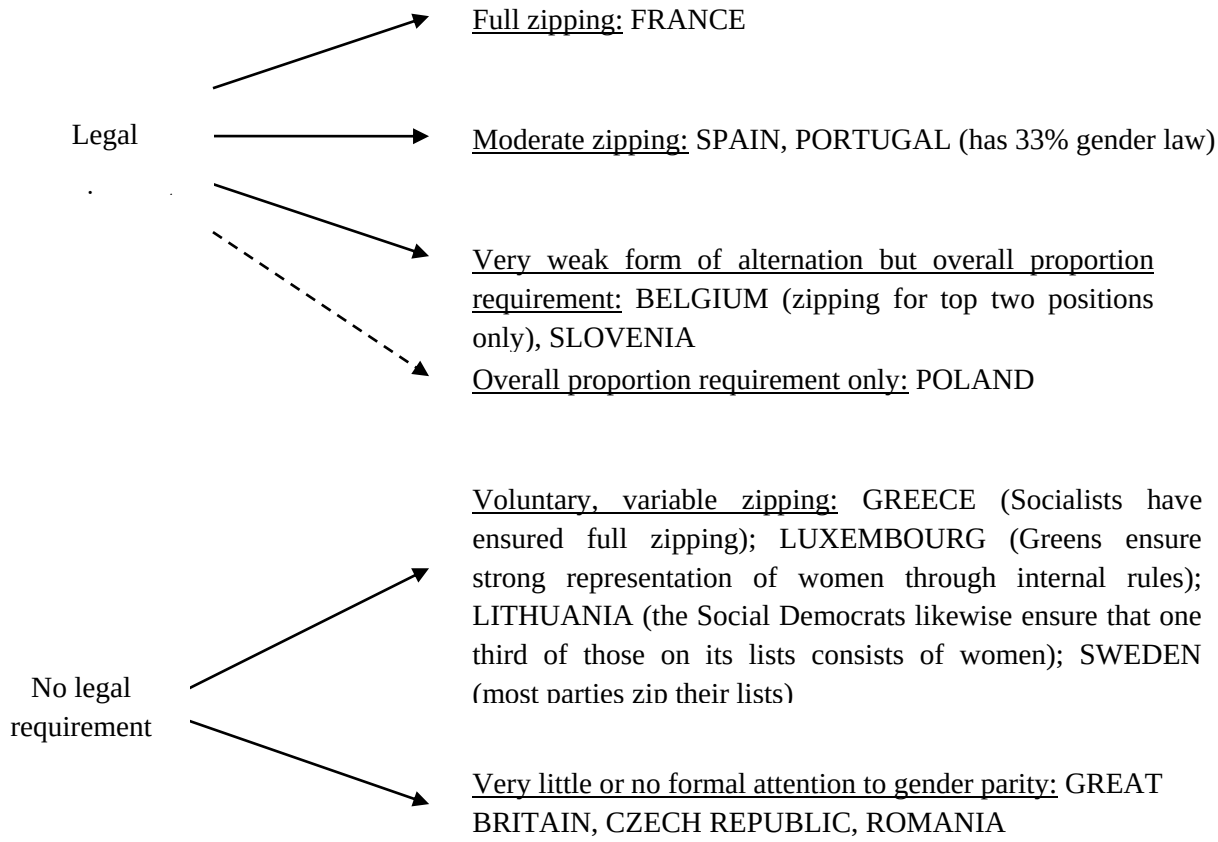
forward fewer candidates than there are seats available - usually one and occasionally two names, for three-member constituencies. In Malta, the two main parties each put forward roughly double the number of candidates relative to seats.

The Coalition government's draft legislation refers to STV and its operation at several points. Elections for a second chamber of 240 members will occur in rounds, with election in thirds, and division of the UK into 12 regions (Cabinet Office 2011: 15). The regions will not contain the same number of seats, but the average - 80 divided by 12 - is about 6.5 For European Parliament elections in the UK, which also use 12 regions, the average size of a region is six seats (the smallest region has three seats and the largest has 10). In contrast, the Irish Republic divides itself into four regions, with three MEPs for each; Malta has five MEPs in a single national constituency, and Northern Ireland three. Large regions with more than three to five seats could lead to very long ballot papers, and lengthy counting procedures: especially if parties were to put forward double the number of candidates relative to seats. This could happen for two reasons. First, parties often compete with each other to provide the same breadth of choice of candidates to voters. Second, STV is based on votes transferring between candidates in rounds. As Malta's election results show when examined closely, the provision of a very wide range of candidates can be desirable for a party under STV, as long as there is infrequent 'split ticket' voting. Long lists of candidates would include 'sweeper' candidates whose real purpose would be to direct lower preferences to a party's key players.

'Zipping': ensuring equal representation of the genders?

The electoral data from the 2004 and 2009 European Parliament elections show that STV is unlikely to produce gender balance. In this respect, party list systems may be preferable. The list structure provides the possibility of alternating male and female candidates in a party's sequence ('zipping'). The data show that pure forms of zipping are rare, but that there are many gradations to ensure balanced representation: see Figure 2. Most countries do not impose stringent rules. The French have legislation to ensure a strict alternation of male and female candidates, but parties can choose whether the head of a list is male or female. Sometimes the parties make their own rules (as in Sweden for instance) and sometimes legislation imposes requirements about the overall proportion of women, independently from requirements about alternation.

FIGURE 2: GRADATIONS OF GENDER BALANCE ON LISTS



By-election arrangements

It is uncommon for countries to make provision for by-elections if an MEP no longer takes up a seat. The administration for by-elections is expensive, especially when they have to cover large geographical areas. The usual practice is for the candidate who has the next place on the list to take up the seat. Sometimes party lists have to include a number of substitutes. In Malta there is provision for a contest, but this involves redistribution of the votes for the candidate no longer in the Parliament. The most common practice is to utilise data from the previous election rather than initiate a new contest.

Number of regions, and length of party lists

Parties' willingness to put forward more candidates than there are seats is not only a feature of STV, but can also happen with open lists. For instance, in Lithuania, with 13 seats for MEPs, the legal rules stipulate that parties can put forward a maximum of double that number of candidates. All the parties competing in Lithuania seem to do this (Lithuanian Central Electoral Commission 2004). Once one party puts forward more candidates, other parties tend to follow suit, to keep up their image.

This links to regionalisation and the number of regional constituencies (see below). The government's proposals involve constituencies for STV which are probably too large, especially if parties were to offer more candidates than there are seats. One alternative would be more and smaller

regions, with a slightly less proportional system. Smaller regions would retain the key strength of STV, which is the ability to make all votes count towards the election of a winning candidate. Another solution would be to limit the length of party lists.

Conversion formulae of votes into seats

Electoral systems use formulae which convert percentage vote shares into seats for each party. Such formulae are simply mathematical functions which convert one set of numbers into another. The D'Hondt formula, which divides the number of votes for each party by a series of divisors in rounds, is much the most common for European Parliament elections. Latvia and Sweden use the Sainte-Laguë method, whose basic concept is the same as for D'Hondt. The choice of the formula does not appear to interact with preferential voting. The majority of countries use D'Hondt, and this is irrespective of whether they are Western, Northern or Eastern European, or how much choice they give to voters.

Italy, Greece, Lithuania, Slovakia and Cyprus use the highest remainder method. They do not differ much from countries using divisor methods in terms of proportionality. But individual votes become more valuable in the final rounds of allocation, when small parties can compete convincingly with the 'remainder' piles of votes for larger parties, making it easier for 'minor' parties to gain seats.

Regions

The requirement for parties to win a strong vote share specifically within a region is unusual. This occurs only in Great Britain and France. In most cases entire nations form single constituency units. Spain is a single constituency for electing its 50 MEPs, as are countries such as Sweden and Finland. In Italy and Poland, there is division into regions for the purposes of fielding candidates and for counting preferential votes, but *party* success depends on the sum of votes across all the regions. In France, the government created eight regions as part of a plan to engage voters, but this has done nothing to arrest falling turnout. The electorate did not identify with the regional units.

Conclusion

The evidence shows in general that, under list PR with rank ordering in Western European countries, voters rarely succeed in altering the parties' rank order. Any preference voting needs good political knowledge about individual candidates, so many voters won't use this option. The UK is more likely to follow the Western European pattern. But differences in political attitudes and methods of counting votes can make it difficult to predict how much impact preference voting might have.

Too much consideration may have been given to STV. The advantages are not as clear as many people assume, and STV merges into open lists. The government's proposed constituencies would be too large for STV, especially if the parties were to offer more candidates than there are seats. A possible alternative could be the 'cumulative vote' system of list PR available in Luxembourg, where voters can give two votes to a candidate whom they particularly favour, and can also vote across party lines. A design where some preference votes have double the value of others could interest the electorate and aid contenders whom party hierarchies don't favour. But as with the wider debates about STV, a system which potentially favours party outsiders and independents is unlikely to find favour with the parties themselves.

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10 January 2012

Written evidence from Dr Alex Reid (EV 108)

This submission is based on an assessment, which I have undertaken as an interested member of the public, of the 603 pages of written evidence, and the oral evidence, which has been submitted to the Joint Committee. This submission is also published in expanded form, with supporting material, at www.lordsreform.org.

Where there is agreement

The evidence submitted to the Joint Committee shows almost unanimous agreement on three points:

a. The House of Lords is doing a useful job, scrutinising and revising draft legislation, and on occasion delaying legislation to give Government the opportunity to think again.

b. The current balance of power between Commons and Lords is about right.

c. The composition of the House of Lords suffers from some defects, which should be rectified. It has become too large (809), the hereditary Peers should be phased out, and arrangements for suspension and expulsion of Peers should be introduced.

Where there is disagreement

However, there are two matters on which the evidence shows strong and widespread objection to the Government's proposals:

a. The proposal to move from an appointed House of Lords to one which is largely or wholly elected is seen as presenting two serious dangers:

- **Balance of power between Commons and Lords.** The present balance of power between Commons and Lords, which is widely seen as satisfactory, rests on conventions not codified in law and on the self-restraint of an unelected House of Lords. A directly elected House of Lords, whatever the electoral system, would be likely to become much more assertive. This would lead to conflict rather than complementarity between the Houses, and potential gridlock as sometimes occurs in the USA. An attempt to prevent this by codifying the conventions into law would have the disadvantage of setting arrangements into concrete; it would also risk drawing the courts into disputes between the two Houses. This would complicate the current relationship between Parliament and the judiciary, and could also lead to legal delays impeding the work of Parliament.

- **Loss of expertise and independence.** A largely or wholly elected House of Lords would be dominated (as is the Commons) by career politicians who had worked their way up through political parties. There would be fewer eminent people with substantial experience of the world outside politics. This would be a serious loss in terms of expertise and judgement. Also career politicians are more likely to be subservient to the party whips, thus reducing the currently somewhat independent character of the House of Lords.

b. The proposal for House of Lords members to move from being part-time and unpaid (receiving only a per diem allowance) to being full-time parliamentarians with salaries and pensions is seen as having two serious disadvantages:

- **Aggravating the loss of expertise and independence.** The move to full-time salaried employment would reinforce the appeal of the House of Lords to career politicians, and would reduce its appeal to people who have, and wish to retain, an involvement in the wider world outside politics.

- **Cost.** At a time when there is a compelling necessity to focus on value for money in the public sector, the creation of 300 or more full time jobs for professional politicians in the House of Lords, at an additional cost of perhaps £25m per annum, is difficult to justify.

The Government case

In its foreword to the White Paper, the Government does not put forward any argument that the proposed changes would improve the effectiveness or efficiency of the House of Lords. The only argument put forward for the changes is one of democratic principle. To quote:

'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'.

The Evolution Option

At first sight there is a binary choice – between the status quo (without democratic legitimacy) and a largely or wholly elected House (with all the risks and disadvantages set out above).

I believe there is a middle way, which merits serious consideration, and which I refer to as the Evolution Option. This would be a House (of say 540) with a minority (say 25%) of Independent Members appointed as at present, and the majority (75%) being appointed by parties in numbers **pro rata to the party's share of vote in the last General Election**. There would, as the Government proposes, be a single 15 year term, staggered so that one third of seats became vacant every five years. Hereditary Peers would be phased out, and all members would continue to be part-time and unpaid receiving only a per diem allowance as at present.

The Evolution Option would go a long way to meet the Government's desire for democratic legitimacy, because the number of party-affiliated members from each party would be exactly pro rata to the parties' share of vote in the last General Election.

It is important to make clear that each batch of vacant seats would not be allocated to parties pro rata to share of vote. That approach, which has been suggested by some, would not produce proportionality overall. Indeed it could easily result in a party which had just won a General Election ending up with fewer seats in the Lords than the party that had just lost.

Under the Evolution Option each batch of vacant seats would be allocated to parties in such a way as to produce proportionality overall. In the event that one party lost more than a third of its share of vote between elections, exact proportionality could not be achieved. However that is most unlikely. In the last 50 years no major party has lost a third of its share of vote between elections. Even if that does occur in the future, a highly proportional result would still be achieved, with exact proportionality likely after the following General Election.

The Evolution Option substantially increases democratic legitimacy, but it does so in a modest, incremental way which would greatly reduce the risks associated with the directly elected approach. Instead of costing more it would cost less.

The reduced cost arises because the present remuneration arrangements would be applied to a smaller number of members; also there would be no cost of additional elections.

Bishops and Ministers

Of those submitting evidence who express an opinion on the matter there is a majority view that it is inappropriate for Bishops to have seats as of right in the House of Lords –

particularly since some Bishops could (alongside other faiths) be nominated as Independent Members by the House of Lords Appointments Commission. The majority do not object to the proposal that the Prime Minister should be able to nominate some Ministers to serve as additional members of the House of Lords for the duration of their ministerial tenure; but there is a widespread view that their number should be statutorily limited to say six. To maintain party proportionality, the Evolution Option would not allow those Ministers to vote.

How the Evolution Option would work

With a reduced house of 540 there would be 135 Independent Members, comprising 25% of the whole. This is a reduction of just over 10% on the current 152 Crossbench Life Peers, which could probably achieved by voluntary retirement. In addition to reducing the number of Independent Members to 135, the House of Lords Appointments Commission would need to allocate them to three equal groups of 45 each, who would have further terms of 5, 10 and 15 years respectively. This could be done, for example, by assigning the longest terms to those who have served for the shortest period.

If reform is to be achieved before the next General Election in 2015, the allocation of the 75% of seats to parties would be based on the share of vote in the 2010 General Election. The table below shows the increase or reduction in party-nominated Life Peers that would be needed for each party, based on the share of vote in the 2010 General Election. If the transition date to a reformed House is after the 2015 General Election, then the allocation would be based on share of vote in the 2015 General Election.

Party	*Current Life Peers*	*Seat entitlement after 2010 Gen Election*	*Change*
Conservative	170	149	-21
Labour	235	120	-115
Liberal Democrat	87	95	+8
Other parties	10	41	+31
Total	502	405	-97

Under the Evolution Option, it would be for each party to decide how to select their additional (or reduced) nominees. Each party would also need to decide how to allocate their nominees into thirds, having terms of 5, 10 and 15 years respectively. Thereafter it would be for each party to decide how to select its nominations for future vacancies allocated to it.

Suppose hypothetically that at the 2015 General Election the Conservative and Labour shares of vote are reversed, with the other shares of vote remaining the same. The way in which exact proportionality would be maintained under the Evolution Option is shown below:

Party	*Share of vote in 2010 Gen Election*	*Seats after 2010 Gen Election*	*Share of vote in 2015 Gen Election if Con & Lab reversed*	*Continuing members (two thirds)*	*Total entitlement to seats after 2015 Gen Election*	*Allocation of vacancies after 2015 Gen Election to achieve this*
Con	36.1%	149	29.0%	100	120	20
Labour	29.0%	120	36.1%	80	149	69
Lib Dem	23.0%	95	23.0%	63	95	32

Other	11.9%	41	11.9%	27	41	14
Total	100%	405	100%	270	405	135

24 January 2012

Written evidence of Lord Goldsmith QC (EV 109)

1. I regret that professional commitments overseas mean that I am unable to attend in person the hearing of the Joint Committee on the drafts House of Lords Reform Bill. I have prepared the following summary response to represent the oral evidence I would have given.

2. The Committee has expressed interest in my views on two questions:

    a. Whether the Parliament Acts could be used to enact the draft House of Lords Bill without the assent of the House of Lords;

    b. Whether there is any reason why the Parliament Acts could not be used by the House of Commons to enact legislation without the assent of the House of Lords if the House of Lords were to be elected .

QUESTION A; COULD THE PARLIAMENT ACTS BE USED TO PASS THE DRAFT LEGISLATION WITHOUT THE ASSENT OF THE HOUSE OF LORDS

3. This question raises the issue whether the draft House of Lords Reform Bill (or similar legislation) could become law if passed using the provisions of, and in accordance with the provisions set out in, the Parliament Acts 1911 – 1949 without the assent of the House of Lords. In other words could the House of Commons force through that legislation against the will of the House of Lords by following the procedures in the Parliament Acts.

4. In my view the answer is yes. This issue was, I believe, resolved by the decision of the House of Lords in R (Jackson & Others) –v- the Attorney General [2005] UK HL56.

5. This case, also known as the Hunting case arose in the following circumstances. The Hunting Act 2004 which outlawed hunting with dogs received the Royal Assent in November 2004. It had been enacted without the assent of the House of Lords pursuant to Section 2 of the Parliament Act 1911 as amended by the Parliament Act 1949. The Parliament Act 1949 passed by the post-war Labour Government had reduced the period of delay required between successive presentations of a Bill, and the number of those presentations, before the assent of the House of Lords could be dispensed with. The

historical context of both Parliament Acts will be very familiar to the Committee and I will not therefore repeat it.

6. The 1949 Act had been passed using the provisions of the 1911 Act. The issue raised in the Hunting Act case was whether the 1949 Act could legitimately have been passed using the 1911 Act so as to amend itself. The claim was brought by supporters of the Countryside Alliance who opposed of course the Hunting Act. They argued on a variety of arguments that it was incompetent for the House of Commons to use the 1911 Act to amend the very Act itself. Rather they argued it was necessary to have the assent of the House of Lords to amend the1911 Act. They therefore sought a declaration that the Hunting Act, having been passed without the assent of the Lords but not in accordance with the original Parliament Act conditions, was not an Act of Parliament and therefore of no legal effect.

7. As well as being the nominal Defendant on behalf of the Government I argued the case before the three courts who heard the case: the Divisional Court (Maurice Kay LJ and Collins J); the Court of Appeal (Lord Woolf CJ, Lord Phillips of Worth Matravers MR and May LJ) and a 9 judge panel of the House of Lords (Lords Bingham of Cornhill, Nicholls of Birkenhead, Hope of Craighead, Rodger of Earlsferry, Walker of Gestingthorpe, Baroness Hale of Richmond and Lords Carswell and Brown of Eaton-under-Heywood. Each of the three courts rejected the Claimants' case and held that the Hunting Act was valid, though for somewhat different reasons.

8. What is particularly relevant for present purposes is that the argument included consideration not merely of the various arguments raised by the Claimants as to the nature of legislation passed under the Parliament Acts but also focussed on what limits, if any, there would be on the sort of legislation which could be passed using the Parliament Acts. In particular it was argued that the Acts could not be used to pass constitutional legislation or at least some sort of constitutional legislation. This was an issue that particularly in the Court of Appeal was tested by asking whether the Parliament Acts could be used to abolish the bicameral system altogether.

9. The decision of the House of Lords, in my view, clearly shows that the Acts may, as a matter of law, be used to effect changes to the composition of the House of Lords without their assent. Whether it would be politically or constitutionally desirable to do so is of course a different matter.

10. Though the members of the panel gave differing reasons for their decision all upheld the validity of the 1949 Act and therefore of the Hunting Act. I believe that the essence of the decision at least of the majority is that as a matter of construction set in the historical and constitutional context the Parliament Acts created a new and parallel method of enacting legislation so long as the express conditions laid down were complied with. It was not the case that there was some implied exclusion for constitutional legislation; indeed part of the very purpose of the 1911 Act was to legislate for Home Rule in Ireland and the disestablishment of the Anglican Church in Wales – both very important constitutional issues; and an amendment to make some carve out for important constitutional change had been rejected. Rather by passing the 1911 Act Parliament had ordained that "any Public Bill" (the words of Section 2) introduced could become an Act of Parliament and the words "any Public Bill" were to be read in their plain and broad meaning. Accordingly except for the express exceptions in the 1911 Act, in particular the prohibition on using the Act to extend the life of Parliament beyond 5 years, there was no limitation on the nature of the Bill which could be enacted in this way.

11. It would follow that an Act to change the composition of the House of Lords would clearly be a lawful and effective enactment if enacted using the Parliament Acts.

12. I am aware that some argue that the decision does not rule out the possibility of <u>any</u> limitation, for example, a limitation on abolition of the House of Lords itself. This argument is based on certain dicta in the case and the fact that the majority ruled that the Act could not be used to extend the duration of Parliament. It is not, however, necessary to examine that argument as any such limitation must be of very narrow ambit and could not apply to a change which dealt solely with the composition of the House.

QUESTION B; COULD THE PARLIAMENT ACTS BE USED IN RELATION TO AN ELECTED HOUSE OF LORDS

13. The second issue is whether the Parliament Acts could still be used in the same way in relation to a wholly or partly elected House of Lords as in relation to the present House.

14. The White Paper and draft Bill proceed on the basis that the existing situation would continue – this would be enshrined in Section 2 of the draft Bill which intends to provide that the changes will not affect the existing status. Nonetheless the assumption is explicitly that the Parliament Acts will continue to operate even if and when the House of Lords became an elected chamber (see the White Paper). If that assumption is not sound then it affects the way the legislation proceeds.

15. To my mind there appears to be at least a very strong argument that the Acts were not intended to operate in such circumstances.

16. In the historical context, the purpose of the Parliament Acts was fundamentally that they were passed in order to restrict the powers of an unelected House of Lords against the elected House of Commons. This follows from what we all know to be the case but it is most fully explored in the speeches in the House of Lords in *Jackson v AG* and particularly by Lord Bingham of Cornhill at paragraphs 8-10 in particular and Baroness Hale especially at paragraph 156. It is worth setting out that latter paragraph:

> *"The history is important because it demonstrates clearly the mischief which the 1911 Act was meant to cure. The party with the permanent majority in the unelected House of Lords could forever thwart the will of the elected House of Commons no matter how clearly that will had been endorsed by the electorate. At that time this could not be called a necessary or even desirable check on the over weaning power of a government which had the command of the House of Commons because there was no equivalent check on the party which had the command of the House of Lords. The object was henceforth to ensure that the elected House could always get its way in the end. The United Kingdom would become a real democracy. The democratic element was reinforced by the reduction of the maximum length of a parliament from 7 years to 5 and the exception of a Bill to prolong the life of parliament from the 1911 Act procedure.*

The elected Chamber would have to submit itself to re-election at regular intervals." [emphasis added]"

17. Examination in more detail (as described by Lord Bingham and Lady Hale) of the historical context of the passage of the Parliament Acts and the resolutions passed by the House of Commons before them would demonstrate very clearly this point. In this connection it is worth recalling that the problem was as Roy Jenkins noted in Asquith 1964, 1967 paperback edition page 187 quoted by Baroness Hale at paragraph 144 of Jackson) "*It quickly became clear that the opposition leaders in both Houses were prepared to accord no real primacy to the elected Chamber.*"

18. This would lead to the proposition that the Parliament Acts were intended to apply only to the state of an essentially unelected House and were not intended to survive the creation of an elected House. That proposition indeed appears clearly from the terms of the recitals to the 1911 Act which are as follows:

... *"Whereas it is expedient that provision should be made for regulating the relations between the two House of Parliament;*
And whereas it is intended to substitute for the House of Lords as it at present exists a second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation;
And whereas provision will require hereafter to be made by parliament in a measure effecting such substitution for limiting and defining the powers of the new second chamber, but it is expedient to make such provision as in this act appears for restricting the existing powers of the House of Lords:"

19. The clear intendment of these words is that parliament (and it was the whole of parliament which passed the 1911 Act) 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*."

20. The question that arises is what the implications for the draft Bill would be of these considerations. I consider there to be three:

21. First, these considerations would at the very least provide to the new and elected House of Lords a moral justification for declining to give way to the House of Commons. It is unlikely, in my view, that any justification would in fact be needed because the elected member of the House of Lords would regard his or her own position as one which has democratic legitimacy and carrying a right therefore to oppose legislation he or she disagrees with. But these considerations would put to rest any argument that in failing to give way to the Commons was unconstitutional.

22. Secondly, there is a legal route by which effect could be given to that intention by holding, in accordance with a principle sometimes though not invariably applied that legislation must be interpreted in the context of the conditions at the time of its enactment, that the words "House of Lords" which appear in the operative sections of the Parliament Acts only refer to the House of Lords in its unelected form and that once it became an elected (or substantially elected) Chamber it was no longer the same "House of Lords" and therefore the provisions of the Parliament Acts would not apply to it.

23. This legal principle is not invariably applied - as explained by Lord Bingham of Cornhill in R (Quintavalle v Secretary of State for Health [2003] UKHL 13 at para 22- but this is likely to be a case where the principle would be appropriate to be applied. – see para 23 of the same case. See also the Australian case: the High Court of Australia *Corporate Affairs Commission (NSW) v Yuill [1991] HCA28: (1991) 172 CLR 319*

24. 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.

25. Thirdly, 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.

26. It is further my view, based on my experience as a member of the House of Lords and one time minister that the House of Lords is far more frequently persuaded to accept the Commons' view by acceptance of the argument that it (the Commons) has the democratic mandate, and the Lords has not, than by a belief that the Parliament Acts will be invoked. Irrespective of the strict application of those Acts the effect of having an elected House will radically change the relationship between the two Houses.

Written evidence from Lord Pannick (EV 110)

Could the Parliament Act 1911 be used by the House of Commons to insist on reform of the House of Lords?

– **Lord Pannick QC**[420]

1 The Parliament Act 1911 strengthened the powers of the House of Commons by restricting the powers of the House of Lords. The Upper House no longer had any responsibility for Money Bills (section 1) and only a delaying power in relation to other Bills (section 2), subject to defined exceptions.[421]

2 In 1911, Conservative peers feared, or at least asserted, that the Bill they were opposing would neuter the House of Lords as an effective chamber of Parliament. The Earl of Ancaster spoke for many when he complained that if the legislation were to be enacted, peers "might just as well join the Upper Tooting Debating Society as come down here and speak in this House".[422]

3 But Peers continue to come to Westminster from Tooting, as from all other parts of the United Kingdom, to contribute to the consideration of Bills, and sometimes to improve them. Indeed, the proposals brought forward by the Government for reform of the House of Lords[423] proceed from the premise that the Upper House continues to play so important a role in the government of this country that its membership should be determined by popular election, rather than by appointment by the Executive.

4 A draft Bill to that effect has been referred to a Joint Committee of both Houses of Parliament for pre-legislative scrutiny.[424] That Committee has been asked to report by 29 February 2012. If, after the Joint Committee completes its work, the Government were to introduce a Bill to make the House of Lords wholly or mainly elected, and if the House of Commons supports such a proposal (which is by no means certain), the Bill would almost inevitably be rejected by the House of Lords, the overwhelming majority of whose members take the view that an elected Upper House would be less well-qualified to perform the expert revising role and are concerned that difficult questions would arise about the respective functions of the two Houses.[425]

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420 Blackstone Chambers, London; Fellow of All Souls College, Oxford; Crossbench Peer in the House of Lords. This is an edited version of the Birkenhead Lecture delivered in Gray's Inn on 17 October 2011. I am very grateful to Professor Vernon Bogdanor for helpful comments. He is not responsible for my errors or views.

421 Subject to stated exceptions, considered below, the House of Lords could only hold up a Bill for three Parliamentary sessions spread over at least two years, if the House of Commons was determined that it should become law. The Parliament Act 1949 reduced these delaying powers from three to two sessions with only one year needing to elapse.

422 Hansard, HL, 29 June 1911, Series 5, Volume 8, column 1186.

423 House of Lords Reform Draft Bill (Cm 8077, May 2011).

424 Hansard, HL, 7 June 2011, Volume 728, columns 137-147.

425 See the two day debate on the Government's proposals for reform of the House of Lords: Hansard, HL, Volume 728, 21 June 2011 at column 1155ff and 22 June 2011 at column 1314ff.

5 An important legal issue would then arise. Would the Parliament Act 1911 apply, restricting the House of Lords to a delaying power? Such a question was described in one textbook in 2003[426] as "more appropriate for the classroom than the courtroom". But since the Jackson case in 2005 on whether the Hunting Act is valid law, there can be no doubt that the judiciary would claim jurisdiction over such an issue.

6 For the reasons set out below, my opinion is that the House of Commons could use the powers conferred by section 2(1) of the Parliament Act 1911 to insist on the Government's proposals for reform of the House of Lords.

II

7 Observations made by the Court of Appeal[427] and by some members of the Appellate Committee of the House of Lords[428] in Jackson suggest that the Parliament Act may not apply in this context.

8 The Countryside Alliance brought legal proceedings to challenge the legal validity of the ban on hunting of foxes with dogs. The Hunting Act had been enacted under the Parliament Act 1949, which had amended the 1911 Act so as to reduce the delaying powers of the House of Lords. The Claimants argued that the Parliament Act 1949 was invalid because it was enacted under the 1911 Act procedures, that is without the consent of the Lords. The Claimants said that if the conditions set out in the 1911 Act for legislation to be validly enacted without the consent of the Lords were to be altered, it could only be done with the consent of the Commons and the Lords. The claim failed. The High Court, the Court of Appeal and the Appellate Committee of the House of Lords each held that the Parliament Act 1949 was valid legislation and so the Hunting Act was valid law.[429]

9 For the Court of Appeal, Lord Woolf, the Lord Chief Justice[430], stated that the purpose of the 1911 Act was "to establish a new constitutional settlement". So it could not be used "to enable more fundamental constitutional changes to be achieved than had been achieved already". If Parliament had intended to confer such a power, it "would be unambiguously stated in the legislation". The Court of Appeal added that "the greater the scale of the constitutional change proposed by any amendment, the more likely it is that it will fall outside the powers contained in

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426 A.W. Bradley and K.D. Ewing Constitutional and Administrative Law (13th edition, 2003), p.198. The current 15th edition (2011) does not include the phrase.

427 R (Jackson) v Attorney General [2005] QB 579.

428 R (Jackson) v Attorney General [2006] AC 262.

429 I declare an interest: I represented the League Against Cruel Sports, and made submissions supporting the Attorney-General in opposing the arguments presented by the Countryside Alliance.

430 The other members of the Court of Appeal were Lord Phillips of Worth Matravers, the Master of the Rolls, and Lord Justice May.

the 1911 Act". However, the Court of Appeal concluded that the amendments to the 1911 Act procedures made by the 1949 Act were not fundamental and so the 1949 Act was valid.[431]

10 The Appellate Committee of the House of Lords rejected the approach taken by the Court of Appeal. But there were further comments by some of the Law Lords suggesting limits to the use of the 1911 Act to secure constitutional change without the consent of the House of Lords. Lord Steyn said he was "deeply troubled" about the suggestion that the 1911 Act could be used to abolish the House of Lords. That would be, he suggested, "an exorbitant assertion of government power in our bicameral system".[432] Lord Carswell noted that if attempts were made to use the 1911 Act to abolish the House of Lords or to make a "radical change in its composition which would effect a fundamental change in its nature", then he would "incline very tentatively to the view" that "there may be a limit somewhere" to the powers contained in the 1911 Act, though "the boundaries appear extremely difficult to define".[433] Lord Brown of Eaton-under-Heywood said that he was not prepared to give a ruling which would sanction the use of the 1911 Act for purposes such as the abolition of the House of Lords, though he contrasted as less controversial an alteration in its composition or the method of selection of Peers.[434]

III

11 Contrary to the views of the Court of Appeal in the Hunting Act case, the 1911 Act confers ample legal power on the House of Commons to use section 2(1) of the 1911 Act to enact fundamental constitutional reform, if the House of Lords refuses to give its approval to such proposals. There are four arguments which support this conclusion.

12 First, the 1911 Act states when section 2(1) cannot be used to force through a Bill without the consent of the House of Lords.[435] Section 2(1) expressly does not apply to a Money Bill (which under section 1 is a matter for the House of Commons) or to a Bill containing any provision to extend the maximum duration of Parliament beyond 5 years. Section 5 states that section 2 does not include any Bill for confirming a provisional order (a form of legislation which is no longer used).[436] Given these specific exceptions, it would be difficult to imply other exceptions. As Lord Bingham pointed out in the Hunting Act case with his customary force and precision, subject to the stated exceptions section 2(1) applies to "any" public Bill and there is no broader expression than "any".[437]

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431 Paragraphs 42, 45 and 99-100.

432 Paragraph 101.

433 Paragraphs 176 and 178.

434 Paragraph 194.

435 Section 2 only applies to a public Bill, not a private Bill. It only applies to a Bill which begins in the Commons, not one which begins in the Lords: Erskine May: Parliamentary Practice (24th edition, 2011), p.648. Because section 2(1) only applies to a Bill, it does not apply to secondary legislation.

436 See Erskine May Parliamentary Practice (24th edition, 2011) at pp.932-933 and Companion to the Standing Orders and Guide to the Proceedings of the House of Lords (2010 edition), paragraph 9.65.

437 Paragraph 29.

13 Second, to imply limitations on the use of the section 2(1) power would defeat the manifest purpose of the 1911 Act. The legislation was deliberately designed to ensure that, in the event of a dispute, the elected House of Commons could prevail over the unelected House of Lords. The controversy over the Liberal Government's proposals for limiting the powers of the House of Lords caused the second general election of December 1910 and was one of the main topics of debate in that general election campaign[438]. Courts should be very reluctant to undermine the political victory of the House of Commons by restricting its ability to decide when it is appropriate to use the powers conferred by the 1911 Act, subject only to the express limitations contained in the 1911 Act itself. Any use of the section 2(1) powers would occur only in the circumstances of a highly contentious political dispute. The courts should stay well away from implying limits on the ability of the Government, through its majority in the House of Commons, to resolve a political stalemate. The central purpose of the 1911 Act was to provide a means of resolving such a conflict other than by the Government asking the monarch to appoint sufficient new Peers to force the legislation through the House of Lords.

14 Third, the suggestion by the Court of Appeal that the 1911 Act does not confer power on the House of Commons to force through, without the consent of the Lords, a Bill which involves fundamental constitutional reform would conflict with the immediate purpose of the 1911 Act. It was designed to enable the Liberal Government, supported by the Irish nationalists, to secure the fundamental constitutional reform of Home Rule for Ireland, which was strongly opposed by the Conservative Party.[439] Indeed, the first two measures for which the 1911 Act was used were important constitutional reforms: the Government of Ireland Act 1914 on Home Rule, and the Welsh Church Act 1914 on the disestablishment of the Anglican Church in Wales. Moreover, the suggestion that section 2(1) of the 1911 Act cannot be used for fundamental constitutional reform is very difficult to reconcile with the acceptance by the Court of Appeal and by all members of the Appellate Committee that section 2(1) allowed the House of Commons to force through the Parliament Act 1949 amending section 2(1) itself, so permitting a reduction in the delaying powers of the House of Lords. The Court of Appeal's conclusion[440] that the 1949 Act was not a fundamental constitutional reform is surely wrong.

15 Fourth, it is plain from the Parliamentary debates that the 1911 Act was intended to allow the House of Commons to enact legislation without the consent of the House of Lords on fundamental constitutional issues, including reform of the House of Lords. Winston Churchill, the Home Secretary, made the point very clearly during the Committee Stage of the Parliament Bill. The passage of the Bill was, he said, "an indispensable preliminary to the discussion of any grave questions in regard to the constitution of the Second Chamber". This was, he insisted, for a very good reason: "It is obvious that we could not embark upon discussion on equal terms while

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438 See Roy Jenkins Mr Balfour's Poodle (1989 edition), chapter X.

439 The Home Secretary, Winston Churchill, told the House of Commons on 8 August 1911 that it was "absurd" to suggest that the Government had made "any secret of our intention, our consistent and original intention, to use the machinery of the Parliament Bill for the passage of Home Rule ...": Hansard, HC, 8 August 1911, Series 5, Volume 29, columns 989-990. See also the comments of the Prime Minister, H.H. Asquith: Hansard, HC, 20 April 1911, Series 5, Volume 24, column 1112; and Hansard, HC, 24 April 1911, Series 5, Volume 24, columns 1387-1394. The Liberal government, and the Irish Nationalists, were understandably concerned that they needed the 1911 Act to prevent such a measure from being blocked by the House of Lords.

440 See R (Jackson) v Attorney General [2005] QB 579 (Court of Appeal) at paragraph 99.

the last word rests with the House of Lords, and while we should be forced after all our suggestions and resolutions have been put forward to accept the decision of the House of Lords on all the points which have been under discussion".[441]

16 The Prime Minister, Asquith, responded generally to the many amendments tabled at Committee Stage to exclude a variety of constitutional issues - including the composition of the House of Lords - from the scope of clause 2(1).[442] Asquith told the House of Commons that he was seeking "over the whole sphere of legislation, power, after adequate deliberation and delay, to carry into law with the consent of the Crown the will of the people".[443]

17 A Conservative MP moved an amendment at the Committee Stage in the House of Commons to exclude from section 2 any Bill "which contains any provision which affects the Constitution of the House of Lords".[444] The Home Secretary, Winston Churchill, opposed the amendment on behalf of the Government on the ground that "the present hereditary and unreformed House of Lords" should not "exercise a final and absolute veto upon all proposals for the reconstitution of the Second Chamber".[445] The amendment was defeated.[446] At the Report Stage, the House of Commons rejected an amendment moved by George Cave (a future Lord Chancellor) which would have required a referendum before the Bill applied to a number of constitutional subjects, including any legislation which "affects the constitution or powers of either House of Parliament or the relations of the two Houses one to the other".[447]

18 There can be no doubt that the 1911 Bill was presented to Parliament, and the relevant amendments were rejected, on the basis that clause 2(1) would apply even to fundamental constitutional issues, including reform of the House of Lords.[448] It is, then, very surprising that in

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441 Hansard, HC, 3 April 1911, Series 5, Volume 23, columns 1894-1895. F.E. Smith had complained that the Bill, if enacted, would enable the Government to alter "the very instruments of Government which we are told is to be the only security left in the Bill": column 1929. Winston Churchill, the Home Secretary, responded that the 1911 Bill was not "the final settlement". The Government would, in due course, "submit to the delaying powers of the Lords" a measure for reform of the composition of the Second Chamber: Hansard, HC, 22 February 1911, Series 5, Volume 21, columns 2035-2036.

442 They included, the 1689 Bill of Rights, the Habeas Corpus Act, the Acts of Union with Scotland and Ireland, the Civil List, the administration of justice, and any amendment to the 1911 legislation,

443 Hansard, HC 20 April 1911, Series 5, Volume 24, columns 1103-1112.

444 Hansard, HC, 24 April 1911, Series 5, Volume 24, column 1507.

445 Hansard, HC, 24 April 1911, Series 5, Volume 24, column 1510.

446 Hansard, HC, 24 April 1911, Series 5, Volume 24, column 1518.

447 Hansard, HC, 8 May 1911, Series 5, Volume 25, columns 915-978.

448 Lord Cooke of Thorndon suggested in "A Constitutional Retreat" (2006) 122 LQR 224, 228 - a comment on the Jackson case - that it is necessary to be especially careful about the use of Hansard as an aid to interpretation under the principle in Pepper v Hart [1993] AC 593 when the relevant references come from debates in the House of Commons, which was in conflict with the House of Lords on the matters in dispute. But nothing was said in the House of Lords' debates to suggest that clause 2(1) was understood as not applying to reform of the House of Lords.

the Hunting Act case the Court of Appeal stated that the extracts from Hansard which it had seen displayed "no consensus for a view that the 1911 Act was intended to give the Commons directly or indirectly power to change fundamentally this country's constitutional arrangements".[449]

IV

19 The strongest argument advanced by those who wish to restrict the ability of the House of Commons to use section 2(1) of the Parliament Act to abolish or reform the House of Lords without the consent of the Upper House is that the Appellate Committee of the House of Lords accepted in the Hunting Act case that there is at least one implied limitation to the scope of section 2(1). So, it is argued, there can be others.

20 Section 2(1) of the 1911 Act expressly states that it does not apply to a Bill to extend the life of a Parliament beyond five years. Any such Bill requires the consent of the House of Lords as well as the House of Commons. In the Hunting Act case, a majority of the Appellate Committee said that there is an implied limitation which prevents the House of Commons from acting in two stages without the consent of the Lords, first by using section 2(1) to amend the Parliament Act to remove the prohibition on the House of Commons using its powers to extend the life of Parliament and then using the amended section 2(1) to extend the life of Parliament beyond five years. Five of the nine Law Lords took the view that this could not validly be done, Three others reserved their position, and only Lord Bingham of Cornhill took the contrary view that section 2(1) could be used to remove the restriction in section 2(1) concerning the duration of Parliament.[450]

21 The views of the majority of the Law Lords are supported by the Parliamentary debates on the 1911 Bill. The House of Lords amended clause 2(1) during the Committee Stage to add the restriction which prevents the House of Commons from extending the life of the Parliament beyond five years without the consent of the House of Lords.[451] When the Bill returned to the House of Commons, the Government conceded the point and accepted the amendment. Winston Churchill, the Home Secretary, spoke for the Government and said that it was "an essential and indispensable part of our proposals for constitutional change that the life of Parliament should be shortened". He added that the Government were "bound to make every effort in our power to

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449 Paragraph 48.

450 See Lord Nicholls of Birkenhead at paragraphs 58-59; Lord Steyn at paragraph 79; Lord Hope of Craighead at paragraphs 118 and 122-124; Baroness Hale of Richmond at paragraph 164; and Lord Carswell at paragraph 175. Lord Rodger of Earlsferry reserved his position at paragraph 139, as did Lord Brown of Eaton-under-Heywood at paragraph 194. Lord Walker of Gestingthorpe said this was an issue which did not need to be resolved: paragraph 141. See also the judgment of the Court of Appeal at paragraphs 40-41. Lord Bingham of Cornhill was in a minority on this issue at paragraph 32.

451 Hansard, HL, 3 July 1911, Series 5, Volume 9, columns 6-12.

give reasonable reassurance where we can, without prejudice to any essential principles of the Bill, to persons to whom we are opposed".[452] If Mr Churchill had said that the Government could, after the passage of the Bill, use section 2(1) to remove this provision, without the consent of the House of Lords, the "reassurance" to the Conservative Opposition would have been nullified.

22 So the majority of the Appellate Committee in the Hunting Act case was correct to say that section 2(1) impliedly prevents the House of Commons from using that provision to remove the limitation on the use of the powers of the House of Commons to extend the life of Parliament without the consent of the House of Lords.

23 Lord Hope of Craighead posed this question in the Hunting Act case: if there is such an implied limitation on the use of section 2(1), "how much more room is there for other prohibitions to be implied?".[453] The difficulty with this suggestion is that the implied limitation in section 2(1) accepted by the majority of the Law Lords in the Hunting Act case was based on an *express* provision in the 1911 Act which precludes the use of section 2(1) to extend the duration of Parliament. So this cannot be used as an argument to create further implied limitations on the use of section 2(1) which are not based on anything expressly stated in section 2(1), especially when the manifest purpose of the 1911 Act was to confer a broad power on the House of Commons to enact fundamental constitutional change without the consent of the House of Lords.

V

24 There is nothing expressly stated in section 2(1) which prohibits the use of that provision to alter the composition of the House of Lords without its consent. But there is one other implied limitation in section 2(1), and indeed in the 1911 Act as a whole.

25 The House of Commons could not use section 2(1) of the 1911 Act to abolish the House of Lords without its consent. The continuing existence of an Upper House is assumed by the Preambles to the 1911 Act, which stated that it was "intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis" but that such substitution "cannot be immediately brought into operation". The continuing existence of the House of Lords is also assumed by section 2(1) in its recognition that the consent of the House of Lords will be required for legislation on matters excluded from the scope of that provision. Indeed, if it is implicit in section 2(1) that the 1911 Act cannot be used to extend the life of Parliament, it must equally be implicit in section 2(1) that the 1911 Act cannot be used to abolish the Upper Chamber whose consent is needed for any Bill to extend the life of Parliament.[454] If Parliament wants to redefine itself by legislation which abolishes the House of

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452 Hansard, HC, 8 August 1911, Series 5, Volume 29, columns 1094-1095.

453 Jackson at paragraphs 122-124. Lord Hope of Craighead found the argument "not unattractive", but did not consider it further because, he said, it could not be used to undermine the amendments made by the 1949 Act because of what he described as the "political reality" of their acceptance.

454 See Peter Mirfield (1979) 95 Law Quarterly Review 36, 53-56. In Jackson at paragraph 42, the Court of Appeal stated that because the purpose of the 1911 Act was "to establish a new constitutional settlement" which restricted the

Lords, and introduces a unicameral legislature, any such legislation could not be valid without the consent of both Houses of Parliament.

26 The same reasoning would prevent section 2(1) of the 1911 Act being used to enact (without the consent of the House of Lords) a referendum on the abolition of the House of Lords, since that would (if approved by the electorate) result in a unicameral legislature. The powers in the 1911 Act cannot validly be used to promote that result.

27 Much more difficult is whether the House of Commons could use section 2(1) further to reduce the delaying powers of the Lords. During the debates on the Parliament Bill in 1947, Emrys Hughes, a Labour backbencher, unsuccessfully proposed reducing the delaying powers of the House of Lords to one month. The (Labour) leader of the House of Commons, Herbert Morrison, responded that this was "Bolshevism gone mad".[455] Perhaps, but as a matter of law, if, as the House of Lords held in the Hunting Act case, section 2(1) was validly used in 1949 to reduce the delaying powers to 1 year, why should the delaying powers not be further limited? And since section 1 allowed for Money Bills to be the exclusive preserve of the Commons, surely section 2(1) could be used to add further topics to section 1. Of course, at some point, a House of Lords without power is an abolished House of Lords. But if the House of Commons were to insist on using section 2(1) to restrict the powers of the House of Lords so it has no delaying powers, and its consent is needed only for a Bill to extend the life of Parliament, that would be a valid use of section 2(1). There would remain a House of Lords with *some* powers, and the 1911 Act allows the House of Commons to insist on its opinion as to what those powers should be.

VI

28 So abolition of an Upper House would be inconsistent with the purposes and terms of the 1911 Act. But a substantial reform of the House of Lords, as the Government now proposes, is precisely what the second Preamble to the 1911 Bill contemplated: replacing it with "a Second Chamber constituted on a popular instead of hereditary basis". One of the central purposes of section 2(1) of the 1911 Act was to enable the House of Commons to insist on reform of the House of Lords.

29 F.E. Smith (from the benches of the Conservative Opposition) may well have been correct during the Parliamentary debates to mock section 2(1) as rewarding the House of Commons for "adding obstinacy to error".[456] But the House of Commons is entitled to be obstinate, even if it is in error, and it may use the Parliament Act to force through its proposals for reform of the House of Lords.

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powers of the House of Lords but preserved its role in the legislative process, "it would be in conflict with the 1911 Act for it to be used as an instrument for abolishing the House of Lords".

455 Hansard, HC, 4 December 1947, Series 5, Volume 445, columns 629 and 634: cited in Vernon Bogdanor The New British Constitution (2009), p.148.

456 Hansard, HC, 30 March 1910, Series 5, Volume 15, column 1309.

Written evidence from the Federation of Muslim Organisation's (FMO) (EV 111)

I am writing with regards to the Federation of Muslim Organisation's (FMO) views in relation to the Government's proposals to reform the House of Lords.

The FMO has been established for over 25 years and serves as the umbrella body for almost 200 organisations in the multi-faith environment of Leicester, the UK's most ethnically diverse city outside of London. We work on a range of issues including education, youth, health, housing and inter-faith work amongst others. The Federation is run by an executive committee which is democratically elected bi-annually by the Federation's affiliates and is bound to operate in accordance with the constitution of the Federation. Adopting a professional, diligent, pragmatic and diplomatic approach has enabled us to gain the trust of the local community in a unitary, collective effort and has also led to us developing outstanding relations with our various faith and non-faith based partners. Indeed, such has been our success that we have been used as a frame of reference by many other organisations who have sought our consultation on a range of issues.

The Federation welcomes the opportunity to have an input on changes that will affect the way that the state of Britain is run. As an organisation that places a significant emphasis on promoting a dialogue between our community and with representatives of other communities we believe that we are well placed to offer a contribution to the consultation on House of Lords reform particularly the debate in relation to what factors need to be considered in the process of selecting Lords. In the ever changing social landscape of Britain, the decision to reform the House of Lords is a pertinent one as it takes into account the need for increased representation from currently under-represented communities. Whilst we recognise the need for reform, we feel strongly that there should be a process of tweaking the current system rather than a radical evolution. There is a wealth of experience in the House which must be retained by whatever means including membership of possible House of Lords expert groups.

We would like to bring to your attention some issues for your consideration in this consultation. One of the many issues that we have to contend with from our own community is the feeling that the political arena is often seen as being too London-centric with many feeling that the views of those outside London are not given due attention. The social makeup of certain cities such as Leicester requires representation which is at present insufficient. Members of our local community feel strongly that a city which is close to becoming the first majority-minority city in the country needs to be more proportionately represented in the political domain. I have no doubt that representatives from other significant metropolitan areas harbour the same feelings. As such, it is imperative that a wider net is cast so that new representatives in the House of Lords are drawn from a wide geographical base.

The process of selecting representatives from other faiths is a pivotal one and must be done in an engaging and effective manner that avoids tokenism and selects the most expert representatives. Any desire to choose religious clerics for these roles must be allied to a strict selection criterion to assess potential candidates' awareness and expertise with regards to local issues. This is because clerics may not necessarily have the same knowledge and awareness of local issues which community advocates possess. What the role of a Lord in the House requires is a wide specialism over many areas, especially in the area of inter-faith

and inter-body dialogue that many of the religious clerical hierarchy do not engage in and have not had sufficient experience with. The training that is received by some such as Church of England clerics is not necessarily the training that has been received in a structured, uniform manner by clerics from other faiths. This is because the dynamics of other faiths are far more complex and in many cases more sectarian thus meaning that they do not enjoy the structured training apparatus that the Church of England possesses.

A combination of elected and appointed expert figures in the House is fundamental to the running of a potent Chamber. All members must possess a grasp of a wide range of local, national and international socio-economic political issues thus making it absolutely crucial that those selected for the House have a wide range of skills and abilities. To enable a successful recruitment process of such skilled experts it may be pertinent to create an independent appointments body to verify the candidates in terms of their track record, experience and commitment. Liaising with public bodies such as local authorities and the police will be central to the process of determining the suitability of candidates in terms of gauging their experience and expertise in dealing with issues in a calm and reasoned manner. The efforts of the Joint Committee must also avoid the clichéd approach adopted in other areas of public life, which is that of acquiring the voice of only one faith community and in doing so acquiring people who do not necessarily have proven experience of working positively on integration issues.

I appreciate the magnitude of the task that the Joint Committee has undertaken and I wish you the greatest of success in your efforts. Should you require any further assistance from me please do not hesitate to contact me.

27 December 2011

Written evidence from Conor Burns MP (EV 112)

The program of reform for the House of Lords that is currently being pursued by the government is one which will severely harm the ability of this Parliament to work effectively. While reform is essential, it needs to create a house which will complement, rather than compete with, the work of the Commons in producing sound and robust laws. With this in mind these are some of the objections that I have to the current government proposals concerning reform of the Upper House.

Current proposals to create a new democratically elected 'senate'- style second chamber will give the Lords a mandate to challenge any of the work of the Commons. In the longer term the political composition of the Lords may not necessarily reflect the more fluent make-up of the Lower House. The natural conclusion of this is the advent of behavioural issues between the houses, and so it is with this in mind that I ask the committee to urgently review the following points:

1) Problems created by election to the House of Lords

   The vision of an elected second House would undoubtedly strengthen it to equal, if not surpass the legitimacy of the Commons. Having been elected on a particular platform, new members of the Upper House would then possess the democratic mandate to pursue a particular ideological or issue-based agenda. This could not only give them the potential to frustrate the program of the government of the day, but lead to confrontation and political stalemate.

   In addition the prospect of election could deter otherwise experienced and professional candidates from trying to become Members of this prestigious revising body. The current House boasts a wealth of ex-cabinet members and key government figures whose indispensable experience and unique insights enable them to astutely revise and scrutinise legislation. Were election to be a pre-requisite of office, there is little incentive for members retiring from government or other public service duties to stand in another election.

   Moreover, the new provisions made for elected candidates could discourage ex-MP's, civil servant and heads of business and industry. If at least 80% of its members will have to stand for election and they will be paid c. £60,000 per year over a 15 year term, this will entail a likely income drop during the highest earning years of their lives in addition to the expectation that they will take on a full-time job for the next fifteen years. As a result of this it is highly likely that many of the better and more experienced candidates will be put off from applying.

   Furthermore, election carries the risk of excluding independent candidates if future members of the Upper House were to seek the patronage of major parties to access the resources needed to campaign for election. This could mean that membership of the House of Lords could become inaccessible for independents without great personal wealth, women and minorities who have so far been typically better represented in the Lords than in the Commons.

   As well as this, by introducing the mechanism of election the Deputy Prime Minister appears to imply that currently the House of Lords is undemocratic. In fact, when it is examined, Peers are appointed on the principle of double election, which is currently used by the three main political parties. The Prime Minister is not elected to run the country by the citizenry, but rather by his party, and it is then the country who selects the party. By this same principle, when the country elects the party, the party appoints peers to the Other Place, representing the wishes of the electorate through a transparent democratic process.

2) Problems in the changing function and powers of the House of Lords

   In spite of the Draft Bill stating that the functions of the Upper House would remain the same, it is plainly inevitable that with a new mandate and strengthened consent, the new House would begin to challenge the Commons for supremacy and be entitled to functions from which it had previously been

excluded. For example, the Bill does not consider the possibility that a Prime Minister could be drawn from this new House of Lords, with added legitimacy of proportional election and the further benefit of a 15 year term.

Over time the House of Lords has constantly evolved from a chamber which provided a check on the executive by its power to reject legislation to one which can still act as a check on the executive but does so through the detailed consideration of legislation and its scrutiny of administrative decisions by expert advice. The proposals in the Draft Bill are designed to reverse this evolution as the addition of a democratic mandate to the role of the new members will embolden them to reject legislation, block policy and ultimately frustrate the program of government in a way that previous reform of the house has intended to stop.

What's more, constituencies will interfere with the current balance and work of the House since the idea of a representative House of Lords is at odds with its function of revision and scrutiny of legislation. If new members of the House are elected by constituencies then the primary work of the new members will be to represent their constituents by corresponding to them, taking up their cases and spending time in their constituencies. This will then take away vast quantities of valuable time from the new peers that would otherwise be devoted to the revision and scrutiny of legislation.

The current proposals fail to take into account the constitutional changes that will occur if the new House is given more power though election. No consideration appears to have been given to how it is that the relationship between the two Houses will be altered if the second chamber is given powers which make it more equal to the first chamber. There is no clear consideration of how the status of the new chamber will be relevant to the current conventions and statutes that govern the relationship between the Lords and Commons. The Bill erroneously imagines them as final, seemingly unaware that they rest on a series of assumptions in the absence of anything as totemic as a written constitution giving legitimacy to the Commons.

3) Problems with the term length in the new House of Lords

The Draft Bill proposes that a single non-renewable term of 15 years be the life-cycle of a working new member of the House of Lords. This is a seriously flawed concept as the idea of re-election is in place to make parliament more accountable, following the assumption that an MP will want to be re-elected and will thus work hard to represent their electorate before all other business. The Draft Bill deters future members from representing the people who elected them and indeed from working hard to review legislation full-time as the reform states.

Problems with the electoral process of the new House of Lords

The idea that voting in new members take place at the same time as a general elections, under a different electoral system, with staggered terms will lead to voter fatigue, confusion and ultimately a House whose make-up does not reflect the position of the Government , causing further behavioural issues. Holding a vote for both members of the Lords and the Commons on the same day, but using two different systems will undoubtedly cause confusion among an electorate who have already rejected a different voting system during this parliament.

Moreover in a parliament which had two houses that have been elected using two separate forms of voting could not be considered to function well. In fact, in spite of all of the Commons best historical efforts to repeal powers from the Crown and the Lords, this new legislation appears to offer them more power as new members who are voted using the Single Transferrable Vote System (STV) would logically be more democratically representative than the Commons and therefore have supremacy and higher legitimacy which runs in direct contravention to the current balance and functions of the two houses. The revising chamber having more power than the legislating one is simply illogical.

4) Problems with the salary and allowances in the new House of Lords

The current government proposals allocate the new members with constituencies, staff, salaries and offices. This is an idea which will cause great expense to the taxpayer, with no clear indication of how much the total cost of this new chamber will be and where it is that the money required for this project will come from. For example, based on the current staffing budgets of MPs (£115,000) and MEPs (£222,000) coupled with the fact that the Draft Bill seeks to allocate constituencies twice the size of current parliamentary ones, the assumption remains that staffing budgets for all 300 new members would be at least £200,000 each.

It is true that no one would 'invent' the House of Lords in its current form, but we are fortunate enough that without anything a totemic as a written constitution we are able to constantly evolve and develop all the organs of government into a coordinated and integrated Parliament.

However, I find that the proposals of the Draft Bill, when closely examined, lend themselves to the creation of a fractured, confrontational and unbalanced parliament that is not in the interests of the electorate or indeed the wider democratic community. I urge you to consider the points made above.

26 January 2012

Written evidence from Matthew Allen (EV 113)

With the encouragement of Lord Norton (see 'Lords Of The Blog': 'Stirring Up Apathy'; where I am 'Matt'), I submit the following ideas for the consideration of the Joint Committee. I do this as one ordinary member of the public; albeit one who finds the whole history of the Lords quite fascinating.

I shall begin by giving you the text of my alternative 'draft bill'. I shall then add a few 'explanatory notes', which will be chatty and colloquial in style, rather than academic, but will not contain any wild assertions, for all that. By way of introduction, I put it to the Committee that this bill of mine is less 'ambitious' than the government bill, but also less 'turbulent'.

An alternative draft bill ('House Of Lords Sitting Membership Bill'??) .....

1. "As from 1st January 2014, the total number of sitting members of the House of Lords shall not exceed 600, at any one time.

2. By the 1st June 2013, the clerks of the house will have compiled a list of those life peers who wish to continue sitting in the house from 2014 onwards.

3. By standing orders of the house, there shall also be a prior agreement about the maximum number of sitting members to be allocated for each party grouping. This will be proportionate to their pre-existing share of seats, among all life peers, but it may build in a slight bias in favour of the smallest parties, and shall have due regard for non-affiliated office holders, in this first instance. Crossbenchers shall be considered to be a 'party grouping' of their own, for these purposes.

4. It is expected that the total number of seats in the house held by the two largest parties shall be equal, or very close to equal.

5. If and where it is found that the number of peers on the clerk's list exceeds the allocated maximum for their particular party grouping, then the life peers of that grouping shall hold an election among themselves at the first opportunity, using the alternative vote system, whereby those who poll the fewest votes will be removed from the list.

6. This mechanism, in the first instance, only affects the position and privileges of life peers, and does not concern itself with the place of bishops, hereditary peers, or retired law lords in the house.

7. It is expected that around two thirds of life peers will continue to be sitting members of the house from 2014, by this mechanism.

8. This legislation does not affect the status of any peer in terms of their title and honour, nor is it concerned with any broader questions about the creation of new peers. It does, however, remove the automatic right of a life peer to sit and vote in the Lords, following the precedent set for hereditary peers in 1999.

9. After the January 2014 changes have been put in place, if a vacancy arises in the house, due to the death of a sitting life peer, then anybody who holds a life peerage, but does not have a seat in the house at that point, may put themselves forward to fill that vacancy. Where there is more than one person wishing to do this, the winning candidate shall be chosen by a vote of the whole house. Therefore, these by-elections shall not be determined by party groupings, as such.

10. As from January 2014, the same principle shall apply to any hereditary by-elections: all vacancies from that point onward shall be filled by a vote of the whole house".

Explanatory Notes: Relating to the 10 sections above

1: This puts the Lords 'ahead of the game' in slimming down its membership to 600, as the Commons will be of that size, in the next parliament. There is widespread agreement that the second chamber should not be larger than the first, and this is made all the more relevant by this time of cutbacks that we are going through now. 600 is, indeed, quite 'generous' in being able to keep on board both the committed frequent-attenders, and the more occasional attenders who are highly valued for what they do have to say, when they say it.

2: A simple matter of any interested peer registering that interest, along with a few basic details. Also provides ample time for each peer to consider the priority that s/he actually gives to the business of the house.

3: Each peer will need to choose what affiliation to be under, when registering. Non-affiliated office holders (eg, Lord Speaker) will be 'protected' in this process. As a side comment, the government's aspiration of making the Lords more 'reflective' of the general election vote could, of course, have been brought about by a reduction in numbers, rather than an increase in numbers!

4 and 7: I admit that my statistical methodology and/or maths will be a bit 'off' in places, here – but you should be able to follow my general drift about the likely and desired outcome. Using recent data from the Parliament website, this 'balancing act' actually works out remarkably neatly.

The grand total membership of the Lords now stands at 826. My bill provides for a reduction in the number of sitting life peers, in order to cap membership at 600. This means – one way or another – the departure of 226 life peers by 2014…..… I say, 'one way or another', because this cuts out the need for any agonising over whether there should be retirement ages, strengthened leaves-of-absences/ disqualifications etc. – The current grand total of life peers is 686. 226 out of 686 comes to about a third. This calls for the 'voting in' of two thirds of the current party groupings ('natural wastage' being too long-winded a contributing factor to take account of, here).

- 2/3 of Conservative Life Peers (170) = 113; Plus their 48 Hereditaries = CONSERVATIVE ('POST 2014') HOLD OF: 161

- 2/3 of Labour Life Peers (235) = 157; Plus their 4 Hereditaries = LABOUR HOLD OF: 161

- … Of Lib Dems L.Peers (87) = 65 (smaller party bias in favour); Plus 4 Hereds = LIB DEM HOLD OF: 69

- … Of Crossbench L.Peers (154) = 103; Plus 33 Hereds = CROSSBENCH HOLD OF: 136

- Leaving approx: 22 'OTHERS' (Preserving all the very small-party people, party-independents and non-affiliated officers; but losing 2 or 3 notably 'dodgy peers' who we won't bother to name here).

- POST 2014: ESTIMATED PROPORTIONS (out of 600) in %:
CON: 26.8% … LAB: 26.8% … LIB DEMS: 11.5% … CROSS: 22.67% OTHERS: 3.67%.

5: A life-peer version of the first round of hereditary elections, in effect, with each candidate submitting a 75-word summary etc – and with the same outcome in mind, to wit: it will allow each group to postively identify who the most interesting and interested people are, among their ranks.

As a side comment, much mention has been made of the benefit of the Lords being complementary to the Commons, rather than competitive. At the same time, most people seem to welcome signs of the Lords becoming more assertive! I am of the opinion that a little more competition would be a good thing, insofar as it will not give any government an 'easy ride'. I suggest that the 'filtering' of the life peers in my bill, which would in itself be done in a very publicly transparent way, would give the 'chosen' peers a renewed sense of confidence in their handling of legislation.

6 and 10: I cannot see any advantage to our 'parliamentary life', in any sense of that term, in undermining the constitutional position of the bishops, retired law lords, or hereditary peers. The bishops exercise their function of providing a broader 'moral perspective' with care and responsibility. I would also contend that the house has already lost some of its 'weightiness' (in fact, and in the eyes of the public), by no longer having seats for active senior judges, and I would like to see the status of the 'law lord' restored, even if it was only for former supreme-court judges (granted this is outside the scope of my bill).

Finally, the 'exempted' 92 hereditaries are clearly people of high quality, with the particular distinction of making both regular and concise spoken interventions in the chamber. The historic problem of the conservative party being able to 'bus in' hundreds of 'backwoodsmen' has been dealt with. Entry to the house now requires the 'second hurdle' of a by-election. It is a working precedent. Note that my bill would make the whole house the 'electorate' for all future by-elections; thereby answering the specific complaint sometimes raised about the vanishingly small sitting-hereditary party-group electorates in the case of Labour and the Lib Dems, at the moment.

8: I suggest that this would represent a significant 'mind-shift' in the way a new arrival in the Lords would be regarded. Internally, UCL's 'House Full' report indicated a deepening dissatisfaction with the 'fractious atmosphere' created by having too many members in the chamber. Externally, the public perception is that various 'establishment/in-crowd' types are routinely gifted a comfy red seat, with all its associated prestige, public-platform influence and perks. The House Of Lords Appointments Commission has done little to dispel this feeling, since it is in itself something of a cosy quango. For all of the outstanding 'workhorses' and expert-analysts in the house, the 'currency' of the life peerage has been devalued by the numerous examples of the people who have awarded peerages for less-than-noble reasons; and/or by the people who have made little or no effort to engage in the serious business of the house. In the light of what I have just said, I also have to caution the house at this juncture that striking a self-congratulatory tone about the extent of experience and expertise among the peers does not come across at all well on the television! A quick glance through the back-stories of many peers often reveals that they have tried to enter the Commons, and failed. So there are 'consolation prizes' for political-party oldies in there already, and not much would change, in that respect, were the government's proposals to come to fruition. In any event, experience and expertise are not the be-all and end-all; whatever happened to the broad-minded amateur, or the fresh-thinking youngster??

Prior to the 1999 Act, in what may have seemed like a piece of frivilous obstruction at the time, Viscount Cranborne expressed a concern about a having a house-full of members who, "owed their presence to the living rather than the safely dead". Those words turned out to have quite a prophetic ring to them when New Labour's 'Stage Two' reform never went ahead, and various murky tales came out about 'Tony's Cronies' and 'Cash For Honours'. My point is that introducing a 'second hurdle' for a peer, of having to be 'elected-into' the house would remove the 'sting' of the power of patronage, in precisely the same way that the hereditary by-elections have removed the sting of the power of birthright. There would be no need to break the link between the house and the peerage. New peers could be created at any time, in much the same way as now ~ but that would have no immediate impact on the capped-membership house. Therefore, no big influxes from a new government's

favoured people, nor from the outgoing government's dissolution list. I hope you can see that, though my bill may seem to be 'tinkering' in nature compared to the government bill, it is not merely a 'holding operation', nor is it coming firmly down on the side of either the pro-government or anti-government voices, on the matter of Lords reform. I regret to observe a certain lack of imagination, in fact, in the way both of those positions are typically advanced. Making a big play of bringing in a similar mode of legitimacy to the Commons on the one hand (pro-Government); or focussing on the primacy of the Commons on the other (anti-Government) both overlook possibly the most crucial reason for having a second chamber at all. Democracy (the 'least worst' system) does not protect itself against ignorance, abuse, corruption, disregard for liberties or traditions, mass manipulation and short-term populism. It therefore needs something which is 'non-democratic' to act as a brake upon itself. Nonetheless, we need to be doing everything we can to make sure that this 'non-democratic' body will be held in high public regard. That is the key to appreciating the healthy developments which my bill would bring about – even though they appear to be fairly 'gentle' in nature, and they take care to 'go with the grain' of our history.

9. Recall from my notes on 4 and 7 the fair balance of 'allegiances' which would result from the life-peer elections, in the first instance. My bill seeks to sustain a sense of the house managing its own affairs; by 'co-opting' in the best of the bunch, as vacancies arise. The significant Crossbench presence should help to ensure that party loyalty would not count for all that much in future whole house by-elections. Imagine for a moment that this bill had already been in effect in 2010; and that a vacancy had arisen, which the likes of Michael Howard, John Prescott, and Paul Boateng were all interested in filling. I'm using three random examples of 'big hitters' in British political life here, who have received life peerages, to illustrate the enhanced sense of the 'winner' among them being recognised as the most deserving and valued 'new recruit'. He would have needed to have made a persuasive case (open for any member of the public to comment on, in advance), in order to secure the privilege of the seat in the Lords. It would no longer be possible for the media to portray him as having just 'strolled into' the house; and the very process of these elections would help to focus the minds of all Lords members as to just what their priorities are and should be, in the greater scheme of things.

28 January 2012

Written evidence from the National Assembly of Wales – (EV 114)

Letter from Rosemary Butler AM, Presiding in response to Lord Richards letter of 17 January 2012:

I am grateful to you for your invitation to express, on behalf of the Assembly, any views about the proposals set out in the draft Bill. You will appreciate, of course, that the tight timetable referred to in your letter means that it has not been possible for me to carry out the kind of soundings that I would normally have wished to carry out, or to refer the issue to one of the committees of the Assembly for inquiry and report, which would have been the ideal.

I am sure that your Committee will also appreciate that my views are solely directed at the possible impact of the bill on the Assembly as an Institution. The political parties represented in the Assembly will have their own views on the proposals generally. I cannot, as Presiding Officer, speak for them.

My views are based on the continuing importance, under current constitutional arrangements, of the working relationship between the House of Lords, as one of the two houses of Parliament, and the Assembly.

Even where Bills considered by Parliament do not deal directly with devolved subjects, they almost always contain provisions whose impact on Wales, including indirect impact on devolved subjects, are of significant interest to Assembly Members.

The coming into force of Part 4 of the Government of Wales Act 2006, extending to the Assembly legislative competence in relation to the whole of the devolved fields of government, is relatively recent. It is therefore unclear to what extent Westminster will still be legislating, with the agreement of the Assembly, on devolved matters. But based on the Scottish experience there is bound to be a significant volume of such legislation, with the result that the House of Lords will continue to be scrutinising provisions on some matters relating to Wales that would normally be the subject of Assembly legislation.

Subordinate legislation is sometimes made jointly by United Kingdom Ministers and Welsh Ministers and may be subject to parallel scrutiny by the Assembly and by Parliament, through the Joint Committee on Statutory Instruments.

Section 109 of the Government of Wales Act 2006 provides a mechanism by which the extent of the legislative competence of the Assembly may be amended by Orders in Council which require the approval of both houses of Parliament.

You will also be aware that the Secretary of State for Wales has established a Commission, chaired by Paul Silk, to consider issues to do with the financial arrangements for devolved government in Wales as well, in due course, as more general issues relating to the powers of the Assembly and the Welsh Government. It seems very likely that there will therefore be the need, at some stage, to further amend the Government of Wales Act 2006 to give effect to recommendations arising out of that process.

All these factors demonstrate that under current constitutional arrangements the good governance of Wales involves a continuing partnership between the Assembly and the

House of Lords which, in turn, demands that House of Lords be constituted in a way that acknowledges the particular needs of Wales.

Although the current constitution of the Lords does not do so in a systematic way, there is nevertheless an obvious pool of knowledge of, and expertise in, the affairs of the Assembly amongst the current membership of the House of Lords. One current Assembly Member, Lord Elis-Thomas and three former Assembly Members, Lord German, Lord Wigley and Baroness Randerson, sit in the Lords and you, yourself, of course, have huge knowledge of these matters through your chairmanship of the Commission whose recommendations led to the 2006 Act under which we now operate. Whilst the preponderance of the members of the House would, under the proposed reforms, be directly elected, so that a proportionate level of representation from Wales would automatically be achieved, the same would not necessarily be true of other classes of members. The 12 Lords Spiritual would, by definition, be drawn exclusively from England. In theory, the same could also be true in relation to the 60 appointed members.

If an effective partnership between the Assembly and the House of Lords is to be ensured then there is a strong case for seeking to ensure an appropriate level of Welsh representation amongst all classes of membership of the House of Lords. This would require the process for appointing members including, perhaps, the membership of the proposed House of Lords Appointments Commission, to have regard to the needs of Wales.

How this aim might be achieved is a matter which the Committee may wish to consider. It would be going beyond my remit to put forward any detailed suggestions. But I believe that there are precedents for this kind of safeguard, for example in paragraph 10(4) of Schedule 12 to the Constitutional Reform Act 2005, in relation to membership of the Judicial Appointments Commission, whose selection panel:

> "must select persons for appointment as lay members (including the chairman) with a view to securing, so far as practicable, that the persons so appointed include at any time at least one who appears to the panel to have special knowledge of Wales."

May I thank you once again for the opportunity to express a view on behalf of the Assembly in relation to the work of the Committee. I look forward with interest to reading the Committee's report in due course.

25 January 2012

Written evidence from Northern Ireland Assembly (EV 115)

Letter from William Hay MLA, Speaker in response to Lord Richards letter of 17 January 2012:

Thank you for your letter of 17 January inviting the Northern Ireland Assembly to make a submission to the Joint Committee in relation to the Government's proposals for reform of the House of Lords.

I have considered the Draft House of Lords Reform Bill and can confirm that the Northern Ireland Assembly will not be making a formal submission to the Joint Committee in relation to this matter. However, this does not preclude Members of the Northern Ireland Assembly, either as individuals or on behalf of their political party, responding with their views on the contents of this Bill. With this in mind, I am arranging for a copy of your letter, and my response, to be circulated to all Members of the Northern Ireland Assembly.

I wish you every success in your deliberations on the Draft House of Lords Reform Bill.

26 January 2012

Written evidence from Thomas Docherty MP (EV 116)

The case for a referendum

The overwhelming rejection of the AV referendum in May 2011 would suggest that the public is not enthusiastic about alternatives to the First Past the Post system of elections to Westminster. Furthermore it is reasonable that the public should be asked their view on such a radical change to the dynamic, and operation of the Upper House, to say nothing of the decision to create another 300 full-time politicians.

Restraining "mission creep"

During the debate in the Commons on the subject of Lords reform, MPs who favoured an elected second chamber were repeatedly pressed to explain if or how "mission creep" could be stopped. Although these MPs did agree it was a serious problem, it was noticeable that not a single one of these MPs was able to articulate a solution to the problem. It is clear from experiences in Scotland that once you have two sets of elected representatives who take differing views, it is impossible to prevent clashes over democratic mandates. Furthermore I believe that the public would not accept an argument that even though they had voted for elected members to represent them, they could not approach these elected members to seek assistance, for example with casework.

Unless the Government can demonstrate how it will guarantee that can be no possibility of mission creep, an elected second chamber is too risky.

Scotland

The Government has in the past couple of weeks announced two constitutional consultations involving the relationship of Scotland with the rest of the UK. If either proposed change were to be implemented (separation of Scotland or banning Scottish MPs from voting in legislation that the Government alleges does not affect their constituents) then it is only reasonable to assume that this should force a rethink of the size and rules of membership of the second chamber. For example in the latter scenario, I would assume that a ban on Scottish MPs would also be applied to Scottish elected Peers. However what is far more complicated is how would you define a "Scottish appointed Peer"?

Therefore until the two Scottish constitutional questions are resolved it would be only prudent to postpone implementation of any further changes to the House of Lords.

27 January 2012

Written evidence from Simona Knox via her MP, Kelvin Hopkins (EV 117)

I am writing as your constituent to express my concerns about the government's proposals on Lords Reform and specifically on the issue ·of Bishops sitting as of right in a reformed chamber. I urge you to make representations on my behalf opposing the proposals to the Deputy Prime Minister Nick Clegg MP, who is leading work on Lords Reform, and to the Joint Committee which is scrutinising the draft Bill.

The package of proposals on Bishops do not simply maintain the status quo but give even more privileges to the Church of England - some of which even the Archbishop of Canterbury, Rowan Williams, and the Archbishop of York, John Sentamu, have strongly opposed in their submission to the Joint Committee, stating that the Church of England did not seek exemptions proposed 'by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension'.

Ours is the only democratic country to give seats in its legislature to religious representatives as of right, and I believe that having any reserved places for Bishops in parliament is unfair, unequal and against the aims of a more transparent and legitimate second chamber. The government's new proposals, which in effect create a new largely independent, and largely unaccountable, place for the Church of England in parliament, are unnecessary, and even the Church of England leadership think they go too far.

I urge you to make my concerns known in parliament in whatever ways you are able. I know that you listen to your constituents and really hope that you will debate this issue in Parliament.

20 December 2011

Written evidence from The Rt Hon Frank Field MP and Lord Armstrong of IIminster (EV 118)

A Representative House of Lords

1. The House of Lords Pre-Legislative Committee is considering the bill presented to it by the government. The Bill aims to make a fundamental change in the workings of our two chamber democracy.

2. The consideration of the Bill so far has been restricted to how to make the Lords in Bagehot's terms a more effective part of the constitution by a method of direct election. We believe this to be an immensely important consideration: but we also believe that direct election is not the only means of achieving representative legitimacy. For Parliament to restrict its consideration only to the form of direct election will result in the loss of a once in a lifetime opportunity also to consider a more fundamental issue that is implicit in Lords reform.

3. The British system of democracy rests, in part, on how the idea of representation underpins our freedoms. We believe that their Lordships should therefore also consider how the idea of representation might be made effective in a reformed House of Lords.

4. Much of the last government's time was spent on reforming our constitution. In none of the background papers, or in the subsequent debate, did any Minister set out what the principles are which underpin British democracy and how the proposed reforms would strengthen our democratic institutions. Yet much of our constitution has over the past decade been remodelled out of all recognition. Reforming the House of Lords offers the last opportunity to reform part of our constitution by principle rather than by mere fashion.

5. One of the most persuasive reflections on the operation of British democracy takes the twin principles of Representative and Responsibility as the operational axis to how freedom is operated and safeguarded in our system of Government. The operation of these twin principles have proved dynamic and politicians and theorists have given over time four working definitions to the idea of representation.

6. First, the term representative is used of someone who had been freely elected on the universal franchise and is dependent on his or her constituents for re-election. Second, the term representative can be viewed as an agent or delegate. Third, the term representatives signifies that a person is typical of the group that has elected them by mirroring the main characteristics and the views of the group that elects them.

7. There is a fourth meaning given to the term representative. From earliest times membership of the Commons was based on the idea of group representation, i.e. the individual in the Commons represented the whole of their area, and not just

the very small number of people who had the vote. Indeed, the first squires called to Parliament were chosen on the basis that they would be able to speak for their whole area and, because of this, be able to enforce locally any taxation Parliament agreed. Members of the House of Commons were not therefore representing individual interests, in theory at least, nor simply the interest of the majority of voters. The representative of a whole area becomes effective when a constituency is engulfed in crisis. The local MP in such circumstances is expected to defend his or her patch, even if it means defying their government.

8. It could be argued that, while the members of the House of Commons came increasingly to be chosen by popular suffrage on a progressively wider franchise, and thus to be more democratically representative, the House of Lords continued to represent the great economic and social interests in society: the Church, the law and the landed and agricultural owners who for centuries exercised great economic and social power and influence.

9. The representation of groups is almost as old in our constitution as the representation of particular areas. And the idea of group representation continued to play one of the effective representative roles in our constitution right up to the sleaze crisis that engulfed the Major government when individual MPs were found to have taken money to represent outside interests the Commons. Following the goading by the Nolan Report the Commons, instead of expelling the offending Members, barred the professional representation of interests within its walls. This move was a violent assault on the richness that has been attached to the meaning of representation in our democracy. That is where the debate in the Commons rests for the moment.

10.The work of the Commons over the centuries had been deeply enriched by the group knowledge that has been brought to its proceedings, be they specialisms from doctors, trade unionists, teachers, lawyers, nurses and so on. Indeed it was not until after World War II that the universities of Oxford and Cambridge ceased to elect their own representatives to the House of Commons. All individuals who belong to such groups are now careful to the point of inaction not to represent their group interests. Not so in the House of Lords where such specialist knowledge is treasured. Given that the Commons has stripped out this form of representation from its proceedings, might not we strengthen it in our Parliamentary system and to do so by group elections, rather on the model of the old university seats, instead of what will become individual elections with the candidates chosen by the party whips? Might not this idea of group representation be the starting point for Lords reforms rather than trying to impose a form of election on the Lords which is most appropriate to the Commons?

11.A radical Lords reform could be based on seeking the representation of all the major legitimate interest groups in our society and of using the idea of the Big Society as a means of strengthening how representation works in our democracy. There would be a need to establish a reform commission with the duty to make recommendations for mapping out which group interests should gain

representation, and at what strength. So, for example, the commission would put forward proposals on which groups would have how many seats to represent (for example) local authorities and voluntary interests, to represent women's organisations and interests, the interest of trade unions, employers, industrialists and businesses, and the cultural interest of writers and composers as well as the interests of the professions including, those involved in health and learning. The representation specifically of local authority associations would ensure that the different regions of the country would have voices in the upper chamber. And so the list would go on with the seats for Anglican bishops shared with other denominations and faiths.

12.The commission's second task would be to approve the means by which each group elects or selects its own representatives. The commission should be encouraged to approve a diversity of forms of election. Some groups already elect their group representatives. Other groups might wish to adopt a form of indirect election. The commission's task should not be to impose a bog standard form of election.

13.The numbers of those to be elected as group representatives would be determined as a maximum proportion of the size of the whole House. If the maximum size of the House was set at 600 members—the same size as the new House of Commons—up to 400 might be elected as group representatives, thus allowing for up to 100 independent cross-bench members to be chosen by the commission as at present and up to 100 appointed by the Prime Minister. Each of the group representatives would be required to declare whether he or she would take a party whip or would sit as an independent cross-bench member. The Prime Minister's quota would provide a mechanism for adjusting the balance of the party political representation in the House, as well as for appointing former senior public servants such as Chiefs of Staff of the Armed Services and Permanent Secretaries.

14. Reform of the House of Lords along these lines offers this Parliament a last chance to rebuild within our system one of the key meanings that has until recently been given to the term representative. It would be a reform that resulted in giving legislative power to the Big Society which has historically acted as a bulwark against a too powerful state. The House of Commons would retain the primacy which it now enjoys, and which could be buttressed by conventions of the kind that already exist for that purpose. Thus the reform would strengthen our democracy without setting the Commons and Lords into a state of near permanent political warfare at Westminster and in the constituencies. And it would be a reform that might, for the first time, enthuse the electorate with the politics of constitutional change.

6 February 2012

Written evidence from Professor Reg Austin (EV 119)

Letter to Mr David Beamish, Clerk of the Parliaments, 8 Feb 2012

As you will see from the enclosed copies of our letters to the Deputy Prime Minister and to Dr Phillip Lee, the MP for Bracknell, we have a group in Bracknell which makes a study of Current Affairs,

The group has considered the possibilities for a reform of the House of Lords and has arrived at a proposal which, we hope, could effect a useful improvement to its ability to perform its function of advising and monitoring the proceedings of the House of Commons.

Our proposal, as outlined to the above recipients, suggests the involvement of a number of UK Professional Institutes to provide a proportion of members of the Upper House as a means of introducing members independent of the political parties and having the wisdom acquired from professional knowledge and experience of the several aspects of everyday life.

As suggested in the letters, the members would be chosen by elections held within the Institutes and be expected to serve for a fixed term after which a new member would be elected for a further term.

We have not yet received a reply from the Deputy Prime Minister. A reply was received from Dr Lee who, we feel, did not fully understand our proposal. Hence, one of the letters covers our reply to his response.

As we understand that members of the Public are invited to offer proposals directly to your Committee we are now so doing.

We would be pleased to receive, in the first instance, acknowledgement of your receipt of this letter (either by post or by email) and subsequently look forward to your Committee's comments on the value of our proposal. On behalf of the Group,

Letter to The Rt Hon Nick Clegg, Deputy Prime Minister, 14 January 2012

I have the honour to represent a Group in Bracknell which makes a study of current Affairs.

We are aware, of course, of your House of Lords Reform Bill, now in draft form and wish to put forward, to you, our suggestions for the appointment of new members.

The history of the introduction of a second chamber goes far back in time to Ancient Greece and was instituted to achieve a body that comprised members who were not elected by "mass electors", were non-political and wiser than members of the "lower house".

Thus the Second Chamber would be well qualified to "prevent the passage into law of ill-considered legislation".

Our Group was unanimous in supporting the idea of a system that would meet the above stated "requirements" and provide a second house which is apolitical, with members not tied to any specific party. The Group believes that better legislation would be achieved by having a second House which will operate independently of party loyalty, and bring an improved representation of people in this country.

Thus we would suggest that the Statutory Appointments Commission could consider nominations for new members from Professional Institutes and similar national organisations.

In the UK there are a number of well-respected Professional Institutes to which belong members with great knowledge and between them have experience of all walks of life Business, Medical, Public Service, Science, Engineering, the Arts, Defence and Security, Transport, etc., etc.

There are in the order of 150 such Institutes, about 70% of them incorporated under Royal Charter.

To these might possibly be added such bodies as the Royal British Legion and the Women's Institute.

If a number of these Institutes were accorded a right each to elect a Member to the second chamber, then the aims of having elected, but non-political, members of wisdom and experience would be achieved. Each Institute would be required to elect a Deputy Member to be available to stand-in as necessary for the Member

The main question might be to determine which of the Institutes would be accorded the right, as some may be felt to be not entirely appropriate and others might be seen to introduce unnecessary duplication of the same knowledge area.

However that should not constitute an irresolvable problem

We commend this proposition to you and look forward to receiving your comments on it.

Letter to Dr Philip Lee MP, 6 February 2012

I write again on behalf of the Bracknell Current Affairs Group.

We appreciate the courtesy' of your reply, but rather feel that you have missed the point of our proposal.

Of course "people must be allowed to elect those who make the laws of the land", and this is one part of the reason for our proposal. The other part is to ensure that the level of knowledge and experience, of those elected, is improved from its present inadequacy.

We would like to think that the current opportunity to reform the House of Lords, or whatever it may *eventually* be called, gives the chance to improve the situation in at least one of the two houses. Thus the Upper House may become better qualified to advise the Lower House and to hold it to account.

We believe that there has been growing disillusionment with many, if not most, of the UK population with their representation in Parliament and the capability of our governments to manage the affairs of the United Kingdom in a knowledgeable manner.

In reality, the only opportunity for electors is to *vote* for candidates proposed and promoted by the main political parties whether they agree with the candidate's views or not. Voters generally vote for the candidate with whom they least disagree, rather than one whose policies are fashioned by the local electorate or concur with their own. There seems to be little real opportunity for a candidate to represent independent views to be elected.

Our concern is that unless a radically different approach is taken for the Upper House, it will merely become a replica of the Lower House with the continuation of the same self-interested party-politics and the current juvenile "Ya-boo" exchanges across the floor.

Our proposal would enable thinking people to elect members, independent of the political parties, through their Institutes which together cover all walks of life. Any member of the public can join an appropriate Institute whether it be the Royal Institute of British Architects (RIBA), or the Women's Institute and to vote for a candidate of their choice.

If there were more expertise and experience in government, many, if not all, of the several fiascos of the past 50 years might not have happened.

For example, thinking people as long ago as the 1970s foresaw the coming financial crisis with its associated demise of our high-tech industries with their exporting ability. The "Brain-drain" from the 1960s onwards was a direct result and indicator of the problem. Voices were raised but not listened to.

Another example is the lack of a national strategy on power generation for the future, in. particular the longer term. We are at significant risk of power cuts because individual generating boards are not co-operating to produce a national strategy.

You, we believe, may be an unusual Member of the House in having professional medical knowledge and experience of the operation of the NHS which should enable you to speak on those matters with some authority. How many other medical colleagues do you have in the House?

Further, how many professional Scientists, Engineers or Accountants, for example, sit alongside you?

We therefore urge you to take our proposals more seriously

9 February 2012

Written evidence from Gavin Oldham (EV 120)

Summary

This submission addresses how to provide the second chamber with a long-term mandate under a system where the majority of members would be elected. My proposal is that, *when people are presented with their voting form for the second chamber, they should be asked to vote on how they would like the country to be in 50 years' time.*

This approach, when combined with a rolling election process, may well also provide a solution to the vexed issue of the relative positioning of the Commons and the new second chamber, as each would have its own democratic remit. The Commons would retain the primary authority as short-term and current issues must always be dealt with by priority, but the fact that scrutiny would be based on the impact of proposals as they would affect the long-term would be very re-assuring for most people, and particularly for those with children and/or grandchildren.

Proposal

This is the legacy that the mother of parliaments has bequeathed on our children and grandchildren:

- Debt, in such huge volumes that it has crippled the financial system;
- Global warming, driving species into extinction and threatening the lives and livelihood of many millions of people;
- A systemic breakdown in family formation and cohesion, graphically illustrated in the Children's Society's 'Good Childhood' reports.

In my search for an explanation I even came to question in my mind whether one-person, one-vote democracy had some responsibility for this. For example, there will always be far more voices calling for more public expenditure than getting on with wealth generation. And the worst damage is most evident in the world's oldest democratic countries.

But if the cause is short-termism, we must have trust in the people to address it: not least because the benefits of one-person one-vote democracy for social stability and shared responsibility are so great that we need to look to rare opportunities such as this for democratic improvement rather than any alternative approach - although co-operation in the United Nations has much to commend it.

This is why the reform of the House of Lords is so important. It is almost certain that the large majority of members will be elected in future, and this is our opportunity to look for a re-balancing in favour of the longer term.

Our generation has an ability to influence the lives of its successors which far outweighs any generation before us. In this respect it is worth noting that one of core values of our established Christian faith is to love our neighbours as ourselves. This 'great commandment' applies as much to loving our neighbour of the future as our neighbour of to-day: and especially when we can influence their lives so much.

So I propose that, **when people are presented with their voting form for the second chamber, they should be asked to vote on how they would like the country to be in 50 years' time**, so that:

- those standing would fill their manifestos with messages of stability and hope for the future;
- the second chamber would review business passed to them by the House of Commons on the basis of how it would affect those children and young people who have no vote, and indeed generations yet unborn.

We can trust the electorate to make this call if they are given the guidance. We should therefore lift our eyes to the horizon and take a more strategic view of the opportunities afforded by reform of the second chamber. The big issue is to enable a second chamber which provides the long-term checks and balances to offset the short-term nature of political cut and thrust. I hope we will therefore trust the electorate to vote for the well-being of future generations, so that they too may have cause to give thanks for their lives.

Please note that I have not addressed the term in office question, but this proposal may complement a longer period in office of at least 10 years. I would however suggest a rolling process electing say 20% bi-annually so as to further draw the distinction between the two houses.

I would be pleased to discuss this further if you so wish

15 February 2012

Written evidence from James Moore (EV 122)

There is a lot of concern and mistrust of the political agenda surrounding the changes being considered to the House of Lords.

There are many people who deserve and aspire to receive honours and titles. By abandoning the Lords in its current format, we are reducing the ability to recognise people who have done something for the good of society in favour of people who have served a political party.

The argument that there is no expertise in the Lords is totally baseless (unless meaning expertise in party politics). I believe the opposite is actually the case.

The type of people who deserve the honour of sitting in the Lords and who will be expert in a certain field may well be the type that would not choose to stand for elected office. By making it wholly elected, it will attract more typically party-affiliated politicians who will be obviously more influenced by their party needs rather than the needs of the county.

The current system also guarantees that minority groups such as faith, charity, scientific groups can be represented by one of their own who has a long and respected career outside politics. The alternative will be the need for more specialist lobby groups to replace their lost influence.

So in reality election will not widen the likelihood of people to get in to the Lords, it will actually narrow it and create a more party-tribal atmosphere.

In light of the scandals over lobbying and the ability of governments to be selective with advice during consultation processes it is essential that interested groups have a direct influence in the legislative process.

Party politics is a dangerous thing when it comes to creating inclusive government. It's almost unheard of to find that more than 40% of people support a particular party. But we can break down that barrier by including people such as non-affiliated peers and the sovereign around whom there can be a sense of unity and common purpose as there is less political agenda. Life membership allows a freedom to do what is right in the long term without undue party influence.

To the argument that the current system is failing (with for example the appointment of Jeffrey Archer) then the same can be said of the electorate's choice of MPs. It is equally possible to remove any particular Lord who proves unsuitable on a case-by-case basis, allowing a committee of members of the Lords to do this themselves.

The continual constitutional changes which essentially increase the influence of party-politics cause disillusionment in the electorate and it partly this that drives low electoral turnout and also reduces people's national cohesion, which taken to it's logical conclusion will lead to a break up of the UK (the SNP do well off this). The obsessive demand to change the institutions of the country, imply that there is nothing more important for politicians to do with their time.

At best, nothing of real importance in the life of the UK will improve with this change. There will be an inevitable increase in the cost of running an elected House of Lords.

Electing will simply increase party-political influence which if the party in power is in control of the Lords, there will be almost no way to slow down controversial legislation, or if they are not in control could mean years of not getting any major Bills through at all. It would be untenable to allow the Parliament Act to remain in place if the Lords were elected.

If the argument is purely about making it democratic, then this will put the Sovereign in a very difficult situation and she will inevitably come under more direct attacks if the Lords are changed in the ways proposed. It also raises questions around the democratic credentials of the EU in its actions in forcing a second treaty referendum in Ireland and in the action that has been taken against Greece or the unelected government that has had to be brought in Italy after the failure of the democratically elected one.

If party politicians were genuinely interested in real democracy, they would seek to allow direct elections for all government ministerial positions independent of elections for Parliament. This would create a much more democratic process than seeking to have direct influence over the House of Lords.

At worst case, all peers (hereditary or life) should at least still be allowed to speak in the Lords, even if not to vote and should be invited for ceremonial occasions.

I appreciate that these views are very unfashionable among MPs, but I hope that you will consider the benefits of the current system, allowing common sense to prevail and that we can all learn to live with the imperfect, but well balanced system that we currently have.

29 February 2012

Supplementary written evidence from Mark Harper MP— (EV 123)

During the evidence session on Monday 27 February, I agreed to write to the Committee to explain why the draft House of Lords Reform Bill provides different mechanisms for modifying the list of disqualifying offices for appointed and elected members.

The draft Bill makes it possible for there to be different lists of disqualifying offices for appointed and elected members due to the need to allow greater flexibility when making recommendations for individuals to be appointed. The appointed element in the reformed House would be chosen for its experience and expertise and we believe it to be acceptable for appointed members to hold some of the offices which elected members could not hold.

The list of disqualifying offices for elected members will at the time of the first election be any office described in Part 2 or 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other than a member of the House of Lords Appointments Commission). Thereafter the reformed House of Lords could resolve to modify the list.

For appointed members, we needed to provide for a list of disqualifying offices to be drawn up in advance of the first elections and first round of appointments. To permit this we included a provision for the list of disqualifying offices to be modified for appointed members by an Order in Council.

However, we agree that after the first round of appointments it should be open to the reformed House to make a resolution to amend the list of disqualifying offices for both elected and appointed members.

We will examine the drafting of the Bill and make any necessary amendments, before introduction to ensure that it reflects this, subject to any further views from the Joint Committee.

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

8 March 2012

Supplementary written evidence from Mark Harper MP (EV 124)

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.457

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

[457] 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.

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 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 Bll 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.

8 March 2012