Conventions on the relationship between the House of Commons and House of Lords

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There are a number of conventions and statutes which together, enshrine the primacy of the elected chamber, the House of Commons, over the House of Lords. The nature of conventions, however, is that they are not necessarily closely defined and change over time. The force of convention also relies on those involved observing the rules, and for a common understanding of the nature of the rules. As the composition of the House of Lords has changed, some of the conventions have come under pressure. Others have been tested by the creation of the first coalition government since in peacetime since the 1930s, or by particular pieces of legislation such as the *Constitutional Reform Act 2005* and the *Parliamentary Voting System and Constituencies Act 2011*.

In 2006 a Joint Committee of both Houses was established to consider "the practicality of codifying the conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation". The main conventions considered by the Joint Committee were:

- the Salisbury-Addison Convention (regarding bills implementing manifesto commitments);
- the convention that the Lords does not usually object to secondary legislation;
- the convention that the government should get its business in "reasonable time";
- the financial privilege of the House of Commons; and
- the exchange of amendments between the Houses.

These are examined in this note along with the requirements of the Parliament Acts.

In May 2011 the Government published a White Paper and Draft Bill on reform of the House of Lords. The Government proposed that the Lords would be either 80% or 100% elected, but that there should be no changes to the constitutional powers and privileges of the House of Lords, nor its relationship with the House of Commons.

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1 The Parliament Acts

The *Parliament Act 1911* as amended by the *Parliament Act 1949* sets out conditions under which bills which have been passed by the House of Commons may acquire the force of law without being passed by the House of Lords. Erskine May explains the conditions and procedures for Bills (other than money bills) as follows:

> …it is provided that a bill which is passed by the House of Commons in two successive sessions (whether the same Parliament or not), and which, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, shall, on its rejection for the second time by the House of Lords, unless the House of Commons direct to the contrary, be presented to Her Majesty and become an Act of Parliament on Royal Assent being signified to it. One year must elapse between the second reading of the bill in the House of Commons in the second session.[1]

The Parliament Acts do not apply to:

- bills originating in the House of Lords;
- bills to extend the maximum life of Parliament beyond five years;
- provisional order bills;
- private bills; and
- delegated legislation.

Information about money bills is set out in section 5 below on financial privilege below.

[1] Erskine May, Twenty-third edition, p659

2 Salisbury-Addison Convention

The House of Lords Library Note, *The Salisbury Doctrine,* provides the following summary of the Salisbury convention:

> The Salisbury doctrine, as generally understood today, means that the House of Lords should not reject at second or third reading Government Bills brought from the House of Commons for which the Government has a mandate from the nation.

It goes on to explain the origins of the doctrine:

> It had its origins in the doctrine of the mandate developed by the third Marquess of Salisbury, Prime Minister in 1885 and from 1886–1892 and 1895–1902, as part of his effort to perpetuate the influence of the House in an age of widening suffrage. Salisbury, a Conservative who sat in the Lords from 1868 until his death in 1903, developed a doctrine of the mandate over this period which argued that the will of the people and the views expressed by the House of Commons did not necessarily coincide, and that in consequence, the House of Lords had an obligation to reject, and hence refer back to the electorate, particularly contentious Bills, usually involving a revision of the constitutional settlement, which had been passed by the Commons.
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> Since 1945, the Salisbury doctrine has been taken to apply to Bills passed by the Commons which the party forming the Government has foreshadowed in its General Election manifesto, being particularly associated with an understanding between Viscount Addison, the Leader of the House of Lords, and Viscount Cranborne (the fifth Marquess of Salisbury from 1947), Leader of the Opposition in the Lords, during the Labour Government of 1945–51; and thus is sometimes called the Salisbury/Addison doctrine. Lord Carrington later described the convention as extending to any wrecking amendment to a manifesto measure (Lord Carrington, *Reflect on Things Past: The Memoirs of Lord Carrington* (1988), pages 77–78).[2]

The continued validity of the convention after the *House of Lords Act 1999* removed all but 92 hereditary peers from the House of Lords was discussed by the Joint Committee on Conventions. They also heard evidence from the Deputy Leader of the Liberal Democrats in the Lords who argued that the convention was a historical agreement between the Labour Party in the Commons and the Conservative Party in the Lords, and was "therefore not relevant to current circumstances". The Joint Committee stated:

> …the Salisbury-Addison Convention has changed since 1945, and particularly since 1999. Indeed, this was tacitly admitted by the Government which said in written evidence, "For a convention to work properly, however, there must be a shared understanding of what it means. A contested convention is not a convention at all". The continued validity of the original Salisbury-Addison Convention is clearly contested by the Liberal Democrats.
>
> The Convention now differs from the original Salisbury-Addison Convention in two important respects. It applies to a manifesto Bill introduced in the House of Lords as well as one introduced by the House of Commons. It is now recognised by the whole House, unlike the original Salisbury Addison Convention which existed only between parties.
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> The convention which has evolved is that:
>
> In the House of Lords

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[2] House of Lords Library Note, *The Salisbury Doctrine,* June 2006, p1

> 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.[3]

Since the 2010 General Election and the formation of a coalition government, there has been further discussion of the continued relevance of the Salisbury-Addison Convention. In particular, the application of the convention to bills included in the coalition agreement has been questioned. In a debate on the constitution on 20 January 2011, Baroness Royall of Blaisdon (the Leader of the Opposition in the House of Lords) asked:

> Does the Leader of the House accept, as we believe he must, that without a democratic mandate—without the direct and specific approval of the electorate for either the coalition or its programme—there can be no mandate for Bills; and that without a mandate for a Bill there can be no protection provided by the Salisbury/Addison convention?[4]

The Leader of the House of Lords, Lord Strathclyde, replied:

> The present Government are the first coalition Government since the Salisbury convention was formulated in its classic form. Inevitably, there are some stresses within the system. The Salisbury convention applies to manifesto Bills, but this Government did not contest the election as a single party under a single manifesto. However, the Government, like all others, were formed and are sustained on the basis of the confidence of the House of Commons. This confidence has been secured on the basis of a programme set out in the coalition agreement. Like any Government, we have brought forward some measures that were in the manifesto and some that were not.
>
> So the Salisbury convention continues to apply, although perhaps it is not as often relevant as when a single party wins a majority. It is difficult now to determine what precisely constitutes a manifesto Bill but, then again, it was ever thus...
>
> The Salisbury convention was only ever one manifestation of the relationship between the two Houses, which is based, as we all know, on the primacy of the other place. We in this House do not routinely oppose government legislation, whether or not it derives from a manifesto. That much was made clear by the Joint Committee in 2006, so it is not special pleading by a coalition Government. So many noble Lords on all sides of the House cling dearly to the idea that we are a revising House—a House of scrutiny, not of opposition—although you would be hard-pressed to believe that when looking at the antics in the House in the past few days. All of us on this side of the House are fond of reminding those opposite what the last Lord Chancellor, Jack Straw, said in 2006. He said that, ""if any coalition or arrangement as in 1977 gains the support of the democratically elected House and endorsed by a motion of confidence then the programme for which they gain that endorsement should be respected by this House"—" the House of Lords. That was the previous Government's understanding of the constitutional convention regarding coalitions.[5]

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[3] Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06, paras 97-99

[4] HL Deb 20 January 2011 c592

[5] *Ibid,* c596-601

3 Secondary legislation

Unlike most primary legislation, the House of Lords is able to exercise a veto over secondary legislation. The general powers of the House of Lords over delegated legislation are set out in the *Companion to Standing Orders* as follows:

> The Parliament Acts do not apply to delegated legislation. So delegated legislation rejected by the Lords cannot have effect even if the Commons have approved it. Neither House of Parliament has the power to amend delegated legislation. The House of Lords has only occasionally rejected delegated legislation. The House has resolved that "This House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration". Delegated legislation may be debated in Grand Committee, but must return to the floor of the House if a formal decision is required.[6]

The *Companion* provides details of the last three instances of the rejection of an affirmative statutory instrument as follows:

> …18 June 1968: Southern Rhodesia (United Nations Sanctions) Order 1968; 22 February 2000: Greater London Authority (Election Expenses) Order 2000; and 28 March 2007: Gambling (Geographical Distribution of Casino Premises Licences) Order 2007. A motion for an address praying against a negative instrument (Greater London Authority Elections Rules 2000) was agreed to on 22 February 2000.[7]

Blackburn and Kennon's *Griffith and Ryle on Parliament* comments on the Lords powers in relation to statutory instruments, stating that "the dam has been breached". They continue:

> …it is no longer true to say that the Lords do not use their powers on delegated legislation.[8]

The Joint Committee on Conventions considered the Lords role in scrutinising secondary legislation and concluded that "the House of Lords should not regularly reject Statutory Instruments, but that in exceptional circumstances it may be appropriate for it to do so".[9] The Joint Committee further explained:

> 228. The Government appear to consider that any defeat of an SI by the Lords is a breach of convention. We disagree. It is not incompatible with the role of a revising chamber to reject an SI, since (a) the Lords (rightly or wrongly) cannot exercise its revising role by amending the SI or in any other way, (b) the Government can bring the SI forward again immediately, with or without substantive amendment, as described by the Clerk of the Parliaments, and (c) the power to reject SIs gives purpose and leverage to scrutiny by the Joint Committee on SIs, and by the new Lords Committee on the Merits of SIs. The Government's argument that "it is for the Commons, as the source of Ministers' authority, to withhold or grant their endorsement of Ministers' actions" is an argument against having a second chamber at all, and we reject it.
>
> 229. For the Lords to defeat SIs frequently would be a breach of convention, and would create a serious problem. But this is not just a matter of frequency. **There are situations in which it is consistent both with the Lords' role in Parliament as a**

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6 House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords,* 2010, para 10.02

7 *Ibid,* p191, Fn 2

8 Blackburn and Kennon, *Griffith and Ryle on Parliament,* para 12.163

9 Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06,

revising chamber, and with Parliament's role in relation to delegated legislation, for the Lords to threaten to defeat an SI. For example:

a) where special attention is drawn to the instrument by the Joint Committee on Statutory Instruments or the Lords Select Committee on the Merits of SIs

b) when the parent Act was a "skeleton Bill", and the provisions of the SI are of the sort more normally found in primary legislation

c) orders made under the Regulatory Reform Act 2001, remedial orders made under the Human Rights Act 1998, and any other orders which are explicitly of the nature of primary legislation, and are subject to special "super-affirmative" procedures for that reason

d) the special case of Northern Ireland Orders in Council which are of the nature of primary legislation, made by the Secretary of State in the absence of a functioning Assembly

e) orders to devolve primary legislative competence, such as those to be made under section 95 of the Government of Wales Act 2006 and

f) where Parliament was only persuaded to delegate the power in the first place on the express basis that SIs made under it could be rejected.

230. This list is not prescriptive. But if none of the above, nor any other special circumstance, applies, then opposition parties should not use their numbers in the House of Lords to defeat an SI simply because they disagree with it. This would be contrary to the fundamental conventions which govern the relationship between the Houses, as discussed above in the context of the primacy of the Commons. It would also defeat the purpose of delegating the power in the first place. The defeat of the GLA Orders in 2000 was probably not an abuse of this kind; on the other hand, the defeat of the Rhodesia Sanctions Order in 1968 probably was. [10]

4 Lords consider government business "in reasonable time"

The Government does not have the same levels of control over the business in the House of Lords as it does in the House of Commons and the progress of business is harder to predict. There is no selection by a chairman of amendments to be discussed in the Lords. All the amendments that have been tabled may be considered. There is no guillotine or programming procedure. In addition, amendments may be considered at third reading as well as report stage in the Lords.

There has traditionally, however, been a convention that the House of Lords considers government business in "reasonable time". The Joint Committee on Conventions stated that:

> The convention "that Government business in the Lords should be considered in reasonable time" is set out in the Wakeham report, in the context of the Parliament Acts and linked with discussion of the Salisbury-Addison convention. "…The reformed second chamber should maintain the House of Lords convention that all Government business is considered within a reasonable time. Traditionally, the convention applies to all business, but it is particularly important that there should be no question of Government business being deliberately overlooked."[11]

However, they continued:

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[10] Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06,

[11] Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06, p120

125. On 26 March 2002, the Lords voted to delay the committee stage of the Animal Health Bill until after a consultation and two inquiries. Committee stage began on 25 July, a 4-month delay to a Bill which the Government had wanted to enact by the summer.

126. Then on 18 September 2003, in the Hunt report's words, "The Opposition threatened to disrupt the Government's legislative proposals to remove the remaining hereditary peers. As Lord Strathclyde, Leader of the Conservative Opposition put it: 'If this Bill is ever presented to this House, the noble and learned Lord and his colleagues can be assured that he can expect a major fight on his hands, and it will not be confined to this Bill.'" [The Hunt Report was a report to the Lords Labour Group by the Working Group on House of Lords Reform chaired by Lord Hunt of Kings Heath.]

Finally, on 8 March 2004 the Lords voted to refer the Constitutional Reform Bill to a Select Committee and to carry it over. On 18 March, the Government dropped its House of Lords Reform Bill, citing the vote on 8 March as the reason. The Select Committee sat for 3 months, and the Constitutional Reform Bill reached the Commons just before Christmas, 5-6 months after the Government might have hoped.

127. The Hunt report noted these incidents, though without reference to the dropping of Lords reform. It commented, "The House has pushed at the limits of the convention that it must consider the Government's business without unreasonable delay". It went on to propose to turn the convention into a rule, as follows:

> "The Working Group proposes a time limit for the Second Chamber to consider a bill. The Lords must have enough time to consider a bill properly. Equally, it is wrong that a bill or legislative programme can potentially be in jeopardy because some peers within the rules of the House can threaten to spend endless time debating a particular bill. Debates and decisions in the Lords should be firmly centred on the principles and detailed scrutiny of the legislation under consideration, rather than be part of some wider political strategy.
>
> The question of a time limit is not new. Indeed, the 1968 White Paper on House of Lords Reform which received all-party support in the Lords, suggested that the Lords should have a period of 60 parliamentary days to consider a bill.
>
> A reasonable time limit for the Lords to scrutinise a bill would not in any way undermine the principle of the Parliament Acts. A time limit would impose a discipline on all sides of the House, including the Government, to deal with legislation in an efficient manner. Large bills or bills to which the Government proposed to add a considerable number of amendments would trigger a longer period for consideration in the Lords. Further detailed work will be required on the actual time limit, though the 60 parliamentary days limit which received considerable support in 1968 would be a good starting point for discussion. The aim would be to set a reasonable time limit which reflects current experience with bills in the Lords. In the light of our later recommendations on changing the legislative procedure, some of the current intervals between different stages should be revisited to allow more flexibility."

The Labour Party had included a commitment in their 2005 manifesto to

> …legislate to place reasonable limits on the time bills spend in the second chamber – no longer than 60 sitting days for most bills.[12]

[12] Labour Party Manifesto, 2005, p110

However, the Joint Committee found that such legislation was not required and the Government appeared to accept this conclusion. The Joint Committee explained:

> 153. Everyone agrees that the Lords should consider Government business in reasonable time, and in our view there is indeed such a convention. And no-one except the Government sees a problem in this area. The Lords do not filibuster, with the possible exceptions of the Industrial Relations Bill in 1971 and the first Hunting Bill in 2003. Self-regulation makes the reasonable time convention work, with difficulties being resolved through the usual channels. When a Bill runs slow, it is usually to suit the Government; it can often suit the Government to keep a Bill back in order, for instance, to expedite others. We would however draw attention to the figures above, which show an inexorable rise in the time Bills spend in the Lords. This must be having an impact on the management of business in both Houses.
>
> 154. There is no conventional definition of "reasonable", and we do not recommend that one be invented. The Government wants to define "reasonable" or set a time limit; but in our view there is no problem which would be solved by doing so. A target number of days could be counterproductive, by legitimising delay up to the target. It would reduce government business managers' room for manoeuvre in managing the legislative programme. If there were a target, it is not obvious which days should count towards it – e.g. Grand Committee days, general debate days. If the target had the effect of guillotining proceedings in the Lords, then it might leave parts of a Bill unscrutinised in either House. It could also tempt the Government to avoid proceedings on a difficult Bill and wait to be "saved by the bell". Both would be unacceptable. If on the other hand there were provision for negotiated exceptions, then the results of the new system would probably be little different from the outcomes achieved at present.

The debate on "reasonable time" has been reopened recently after accusations of opposition filibustering during the passage of the *Parliamentary Voting System and Constituencies Act 2011* through the House of Lords. However, the Bill was given Royal Assent by the deadline required for the referendum to be held on the required date.

5 Financial Privilege

The House of Commons has a special role in financial matters. This is based on a resolution of 1671 which stated "That in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords". *How Parliament Works* explains that this was reinforced seven years later:

> …by a resolution that said in splendidly comprehensive language:
>
> > all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit and appoint in such bills the ends, purposes, considerations, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords.

How Parliament Works explains:

> …this did not put things permanently beyond doubt and it was arguable that the Lords retained a power to reject a supply bill outright. Thus in 1860 the Lords rejected the Paper Duty Repeal Bill and, more seriously in 1909, the Finance Bill, which gave effect to Lloyd George's controversial budget. In the latter case, the result was the passing of the Parliament Act 1911 and the permanent restriction of the powers of the House of Lords to thwart the legislative will of the Commons.

Today, Bills of aid and supply such as the Finance Bill and the Consolidated Fund and Appropriate Bills originate in the Commons and are not amended by the Lords. Finance Bills are debated on second reading in the Lords, but other proceedings are only formal.

The *Parliament Act 1911* allows money bills (a bill whose only purpose is to authorise expenditure or taxation), that are so certified by the Speaker of the House of Commons to gain Royal Assent without having passed the House of Lords under certain circumstances. Under the 1911 Act if such a Bill is sent to the Lords at least one month before the end of the session and is not agreed by the Lords within a month, it may be sent directly for Royal Assent. *How Parliament Works* states that although it remains possible in theory for the Lords to amend money bills, the Commons are not obliged to consider such amendments, and "it is now inconceivable that any amendment would be attempted".[13] No money bill has ever been presented for Royal Assent under the terms of the *Parliament Act 1911*.

It is possible for bills that involve an increase in public expenditure to begin in the Lords if a minister takes charge of it for its Commons stages. For such bills, a subsection is added which states that "Nothing in this Act shall impose any charge on the people or on public funds" or vary any such charge. This is known as a 'privilege amendment'. The words are routinely removed when the bill is in Committee in the House of Commons. Lords amendments to a Commons bill that involve a charge upon the public revenue not sanctioned by the Commons money resolution in respect of that bill are deemed disagreed to upon the Speaker's declaration, 'by reason of privilege'.

6 Exchange of amendments between the Houses

The exchange of amendments between both Houses of Parliament, known as 'ping-pong', was considered by the Joint Committee on Conventions in 2006. They explained:

> 168. Once a Bill has passed through both Houses a list of Amendments made in the second House is compiled and the Bill is returned to the first House seeking its agreement to the Amendments. If the first House does not agree to the Amendments made by the second House it returns the Bill to the second House indicating its disagreement, or setting out alternative propositions. Exchanges between the two Houses continue until agreement is reached or a stalemate occurs. The point at which stalemate is deemed to have been reached is referred to as "double insistence". This is described in the House of Lords *Companion* as "if one House insists on an amendment to which the other has disagreed, and the other insists on its disagreement, and neither has offered alternatives, the bill is lost." However, as *Erskine May* acknowledges, "…there is no binding rule of order which governs these proceedings in either House, and, if there is a desire to save a bill, some variation in proceedings may be devised in order to effect this object".

The Joint Committee concluded that the exchange of amendments was not a convention, but a framework for political negotiation. However, they acknowledged that there was a convention that in general, neither House should be asked to consider amendments without notice. They recommended:

> We believe that it would facilitate the exchange of Amendments between the two Houses if that convention was more rigorously observed, i.e. if reasonable notice was given of consideration of Amendments from the other House. We recognise that this convention may have to be breached at the end of a Session when pressure of time

[13] Robert Rogers and Rhodri Walters, *How Parliament Works,* 6th Edition, 2006, pp266-7

> makes rapid exchanges of messages between the two Houses inevitable; but this should be the exception and not the rule.[14]

7 The Draft Bill on House of Lords Reform

7.1 The draft Bill proposals

The Government published a White Paper and Draft Bill on reform of the House of Lords on 17 May 2011. The proposals are for either an 80% or 100% elected House of Lords with Members elected for 15 year non-renewable terms, with elections for a third of members held every 5 years.

There has been some debate about whether such reforms would change the relationship between the two Houses of Parliament. 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 House of Parliament or the existing constitutional relationship between the two Houses of Parliament.

The White Paper sets out the Government's view of the existing conventions:

> The relationship between the two Houses of Parliament is governed by statute and convention. The Parliament Acts of 1911 and 1949 provide the basic underpinning of that relationship and set out that the House of Lords is, ultimately, subordinate to the House of Commons. They provide that, in certain circumstances, legislation may be passed without the agreement of the House of Lords. The Government does not intend to amend the Parliament Acts or to alter the balance of power between the Houses of Parliament. The Parliament Acts are, however, a long-stop which are rarely resorted to: the relationship between the Houses is governed on a day to day basis by a series of conventions which have grown up over time. These include that the House of Lords should pass the legislative programme of the Government which commands the confidence of the House of Commons; the principle that the Government of the day can continue in office only if it retains the confidence of the House of Commons and the consequence that, whether or not a Bill has been included in a Manifesto, the House of Lords should think very carefully about rejecting a Bill which the Commons has approved; and the principle that the House of Lords will consider Government Bills in reasonable time. Most important, though, are the conventions which support the financial privileges of the House of Commons.
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> The Government's position is that these conventions have served the relationship between the Houses well and that they represent a delicate balance which has evolved over the years.
>
> The Government believes that the powers of the second chamber and, in particular, the way in which they are exercised should not be extended and the primacy of the House of Commons should be preserved. The present balance between the two Houses as expressed by the principles set out above serves the legislative process well, and gives the second chamber the opportunity to make a substantive contribution while not at the same time undermining the relationship between the Government and the House of Commons.[15]

Clause 2(1) of the Draft Bill states that "nothing in the provisions of this Act about the membership of the House of Lords, or any other provision in this Act":

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[14] Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06, para 189

[15] HM Government, *House of Lords Reform Draft Bill,* Cm 8077, May 2011

(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 and jurisdiction of either House of Parliament, or the conventions governing the relationship between the two Houses.

The nature of conventions, however, is that they are not necessarily closely defined and change over time. The force of convention also relies on those involved observing the rules, and for a common understanding of the nature of the rules. It is not clear how any dispute about use of powers or the appropriate interpretation of conventions could be adjudicated or effectively enforced. As the 2006 Joint Committee stated:

> …Conventions, by their very nature, are unenforceable. In this sense, therefore, codifying conventions is a contradiction in terms. It would raise issues of definition, reduce flexibility, and inhibit the capacity to evolve. It might create a need for adjudication, and the presence of an adjudicator, whether the courts or some new body, is incompatible with parliamentary sovereignty.
>
> Even if an adjudicator could be found, the possibility of adjudication would introduce uncertainty and delay into the business of Parliament. In these ways, far from reducing the risk of conflict, codification might actually damage the relationship between the two Houses, making it more confrontational and less capable of moderation through the usual channels. This would benefit neither the Government nor Parliament.

Placing the conventions in legislation may lead courts to require clarification of what the conventions are; this might have implications for the exclusive cognisance of both Houses.

The Joint Committee on Conventions had stated that:

> Our conclusions apply only to present circumstances. If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again. What could or should be done about this is outside our remit[16].

The Joint Committee had put forward some draft resolutions for one or both Houses to adopt on Conventions. These resolutions were never put before either House, although the Committee's report was approved by both Houses of Parliament.[17]

7.2 Primacy of the House of Commons: initial reactions

Following the Deputy Prime Minister's statement on publication of the White Paper, Frank Dobson asked:

> …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.

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[16] Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06, para 63

[17] In the House of Lords, on 16 January 2007, and in the House of Commons on 17 January 2007

> **The Deputy Prime Minister:** We already know the role of the House of Lords – scrutiny and revision….those 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.[18]

The issue of powers was raised by other Members, including William Cash and Dr Thérèse Coffey who noted that when the European Parliament went from being an appointed to an elected body, it demanded more powers to reflect its democratic mandate. The Deputy Prime Minister responded that:

> …the way to avoid opening that Pandora's box is simply by asserting that the balance of power will remain as it is and as reflected in the Parliament Acts. This is exactly what we are proposing.[19]

Similar points about the power of the second chamber and the relationship between the two Houses were made in the House of Lords, to which Lord Strathclyde, Leader of the House of Lords, responded:

> 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…

He continued:

> …It is an important assumption that underlies the White Paper that the powers of the existing House should not be changed if it were to be elected or partly elected. There is one very good reason for that. If I were to propose that an elected Chamber should have less power than an appointed House, that would begin to look ridiculous. Of course, over time, the relationship between the two Houses may change. It already has changed over the course of the last 20 or 30 years. There is no reason why it should not do in the future.[20]

On 7 June the House of Lords debated a motion to establish a Joint Committee on the draft Bill. An amendment was tabled to the motion by Lord Cunningham of Felling, who had been Chair of the Joint Committee on Conventions, that the Committee on the draft bill should be:

> …mindful of the need to protect the primacy of the House of Commons, that it be an instruction to the committee to take into account the conclusions of the Joint Committee on Conventions which was noted with approval by both Houses.[21]

Speaking to his amendment, Lord Cunningham said:

> …if we are abolished and replaced by an elected Chamber, whatever conventions bind us or relate us to the other place will cease to exist because this place will have ceased to exist. We have to recognise that, as do the Government, and they cannot blithely say in their White Paper and draft Bill that all will be the same. All will not be the same because we will have changed something fundamental.[22]

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[18] HC Deb 17 May 2011 cc160-161
[19] *Ibid,* c171
[20] HL Deb 17 May 2011 c1277
[21] HL Deb 7 June 2011 c137
[22] *Ibid,* c139

In response, Lord Strathclyde stated that the Joint Committee would be able to look at the matter without the amendment.[23] Lord Cunningham withdrew his amendment.

7.3 Further Information

The House of Lords Library Note, LLN 2010/014, *Possible Implications of House of Lords Reform,* sets out previous discussions on the impact of reform of the House of Lords on existing powers and conventions. It considers in detail the implications for conventions of an elected House of Lords.

[23] *Ibid,* cc145-146