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House of Lords – Developments since January 2002

This Research Paper summarises recent developments in the process of House of Lords reform. It begins with a brief chronology of the developments that followed the election of the Labour Government in 1997. It then concentrates on events since the publication of the White Paper, *The House of Lords Completing the Reform*, in November 2001, including:

- the Commons debate on the White Paper;
- reports by the Public Administration Select Committee and the Joint Committee on House of Lords Reform;
- Government proposals for the abolition of the post of Lord Chancellor, the creation of a Supreme Court and for next steps for the House of Lords – including removing the remaining hereditary peers and creating a statutory Appointments Commission;
- by-elections for hereditary peers; and
- academic comment on the ‘interim’ House.

Richard Kelly

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Summary of main points

This Research Paper summarises recent developments in the process of House of Lords reform. It begins with a brief chronology of the developments that followed the election of the Labour Government in 1997. It then concentrates on events since the publication of the White Paper, *The House of Lords Completing the Reform*, in November 2001.

It includes a review of the House of Commons debate on the White Paper, *Modernising Parliament: Reforming the House of Lords*, and the reaction of the main opposition parties to the White Paper. It then reviews reports on House of Lords reform by the Public Administration Select Committee and the Joint Committee on House of Lords Reform.

The Public Administration Select Committee argued that there was a good deal of agreement on the fundamental points within the debate on House of Lords reform. However, the House of Commons did not agree to any of the options for the split between elected and appointed members of a reformed second chamber when the Joint Committee's first report was debated in February 2003.

The June 2003 machinery of government changes prepared the ground for the abolition of the post of Lord Chancellor, and the creation of a Supreme Court. The implications for the speakership of the House of Lords stemming from the abolition of the post of Lord Chancellor were considered by an *ad hoc* Select Committee on the Speakership of the House of Lords.

In September 2003, the Department for Constitutional Affairs published further proposals: *Constitutional reform: next steps for the House of Lords*. It proposed the removal of the remaining hereditary peers from the House of Lords and the creation of a statutory Appointments Commission. The proposals and the initial reaction to statements in both Houses on the proposals are reviewed. The Constitution Unit of University College London has responded to the proposals and this response is also summarised.

This paper also includes a brief review of the by-election procedure for replacing exempted hereditary peers and reports on some academic assessments of the 'interim' House are reported.

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I Introduction

This paper reviews the developments in the process of House of Lords reform particularly since the last Library Research Paper, *House of Lords Reform – the 2001 White Paper*.¹ It begins with a brief chronology that highlights the main developments that have occurred since 1997. It then reports in more detail on the events that have happened since the beginning of 2002.

II Chronology

In this section, the main developments in House of Lords reform are identified and briefly described.

April 1997 Labour Manifesto:

A modern House of Lords

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

The system of appointment of life peers to the House of Lords will be reviewed. Our objective will be to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election. We are committed to maintaining an independent crossbench presence of life peers. No one political party should seek a majority in the House of Lords.

A committee of both Houses of Parliament will be appointed to undertake a wide-ranging review of possible further change and then to bring forward proposals for reform. We have no plans to replace the monarchy.²

20 January
1999 Publication of the White Paper: *Modernising Parliament: Reforming the House of Lords*. A statement in the House of Commons announced the publication of the White Paper, the setting up of an appointments commission and the establishment of a Royal

¹ See Research Paper 02/002 *House of Lords Reform – the 2001 White Paper*, 8 January 2002

² Labour Party, *New labour: because Britain deserves better*, April 1997, pp32-33

Commission, with the following terms of reference:

Having regard to the need to maintain the position of the House of Commons as the pre-eminent chamber of Parliament and taking particular account of the present nature of the constitutional settlement, including the newly devolved institutions, the impact of the Human Rights Act and developing relations with the European Union,

to consider and make recommendations on the role and functions of a second chamber; and

to make recommendations on the method or combination of methods of composition required to constitute a second chamber fit for that role and for those functions.

To report by 31 December 1999”.³

11 November 1999 *House of Lords Act 1999* received Royal Assent. As Stage 1 of House of Lords reform, it removed the right of all but 92 hereditary peers to sit in the House of Lords.

January 2000 The Royal Commission on the Reform of the House of Lords, chaired by Lord Wakeham, published: *A House for the Future* (Cm 4534). The Royal Commission concluded that its proposals, if implemented, would make the second chamber more democratic and more representative:

More democratic – The chamber as a whole will reflect the overall balance of political opinion within the country. Regional members will directly reflect the balance of political opinion within the regions.

More representative – The chamber will contain members from all parts of the country and from all walks of life, broadly equal numbers of men and women and representatives of all the country’s main ethnic and religious communities.⁴

³ HC Deb 20 January 1998 c911

⁴ Cm 4534, p9, para 40

- May 2000 The members of the House of Lords Appointments Commission announced.
- February 2001 Appointment of the Constitution Committee in the House of Lords, in response to a recommendation from the Royal Commission.
- April 2001 The Appointments Commission published recommendations for the creation of 15 new non-party political appointments to the House of Lords ('people's peers').⁵
- May 2001 Labour Manifesto:
- We are committed to completing House of Lords Reform, including removal of the remaining hereditary peers, to make it more representative and democratic, while maintaining the House of Commons' traditional primacy. We have given our support to the report and conclusions of the Wakeham Commission, and will seek to implement them in the most effective way possible. Labour supports the modernisation of the House of Lords' procedures to improve its effectiveness. We will put the independent Appointments Commission on a statutory footing.⁶
- 7 November 2001 The Government published a White Paper, *The House of Lords Completing the Reform* (Cm 5291).⁷
- 9 & 10 January 2002 Debates in the House of Lords and the House of Commons on the White Paper.⁸
- 14 February 2002 The Public Administration Select Committee published its report on House of Lords reform, in which it made proposals for the role and composition of the reformed House and indicated how its proposals could be implemented.⁹
- 13 May 2002 Statement announcing the decision to establish a Joint Committee on House of Lords Reform.¹⁰

⁵ Details of the 15 can be found on the House of Lords Appointments Commission website, see: <http://www.houseoflordsappointmentscommission.gov.uk/>

⁶ Labour party, *ambitions for Britain: Labour's Manifesto 2001*, p35

⁷ see Library Research Paper 02/002, *House of Lords Reform – the 2001 White Paper*

⁸ HC Deb 10 January 2002 cc702-778; and HL Deb 9 January 2002 cc561-682, HL Deb 10 January 2002 cc692-824

⁹ Public Administration Select Committee, *The Second Chamber: Continuing the reform*, 12 February 2002, HC 494-I 2001-02

¹⁰ HC Deb 13 May 2002 cc516-518

- 19 June 2002 House of Commons appointed twelve Members to serve on the Joint Committee on House of Lords Reform.
- 4 July 2002 House of Lords appointed twelve members to serve on the Joint Committee on House of Lords Reform.
- 11 December 2002 The Joint Committee's First Report, including options on the composition of the reformed House of Lords, was published.¹¹
- January 2003 Debates on the Joint Committee's First Report in the House of Commons (21 January) and the House of Lords (21-22 January)
- 4 February 2003 House of Commons debate and votes on the Joint Committee's proposals. House of Lords votes on the Joint Committee's proposals.
- 9 May 2003 The Joint Committee's Second Report was published.¹²
- 12 June 2003 Machinery of government changes: announcement on the abolition of the post of Lord Chancellor.
- 14 July 2003 Department of Constitutional Affairs launched consultations on:
*Constitutional reform: a Supreme Court for the United Kingdom*¹³
*Constitutional reform: a new way of appointing judges*¹⁴
*Constitutional reform: the future of Queen's Counsel*¹⁵
- 17 July 2003 The Government's Response to the Joint Committee's Second Report was published.¹⁶
- 18 September 2003 Department of Constitutional Affairs launched consultations on:
*Constitutional reform: next steps for the House of Lords*¹⁷
*Constitutional reform: reforming the office of the Lord Chancellor*¹⁸

¹¹ Joint Committee on House of Lords Reform, *House of Lords Reform: First Report*, 11 December 2002, HL 17 and HC 171 2002-03

¹² Joint Committee on House of Lords Reform, *House of Lords Reform: Second Report*, 9 May 2003, HL 97 and HC 668 2002-03

¹³ See: <http://www.dca.gov.uk/consult/supremecourt/index.htm>

¹⁴ See: <http://www.dca.gov.uk/consult/jacommission/index.htm>

¹⁵ See: <http://www.dca.gov.uk/consult/qcfuture/index.htm>

¹⁶ Joint Committee on House of Lords Reform, *House of Lords Reform: Government Reply to the Committee's Second Report*, 17 July 2003, HL 155 and HC 1027 2002-03

¹⁷ See: <http://www.dca.gov.uk/consult/holref/index.htm>

¹⁸ See: <http://www.dca.gov.uk/consult/lcoffice/index.htm>

III The November 2001 White Paper

The Government's White Paper *The House of Lords – Completing the Reform*, published in November 2001, outlined how the Government intended 'to complete reform of the House of Lords early in this Parliament, in fulfilment of its election mandate and the report of the independent Royal Commission'. The White Paper's introduction identified 'the most important changes proposed' as:

- The hereditary peers will finally cease to have any privileged rights of membership;
- A majority of the members of the new House will be nominated by the political parties, in proportions intended to reflect the shares of the national vote in the previous General Election. There will also be about 120 appointed members with no political affiliation, 120 directly elected members to represent the nations and regions, and a continuing role for Law Lords and Bishops of the Church of England;
- An independent statutory Appointments Commission will have substantial powers. It will appoint the independent members and decide – within certain bounds – how many seats each major political party is entitled to, thereby substantially reducing Government patronage;
- The size of the House will be capped at 600 in statute, with an interim House as close as may be to 750 members to accommodate existing life peers;
- There will be formal commitments to achieving balance and representativeness in the House;
- The link with the peerage will be dissolved.¹⁹

The House of Lords debated the White Paper on 9 January 2002, and the House of Commons on the following day.

A. House of Commons Debate

In introducing the debate in the House of Commons, Robin Cook, then Leader of the House, said that it fulfilled a commitment he had made to hold a debate during the consultation period, so that Members could contribute to the consultation stemming from the white paper. He prefaced his remarks by saying that, whatever the outcome, there were two principles on which the Government would not compromise: first that 'the

¹⁹ *The House of Lords – Completing the Reform*, Cm 5291, para 2

hereditary principle has no place in a modern parliament'; and, second, that 'the second Chamber of Parliament must reflect the broad political balance in the country'.²⁰

He outlined the role of a second chamber and the importance that some, but not all of its members, should be elected:

The Government's view is that the second Chamber should remain a Chamber of revision of legislation, of scrutiny of Government decisions, and of deliberation on public policy. It should have the capacity to recommend policy and it should have the power to delay legislation that requires second thoughts, but it should not have the right to compel the Commons to change the view of its elected majority.

If the second Chamber is to discharge those functions in the public interest, it is essential that it should contain some members elected by the public. That is why the White Paper proposes for the first time that there should be members directly elected by the public to the second Chamber.²¹

He noted that the principle of direct elections was 'broadly welcomed' while acknowledging that 'The precise proportion proposed ... has not enjoyed quite such a welcome'. He cautioned that a wholly elected second Chamber could undermine the supremacy of the Commons.²²

He said that the Government believed that:

... the right solution for House of Lords reform is to have a mixed membership of elected and appointed Members. ... However, that still leaves us with a very difficult judgment—it must be a matter of judgment—about where the balance should be struck between elected and appointed Members. That is why the first of the six questions posed in the White Paper is whether the proposed balance between elected and appointed members is right.²³

He hoped that the debate would establish 'whether there is an alternative that would command a centre of gravity of opinion in support of reform'.²⁴

He concluded that:

The reforms will secure four objectives of principle: they will remove the last of the hereditary peers from Parliament; they will introduce the first ever elected peers into the House of Lords; they will put the appointment of independent

²⁰ HC Deb 10 January 2002 cc702-703

²¹ *Ibid*, c706

²² *Ibid*, c706

²³ *Ibid*, c709

²⁴ *Ibid*, c709

Members outside political patronage; and they will secure a political balance in the House of Lords that reflects the views of the British public in the most recent general election. I invite support for those four objectives of principle from all hon. Members who want a modern second Chamber—one that will not compete for power with the House of Commons, but will complement the House of Commons as a Chamber of revision and be in touch with the Britain of today, not the Britain of yesterday.²⁵

Eric Forth, then Shadow Leader of the House, identified common ground between the Conservatives and the Government:

We agree that there should be a second fully effective parliamentary Chamber. Indeed, we agree with the sentiments of the Prime Minister and the Lord Chancellor that I quoted a moment ago when they said that the second Chamber should at least be substantially elected to give it democratic integrity and credibility. We agree with the Lord Chancellor when he said in 1997 that the second Chamber must be "above patronage". It should be visibly and palpably above criticism, not a quango.²⁶

However, he raised a number of concerns about nomination, composition and the electoral system. He argued that:

The proposal for a majority of nominated Members creates the difficulties that follow in the rest of the White Paper. For example, the statement,

"It is sometimes argued that only direct election can provide legitimacy for the second chamber. This was not an argument accepted by the Commission or by the Government",

sits oddly with the repeated assertion by the Prime Minister and others, including the right hon. Gentleman today, that a hereditary element in the House of Lords is an affront to democracy. It is beyond me how the Government can go on to assert that a nominated element in the House of Lords is not an equal affront to democracy, and that has never been satisfactorily explained.²⁷

He questioned how it would be possible to cap the size of the second Chamber and ensure that party representation reflected the votes cast in the previous general election.²⁸

He called on the Government to establish a Joint Committee:

We still believe that the way forward is to have a joint Committee of both Houses consider the matter, to see whether we can expand the common ground that

²⁵ *Ibid*, c710

²⁶ *Ibid*, c712

²⁷ *Ibid*, c715

²⁸ *Ibid*, c717

undoubtedly exists and build on the contents of the early-day motion, on what has been said in another place and on what we will hear in this debate. We want to make a genuine attempt not only to find a means of having an effective, reformed upper House but seriously to consider the role that the Commons plays in the parliamentary context. Let us not imagine that that can be done by focusing on the nature, composition and powers of the upper House without looking equally seriously at the role of this House, its relationship to the Government of the day and the dynamic that is created by one Chamber of the legislature producing the Executive and the Executive being part of it.

Until we deliberate on all those factors together, it will be very difficult for the Government to find a way forward. We make a genuine offer. We would want to play a positive role in a joint Committee. We urge it to be set up because we fear that the White Paper is going nowhere. I do not want the Government to use the fact that their White Paper has so little support as an excuse to shelve any further reform of the upper House. That cannot be allowed to happen, and I ask the Leader of the House to give serious consideration to a joint Committee.²⁹

Paul Tyler reminded Robin Cook of ‘the so-called Cook-Maclennan agreement’, and its commitment to ‘recommendations for a democratic and representative Second Chamber’. He argued that ‘the White Paper before us this afternoon does not fulfil that promise’.³⁰

He said that the Liberal Democrats:

... found the royal commission recommendations woefully timid and desperately disappointing. However, in our worst nightmares we could not have believed that the Government would water down Wakeham. It was bad enough at the start, but to find that the White Paper is even worse is extraordinary.³¹

He called for ‘a smaller House, of perhaps 300 Members but certainly not much more’. He wanted a House that was ‘free of all direct party political patronage and that has minimal obligation or deference to the Executive’, without ‘Member of Parliament clones or aspirant Members of Parliament’.³²

He suggested that elections should be ‘fixed term’, and not coincide with general elections; that they should ‘be carried out through an effective system of proportional representation’, he hoped that the recommendation for the single transferable vote electoral system would be accepted; and that not all members were elected at the same election, to assist with continuity. He believed that membership should be limited to a single fixed term of ten years.³³

²⁹ *Ibid*, c718

³⁰ *Ibid*, c720

³¹ *Ibid*, c721

³² *Ibid*, c724

³³ *Ibid*, c724

A range of issues were aired during the course of the debate. Sir George Young argued that Lords reform was not ‘a two-dimensional contest between the Lords and the Commons’. Rather, the two Houses should be viewed as partners in a contest ‘between Parliament and the Executive’. Therefore the two Houses needed to develop stronger links with each other.³⁴ Robert Marshall-Andrews argued the case for unicameralism.³⁵

There was no agreement on the size and composition of the second Chamber. Sir George Young considered that ‘the current position of a wholly appointed Chamber is unsatisfactory’, and believed that ‘the new House should be one third non-political and appointed, and two thirds political and elected’. He wanted ‘the two thirds who are politicians to be directly elected by open rather than closed lists’.³⁶ John Maples argued that ‘The second Chamber must be either elected or nominated’.³⁷ His preference was for members of the second Chamber to be nominated by the Prime Minister.³⁸ Sir Patrick Cormack also called for a wholly nominated second Chamber.³⁹ However, speaking between Mr Maples and Sir Patrick, James Plaskitt argued that ‘Democracy must be the default position’.⁴⁰

Andrew Tyrie argued that the crucial issue was the composition of the second Chamber, and that ‘only a House that has the legitimacy of the ballot box behind it can hope to play a meaningful role in this country’.⁴¹

Tony Worthington raised some concerns about the extension of patronage to which the White Paper could give rise.⁴² He expressed concern about the number of political appointments that would be decided by the Prime Minister and leaders of the opposition parties.⁴³

Mark Fisher thought that ‘the House of Lords should be far smaller’. He called for it ‘to contain no more than 300 people’.⁴⁴ In terms of the roles and powers of the second Chamber, Mark Fisher considered that the second Chamber should be ‘a House of scrutiny’. He believed that if legislation was not introduced in the second Chamber and Ministers did not come from the second Chamber ‘it would truly become a Chamber of parliamentary scrutiny’.⁴⁵

³⁴ *Ibid*, c728

³⁵ *Ibid*, c741

³⁶ *Ibid*, cc728-729

³⁷ *Ibid*, c733

³⁸ *Ibid*, c736

³⁹ *Ibid*, c739

⁴⁰ *Ibid*, c737

⁴¹ *Ibid*, c752

⁴² *Ibid*, c762

⁴³ *Ibid*, cc762-763

⁴⁴ *Ibid*, c732

⁴⁵ *Ibid*, c731

1. Summing up

During the course of the debate some members tried to summarise the arguments that had already taken place. Chris Bryant offered a summary of the centre of gravity that had been arrived at during the debate. He concluded that there should be a second Chamber, that it should be small, that it should ‘have no more than secondary revising powers’, and that it should be largely elected, ‘which means more than 50 per cent’.⁴⁶

Stephen Twigg, summing up the debate for the Government, said:

Certain basic principles have been accepted by all speakers in the debate—or certainly by most. They are that there should be two Chambers; that we should remove the hereditary element; that we should assert the pre-eminence of the House of Commons; that we should have a second Chamber that reflects the balance of public opinion between the parties; and that there should not be a fundamental change in the powers of the two Chambers.⁴⁷

He favoured an appointed element as it brought expertise to a second Chamber; ensured the pre-eminence of the House of Commons; and it would play a part in ensuring representativeness. He also raised the question of the length of an elected Member’s term, noting the conflicting desires for independence and accountability. He argued against the 15-year terms proposed by the Royal Commission and for ‘shorter terms for Members with the right to stand for re-election’.⁴⁸

He confirmed that it was the Government’s view that political parties should control the appointment of party-political appointments to the second Chamber.⁴⁹

B. Opposition Party Responses to the White Paper

1. Conservative

In February 2002, the Conservative Party published its response to the White Paper. It argued that:

Reform of the House of Lords should not be looked at alone but within a mechanism to consider the relative powers and relationship between both Houses and between the legislative and the executive.⁵⁰

⁴⁶ *Ibid*, c 772-773

⁴⁷ *Ibid*, c777

⁴⁸ *Ibid*, c778

⁴⁹ HC Deb 10 January 2002 c778

⁵⁰ Conservative Party, *Delivering a Stronger Parliament: Reforming the Lords*, pi

The Conservative Party did not want any reform to weaken the primacy of the House of Commons, rather it sought to strengthen Parliament as a whole:

We have no proposals to weaken the primacy of the Commons, and wish to strengthen Parliament against the executive.

Four central objectives of our change are to reform and strengthen both Houses: to tilt the balance against an overmighty executive in modern Britain; reduce overall numbers of politicians; end abuse of patronage; and reinforce the authority of the Upper House in carrying out its functions.⁵¹

It called on the government to ‘abandon the White Paper plans and establish a Joint Committee of both Houses to review further change, including the question of composition, and then bring forward proposals for reform’. It argued that the Joint Committee was ‘necessary to ensure that major constitutional change to a House of Parliament is born out of political consensus and is looked at in the round, ie to give consideration to the relationship of the executive and legislative chambers, and the role and functions of the second chamber’.⁵²

The removal of most hereditary peers provided the context for other work which the Conservative Party wanted the Joint Committee to undertake:

We believe that the removal of the hereditary peers has shifted the boundaries between the Houses. The Joint Committee should therefore, in our view, also consider the entrenchment of the Parliament Act; uphold and strengthen the role of the Lords with regard to Secondary Legislation; and review the Salisbury Doctrine. It will need to consider both the representation of Law Lords and Bishops in a smaller House.

...

We shall ask the Joint Committee to consider our proposals for a smaller House or Senate based on a membership of 300 predominately elected members, by direct election on a largely county-wide constituency basis who would serve for a single term of up to 15 years. This is in stark contrast to Labour's predominately politically appointed, and therefore malleable House.

The independent cross bench senators should serve three terms and be appointed by a Statutory Appointments Commission.⁵³

However, it called for the role of the House of Lords to be decided first:

⁵¹ *Ibid*, pi

⁵² *Ibid*, pi

⁵³ *Ibid*, pp i-ii

Our firm belief is that the Joint Committee must consider the roles, functions and powers an effective Upper House needs to complement the Commons before deciding composition. We reached the conclusions on composition that we have because we wish to maximise the degree of respect and consent that the Commons and the country at large give to an Upper House that used all the powers of the present House and developed new roles in a bicameral system.⁵⁴

The Conservative Party said that it would present the following proposals for the Joint Committee:

- i. The Senate should have 300 members called Senators.
- ii. The peerage would be divorced from membership of the House.
- iii. All existing peers would retain their titles while we affirm our intention to create peerages in the future as an honour only, with no right to sit in Parliament.
- iv. All political members should be directly elected in largely county-based, three member constituencies. There should be an end to the abuse of patronage of the Blair years.
- v. One Senator would be elected in each constituency on GE day – or Euro-election day - by first past-the-post.
- vi. In no circumstances would our Party tolerate “closed lists” for Westminster – Senators who died or retired would be replaced by by-elections.
- vii. Terms would be of three Parliaments (a maximum of 15 years), with no reelection and no right to proceed immediately to the Commons – so as to ensure independence for elected peers from party pressure and threats of “deselection”.
- viii. 240 Senators would be elected first-past-the-post in 80 largely county-based constituencies.
- ix. 60 other independent Senators would be appointed for three-Parliament terms by a Statutory Appointments Commission, responsible to Parliament.
- x. A number of Bishops of the Established Church should remain; the Appointments Commission should consider representation of other sects or faiths.
- xi. There would be transitional arrangements, phased in over three elections during which members of the present House would continue to sit.
- xii. Law Lords, including retired Law Lords over 75, should stay unless/until there is a decision to set up a separate Supreme Court.
- xiii. The Senate should be able to summon Ministers, including those in the Commons, to appear before it, eg in Select Committees whose powers would be enhanced.⁵⁵

⁵⁴ *Ibid*, p4, para 3.5

⁵⁵ *Ibid*, p5, para 5.1

2. Liberal Democrats

On 22 January 2002, the Liberal Democrats published their response to the Government's White Paper on House of Lords reform. Their own summary of their proposals is reproduced in the box below.

Liberal Democrat House of Lords proposals in brief:

- Maximum of 300 members
- Minimum of 80% of members elected
- Elections by proportional representation so that no party has a majority
- Voting system to give maximum power to voters and minimum to parties (Single Transferable Vote system recommended)
- Members elected for a 12 year term, staggered so that a third are elected every four years
- No member allowed to restand at end of their term, to encourage independence from parties
- Any non-elected members of the upper chamber to be appointed independently of political parties
- Enhanced powers for the second chamber, including greater opportunities for pre-legislative scrutiny⁵⁶

IV *The Second Chamber: Continuing the Reform* – Public Administration Select Committee

In December 2001, the Public Administration Select Committee (PASC) announced an inquiry into the November 2001 White Paper. The PASC published its report in February 2002. The PASC found:

Our inquiry has persuaded us that there is much greater agreement on the fundamentals than the Prime Minister or the Lord Chancellor allow. The role, powers and functions of the second chamber are not in dispute. It is only on the details of composition that real disagreement remains. However even on this there is evidence of shared views.⁵⁷

It subsequently highlighted the issues on which there was general agreement as:

- There should be no major change in the powers of either House.

⁵⁶ See: <http://www.libdems.org.uk/module/printnews.cfm/article.2400>

⁵⁷ Public Administration Select Committee, *The Second Chamber: Continuing the Reform*, 14 February 2002, HC 494-I 2001-02, para 38

- There should be a larger proportion of elected members in the second chamber than that proposed by the Government.
- The second chamber should be substantially smaller than the current House of Lords.
- Approximately 20 per cent of the members of the second chamber should be independent of any party.
- The members of the second chamber should serve for longer terms than members of the House of Commons.⁵⁸

Against the backdrop of the White Paper, it then made its own proposals for House of Lords reform. It agreed that there was no need for major changes to the role or functions of the second chamber.⁵⁹ But it did make recommendations on the principles of composition and on the processes of electing and appointing members to the second chamber. It made the following recommendation on the composition of the reformed House:

To fulfil the condition that the second chamber should be predominantly elected, we therefore recommend that 60 per cent of its members should come by election. Of the remainder, half (20 per cent of the total) should be nominated by the political parties; and half (20 per cent of the total) should be independent, non-aligned members; both categories should be appointed by the Appointments Commission. We further recommend that a draft Bill should contain options for the precise proportion of elected and appointed members.⁶⁰

The PASC considered the divergent views of the Royal Commission and the Government's White Paper on the length of electoral terms and appointments. It noted that the Royal Commission recommended 15-year terms, with no right of re-election, to encourage independence, while the White Paper suggested that 5- or 10-year terms, with no bar on re-election, would give greater accountability and flexibility. It concluded:

We recommend that elected second chamber members should serve a single term extending to two Parliaments. No member of the second chamber should be permitted to stand for election to the Commons for ten years after leaving the second chamber. These restrictions would apply from the next general election. Political parties should not be allowed to nominate for appointment anyone who has served as an elected member of the second chamber.⁶¹

It also sought to achieve similar lengths of service for appointed members, and recommended that:

⁵⁸ *Ibid*, para 49

⁵⁹ *Ibid*, para 70

⁶⁰ *Ibid*, para 96

⁶¹ *Ibid*, para 126

If elected members are allowed a single two-Parliament term, then we believe a limit of ten years should apply to appointed members; with no possibility of gaining a second term by switching categories.⁶²

The PASC called for a much smaller second chamber than either the Royal Commission or the White Paper: it recommended a cap of 350 on membership.⁶³ It also called for better resources for members of the second chamber,⁶⁴ and recommended that the Senior Salaries Review Body should review the question of how members were paid when the chamber had been operating for a number of years.⁶⁵

The PASC set out a timetable for implementing its ideas, beginning with the appointment of a Joint Committee to examine a draft Bill, followed by the departure first of the remaining hereditary peers and then all life peers, culminating in a chamber of 210 elected and 140 appointed members.⁶⁶

The Government provided an interim response which the PASC published on 30 April. The Government welcomed the Committee's assessment of the purpose, role, functions and powers of the House of Lords. The Government noted that there was 'a considerable difference between the composition recommended by the Government to give effect to these principles and that recommended by the Committee'. Because of the consultation, on the White Paper, the Government was not in a position to give a full response to the Committee.⁶⁷ Neither was the Government in a position to respond to the PASC's recommendation that the size of the second chamber should be capped at 350. The Government did not comment on the Committee's recommendation on term length.

V Joint Committee on House of Lords Reform

A. Terms of reference and First Report

On 13 May 2002, Robin Cook announced that the Government had decided that '... it would be right to invite the two Houses to establish a Joint Committee, in the hope that we can forge the broadest possible parliamentary consensus on the way forward [on House of Lords reform]'. The appointment of a joint committee had first been signalled in the Labour Party's 1997 manifesto (see Section II) but not previously implemented. According to various press reports, the announcement in 2002 came after a Cabinet debate about how many peers should be elected. For example:

⁶² *Ibid*, para 136

⁶³ *Ibid*, para 168

⁶⁴ *Ibid*, para 174

⁶⁵ *Ibid*, para 177

⁶⁶ *Ibid*, paras 185-200, and Annex B

⁶⁷ Public Administration Select Committee, *The Second Chamber: Continuing the Reform: The Government Response to the Committee's Fifth Report*, 30 April 2002, HC 794 2001-02, paras 5-6

The government tore up five years of work on reforming the House of Lords yesterday after a cabinet feud over how many peers should be elected.

Ministers will now step back and appoint a joint committee of MPs and peers to come up with options for change. These will be put to a free vote in both the Commons and Lords.

The decision to abandon the results of a long-running Royal Commission and a subsequent white paper setting out plans for the Lords is a boost for the campaign for more elected peers.

It is also a rebuff for Lord Irvine, the lord chancellor, who was behind the white paper and argued strongly against the Lords being under the sway of peers chosen by popular vote. Along with John Prescott, the deputy prime minister, he believed that too large a proportion of elected peers would undermine the House of Commons.

Robin Cook, leader of the Commons and a supporter of elected peers, called for the joint committee to produce a speedy conclusion. "We must not allow a repeat of past history in which reform has been delayed because those who wanted it could not agree and therefore left the field to those who opposed it," he said.⁶⁸

In his statement, Robin Cook noted the support of the two main opposition parties for a Joint Committee. He then outlined what the Government hoped the Joint Committee would achieve in two separate phases of work:

Reform of the second Chamber has implications for the future of Parliament as a whole, and in particular for the relations between the two Chambers. It is right that Parliament itself should record its views on the composition of the second Chamber. For this we believe that a Joint Committee alone is insufficient. We therefore intend to ask the Joint Committee, as the first phase of its work, to report on options for the composition and powers of the House of Lords once reform has been completed. This will define options for composition, to include a fully nominated or a fully elected House, and intermediate options. Both Houses will then be asked to record their views on these options in free votes.

In the second phase of its work, on which the Committee will report, it will define in greater detail the proposed composition, role and powers of the reformed second Chamber, taking account of the opinions expressed by the two Houses. It should also recommend the transitional strategy for transforming the existing House of Lords into its fully reformed state, which will be particularly important if the recommendation were for a significantly smaller House. The Government's intention would then be to introduce legislation in the light of the report of the Joint Committee and the opinions of both Houses expressed in those free votes.

⁶⁸ "Cabinet strife behind U-turn on Lords reform", *Financial Times*, 14 May 2002, p1

As both the royal commission, chaired by the noble Lord Wakeham, and the Government's White Paper made clear, any proposals on the powers and composition of the House of Lords must flow from a clear understanding of its role and functions.⁶⁹

Writing in the *House Magazine* shortly after the announcement of the establishment of a Joint Committee, Lord Irvine of Lairg, then the Lord Chancellor, stressed that the Joint Committee would help to ‘... forge the broadest possible parliamentary consensus on the way forward’:

Reform of the House of Lords has always been an important part of the government's constitutional reform programme. We made a significant start with the removal of most of the hereditary peers in 1999 and the final discrediting of the doctrine that inheritance was a legitimate means of access to Parliament. We remain committed to further reform, to the removal of the remaining hereditary peers and to the creation of an effective second chamber, representative of the Britain of today, able to play its proper part in the crucial parliamentary functions of scrutinising legislation and holding the Executive to account.

The government published its proposals in November 2001. As I freely acknowledged in the House of Lords on May 13 these did not – as it turned out – command a consensus. We listened carefully to the wide range of views expressed in debates in both Houses last January, and to the responses to the white paper from members of the public and interested organisations, including the House of Commons Public Administration Select Committee.

Because there still seemed to be no agreed consensus on the way forward, we have decided that, on this vital constitutional issue – which concerns not only the composition of the House of Lords but also the role of Parliament as a whole and the relations between the two Houses – it would be right to invite the two Houses to establish a Joint Committee, in the hope that we can forge the broadest possible parliamentary consensus on the way forward.⁷⁰

The Joint Committee on House of Lords Reform was appointed in July 2002 and reappointed with the same membership and terms of reference at the start of the new session in November 2002. Its terms of reference are given in the box below, and its membership is detailed in Appendix 2.

⁶⁹ HC Deb 13 May 2002 cc516-517

⁷⁰ “Sustaining momentum”, *The House Magazine*, 3 June 2002, p19

Principal Terms of Reference of the Joint Committee on House of Lords Reform

(1) to consider issues relating to House of Lords reform, including the composition and powers of the Second Chamber and its role and authority within the context of Parliament as a whole, having regard in particular to the impact which any proposed changes would have on the existing pre-eminence of the House of Commons, such consideration to include the implications of a House composed of more than one "category" of member and the experience and expertise which the House of Lords in its present form brings to its function as the revising Chamber; and

(2) having regard to paragraph (1) above, to report on options for the composition and powers of the House of Lords and to define and present to both Houses options for composition, including a fully nominated and fully elected House, and intermediate options; and to consider and report on—

(a) any changes to the relationship between the two Houses which may be necessary to ensure the proper functioning of Parliament as a whole in the context of a reformed Second Chamber, and in particular, any new procedures for resolving conflict between the two Houses; and

(b) the most appropriate and effective legal and constitutional means to give effect to any new Parliamentary settlement;

and in all the foregoing considerations, to have regard to—

(i) the Report of the Royal Commission on House of Lords Reform (Cm 4534);

(ii) the White Paper *The House of Lords—Completing the Reform* (Cm 5291), and the responses received thereto;

(iii) debates and votes in both Houses of Parliament on House of Lords reform; and

(iv) the House of Commons Public Administration Select Committee report *The Second Chamber: Continuing the Reform*, including its consultation of the House of Commons, and any other relevant select committee reports.

The Committee has made two reports. In its first,⁷¹ it outlined the roles, conventions, functions and powers of the current House of Lords and drew the following conclusion:

Subject to satisfactory assurances that carry-over arrangements could not be used to erode the powers of the House of Lords, we do not consider at this stage that the provisions of the Parliament Acts need to be altered. Together with our

⁷¹ Joint Committee on House of Lords Reform, *House of Lords Reform: First Report*, 11 December 2002, HL 17 and HC 171 2002-03

conclusions about maintaining the existing conventions, we therefore recommend (subject to what we say about secondary legislation in paragraph 23 above) that no new or additional powers are given to the House of Lords at this stage.⁷²

It then addressed the question of what sort of membership a reformed House should have. It identified ‘five qualities desirable in the makeup of a reformed House, namely (not in any order of importance):

- legitimacy
- representativeness
- no domination by any one party
- independence
- expertise’.⁷³

In examining the composition of the House of Lords, the Joint Committee considered:

- the number of members – it recommended about six hundred;
- tenure – it recommended twelve years;
- appointment and election – it recommended a number of options to be voted on in both Houses (see below) and it recommended that the Appointments Commission be established on a statutory footing;
- methods of election; and
- transitional arrangements – it was ‘not attracted by the idea of compulsory retirement for existing life peers’.⁷⁴

The Joint Committee deferred consideration of law lords and bishops, the name of the reformed House and its link with the peerage. However, it noted the low costs of the House of Lords at present and that a different membership would expect greater support. It recommended that ‘some detailed work should be done on costing options’.⁷⁵

The Joint Committee identified seven options for the composition of a reformed House, from fully elected to fully nominated. It marshalled them ‘so that the two complete models – appointed and elected – are first considered and then decreasing proportions of each in turn until the exact balance is reached in Option 7’. The options were:

1. Fully appointed

⁷² *Ibid*, para 29

⁷³ *Ibid*, para 30

⁷⁴ *Ibid*, paras 44-55

⁷⁵ *Ibid*, paras 56-60

2. Fully elected
3. 80 per cent appointed/20 per cent elected
4. 80 per cent elected/20 per cent appointed
5. 60 per cent appointed/40 per cent elected
6. 60 per cent elected/40 per cent appointed
7. 50 per cent appointed/50 per cent elected

The Joint Committee recommended that before each House voted on the options, a ‘take-note’ debate should be held.⁷⁶

Finally the Joint Committee considered how both Houses should decide among the options. It reported that it had ‘considered various possible methods of approaching the voting, including the possibility of a ballot’. It concluded that:

... the best way of getting an accurate measure of views in both Houses would be to have a series of motions put on the different options one after the other, notwithstanding the normal practice of the Houses in dealing with substantially similar questions and questions disagreed to.

This followed the precedent used in deciding between three motions on Hunting with Dogs.⁷⁷

B. Debates on the Joint Committee’s First Report

The ‘take note’ debates were held on 21 January 2003 in the House of Commons, and on 21 and 22 January 2003 in the House of Lords.⁷⁸

1. House of Commons

In the House of Commons, the debate was opened by Dr Jack Cunningham who chaired the Joint Committee.

On behalf of the Government, Robin Cook highlighted ‘the broad agreement that exists on many aspects of reform of the second chamber’:

...First, there is broad agreement on the role of the second Chamber: it should be charged with revision of legislation, independent scrutiny of Executive decisions and deliberation of public policy.

⁷⁶ *Ibid*, para 76

⁷⁷ *Ibid*, para 77. Hunting with Dogs – Votes and Proceedings of the House of Commons, 18 March 2002, p670; House of Lords Official Report, 19 March 2002, cc1239-40

⁷⁸ Joint Committee on House of Lords Reform, *House of Lords Reform: Second Report*, 9 May 2003, HL 97 and HC 668 2002-03, p6, footnote 3

Secondly, there is broad agreement on the relative status of the two Chambers. It has been a feature of all reports on Lords reform that the House of Commons should remain pre-eminent. (...)

The Joint Committee helpfully sets out the conventions that buttress the relative status of the two Houses. Those provide the House of Lords with the right to question and to delay legislation but not to veto it, nor to challenge any part of the mandate in the manifesto on which a Government are elected. I am glad that the Joint Committee will return to the question of how those conventions can be entrenched in any future constitutional settlement.

The last area of agreement is comparatively recent, but I understand that it is now a common agreement between the two Front Benches: both sides of the Chamber now agree that the hereditary principle has no place in a modern Parliament. Whatever principle of composition may be adopted, few people now argue that it should be based on the privilege of birth.⁷⁹

He also told the House that:

The Government fully accept the principle set out by the Joint Committee and repeated by its Chairman this afternoon that no one party should dominate the second Chamber.⁸⁰

He commented on some of the ‘controversial’ issues against the backdrop of the five qualities that the Joint Committee considered desirable in the make up of a second chamber. He argued that:

It is possible to keep a democratic second Chamber subordinate by law and convention; I do not believe that it is sustainable to keep a second Chamber subordinate by denying it legitimacy. That not only weakens the second Chamber, but undermines Parliament.⁸¹

However,

... It would be a mistake if we were to close entirely the door to the second Chamber to people who have acquired a lifetime of expertise but are not attracted to submitting themselves to the roughhouse of the electoral hustings.⁸²

Later, on his own behalf, Robin Cook identified some reservations. First, he believed that the second Chamber should contain fewer than the 600 members proposed by the Joint Committee, noting that ‘there are only five second chambers in the world with a

⁷⁹ HC Deb 21 January 2003 cc200-201

⁸⁰ *Ibid*, c201

⁸¹ *Ibid*, c205

⁸² *Ibid*.

membership of more than 200'. Secondly, he considered a period of membership of 12 years to be 'on the generous side'.⁸³

Towards the end of the debate, Eric Forth suggested that despite 'strong, fixed views, Members on all sides of the House

... want something to happen and, to that end, are prepared to support something other than their preferred option. I expect that that will be reflected in the voting that will take place in about two weeks.⁸⁴ (cc265-266)

He went on to highlight a number of divergent views, on which agreement could be reached:

For example, most people who expressed a view about the size of the upper House—this may not please the Chairman of the Joint Committee and his colleagues—were not happy with the idea of 600 Members. We have had bids ranging from as few as 100 to 300, which is our policy. Although there was not very much support for the Joint Committee's position, Members expressed helpful and positive views, and I am sure that we shall find a fair amount of agreement on the issue.

Similarly, in the argument about length of term for Members of a revised upper House, although not everybody was happy with a period of 15 or 12 years, the Leader of the House suggested that he would be prepared to contemplate a term equivalent to two terms in this House, which could be interpreted as eight or 10 years. Again, many Members would coalesce around using a figure of that magnitude to differentiate the term of office of Members of an elected upper House from that of Members of this House.

I also detect movement on the argument about a hybrid Chamber. Although some months ago most hon. Members would have preferred either a wholly appointed or an elected House—that was certainly my position—there is now a lot of agreement about hybridity and perhaps a more relaxed attitude to it, whether the proportions are 80:20, 20:80, 60:40 or whatever.⁸⁵

But he also pointed out that some issues, on which he considered agreement would be more difficult to reach. In particular he called for more consideration of the need to strengthen Parliament against the Executive.⁸⁶ He also questioned the Government's role in a reformed second chamber:

⁸³ *Ibid*, c206

⁸⁴ *Ibid*, cc265-266

⁸⁵ *Ibid*, cc266-267

⁸⁶ *Ibid*, c268

Will there be Ministers in a reformed upper House? The answer is crucial, not only to the constitutional dispensation, the relationship between the Houses and the Government of the day, but to whether we could have directly elected but relatively independent Members in an upper House. Without Ministers, that could happen because there would be no promotion ladder, arm-twisting or Whips, whose position would be rendered meaningless. I should like to add that issue to the list that the Joint Committee will consider. I hope that it will examine it seriously.⁸⁷

2. House of Lords

In the House of Lords, Lord Howe of Aberavon, a member of the Joint Committee opened the two-day debate. He suggested that the central question was:

... whether any Members should be elected, and, if so, how many. So far as another place is concerned, there has never—in our day at least—been any doubt about the importance of it being an entirely elected chamber. It is the function of that House, which expresses the will of the people, to choose the Government and to empower that government to deliver their programme. But the role of this House, the second Chamber, is—and we must never forget this—to respect the right of the Commons to decide and to recognise the strong advisory nature of our role to require another place to think again about matters, but in the last resort the power to decide issues rests with another place.⁸⁸

He went on to caution that an elected element in the second Chamber could lead to increased partisanship:

How far can we be sure that it would make sense for the most fundamental change proposed for this Chamber—the introduction of elected Members—to be the one most likely to pave the way to the kind of partisanship that makes today's House of Commons a key instrument of dominance by the executive? I apologise if that seems, in any way, to overstate the importance of the issues that confront us. I believe that it does not.⁸⁹

3. Votes on the Joint Committee's proposals

Before the White Paper was published in 2001, there had been press reports of 'Cabinet splits' over the proportion of the elected element in the reformed House of Lords and the powers of the proposed appointments commission. For example:

Robin Cook, the Leader of the Commons, is said to be leading a rearguard action to strengthen the [Appointments] commission's powers ahead of the White Paper's publication. Last night a senior Whitehall figure said; "There are moves

⁸⁷ *Ibid*, c269

⁸⁸ HL Deb 21 January 2003 c577

⁸⁹ *Ibid*, cc580-581

taking place on this as we speak but it may well be too late. Derry (Irvine) has taken the one good thing in Wakeham and crushed it.”

Even before the latest watering down of the Wakeham proposals Cabinet ministers had warned Tony Blair that he was facing a tough battle to get legislation for the next stage of Lords reform through Parliament. More than 130 backbench MPs have signed a Commons motion demanding that a reformed Upper House should be entirely, or substantially elected.⁹⁰

Similar tensions resurfaced ahead of the vote on the Joint Committee’s options for the composition of the House of Lords. At Prime Minister’s Questions on 29 January 2003, Tony Blair told MPs that:

... everyone agrees that the status quo should not remain. Everyone agrees that the remaining hereditary peers should go and, what is more, that the prime ministerial patronage should also go. However, the issue then is whether we want an elected—[Interruption.] I am asked for my views; I am giving them. Do we want an elected House, or do we want an appointed House? I personally think that a hybrid between the two is wrong and will not work.

I also think that the key question on election is whether we want a revising Chamber or a rival Chamber. My view is that we want a revising Chamber, and I also believe that we should never allow the argument to gain sway that, somehow, the House of Commons is not a democratically elected body. I believe that it is democratic. [Hon. Members: "A free vote?"] It is a free vote; people can vote in whatever way they want, but I think that all Members, before they vote, should recognise that we are trying to reach a constitutional settlement—not for one Parliament, but for the long term. In my view, we should be cognisant not just of our views as Members of Parliament, but of the need to make sure that we do not have gridlock and that our constitution works effectively.⁹¹

The following day during Business Questions, Robin Cook commented on House of Lords reform:

... my understanding is that the Prime Minister will not be able to join us on Tuesday. That is no doubt a matter of great disappointment to the Opposition as it is to me, but as the Prime Minister said yesterday, it is a free vote. As he correctly identified yesterday, there are a range of views on the matter. The right hon. Gentleman is correct: my own view is that what went wrong with the last White Paper was that the figure of 20 per cent. elected did not command public confidence, nor, as far as I could see, would it have commanded a majority in the House of Commons.

⁹⁰ “Cabinet split over Blair’s ‘cronies’”, *The Times*, 31 October 2001

⁹¹ HC Deb 29 January 2003 cc877-878

It is my personal and very humble opinion that by removing the 20 per cent. elected element and substituting zero, we will not restore the public confidence that was missing the first time round. I fully agree with the Prime Minister that we do not want a second Chamber that is a rival to this place. We want a second Chamber that is a partner to this place in restoring respect for Parliament and making sure that we command the nation's attention when we speak. To have a partner who can assist us in the task of restoring the standing of Parliament, we need a second Chamber that is legitimate, and as our manifesto correctly identified, to be legitimate in the modern era, it needs to be democratic. To be democratic, some, at least, of its Members need to be elected.⁹²

Both Houses voted on the seven options, on 4 February 2003. In the House of Commons, the Speaker accepted an amendment to Option 1 which allowed Members to vote to abolish the House of Lords. The amendment, moved by George Howarth, was that the House:

... declines to approve Option 1 as it does not accord with the principle of a unicameral Parliament⁹³

No debate was held in the House of Lords, whilst in the House of Commons a debate preceded the votes. The House of Lords divided on all seven options, whilst in the House of Commons, three options were negatived without a division, but in addition the House of Commons voted on George Howarth's amendment. The results of the votes in both Houses are set out in the table below.⁹⁴

	House of Commons		House of Lords	
	Ayes	Noes	Contents	Not Contents
Amendment	172	390		
Option 1	245	323	335	110
Option 2	272	289	106	329
Option 3			39	375
Option 4	281	284	93	338
Option 5			60	358
Option 6	253	316	91	317
Option 7			84	322

Thus none of the options was agreed to in the Commons and the Lords rejected all the options, except for a fully-appointed second chamber.

⁹² HC Deb 30 January 2003 c1013

⁹³ HC Deb 4 February 2003 c168

⁹⁴ Joint Committee on House of Lords Reform, *House of Lords Reform: Second Report*, 9 May 2003, HL 97 and HC 668 2002-03, 7

In an article in *Political Quarterly*, McLean, Spirling and Russell noted that ‘By defeating eight resolutions to amend the status quo, the Commons was left with the status quo – but the status quo is barely distinguishable from one of the eight defeated outcomes [Option 1], and one of the more decisively defeated options at that’.⁹⁵

They also reported that the Joint Committee had ‘discussed, but rejected, what has become known as a ‘preferendum’ – that is, an alternative vote procedure with each member ranking the options on a single ballot paper. They argued that this voting system ‘would have ensured that one option would be seen to ‘win’ by getting over 50 per cent of the vote against its last remaining rival’.⁹⁶

C. The Joint Committee’s Second Report

The Joint Committee reviewed its position and the position of House of Lords reform following these votes. In May 2003, it published a second report. It argued that the Joint Committee had a continuing role to play:

We consider that, if it is the wish of the Houses, it would be possible for the Committee to contribute to the progress of the reform process by investigating and reporting on certain specific issues, which will have to be resolved as part of an overall reform. This should facilitate future decisions on these matters and it would be possible, if thought desirable, to bring into effect some specific changes on the road to overall reform. Our conclusion that further progress can be made is based on the much wider acceptance than at any previous time, of the roles, functions and powers that a reformed House should have and of the kind of qualities desirable in it. The debates in both Houses on our First Report have reinforced our view on this matter.⁹⁷

It reiterated a number of points it made about the roles, conventions, functions and powers of the House of Lords.

It then addressed the way forward. It noted the ‘broad opinion’ that a House of Lords of 600 would be too big, and would therefore enter the second phase of its deliberations ‘with an awareness that a reduction in size (from 600 as the eventual number) is widely considered desirable’.⁹⁸ It also noted the suggestion, in the debates, that its proposed 12-year terms ‘might be too long’, and said it would return to tenure in its further deliberations.⁹⁹

⁹⁵ I McLean, A Spirling and M Russell, ‘None of the Above: The UK House of Commons Votes on Reforming the House of Lords, February 2003’, *The Political Quarterly*, Vol 74, No 3, July-September 2003, p300

⁹⁶ *Ibid.*

⁹⁷ Joint Committee on House of Lords Reform, *House of Lords Reform: Second Report*, 9 May 2003, HL 97 and HC 668 2002-03, para 14

⁹⁸ *Ibid.*, para 27

⁹⁹ *Ibid.*, para 28

The Joint Committee reported that there was “less criticism of our stance on the important matter of the Appointments Commission”,¹⁰⁰ which it had recommended should be established on a statutory basis, with the power to scrutinise all nominations – although the Prime Minister would ‘have the right to have nominations confirmed’.¹⁰¹ Despite concern about patronage, there was no serious challenge in the debates to the Joint Committee’s desire for both political nominations and ‘delivering an open and fair system of appointment’.¹⁰² However, it was concerned that no recent non-political appointments had been made:

Two years have passed since the appointment of the last group of new life peers. There is, therefore, a growing need to top up the stock of expertise and of younger members. In order to handle this problem, consideration should, therefore, be given to the appointment of a new and manifestly independent Appointments Commission, and endorsed - as an interim alternative to primary legislation - by an Order in Council, approved by both Houses.¹⁰³

It restated the need to examine the position of the bishops, and it reiterated its call for proper costing of the options for reform. Finally, it identified ‘two remaining issues of particular importance which we now consider need to be tackled’: the position of the remaining 92 hereditary peers, and consideration of indirect election to the House of Lords.¹⁰⁴

1. The Government’s Response

In its response to the Joint Committee’s Second Report, the Government agreed with the Committee that ‘there is no consensus about introducing any elected element in the House of Lords’, and that maintaining the status quo was undesirable.¹⁰⁵

The Government’s response in July 2003, foreshadowed a consultation on proposals for a revised Appointments Commission which would ‘give the opportunity for looking at a number of other issues highlighted by the Joint Committee’, including the size of the second Chamber, ensuring its representativeness, and widening the basis for religious representation.¹⁰⁶ The Government concluded that:

¹⁰⁰ *Ibid*, para 29

¹⁰¹ Joint Committee on House of Lords Reform, *House of Lords Reform: First Report* 11 December 2002, HL 17 and HC 171 2002-03, para 52

¹⁰² Joint Committee on House of Lords Reform, *House of Lords Reform: Second Report* 9 May 2003, HL 97 and HC 668 2002-03, para 29

¹⁰³ *Ibid*, para 30

¹⁰⁴ *Ibid*, paras 31-35

¹⁰⁵ Joint Committee on House of Lords Reform, *House of Lords Reform: Government Reply to the Committee’s Second Report*, 17 July 2003 HL 155 and HC 1027 2002-03, paras 5-6

¹⁰⁶ *Ibid*, paras 11-12

The Government is grateful to the Joint Committee for the work that they have done, and their efforts to take forward the question of House of Lords reform. It agrees with the Joint Committee that its work, and that of the Royal Commission and the Government itself before it, have produced a considerable degree of consensus on the roles, functions and powers of the House of Lords. They have demonstrated, in contrast, that there is no consensus about the best composition for the second chamber. For the time being, the Government will concentrate on making the House of Lords work as effectively as possible in fulfilment of its important role.¹⁰⁷

The Constitution Unit of University College London interpreted that the Government's response as effectively closing the door to elections, at least for this parliament.¹⁰⁸

The Liberal Democrat members of the Joint Committee issued the following statement on the Government's response:

The Joint Committee on House of Lords Reform published its Second Report on 9 May. We, together with other members of the Committee, issued a statement at the same time stating our belief that the Committee could not continue to act in the absence of an indication of the Government's preferred route to achieve its manifesto commitment to a more representative and democratic House of Lords.

The Government has now published its reply to the Committee's Second Report. It contains no such indication. We regret the failure to acknowledge the substantial majority in the House of Commons against a fully appointed Second Chamber. We note that the Government have failed to recognise that 332 MPs, more than half the total number, voted for a substantial elected element in the new Second Chamber.

We cannot accept the removal of the remaining hereditary Peers on its own, but only as part of much wider measures of reform to create a democratic and accountable Second Chamber.

We therefore see no role which the Joint Committee can usefully play in achieving the reformed House of Lords which we seek. If, at its next meeting, the Committee does not decide to recommend to both Houses that it should be discharged from its functions we will have to consider whether we should play any further part in its proceedings".¹⁰⁹

¹⁰⁷ *Ibid*, para 14

¹⁰⁸ Constitution Unit, *Monitor*, Issue 24, September 2003, p2

¹⁰⁹ Liberal Democrats Press Release, *Lords Reform: Labour risks betrayal of manifesto commitment – Liberal Democrats*, 18 July 2003

2. The Joint Committee's Reaction to the Government's Response

On 28 October 2003, the Joint Committee met to consider the Government's reply to its Second Report, and a letter from Lord Falconer, the Secretary of State for Constitutional Affairs and Lord Chancellor, about the Committee's future.

Lord Falconer had written that:

The committee has done very significant work in identifying options for Lords Reform. The statement which I made on the 18 September 2003 about Lords Reform made it clear that we would continue to explore what further steps beyond those announced on that day should be taken. We also made clear that the Government had a role in making proposals.

We would very much value having the views and response of your committee upon any proposals we make for a way forward. We would also wish your committee to respond to those issues on which we sought views in the consultation paper published on the 18 September.

We would wish, therefore for your committee to stay in being. Whilst it is a matter for both Houses, the terms of reference we would envisage for your committee should be "To consider proposals made by the Government, including those in the consultation document of the 18 September and any other proposals the Committee deems appropriate for the reform of the House of Lords".¹¹⁰

In response, Jack Cunningham, the Chairman of the Joint Committee, wrote to Lord Falconer on behalf of the Committee. He reported that the Committee understood that it would cease to exist when the House was prorogued, and that its members did not think that 'it would be sensible to engage in further deliberation about the complex issues of reform of the House of Lords before then'. Nor was there time to examine and report on the consultation paper *Constitutional Reform – next steps for the House of Lords*.

He also noted that 'a majority of Members do agree that considerable work on the future of the House of Lords needs to be done and that a parliamentary input into that work is vital'. They considered that 'certain detailed aspects relating to terms and conditions of service' might be best undertaken by a Committee of the House of Lords. But the Committee also believed that a 'successor Joint Committee', possibly with fewer members, should be established in the next session of Parliament with the terms of reference that Lord Falconer had proposed. In the opinion of the Joint Committee, those terms of reference would

¹¹⁰ Letter from the Secretary of State for Constitutional Affairs and Lord Chancellor to the Chairman of the Joint Committee on House of Lords Reform, appended to Joint Committee on House of Lords Reform Press Notice No 8

... enable a successor Committee to examine the forthcoming bill, or respond to the consultation if that bill is not to be introduced until later. They would also enable the new Committee to examine other possible ways forward, thereby maintaining momentum towards further reform.¹¹¹

VI The Speakership of the House of Lords – recent developments

A. Machinery of Government changes – June 2003

During the Government reshuffle in June 2003, Lord Irvine of Lairg resigned as Lord Chancellor. The Number 10 press briefing on the afternoon of the reshuffle announced that:

Derry Irvine was retiring from government and he would be replaced by Charles Falconer in what will be a new department of Constitutional Affairs. Amongst other things that would incorporate the Scottish and Welsh offices. However in Cabinet and in Parliament Peter Hain would speak on Wales and Alastair Darling would speak on Scotland. The knock on effect of that was that Helen Liddell had also asked to leave government as well.

Asked if Lord Falconer would be known as Lord Chancellor the PMOS said that in the transition period between his taking office and the establishment of the new arrangements he would be known as Lord Chancellor. Once it was established he would be known as Secretary of State for Constitutional Affairs. Asked if the changes meant we would be without a Lord Chancellor for the first time in a thousand years the PMOS told journalists that after the transition that would be the case.

Questioned as to how long the transition would take the PMOS told journalists that we would go out for consultation on the Supreme Court and on the judicial appointments commission this summer. No one should underestimate the significance of the legal developments as well as the personnel developments. These were proposals which had been thought about for some time and did have significant legal backing. The PMOS told journalists that the Prime Minister had briefed both Rhodri Morgan in Wales and Jack McConnell in Scotland on the developments in Scotland and Wales.

Asked to spell out the significance of the changes to the legal system the PMOS told journalists that it would be a process of modernisation. What it meant was that we would establish a Supreme Court rather than have a committee of the House of Lords. Asked what the membership of that Supreme Court would look

¹¹¹ Letter from the Chairman of the Joint Committee on House of Lords Reform to the Secretary of State for Constitutional Affairs and Lord Chancellor, appended to Joint Committee on House of Lords Reform Press Notice No 8

like the PMOS said that it was a legitimate question but that was precisely the point of the consultation period.

Questioned as to who would be the Speaker of the House of Lords the PMOS said that in the transition period Lord Falconer would not fulfil either the judicial function of Lord Chancellor or the role of speaker. That would be a matter for consultation in the normal way.¹¹²

However, the following day, the late Lord Williams of Mostyn, then Leader of the House, began proceedings in the House of Lords by saying:

The Lord Privy Seal (Lord Williams of Mostyn): My Lords, we will all wish to welcome my noble and learned friend Lord Falconer of Thoroton as Lord Chancellor and Speaker of this House.

Noble Lords: Hear, hear!¹¹³

He also confirmed that he would make a statement on the Government's proposals concerning the speakership, which were announced in a press release on 12 June 2003,¹¹⁴ in due course. The press release announced the creation of the Department of Constitutional Affairs, and indicated that the Government would bring forward proposals for changes to the role of Lord Chancellor:

The creation of the Department for Constitutional Affairs builds on the major constitutional reforms carried through by Lord Irvine in his six years as Lord Chancellor. It is part of a substantial package of further reform measures including:

- Establishment of an independent Judicial Appointments Commission, on a statutory basis, to recommend candidates for appointment as judges. The Government will publish a consultation paper before the summer recess on the best way of establishing such a Commission.
- Creation of a new Supreme Court to replace the existing system of Law Lords operating as a committee of the House of Lords. The new Secretary of State will not be a member of the Supreme Court. The Government will publish a consultation paper on proposals for a Supreme Court before the summer recess.
- Reform of the Speakership of the House of Lords. The Leader of the House of Lords will consult with the other parties, and the House as a

¹¹² Number 10 Press Briefing, 5.45pm Thursday 12 June 2003, see:

<http://www.number-10.gov.uk/output/Page3895.asp>

¹¹³ HL Deb 13 June 2003 c473

¹¹⁴ 10 Downing Street press release, *Modernising Government – Lord Falconer appointed Lord Chancellor*, 12 June 2003: 18:00, see: <http://www.number-10.gov.uk/output/page3894.asp>

whole, on changes to Standing Orders enabling a new Speaker - who is not a Minister - to be in place after the recess, subject to the wishes of the House.¹¹⁵

B. Proposals for the Speakership

Lord Williams, made two statements on the Government's proposals to reform the Speakership of the House of Lords. In his first statement, he said that the Government was allowing the House the opportunity to choose its own presiding officer. He said:

If you wish, my Lords, you may choose your own presiding officer.

Why are the Government doing this? There are two reasons. First, we wish to reform the office of Lord Chancellor, and that necessarily involves reforming the Speakership of this House. But there is a better reason than that mere necessity. We believe that it is right that this House should choose its own presiding officer.¹¹⁶

He then promised a further statement, after listening to representations from members of the House of Lords, if there was any degree of consensus on the way forward.¹¹⁷

In response to Lord Williams' statement, Lord Strathclyde, shadow leader of the House, called for a discussion on the wider issues of reform of the Lord Chancellor's role. He said:

We, for our part, will co-operate with his micro-consultation on the Speakership only when we have seen the macro-picture and debated the full plans. I see no attraction in piecemeal and precipitate reform.¹¹⁸

He also pointed out that:

Other assemblies, including another place, are disciplined by their presiding officers. We are not—we are, uniquely, a self-regulating House. And in my view, we should remain a self-regulating House.¹¹⁹

Lord McNally, the Deputy Liberal Democrat Leader, welcomed the proposal to create a presiding officer in the House of Lords. He suggested that a small *ad hoc* select committee should be set up to take the matter forward. He also called for an early statement on the next stages of House of Lords reform.¹²⁰

¹¹⁵ *Ibid.*

¹¹⁶ HL Deb 16 June 2003 c350

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid*, c532

¹¹⁹ *Ibid*, c532

¹²⁰ *Ibid*, c534

Lord Richard, a former Labour Leader of the House, argued that ‘there is a case for considering what we want the Speaker to do before deciding on the kind of person and electoral system required’.¹²¹

C. A Select Committee on the Speakership of the House of Lords

Lord Williams made a further statement to the House on 25 June, in which he reported the conclusions of his informal consultations:

I suggested last week that the main question was, shall we take this opportunity to set up a mechanism to appoint our own Presiding Officer? There are many who think that we should. I do not pretend that there is consensus. Some see no case for change at all and some believe that the House benefits from having a member of the Government as its presiding officer.

Many of your Lordships advised me that the question of the appointment of our Presiding Officer cannot be separated from the question of powers and functions. I accept that. Some of your Lordships favour a Speakership with significant powers of order, but I have to say that they are in a minority. More favour either a Presiding Officer with no more powers and functions than the Lord Chancellor exercises at present, or a Presiding Officer who would take from me and my colleagues on the Government Front Bench our role as upholders of the conventions of the House set out in the Companion. Either way, there is strong support for continued self-regulation, and strong feelings against a Speakership in this House on House of Commons lines. So I believe that the process of consultation, which was very extensive and very helpful, has been useful.

It is not strictly relevant, but I ought to mention that several noble Lords on all sides of the House took the opportunity to give their view that in recent months self-regulation has slipped a bit in the direction of self-indulgence.

Of those who commented on the method of appointment of a Presiding Officer, most favour election. Some proposed safeguards, such as a minimum number of nominations from each group in the House. But there are other views, including the view that an elected Presiding Officer would inevitably be too powerful for self-regulation to survive.

In short, there is plainly not a level of consensus which would allow me to put proposals straight to the Procedure Committee. On the contrary, there is very strong support on all sides of the House for a Select Committee on the speakership, and that is what I now propose. I shall shortly table a Motion to set up a committee, with a remit as follows:

¹²¹ *Ibid*, c540

"To consider the future arrangements for the Speakership of the House in the light of the Government's announcement that it is intended to reform the office of Lord Chancellor".

That remit will allow the committee to consider not only the role of the Presiding Officer, and the method of appointment, but also the following issues which your Lordships have identified as important: the Presiding Officer's title, pay, term of office and accommodation—the latter was a topic of keen interest, particularly among those of your Lordships who assured me they had no interest in occupying the particular post; Deputy Speakers; the relationship with the Chairman of Committees, the Clerk of the Parliaments and the Clerks, and the House authorities generally and, of course, State Opening and other ceremonial functions.¹²²

Lord Williams' proposal for the creation of a select committee was welcomed by both the Conservative and Liberal Democrat front benches in the House of Lords. Lord Stratchclyde said that:

I also have no quarrel with the terms of reference suggested by the noble and learned Lord, if he will underline the point made in his Statement that the Select Committee must have regard to the whole range of changes proposed to the role of Lord Chancellor.¹²³

Lord Carrington expressed concern about the implications the House of Lords choosing its own 'presiding officer' would have on its representation in the Cabinet. Lord Williams reported that a number of peers had expressed a similar concern.¹²⁴

On 3 July 2003, the House of Lords agreed the following motion:

Moved, That it is expedient that a Select Committee of 11 Lords be appointed to consider the future arrangements for the Speakership of the House in the light of the Government's announcement that it is intended to reform the office of Lord Chancellor, and to make recommendations; and that the Committee shall report by the end of the Session.—(Lord Williams of Mostyn.)¹²⁵

And on 9 July 2003, the House agreed the membership of the select committee.¹²⁶ It subsequently took evidence on three occasions, from:

15 October 2003 Rt Hon Baroness Boothroyd; Rt Hon Lord Weatherill (former

¹²² HL Deb 25 June 2003 cc294-95

¹²³ *Ibid*, c295

¹²⁴ *Ibid*, c298

¹²⁵ HL Deb 3 July 2003 cc 983-84 and c1002

¹²⁶ HL Deb 9 July 2003 cc283-284. The members of committee are: L. Alexander of Weedon, L. Amptill, L. Carter, L. Desai, L. Freeman, B. Gould of Potternewton, L. Lloyd of Berwick (Chairman), L. Marsh, B. Miller of Chilthorne Domer, L. Tordoff, L. Trefgarne

- 20 October 2003 Speakers of the House of Commons)
 Rt Hon Lord Strathclyde (Conservative); Rt Hon Baroness
 Williams of Crosby (Liberal Democrat); Lord Craig of Radley
 (Cross Bencher)
- 3 November 2003 Lord Brabazon of Tara (Chairman of Committees)

The Select Committee has reported its findings to the House of Lords,¹²⁷ and is expected to publish its report by the end of November.

VII Proposals for a Supreme Court

In July 2003, the Department for Constitutional affairs published a consultation document on establishing a Supreme Court.¹²⁸

In discussing the relationship between the Supreme Court and the House of Lords the consultation paper reviewed the advantages and disadvantages of members of the Court being members of the second Chamber.¹²⁹ It concluded that:

On balance, the Government believes that it would be better to sever completely any connection between the Court and the House of Lords. It therefore proposes that members of the Court should lose the right to sit and vote in the House while they are members of the Court. Any one who is a member of the House before joining the Court will retain the peerage and title, and will be free to return to the House when he or she ceases to sit on the Court. This will give the House the continued benefit, which it very much values, of the experience of the retired Law Lords.¹³⁰

It also sought views on whether retired Supreme Court judges should sit in the House of Lords:

Should the link with the House of Lords and the Law Lords be kept by appointing retired members of the Supreme Court to the House?¹³¹

¹²⁷ House of Lords, *Minutes of Proceedings*, 19 November 2003

¹²⁸ *Constitutional reform: a Supreme Court for the United Kingdom*, Department for Constitutional Affairs, CP 11/03 July 2003. Standard Note SN/HA/2701, *Proposals for a Supreme Court for the United Kingdom*, provides some background to the present proposals, a brief summary of some of the main issues in the Consultation Paper, and information about Supreme Courts in some other jurisdictions. Standard Note SN/PC/2105, *Role of the Lord Chancellor*, provides details of the role of the Lord Chancellor.

¹²⁹ *Constitutional reform: a Supreme Court for the United Kingdom*, pp26-27, paras 34-35

¹³⁰ *Ibid*, p27, para 36

¹³¹ *Ibid*, p28

In September 2003, when the Department for Constitutional Affairs published its consultation on the ‘next steps for the House of Lords’, see below, it noted the ongoing consultation on the Supreme Court but suggested specific rules on the link between Law Lords and the second Chamber:

The Government is presently consulting on the question of whether former members of the new Supreme Court, and other holders of high judicial office, should have an expectation of membership of the House of Lords. It is now minded to propose that the following rules should apply to retired members of the Supreme Court and holders of high judicial office. This is that they will be entitled to a peerage, and therefore to membership of the House of Lords, on retirement from their office, rather than on appointment to it. Once they accept a peerage, they will no longer be able to sit judicially. Different, transitional arrangements, will be made for those who already hold peerages; they will cease to be members of the House while they are eligible to sit judicially, but will not lose their peerages.¹³²

VIII Next steps for the House of Lords

A. Proposals

On 18 September 2003, the Department for Constitutional Affairs published a consultation document entitled *Constitutional reform: Next steps for the House of Lords*. In a statement on the document to the House of Lords, Lord Falconer of Thoroton, the Secretary of State for Constitutional Affairs and Lord Chancellor, summarised the current position as one in which the House of Lords voted in favour of an appointed House, whilst in the House of Commons ‘there was no majority for any of the options’. He said that the Government agreed with the Joint Committee’s conclusion that ‘‘simply to maintain the status quo’ in respect of composition was undesirable’.¹³³

He continued that:

In these circumstances we intend to make progress where we can. So the Government are proposing further reforms to ensure that we have a stable and sustainable House of Lords. It was never our intention that the remaining hereditary Peers should remain Members of the House for ever. When this interim arrangement was reached, as well as the immediate benefit of the agreement, we accepted the argument that the presence of the remaining hereditary Peers would act as an incentive to further reform. That has not happened. There is clearly no consensus in Parliament on the way forward.

¹³² *Constitutional reform: next steps for the House of Lords*, Department for Constitutional Affairs, CP 14/03, p53, para 69

¹³³ HL Deb 18 September 2003 c1057

So the context for reform has clearly and significantly changed. The circumstances which gave rise to the original arrangement over the remaining hereditary Peers no longer apply. The solution which the remaining hereditary Peers were here to help is no longer available.¹³⁴

He then set out how the Government proposed to take forward House of Lords reform through removing the remaining hereditary peers, establishing a statutory Appointments Commission, changing the rules on the disqualification of peers and allowing life peers to resign their peerages.¹³⁵

The consultation document made it clear that the Government has decided to remove the remaining 92 hereditary peers from the House of Lords. However, hereditary titles and the power to create them would remain.¹³⁶

1. Appointments Commission

The Government proposed putting the current Appointments Commission (a non-statutory Non-Departmental Public Body) on to a statutory basis. It would control ‘all appointments to the Lords with the exception of up to five direct Ministerial appointments per Parliament for the Prime Minister and the Lords Spiritual’.¹³⁷ However, the powers proposed by the Government were less extensive than those proposed by the Royal Commission. The Government proposed that the Appointments Commission should ‘oversee’ nominations from the political parties,¹³⁸ whereas the Royal Commission had recommended that ‘the Appointments Commission should be responsible for making all discretionary appointments to the second chamber’.¹³⁹

The Government believed that by making the Commission a statutory body it would ‘enhance significantly its independence from Government’. It believed that, like the Electoral Commission, the Appointments Commission should be appointed by the Queen in response to an Address from the House of Commons, and its funding should also be voted directly by the House. However, because its functions would be related to the House of Lords some arrangements would need to be made so that it was also answerable to the House of Lords.¹⁴⁰

The consultation document raised a number of questions about the appointment of members of the Appointments Commission. The Government believed that four

¹³⁴ *Ibid*, c1058

¹³⁵ *Ibid*, cc1057-1059

¹³⁶ *Constitutional reform: Next steps for the House of Lords*, Department for Constitutional Affairs, 18 September 2003, CP 14/03, paras 24-28

¹³⁷ *Ibid*, paras 29-30

¹³⁸ *Ibid*, para 39

¹³⁹ Cm 4534, para 13.42

¹⁴⁰ *Constitutional reform: Next steps for the House of Lords*, Department for Constitutional Affairs, 18 September 2003, CP 14/03, paras 31-33

members should be nominated by the parties and cross-benchers, and that independent members should be appointed according to ‘Nolan principles’. It added: ‘... [h]owever, it is important that all members of the Commission are acceptable to all parties, and the Government will therefore discuss with the Opposition parties how they might also be involved in the appointments process’.¹⁴¹

The Government sought views on whether members of either House should be eligible to sit on the Appointments Commission, whether the Chairman should be separately recruited or selected by the Commission, and for how long independent members of the Commission should be excluded from being members of the House of Lords.¹⁴²

The Government identified three distinct roles for the Appointments Commission:

First, it would determine the number and timing of nominations to be made by each party, and the number of appointments of independents. Second, it would select independents to sit in the House. Third, it would oversee nominations from the political parties, particularly on grounds of propriety.¹⁴³

It described the first power as removing a ‘significant element of Prime Ministerial patronage’. It proposed three guidelines for the exercising of such power:

First, that the Government of the day should not have an overall majority in the House. In practice, the other principles will normally deliver this effect even without specifically spelling it out. Second, that the representation of the political parties should have regard to the outcome of the previous general election result. The Government has previously proposed that this should mean that the Commission should be guided, in its decision on the appropriate balance of new nominations between the parties, by the distribution of the vote between the major parties at the previous general election. Views are invited on whether that remains the most appropriate way of enabling the make-up of the House to reflect the balance of political opinion in the country, or whether some regard should also be given to the number of seats won by each party. In either case, the Government proposes that the Appointments Commission’s first priority should be given to ensuring that as soon as reasonable, given the status quo, the governing party has more seats than the main Opposition party.

Because of the built-in inflexibilities of the House’s membership, the Government does not propose to set out any of these rules, beyond that to have regard to the general election result, in legislation. It would be for the Appointments Commission itself to set out the guidelines it would use for determining how to interpret that requirement.

¹⁴¹ *Ibid*, paras 34-35

¹⁴² *Ibid*, paras 36-38

¹⁴³ *Ibid*, para 39

The third criterion which the Appointments Commission will be required to have in mind is the non party peers' share of the House. The Government proposes that it should be a guideline for the Commission that the appointment of non-political members of the House should average 20% of new appointments over the course of each Parliament. As with the parties' shares of the House, this will not be a rigidly imposed quota. It will, however, be something that the Commission will be expected to adhere to on average over the lifetime of a Parliament.¹⁴⁴

The Government sought views on whether there should be a statutory limit on the size of the House of Lords; and if so, what it should be and how long should the transition period be. The Government does not want to set down a precise timetable but considers that the Commission should 'aim for a House of no more than 600 within a decade of its commencement'.¹⁴⁵

The Appointments Commission would vet nominations from the political parties but have no powers to appoint members in the name of parties. It would simply have power over the number of political appointments.

The consultation paper made no comments on how long the 'independents' appointed or the party nominations approved by the Appointments Commission should serve in the House of Lords.

Until a statutory Appointments Commission is established, the non-statutory Appointments Commission will continue its work.¹⁴⁶ Indeed on 17 July 2003, the Prime Minister announced that he wanted the Appointments Commission to recommend further appointments:

I shall be inviting the commission to recommend a small number of non-party-political peers, as well as reporting on the propriety of any party working peers who are recommended, while discussion on the reform of the House of Lords continues.¹⁴⁷

2. Disqualification

The Government notes that MPs convicted of an offence and sentenced to more than 12 months' detention are disqualified from the Commons. It saw 'a strong case for bringing the provisions on the disqualification of Lords ... into line with those of the Commons'. The government proposed that this provision should be retrospective.¹⁴⁸

¹⁴⁴ *Ibid*, para 41

¹⁴⁵ *Ibid*, paras 44-52

¹⁴⁶ HL Deb 18 September 2003 c1059

¹⁴⁷ HC Deb 17 July 2003 c443W

¹⁴⁸ *Constitutional reform: Next steps for the House of Lords*, Department of Constitutional Affairs, 18 September 2003, CP 14/03, paras 61-62

The Government will propose changes to rules relating to the disqualification of bankrupts and the mentally ill, in the light of changes to bankruptcy rules in the Enterprise Act 2002 and the publication of a draft Mental Health Bill.¹⁴⁹

3. Joining and leaving the Lords

In addition to the Prime Minister's power to appoint up to five ministers during a Parliament, the Government proposes that the 'small number of offices where there is a presumption that the immediately past holders are entitled to a peerage [should continue]'. The offices are: Archbishop of Canterbury, the Archbishop of York, the Secretary of the Cabinet, The Queen's Principal Private Secretary, and the Chief of the Defence Staff.

B. Reactions in Parliament to the Consultation Paper

1. Parliamentary Reaction

Although the statement announcing the consultation paper included comments on the plans to reform the Office of the Lord Chancellor, only reaction to plans for the House of Lords is considered below.

Lord Strathclyde, the leader of the Opposition and Opposition spokesman on Constitutional Affairs described the statement as 'fundamentally dishonest'. He said that 'It is pretending that the Government are still interested in long-term reform when they are pushing a short-term political fix'. He then questioned:

Why have they totally ignored the Royal Commission? Why have they pre-empted the Joint Committee of both Houses? Were the members of that committee consulted on this announcement? If not, how humiliating is that for them?¹⁵⁰

He later pointed out that:

The House will note that the Government no longer talk of broad parity with the main opposition party. Instead, they now talk of not having an overall majority in the House. Does not that mean that the Government would have a majority over the two main opposition parties combined? Can he also confirm that the White Paper explores the further option of seats in this House reflecting the number of seats won in another place? There would not be much point in a statutory appointments commission if it had terms of reference to gerrymander. The House will wish to look very sceptically at these proposals.¹⁵¹

¹⁴⁹ *Ibid*, paras 64-65

¹⁵⁰ HL Deb 18 September 2003 c1060

¹⁵¹ *Ibid*, c1062

Lord Craig of Radley, convenor of the Crossbench peers, told the House of Lords that:

I was under the impression that there were to be no further changes in the make up of the House until stage two was reached. We have not reached it.¹⁵²

Several others, in both Houses, commented on the Government's renegeing on the former Lord Chancellor's commitment that the hereditary peers who remained after the House of Lords Act 1999 would 'go when stage two has taken place'.¹⁵³ Paul Tyler described the announcement as a 'double betrayal', because:

First, it breaks the manifesto promises on which Labour Members were elected on two occasions and, secondly, it tears up the agreement that the hereditary peers would be removed only when the full reform package was in place.¹⁵⁴

However, Lord Falconer argued that:

I am aware of what was said by representatives of the Government at the time. I am in absolutely no doubt that there is no breach of those undertakings whatever.¹⁵⁵

This was echoed by Christopher Leslie, Parliamentary Under-Secretary in the Department of Constitutional Affairs, who said that:

It was never our intention that the remaining hereditary peers should remain members of the House of Lords for ever. When the interim arrangement was reached, as well as the immediate benefit of the agreement, we accepted the argument that the presence of the remaining hereditary peers would act as an incentive to further reform. That has not happened: there is no clear consensus in Parliament on the way forward. So the context for reform has clearly and significantly changed. The circumstances that gave rise to the original arrangement over the remaining hereditary peers no longer apply. The solution, which the remaining hereditary peers were there to help seek, is no longer available. The Government must act, and act decisively, to bring about stability and sustainability.¹⁵⁶

In the House of Commons, Robin Cook pointed out that:

¹⁵² *Ibid*, c1065

¹⁵³ Lord Waddington (HL Deb 18 September 2003 c1066) cited Lord Irvine on 11 May 1999, and Lord Weatherill (HL Deb 18 September 2003 c1070) cited him on 30 March 1999; Bill Cash (HC Deb 18 September 2003 c1089) referred to "legitimate expectations" being "disgracefully dishonoured"

¹⁵⁴ HC Deb 18 September 2003 c1091

¹⁵⁵ HL Deb 18 September 2003 c1066

¹⁵⁶ HC Deb 18 September 2003 c1086

It is the first time that the Government have presented proposals for reform that do not include provision for any Member of the second Chamber to be elected by the British public.

He added:

Is not it the case that the all-appointed option received the fewest votes in the House and had the biggest majority against it? I confess that I am rather confused, so can my hon. Friend remind me why we consulted the House of Commons if we intended to go ahead with the measure that was least popular among Members of Parliament?¹⁵⁷

Win Griffiths echoed this point, asking:

Can my hon. Friend explain why he thinks that he can make progress with the proposals put to us today for the reform of the House of Lords when his proposal is the one that was most heavily defeated in this House?¹⁵⁸

Mr Leslie responded to the latter question in the following way:

I hope that I have been clear in expressing the Government's views on future considerations on composition. We do not close the door to future decisions on how the Second Chamber should be composed. Indeed, we will discuss with the Joint Committee whether we can find a consensus and perhaps move forward. However, it was evident back in February, as all hon. Members will recall, that there was no consensus, and we hear arguments on both sides. Are we to do nothing, or are we to remove the hereditary peers and create a statutory appointments commission while we can, and try to reach a final stage at a later date?¹⁵⁹

There were also a number of criticisms that the Government was failing to keep to its manifesto pledges. Mr Leslie defended the Government saying that ‘... the Government are taking steps to fulfil our manifesto commitments’.¹⁶⁰

2. Constitution Unit

Meg Russell and Robert Hazell of the Constitution Unit, UCL published its response to *Next Steps for the House of Lords* in November 2003.¹⁶¹ They commented on:

- the link to the peerage;

¹⁵⁷ HC Deb 18 September 2003 c1093

¹⁵⁸ *Ibid*, c1098

¹⁵⁹ *Ibid*, c1098

¹⁶⁰ *Ibid*, c1092

¹⁶¹ Meg Russell and Robert Hazell, *Next Steps in Lords Reform: Response to the September White Paper*, The Constitution Unit, November 2003

The proposal to maintain the link between membership of the upper house and the peerage is surprising, given the government's previous rejection of this approach. Maintaining the link is potentially both confusing and damaging to the House, whilst there is no good argument for its retention.¹⁶²

- removing the hereditaries;

The Constitution Unit noted that as the proposals were 'simply a further interim package' removal of the hereditary peers was seen by many as a breach of trust.¹⁶³ Their removal would also deprive the House of 'almost half its most active crossbench members'.¹⁶⁴

- party balance and the size of the House;

One of the paper's most dangerous suggestions is that party balance in the chamber could take account of shares of House of Commons seats as well as general election votes cast. Even a modest implementation of this proposal threatens to send the size of the House spiralling out of control, and could see effective control handed to the governing – or even opposition – party. With party balance based on vote shares, it would be hard to keep the size of the House within the proposed 600 member limit. Any formula including share of seats would make the proposals unworkable.¹⁶⁵

- making the House more representative;

The Constitution Unit argued that giving the Appointments Commission no control over the political appointments, but expecting it to maintain a representative balance among independent members, would fall 'pathetically short' of the standard of a representative chamber. It called for the Appointments Commission to be able to direct political parties as to the overall balances required to meet representativeness criteria.¹⁶⁶

- accountability of the Appointments Commission;

- membership of the Appointments Commission;

The Constitution Unit welcomed the proposals for a statutory Appointments Commission that was accountable to Parliament, but noted that the role of monitoring its work would be small.¹⁶⁷ It also argued that Parliament should have 'full responsibility for appointing its members from the start'. The chair of the Commission should be recruited separately and independent commissioners should not be eligible for membership of the second chamber 'until ten years after they have left the commission'.¹⁶⁸

¹⁶² *Ibid*, para 11

¹⁶³ *Ibid*, para 12

¹⁶⁴ *Ibid*, para 17

¹⁶⁵ *Ibid*, para 32, see Appendix for detailed analysis

¹⁶⁶ *Ibid*, paras 40-41

¹⁶⁷ *Ibid*, para 48

¹⁶⁸ *Ibid*, para 53

- *ex officio* and other members;

The proposal that various groups continue to be appointed to the chamber directly by the Prime Minister undermines the Appointments Commission, and will make its job of maintaining balance and size limits in the house more difficult. As far as possible the Appointments Commission should have sole control over appointments to the house, and all members should be considered on their merits. Such an arrangement would be easier if the peerage link were broken.¹⁶⁹

- life membership and the ability to retire.

The Constitution Unit considered the suggestion that members could renounce their peerages to stand for the House of Commons to be ‘potentially very damaging’. It echoed the Royal Commission’s call for a ten-year bar on members of the second chamber standing for the Commons, but noted that the difficulty could be avoided if members were appointed to the second Chamber for fixed fifteen year terms.¹⁷⁰

The Constitution Unit drew the following conclusion:

The central proposal in the white paper is the establishment of an Appointments Commission, which will have responsibility for maintaining balance amongst the members of the House, and keeping its size in check. This will be a difficult job. To carry it out effectively the commission must have some sanction to ensure that party nominations meet the requirements of balance, and must be required to report regularly on its work to parliament. We demonstrate the commission’s work will be made impossible if it is required to take account of shares of seats in the House of Commons, as tracking general election vote shares is already extremely challenging. Further problems are caused by the government’s proposal that membership of the House continues to depend on holding a life peerage (a suggestion that creates problems around retiring from the House). Finally, more attention needs to be given to maintaining a meaningful independent group in the chamber, particularly as this group will be badly hit by the removal of the remaining hereditary peers.¹⁷¹

IX Elections for Hereditary Peers

The *House of Lords Act 1999*, which removed the majority of hereditary peers from the House of Lords as the first stage of reform, made provision for 92 hereditary peers to retain their seats. Fifteen retained their seats by dint of holding an office within the House of Lords and a further two hereditary office-holders in the Royal Household also retained their seats. The remaining 75 were elected by their party groups. In accordance with Standing Orders the composition of the 75 was:

¹⁶⁹ *Ibid*, para 56

¹⁷⁰ *Ibid*, para 61

¹⁷¹ *Ibid*, para 63

- (a) 2 peers elected by the Labour hereditary peers;
- (b) 42 peers elected by the Conservative hereditary peers;
- (c) 3 peers elected by the Liberal Democrat hereditary peers;
- (d) 28 peers elected by the Cross-bench hereditary peers.¹⁷²

Having removed the general right of hereditary peers to sit in the Lords, provisions were made in the legislation and in the House of Lords Standing Orders to maintain the number of excepted peers.

Since the *House of Lords Act* came into force, three hereditary peers have died. The Duke of Norfolk (who died on 24 June 2002) was one of two hereditary office holders in the Royal Household and was succeeded by his son. The Viscount of Oxfuird died on 3 January 2003. As the Viscount of Oxfuird served as a Deputy Speaker, all members of the House of Lords were eligible to take place in the election of his replacement.¹⁷³ His place was taken by Viscount Ullswater. He received 151 votes, after 42 counts to take account of voters' preferences.¹⁷⁴

Lord Milner of Leeds died on 20 August 2003. According to House of Lords Standing Orders:

In the event of the death of a hereditary peer excepted under Standing Order 9(2)(i) only the excepted hereditary peers in the group in which the vacancy has occurred shall be entitled to vote.¹⁷⁵

The *House Magazine* reported that:

His replacement will be chosen, in accordance with Standing Orders made under the House of Lords Act 1999, by Labour's three remaining elected hereditaries: Lord Rea, Viscount Simon, and Lord Strabolgi.¹⁷⁶

Lord Grantchester won the by-election.¹⁷⁷

The decision that Labour hereditary peers in all categories of Standing Order 9(2) are able to participate in the election to replace Lord Milner reflects discussions that took place during the House of Lords Procedure Committee's inquiry into new standing orders to give effect to the 'Weatherill amendment' to the House of Lords Bill that permitted the 92 hereditary peers to retain their seats:

¹⁷² House of Lords *The Standing Orders of the House of Lords relating to Public Business*, 9 (2)(i)

¹⁷³ House of Lords *The Standing Orders of the House of Lords relating to Public Business*, 10 (3)

¹⁷⁴ Daily Telegraph, *Ullswater triumphs in by-election for the House of Lords*, 28 March 2003

¹⁷⁵ House of Lords *The Standing Orders of the House of Lords relating to Public Business* 10 (2)

¹⁷⁶ The House Magazine, *The By-election with only three Voters*, 15 September 2003, p22

¹⁷⁷ HL Deb 30 October 2003 c425. Lord Grantchester received two votes, on the first count.

Lord Harris of Greenwich: Could I return to what Lord Bledisloe raised some time ago, both about the Labour and Liberal Democrat hereditary peers. When one Weatherill Labour peer dies you then have an electoral college of one vote, that one person then has the power both to nominate and elect a Member of Parliament. Is this being seriously suggested?

Baroness Jay of Paddington: We do not expect it seriously to arise as you will know, Lord Harris.

Lord Harris of Greenwich: I know, but we are now providing in our standing orders for the election of Members of Parliament. I know what Ministers say about this legislation being produced early in the new Parliament; that is presumably because some Ministers have decided this, but as Ministers always say that they cannot disclose the content of a future Queen's Speech, we cannot necessarily accept that this legislation will appear in the first session of the new Parliament. The question therefore arises how is the question answered? An electoral college of one person to choose a Member of Parliament, a most unusual situation. We then have the position, as Lord Burnham rightly said, of the Liberal Democrats, there are two survivors, they disagree as to who the successor should be, perfectly reasonably, or maybe possibly unreasonably, what happens then? And who, in fact, validates this process? I can understand the position as far as Lord Bledisloe is concerned, I have to say I am rather unclear as far as the Conservative Party is concerned but as far as the Labour Party and the Liberal Democrats this proposal makes no sense whatever.

Lord Strathclyde: Chairman, there are several ways of skinning this cat but when we had a debate on the amendments on the floor of the House, the Lord Chancellor accepted it—very graciously if I may say so—on the basis that this was going to be the arrangement. Now I can understand why that causes potentially some trouble for the Labour Party and the Liberal Democrats but we are forgetting that the number of those who will be elected within the parties will be two for the Labour Party and three for the Democrats but I fully expect in practice that some of the 15 will also come from the Liberal Democrats and from the Labour Party. They will also form part of the electorate because they will be accepted peers. So in practice there is every likelihood that although it will be a very small electorate, for both the Labour and the Democrats, there should be more of them than Lord Harris assumes.

Lord Harris of Greenwich: This assumes a Labour or Liberal Democrat peer is elected as a Deputy Chairman. There is no guarantee that will happen. What happens in the extreme circumstances where the two Labour hereditary peers get into a taxi and are involved in an accident. You do not have an electoral college at all in that situation? It does seem to me this is really quite an extraordinarily fanciful proposition to put before us. We are talking about Members of Parliament—

Baroness Jay of Paddington: We are also talking about standing orders and for reasons we have discussed many times—and I do not think the Committee would wish to be wearied again by a rehearsal of the arguments about why this should not be in statute—the fact it is in standing orders of course creates a certain

degree of flexibility which if any of these ludicrous fantasies of Lord Harris' were actually to come upon us—

Lord Harris of Greenwich: It is not ludicrous to suggest that one hereditary peer may die. Unhappily standing orders do not provide for giving Labour hereditary peers the power to remain with us forever, therefore sooner or later one Labour hereditary peer will die.¹⁷⁸

In other words 'group' in Standing Order 10(2) has been interpreted to mean affiliation of hereditary peer, as distinct from 'category' in Standing Order 9(2) which distinguishes whether the excepted hereditary peer is an office holder or not. The relevant standing orders are detailed in Appendix 1.

The Clerk of Parliaments maintains a list of all hereditary peers who wish to stand at any by-election.¹⁷⁹

X Assessing the 'Interim' House

1. Is further reform necessary?

In a recent paper entitled 'Is the House of Lords Already Reformed?', Meg Russell drew the following conclusions:

In the run-up to the recent votes on House of Lords reform, both sides argued that an elected second chamber would be stronger and more effective, believing that this was a reason either to support such an outcome or oppose it. However, I have suggested that a strengthened upper house has become inevitable, whatever its method of composition. The chamber is already powerful, and likely to grow stronger now that it is not controlled by any one party. An important reason to support the elected option was to give the chamber more legitimacy. But, ironically, the failure to agree the way forward on the reform may have acted to boost the public's perceptions of the legitimacy of the chamber as it is now.

Another reason to support the elected option was that this was overwhelmingly popular. For example, in a poll shortly before the recent votes, 83 per cent favoured a largely or wholly elected upper house, and just 3 per cent thought it should be wholly appointed. In setting themselves against elections, Tony Blair and many of his colleagues challenged not only the words in the party manifesto but also public opinion. Having contrived to leave us with an unelected chamber for at least a number more years, these leaders can now hardly expect the public to back them against the Lords if it challenges the government on controversial policies.

¹⁷⁸ Procedure Committee, *Third Report*, HL 81, 6 July 1999

¹⁷⁹ House of Lords, *Register of Hereditary Peers*, 15 November 2002, HL 2 2002-03

The blocking of Lords reform may be remembered as creating a popularity problem for the government, but its outcome may prove quite the reverse for the House of Lords.¹⁸⁰

2. House of Lords procedures

In a special issue of the *Journal of Legislative Studies* on second chambers, Sir Michael Wheeler-Booth, a former Clerk of Parliaments, reviewed House of Lords procedure. He contended that procedures had changed very little since they were set down in 1621.¹⁸¹ He believed that ‘uniquely’ the House of Lords was ‘a self-regulatory body’,¹⁸² but stressed the role of the ‘usual channels’ in ensuring business proceeded.¹⁸³

He then considered whether self-regulation could last given the increased workload and the change in composition of the House of Lords. He argued that the latter change had made the House more ‘assertive’:

It is clear that the ‘interim’ House, that is the one in place since the passage of the House of Lords Act 1999, is assertive or, as the then Leader, Lady Jay, put it ‘more legitimate, more authoritative, more worthy of respect’. In the parliament from 1997 to July 2000, the government had been defeated 87 times, an increase of more than three times the average under the previous Conservative administrations.¹⁸⁴

In addressing his question on whether self-regulation could continue or whether substantial procedural change would be required, he identified four ‘potential catalysts for change’:

- compositional changes, including a large number of new peers made it difficult for the House of Lords to ‘tame’ new members;
- procedural changes such as the Committees proposed by the Royal Commission;
- ‘the problem of processing legislation’;
- the question of ‘social hours’.¹⁸⁵

¹⁸⁰ M Russell, “Is the Lords Already Reformed?”, *The Political Quarterly*, Vol 74, No 3, July-September 2003, p317

¹⁸¹ Sir Michael Wheeler-Booth, “Procedure: A Case Study of the House of Lords”, *Journal of Legislative Studies*, Volume 7, Number 1, Spring 2001, p79

¹⁸² *Ibid*, p82

¹⁸³ *Ibid*, pp85-86

¹⁸⁴ *Ibid*, p87

¹⁸⁵ *Ibid*, pp87-88

Sir Michael Wheeler-Booth was not sure that self-regulation could continue:

It remains to be seen whether the spirit of the ancient procedures of the House of Lords can be preserved, with appropriate changes to enable more legislation to be properly scrutinised without undue delay, or whether a more prescriptive system has become inevitable on the Commons model, with the consequence that the executive would control both Houses of Parliament, instead of just one.¹⁸⁶

3. Lessons from other second chambers

There is a growing literature of comparative studies on second chambers. These were usefully summarised by RL Borthwick, in the special issue of the *Journal of Legislative Studies*. Commenting on the removal of all but 92 hereditary peers following the 1999 *House of Lords Act*, he said:

Thus in 1999 one of the most eccentric arrangements for composing a second chamber was substantially altered. Even then, however, hereditary peers did not disappear from the Lords completely.¹⁸⁷

He went on to review other literature on the size, length of terms, basis of composition and how members are chosen in a selection of second chambers from across the world.

On size, he reported that the average size of second chambers, excluding the House of Lords, was 83; and that only six, apart from the House of Lords, had in excess of 200 members. He also noted that in most cases the size of second chambers was fixed.¹⁸⁸

The length of terms ‘in most systems’ was fixed as well, although terms were often longer than those in the first chamber. However, in some systems there was no fixed terms – possibly because second chambers were dissolved at the same time as the lower house. The House of Lords was ‘unusual’ in that most members were there for life, bishops being the only exception.¹⁸⁹

He reported that

In systems that are bicameral it is normal to compose the second chamber in some way that is different from the way in which the first chamber is chosen.

¹⁸⁶ *Ibid*, p90

¹⁸⁷ RL Borthwick, “Methods of Composition of Second Chambers”, *Journal of Legislative Studies*, Vol 7, No 1, Spring 2001, p19

¹⁸⁸ *Ibid*, pp20-21

¹⁸⁹ *Ibid*, p21

Because of the link between representation of individuals and population in the first chamber, ‘... many second have, as their basis of composition, territory in some form or other’.¹⁹⁰

On how members of second chambers were chosen, he wrote that:

... Leaving aside those who are *ex officio* members of a second chamber, the basic choice is between appointment and election. Apart from a number of former British colonies in the Caribbean, second chambers composed exclusively or predominantly of appointed members are quite rare. The British House of Lords and the Canadian Senate are the major examples. ...

Some form of election is now the normal way of filling second chambers. Elections may be direct or indirect.¹⁹¹

4. Religious representation

Writing in *Public Law*, Charlotte Smith examined the ‘neglected’ issue of ‘the place of representatives of religion in the reformed second chamber’. She outlined the current position and reviewed the proposals in the Royal Commission’s report, the White Paper and the PASC’s report. She then evaluated the proposals for retaining religious representation in the reformed second chamber and highlighted links ‘between those proposals and the tradition of Church-State theory which has grown up within and around the Church of England’.¹⁹²

Smith used the term ‘representatives of religion’ to denote those ‘who would hold their seats as “voices” for the adherents of different religious bodies, or as representatives of the different churches and faith communities’ rather than the adherents of those faith communities.¹⁹³

At present, 26 Church of England bishops sit as the Lords Spiritual (the Archbishops of Canterbury and York, and the Bishops of Winchester, Durham and London, and a further 21 diocesan bishops who sit according to seniority). These seats ‘are the only formal provision made for the representatives of religion in the second chamber in its present form’.¹⁹⁴

The PASC recommended the abolition of *ex officio* seats for senior bishops, but both the Royal Commission and the White Paper recommended the number of seats for bishops should be reduced to 16. The Royal Commission proposed that the other 10 seats should

¹⁹⁰ *Ibid*, p22

¹⁹¹ *Ibid*, p24

¹⁹² C Smith, “The Place of Representatives of Religion in the Reformed Second Chamber”, *Public Law*, Winter 2003, pp674-696

¹⁹³ *Ibid*, pp674-675

¹⁹⁴ *Ibid*, p676

be taken by other Christian denominations – five from England and five from Scotland, Wales and Northern Ireland, collectively, with the Appointments Commission having ultimate responsibility for the appointments. It also recommended that the Appointments Commission should ensure that five members of the second chamber were selected to represent other faith groups. The White Paper treated other Christian Churches and other faith groups as a single constituency and indicated that the Appointments Commission would be encouraged to appoint from that constituency.¹⁹⁵

Charlotte Smith noted that three justifications were advanced in support of representatives of religion in the second chamber:

- ‘the presence of the Lords Spiritual indicates that the government is accountable, in the last resort, to a higher power’;
- the perspective of religious groups in matters of social, philosophical and moral significance is valuable; and
- the chamber should be as representative as possible.¹⁹⁶

In exploring calls to broaden the basis of religious representation, Charlotte Smith identified a number of potential difficulties. Given the current Church of England-State relationship, constitutional difficulties might arise from having a plurality of faiths in the House of Lords. The illiberal views of some religious groups might not conform ‘to the liberal traditions of the United Kingdom’, although this criticism is answerable in terms of the legislative taking into account all of society’s views. She highlighted the difficulty of securing proportionality in religious representation, and for the Appointments Commission in identifying ‘suitable representatives’ from communities and churches with a ‘wide range of opinions and viewpoints’. Furthermore some potential representatives (such as Roman Catholic bishops) have excluded themselves from membership, as a result of canonical law, for example.¹⁹⁷ Smith also noted reservations about the presence of representatives of religion.¹⁹⁸

Both the Royal Commission and the White Paper supported the continuation of Anglican bishops on an *ex officio* basis. Smith considered whether this position could be justified on ideological grounds – the position of the Church of England as the Established Church in England.¹⁹⁹ She concluded that:

Anglican Church-State theory, and an informed understanding of the nature and law of Establishment, are elements frequently unfamiliar to would-be reformers, and, consequently, are often conspicuous in their absence from the debate. It is argued that the current proposals, whether they accept or reject the place of the

¹⁹⁵ *Ibid*, pp676-678

¹⁹⁶ *Ibid*, pp679-684

¹⁹⁷ *Ibid*, pp684-688

¹⁹⁸ *Ibid*, p688

¹⁹⁹ *Ibid*, pp689-694

Anglican bishops episcopate in the reformed second chamber, are based on inadequate reasoning, and reveal a critical, though admittedly common, failure to address the legal and constitutional position of the Church of England.²⁰⁰

²⁰⁰ *Ibid*, p695

Appendix 1 – The Standing Orders of the House of Lords relating to Public Business on Excepted Hereditary Peers

Hereditary Peers.
26 July 1999.

9. - (1) In implementation of section 2 of the House of Lords Act 1999, this Standing Order makes provision for hereditary peers who are excepted from section 1.

(2) The excepted hereditary peers shall consist of the following categories:

- (i)(a) 2 peers elected by the Labour hereditary peers;
- (b) 42 peers elected by the Conservative hereditary peers;
- (c) 3 peers elected by the Liberal Democrat hereditary peers;
- (d) 28 peers elected by the Cross-bench hereditary peers;

(ii) 15 peers, elected by the whole House, from among those ready to serve as Deputy Speakers or in any other office as the House may require; and

(iii) any peer holding the office of Earl Marshal or performing the office of Lord Great Chamberlain.

(3) Elections shall be conducted in accordance with arrangements made by the Clerk of the Parliaments.

(4) In order to stand for election or qualify as an elector under paragraph (2)(i), a peer must register with the Clerk of the Parliaments, identifying the party or Cross-bench group to which he belongs. In order to stand for election under paragraph (2)(ii), a peer must register separately with the Clerk of the Parliaments. A peer may not stand for election nor vote if he has not taken the Oath or is on Leave of Absence.

(5) In the event of a tie between two or more candidates standing in any of the elections held in accordance with paragraph (2), the matter (if not resolved by the electoral arrangements adopted by the House) shall be decided by the drawing of lots.

(6) The Clerk of the Parliaments may refer any question concerning the propriety of the electoral process to the Committee for Privileges.

(7) In the event of a vacancy occurring at any time up to the end of the initial period through death among the peers elected in category (2)(i) or (2)(ii), the vacancy shall be filled by the nearest runner-up in the relevant election under paragraph (2) who both wishes to fill the vacancy and is otherwise available. The provisions of paragraph (5) are applicable for this purpose. If no such runner-up is available, the House shall decide how the vacancy shall be filled.

(8) In this Standing Order and in Standing Order 10 the end of the "initial period" is the end of the first session of the next Parliament after that in which the House of Lords Act 1999 is passed.

Hereditary Peers:
By-elections.
26 July 1999.

10.--(1) In implementation of subsection (4) of section 2 of the House of Lords Act 1999, this Standing Order makes provision for by-elections to fill vacancies occurring by death among excepted hereditary peers after the end of the initial period.

(2) In the event of the death of a hereditary peer excepted under Standing Order 9(2)(i) only the excepted hereditary peers in the group in which the vacancy has occurred shall be entitled to vote.

(3) In the event of the death of a hereditary peer excepted under Standing Order 9(2)(ii) the whole House shall be entitled to vote.

(4) The provisions of paragraphs (2) and (3) shall apply also in the case of any subsequent by-elections.

(5) The Clerk of the Parliaments shall maintain, and publish annually, a register of hereditary peers (other than peers of Ireland) who wish to stand in any by-election.

(6) By-elections shall be conducted in accordance with arrangements made by the Clerk of the Parliaments and shall take place within three months of a vacancy occurring.

(7) Paragraphs (5) and (6) of Standing Order 9 shall apply to by-elections under this Standing Order.

Register of
hereditary peers.
23 January 2001.

11. Any hereditary peer (not previously in receipt of a writ of summons) who wishes to be included in the register maintained by the Clerk of the Parliaments pursuant to Standing Order 10(5) shall petition the House and any such petition shall be referred to the Lord Chancellor to consider and report upon whether such peer has established his right to be included in the register.

Appendix 2 – Members of the Joint Committee on House of Lords Reform

House of Commons

Rt Hon. Jack Cunningham (Labour) – *Chairman*
Janet Anderson (Labour)
Rt Hon. James Arbuthnot (Conservative)
Mr Chris Bryant (Labour)
Rt Hon. Kenneth Clarke (Conservative)
Rt Hon. William Hague (Conservative)
Mr Stephen McCabe (Labour)
Rt Hon. Joyce Quin (Labour)
Mr Terry Rooney (Labour)
Mr Clive Soley (Labour)
Mr Paul Stinchcombe (Labour)
Mr Paul Tyler (Liberal Democrat)
(appointed 19 June 2002)

House of Lords

Rt Hon. Lord Archer of Sandwell (Labour)
Viscount Bledisloe (Cross Bench)
Lord Brooke of Alverthorpe (Labour)
Rt Hon. Lord Carter (Labour)
Rt Hon. Lord Forsyth of Drumlean (Conservative)
Baroness Gibson of Market Rasen (Labour)
Lord Goodhart (Liberal Democrat)
Rt Hon. Lord Howe of Aberavon (Conservative)
Lord Oakeshott of Seagrove Bay (Liberal Democrat)
Baroness O'Cathain (Conservative)
The Earl of Selborne (Conservative)
Rt Hon. Lord Weatherill (Cross-Bench)
(appointed 4 July 2002)

The membership remained unchanged until Parliament was prorogued on 20 November 2003.

Appendix 3 – Debates on House of Lords Reform in the House of Commons, 1997 –

Date	Subject	Hansard
16.05.97	Queens speech debate (third day) on the Constitution.	294 c275-351
30.11.1998	Queens speech debate (fifth day) on the constitution and Parliament.	321 c558-646
01.02.1999	House of Lords Bill. Second reading debate. Adjourned.	324 c609-97
02.02.1999	House of Lords Bill. Second reading debate second day.	324 c741-834
15.02.1999	House of Lords Bill. Committee stage first day. Clause 1 under discussion.	325 c615-702
16.02.1999	House of Lords Bill. Committee stage second day. Clause 1 agreed to.	325 c745-831
03.03.1999	House of Lords Bill. Committee stage third day. Clauses 2-5	326 c1084-175
04.03.1999	House of Lords Bill. Committee stage fourth day. New clauses discussed. Schedule agreed to. Bill reported without amendment.	326 c1245-311
09.06.1999	Debate on a motion for the adjournment on House of Lords reform.	332 c653-743
10.11.1999	House of Lords Bill. Lords amendments considered. Some agreed to including Lords amendment 1 (Weatherill amendment) on division. Lords amendments 214 and 13 disagreed to.	337 c1131-259
19.06.2000	Debate on a motion for the adjournment on the Royal Commission report on the reform of the House of Lords.	352 c48-125
09.05.2001	Westminster Hall adjournment debate on People's Peers.	368 c71-92WH
10.01.2002	Debate on a motion for the adjournment on House of Lords reform.	377 c702-78
17.06.2002	Adjournment debate on House of Lords reform.	387 c125-34
19.06.2002	Debate on a motion to consider the Lords message of 10 June relating to House of Lords reform; that this House concurs with the Lords in the said resolution and that a select committee of twelve Members be appointed to join with a committee appointed by the Lords as the Joint Committee on House of Lords Reform.	387 c338-83
21.01.2003	Debate on a motion for the adjournment on House	398 c187-272

	of Lords reform.	
04.02.2003	Debate on motions on House of Lords reform. (All motions negated on division or question). Motion on Option 1 (fully appointed chamber) negated on division (390 to 172). Motion on Option 2 (fully elected chamber) negated on division 289 to 272). Motion on Option 3 (80 per cent appointed/20 per cent elected) negated on question. Motion on Option 4 (80 per cent elected/20 per cent appointed) negated on division (284 to 281). Motion on Option 5 (60 per cent appointed/40 per cent elected) negated on question. Motion on Option 6 (60 per cent elected/40 per cent appointed) negated on division (316 to 253). Motion on Option 7 (50 per cent appointed/50 per cent elected) negated on question.	399 c152-242
17.07.2003	Summer recess motion speech on House of Lords reform.	409 c493-7

Source: POLIS at 20.11.03

Appendix 4 – Library Research Papers on House of Lords Reform

97/28	House of Lords 'Reform': Recent Proposals	17.02.97
98/85	House of Lords reform: developments since the general election	19.08.98
98/103	Lords Reform: The Legislative Role of the House of Lords	01.12.98
98/104	Lords Reform: Background statistics	15.12.98
98/105	Lords Reform: Recent Developments	07.12.98
99/5	The House of Lords Bill: 'Stage One' Issues, Bill 34 of 1998-99	28.01.99
99/6	The House of Lords Bill: Options for 'Stage Two', Bill 34 of 1998-99	28.01.99
99/7	The House of Lords Bill: Lords reform and wider constitutional reform, Bill 34 of 1998-99	28.01.99
99/88	The House of Lords Bill – Lords Amendments [Bill 156 of 1998-99]	09.11.99
00/60	Lords Reform: major developments since the House of Lords Act 1999	14.06.00
00/61	Lords Reform: The interim House background statistics	15.06.00
01/77	House of Lords reform: developments since 1997	24.10.01
02/2	House of Lords Reform – the 2001 White Paper	08.01.02