House of Commons
Political and Constitutional Reform Committee

House of Lords reform: what next?

Ninth Report of Session 2013–14

Volume I: Report, together with formal minutes and oral evidence

Written evidence is contained in Volume II, available on the Committee website at www.parliament.uk/pcrc

Ordered by the House of Commons to be printed 10 October 2013
The Political and Constitutional Reform Committee

The Political and Constitutional Reform Committee is appointed by the House of Commons to consider political and constitutional reform.

Current membership

Mr Graham Allen MP (Labour, Nottingham North) (Chair)
Mr Christopher Chope MP (Conservative, Christchurch)
Paul Flynn (Labour, Newport West)
Sheila Gilmore MP (Labour, Edinburgh East)
Andrew Griffiths MP (Conservative, Burton)
Fabian Hamilton MP, (Labour, Leeds North East)
Simon Hart MP (Conservative, Camarthen West and South Pembrokeshire)
Tristram Hunt MP (Labour, Stoke on Trent Central)
Mrs Eleanor Laing MP (Conservative, Epping Forest)
Mr Andrew Turner MP (Conservative, Isle of Wight)
Stephen Williams MP (Liberal Democrat, Bristol West)

Powers

The Committee’s powers are set out in House of Commons Standing Orders, principally in Temporary Standing Order (Political and Constitutional Reform Committee). These are available on the Internet via http://www.publications.parliament.uk/pa/cm/cmstords.htm.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/pcri. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Joanna Dodd (Clerk), Adele Brown (Senior Committee Specialist), Edward Faulkner (Committee Specialist), Tony Catinella (Senior Committee Assistant), Jim Lawford, (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Political and Constitutional Reform Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6287; the Committee’s email address is pcri@parliament.uk.
# Contents

<table>
<thead>
<tr>
<th>Report</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary</td>
<td>3</td>
</tr>
<tr>
<td>Introduction</td>
<td>5</td>
</tr>
<tr>
<td>No longer replacing hereditary peers in the House of Lords when they die</td>
<td>8</td>
</tr>
<tr>
<td>Removing persistent non-attendees</td>
<td>12</td>
</tr>
<tr>
<td>A moratorium on new peers</td>
<td>15</td>
</tr>
<tr>
<td>Fixed-term appointments for new peers</td>
<td>17</td>
</tr>
<tr>
<td>The introduction of a retirement age</td>
<td>20</td>
</tr>
<tr>
<td>Voluntary retirement</td>
<td>22</td>
</tr>
<tr>
<td>A strengthened leave of absence scheme?</td>
<td>24</td>
</tr>
<tr>
<td>Expelling peers convicted of a serious offence</td>
<td>26</td>
</tr>
<tr>
<td>The desirability, composition and remit of a Statutory Appointments Commission</td>
<td>27</td>
</tr>
<tr>
<td>Determining the relative numerical strengths of party groups in the House of Lords</td>
<td>30</td>
</tr>
<tr>
<td>Conclusions and recommendations</td>
<td>35</td>
</tr>
<tr>
<td>Appendix 1</td>
<td>38</td>
</tr>
</tbody>
</table>

Formal Minutes | 45 |
Witnesses | 46 |
List of written evidence | 47 |
List of Reports from the Committee during the current Parliament | 48 |
Summary

This Report focuses on the desirability, practicality and effectiveness of a range of small-scale reforms to reduce the size of the House of Lords and considers which, if any, of these measures, would be likely to command a consensus.

We identify one proposal upon which there is clear consensus: the plan to introduce legislation that would make it possible to expel peers who have been convicted of a serious offence. There was unanimous support among those from whom we received evidence for taking action on this matter.

There was also a strong measure of agreement that action should not be taken on two areas: the introduction of a long-term moratorium on new peers and the introduction of a compulsory retirement age. On proposals for a moratorium, we conclude that it would be ineffective and would also starve the House of Lords of valuable expertise. On proposals to introduce a compulsory retirement age, we argue that this would be arbitrary and discriminatory. Instead, we urge a renewed political effort to strengthen the existing voluntary retirement scheme and support proposals that service to the House be recognised by the introduction of a leaving ceremony for peers who agree to take voluntary retirement.

The Report highlights the widespread support for no longer replacing hereditary peers in the House of Lords when they die and for tackling the issue of persistent non-attendance.

The Report also considers evidence on proposals to introduce fixed-term appointments for peers. It concludes that, although this could help to reduce the size of the House of Lords, the change would amount to a large-scale reform and as such should only be considered in the context of wider reform of the House.

Another issue that the Report addresses is the desirability, composition and remit of a Statutory Appointments Commission. We are persuaded by the merits of the arguments which favour placing the current House of Lords Appointments Commission on a statutory basis. However, we believe that changes to its remit would be best discussed in the context of wider reform of the House of Lords.

Finally, the Report considers the scope for establishing a consensus about the principles which should determine the relative numerical strengths of the different party groups in the House of Lords, and for codifying such principles. We conclude that this is perhaps the most contentious of all the issues considered as part of the inquiry, but also the most crucial. We call upon the Government and political parties in the Lords to set out their positions on this matter and to engage in dialogue with a view to establishing a consensus before the next General Election.
1 Introduction

1. The House of Lords is one of the largest parliamentary chambers in the world. It is also considerably larger than the House of Commons, making the UK the only country where the size of the second chamber exceeds that of the first. The membership of the House of Lords is also likely to grow further despite the fact that the major parties all advocate a smaller second chamber in the long term. There is no cap on the size of the Lords. The appointment in August 2013 of 30 new political peers takes to 785 the number of Members who are eligible to take part in the work of the House of Lords. With 53 peers temporarily disqualified or on leave of absence, the potential membership of the Chamber has reached 838. Although the House of Lords has not grown markedly since 2007, and it is still smaller than before the removal of the majority of hereditary peers in 1999, average daily attendance figures have increased. According to the Electoral Reform Society, the House of Lords is both “grossly oversized” and “growing unstably”.

2. Alan Renwick, of the University of Reading, stated that there is “general consensus” among peers and academics that the House is too large and that its size ought to be reduced. In 2011, the Leader’s Group on Members Leaving the House stated that the first effect of a significant increase in numbers is the risk to the reputation of the House:

   It is unhelpful for the second Chamber to be regarded as of excessive size at a time when the Government intends that the number of members of the House of Commons should be reduced. The standing of the House as a serious Parliamentary forum is compromised by its apparently unchecked growth and by a lack of understanding of the reasons for further new appointments.

3. The Leader’s Group also referred to the cost implications of an ever-growing House. It stated: “Hitherto the administration has contained costs by means of efficiency improvements, but rising numbers of active members will inevitably eventually have consequences either for standards of service or for costs.”

4. The practical consequences of a growing House of Lords were also detailed by the Constitution Unit in its 2011 House Full report which was endorsed by a number of Members from both Houses of Parliament as well as a number of academics. The report stated: “to the world outside the most obvious effect [of increasing numbers] might be the rising cost, in terms of allowances, etc [but] the far bigger problem is the effect of the...”

---

1 Ev w43
2 ‘Lord appointments urgently need regulation’, Constitution Unit Press Release, 1 August 2013. Temporary disqualification applies to those who are Judges or MEPs
3 Ev w27
4 Ev w19
5 Ev w24
6 “Members Leaving the House”, Leader’s Group on Members Leaving the House, HL Paper 83, Session 2010-2011, 13 January 2011, para 15
7 Ibid., para 17
8 The Constitution Unit, House Full, April 2011
House of Lords’ growing size on its ability to function effectively”. It referred to a range of issues, including increasingly limited opportunities for peers to contribute to debates, increased competition for opportunities to initiate business, reduced speaking times, increasing pressure on the Chamber’s mechanisms of self-regulation and difficulties gaining places on Select Committees. It also noted that as the numbers of those attending increases so too does the pressure on its resources. The Leader’s Group also stated that overcrowding is a problem, desk space is limited and demand for research and support services is increasing. Yet while it is generally accepted that the House’s increasing size is neither sustainable nor desirable, there is currently no consensus on how best to tackle this.

5. Efforts to reform the House of Lords and reduce its size are far from new. As Lord Hennessy, a Cross-bench peer and Professor of Contemporary History at Queen Mary and Westfield College, University of London, told us:

Lords reform is the Bermuda Triangle of British politics, or one of them. Every generation or so people go into the Bermuda Triangle. Some never reappear; others appear singed, vowing one thing, never to return.

The most recent attempt at wholesale reform, in the form of the Government’s 2012 House of Lords Reform Bill, would have seen the size of the House reduced to 450. The Government had proposed that voters would be able to elect Members of the reformed House of Lords for the first time in May 2015. One-third of the elected Members would be chosen at the General Election in 2015, another third in 2020 and the final third in 2025—120 Members in each election. Existing peers would be ‘phased’ out as elected Members were introduced. In total, 80 per cent (360 Members) of the total of 450 Members, would be elected. The remaining 20 per cent (90 Members) would be appointed by a statutory Appointments Commission on a non-party basis. There would also be 12 Church of England bishops, a reduction from the current 26 church representatives, reflecting the smaller overall size of the Chamber.

6. However, the withdrawal of the Bill in September 2012 after the Government concluded that “it would not be able to secure the Commons majority needed to pass the programme motion that accompanies the Bill”, ended any short-term prospects for large-scale reform. Yet reform is not totally off the agenda; two Private Members’ Bills, introduced by Baroness Hayman in the Lords and Dan Byles MP in the Commons, have reignited the debate over the issue, albeit on a much reduced scale. With tightly focused provisions and smaller-scale ambitions, these Bills are of a wholly different ilk to the large, wholesale reform effort that characterised the Government’s 2012 Bill.

---

9 Ibid.
10 Ibid; Ev 14 [Prof MacLean]; Q 155
11 “Members Leaving the House”, Leader’s Group on Members Leaving the House, HL Paper 83, Session 2010-2011, 13 January 2011, paras 16
12 Q 62
14 HC Deb 3 September 2012, col 35; Ev 39 [Dr Russell]
15 Baroness Hayman’s House of Lords Reform Bill [HL] 2013-14 had its First Reading on in the House of Lords on 15 May, 2013. Dan Byles’s House of Lords Reform (No. 2) Bill had its First Reading in the Commons on 19 June. Its Second Reading is expected to take place on 18 October.
7. For us, the news that Baroness Hayman and Mr Byles were to introduce these Bills was timely, not least because we had already started to take the temperature on House of Lords reform by launching our own inquiry into what, if any, smaller-scale changes to the membership and structure of the House of Lords would be likely to command a consensus. Our call for evidence asked for views on the desirability, practicality and effectiveness of mechanisms for reducing the size of the House of Lords, including the following:

- no longer replacing hereditary peers in the House of Lords when they die;
- measures to remove persistent non-attendees;
- a moratorium on new peers;
- fixed-term appointments for new peers;
- a retirement age for peers.

We also invited evidence on:

- the effectiveness of the current voluntary retirement scheme for peers introduced following the recommendations of the Leader’s Group on Members Leaving the House.
- The desirability and scope of a mechanism to expel peers who have been convicted of a serious offence.
- The desirability, composition and remit of a Statutory Appointments Commission.
- The scope for establishing a consensus about the principles which should determine the relative numerical strengths of the different party groups in the House of Lords, and for codifying such principles.

8. We received a wide range of written evidence from members of the public, academics, Members of both Houses of Parliament, policy experts and campaigning groups. Our deliberations were also informed by the oral evidence sessions that we held with a number of expert panels. We express our gratitude to all those who took the time to offer their views.

9. During this inquiry we have sought to avoid straying into the topic of wider, wholesale House of Lords reform. There is no doubt that this is a topic worthy of further debate, but we have chosen to focus on the potential for implementing smaller-scale reforms, because this is where we believe there is a chance of achieving consensus at present.
2 No longer replacing hereditary peers in the House of Lords when they die

10. Under the 1999 House of Lords Act the vast majority of hereditary peers were removed. However, as a result of a political deal made at the time between the then Conservative leader in the Lords and the then Labour Prime Minister, 92 hereditary peers in the House of Lords remain in place.16 Under the agreement, often referred to as the Weatherill amendment, this group of hereditary peers was to remain until a second phase of large-scale reform was agreed upon. As a result, when a hereditary peer dies, a by-election is held to fill the vacancy. Only hereditary peers are eligible to stand for election and only peers from the group in which the vacancy has occurred are entitled to vote.17 Although the by-election system was initially introduced in the belief that it was unlikely to be used because the second stage of reform was pending, in practice the lack of progress on wholesale reform has meant that by-elections have become established practice in the House of Lords.18

11. Only a small number of those who provided evidence argued that hereditary peers should continue to be replaced in the House of Lords when they die. The Campaign for a Democratic Upper House stated that no longer replacing them “would remove the rationale for the […] Weatherill amendment in 1999, which saw 92 hereditary peers remain as a form of guarantee of further reform.”19 Lord Hunt of Wirral also cautioned against unravelling the political deal secured in 1999. He told us that, although incremental reform was possible, it should not be allowed to impede larger-scale reform.20 However, a number of witnesses rejected these arguments. Dr Ballinger of Exeter College, Oxford University commented: “we have moved on and the House has moved on [since 1999]. I would like to see any of them argue that a Parliament can bind its successors and that a Government of one complexion can bind a Government of another complexion.” He continued: “there is no constitutional bar at all to their removal by legislation and it is a question of whether it is worth a candle in terms of the political fallout […].”21 Alan Renwick also said that: “advocates of major reform should not insist that the hereditary peers be retained until a complete overhaul of the chamber’s composition occurs: Lords reform is only ever going to happen through small steps.”22

12. The vast majority of evidence strongly supported the idea of no longer replacing hereditary peers, although this was for a variety of reasons, few of which were based on reducing the size of the House.23 Both Dr Meg Russell, the Deputy Director of the Constitution Unit, University College, London, and Alan Renwick referred to the
“indefensibility” of a hereditary route into the Lords. Lord Howarth was also clear that “the principle of hereditary membership of the legislature should come to an end”. He noted: “hereditary peers have given great service in Parliament over the centuries, but there is no rationale in today’s society for anyone to have a place in the legislature by virtue of who their ancestors were”. There was support, too, from Dr Barber, of London South Bank University, who said that ending the replacement of hereditary peers when they die was “an essential step”. Dr Ballinger thought that it would amount to a “desirable tidying-up of the 1997 Government’s agenda”, while Dr Michael Gordon of the University of Liverpool stated that the non-replacement of hereditaries when they die represented “the most attractive of the options” discussed in our inquiry.

13. For others such as Lord Norton and Lord Cormack, the presence of the hereditaries is less of an issue than the means by which their presence is maintained, namely through the by-election system. Lord Cormack told us that the issue “is not with the Weatherill amendment and the numbers of people involved; it is with what people perceive to be the absurdity of the by-elections. This is the problem.” Under current arrangements, contained in the House of Lords’ Standing Orders, only 15 of the 92 peers (who would serve as Deputy Speakers or other office-bearers) are elected by the whole House. Two peers are elected by the Labour hereditary peers, 42 peers are elected by the Conservative hereditary peers; three peers elected by the Liberal Democrat hereditary peers and; 28 peers are elected by the Cross-bench hereditary peers. Lord Norton referred to the “embarrassment” many peers felt “that you might have three Lib Dems choosing one person to come in.” Dr Russell described this as a “crazy system” and said that every time a by-election took place it “risked exposing the chamber to ridicule”. Lord Howarth argued that no longer having by-elections would lead “gradually and decently, to the expiry of the hereditary system in our politics.”

14. There was thus support for abolishing by-elections from two quarters: those who perceived the current system as problematic and wanted to see it replaced by a fairer system, and those who wanted to abolish by-elections altogether in order to end the practice of replacing hereditary peers in the House of Lords when they die. However, even though there was strong support for abolishing by-elections, some of the experts we heard from were sceptical that consensus could be secured, not least because of what Dr Russell described as a “small but vocal minority” in the House of Lords who oppose not replacing

24 Ev w40
25 Ev w16
26 Ev w4; See also Ev w2; Q 11 [Lord Steel]
27 Ev w45
28 Ev w22
29 Q 89 ff
30 Q 202
31 The 92 hereditaries also include any peer holding the office of Earl Marshal or performing the office of Lord Great Chamberlain.
32 Q 90
33 Q 132
34 Ev w40
35 Ev w20
hereditary peers when they die.\textsuperscript{36} Lord Norton told us that he thought that among peers “there is a majority but not unanimity” for ending the by-election system.\textsuperscript{37} Mark Ryan, of Coventry University, also thought that an end to by-elections “would not be without controversy in some quarters” as it would be perceived by some as breaching the 1999 agreement.\textsuperscript{38}

15. A previous attempt to end the hereditary system proposed by Lord Steel in his House of Lords (Cessation of Membership) Bill [HL] 2012-13 was dropped after a small number of peers submitted several hundred amendments to the clauses relating to hereditary peers. The proposal has since been revived in Baroness Hayman’s Private Member’s House of Lords Reform Bill in the form of an amendment to the 1999 House of Lords Act which states that “any vacancy resulting from the death of an excepted person [hereditary peer] occurring after the coming into force of the House of Lords Reform Act 2013 shall not be filled.”

16. Dr Russell noted that even a Government Bill would face opposition and that the Government “would have to be prepared to face that down and see it through.”\textsuperscript{39} This view was echoed by the Liberal Democrat Parliamentary Policy Committee which stated that “the trenchant opposition in the Lords to the version of Lord Steel’s Bill which contained this apparently simple reform shows that even such an apparently straightforward change will be difficult, and will not command total ‘consensus’.”\textsuperscript{40} In contrast, Lord Steel told us that “most hereditary peers accept that the by-election system is now indefensible”.\textsuperscript{41} Baroness Hayman added that objections of the sort previously mounted against Lord Steel’s Bill could be neutralised “if that change was endorsed by the House of Commons”.\textsuperscript{42}

17. In the event that consensus on abolition of the by-elections was difficult to achieve, Dr Russell suggested that it may be worth considering whether there is anything that can be done to make the hereditary by-elections “less bad” by changing the Standing Orders to enable all peers to vote in by-elections.\textsuperscript{43}

18. Finally, it is worth noting that although there was strong support for the idea of no longer replacing hereditary peers when they die, there was also an acknowledgement that doing this would not lead to a large reduction in the size of the House. The youngest elected hereditary peer is currently 42 years of age and peers tend to live longer than the national average.\textsuperscript{44} As Lord Tyler observed: “the problem is that the hereditaries [...] do not die quick enough. They are too young. [...] The hereditaries keep going and, on the present actuarial analysis, it will be 30 to 40 years before they have all gone [...].”\textsuperscript{45}

\textsuperscript{36} See also Ev 45 [Dr Ballinger]  
\textsuperscript{37} Q 66  
\textsuperscript{38} Ev w9  
\textsuperscript{39} Q 132  
\textsuperscript{40} Ev w6  
\textsuperscript{41} Q 29  
\textsuperscript{42} Q 29  
\textsuperscript{43} Q 132  
\textsuperscript{44} Ev w45  
\textsuperscript{45} Q 64. See also Ev w14 [Prof McLean]
19. The evidence we received on no longer replacing hereditary peers in the House of Lords when they die showed that there is broad-based and significant support for this idea and that this could be realised by ending the by-election system which perpetuates the current system. We accept that doing this would not have a large or swift impact on the size of the House but, as a means of gradually reducing numbers we conclude it would be worthwhile. It would also serve to reduce the reputational risk to the House which results from the existence and use of the current by-election system. We do not believe that taking action on this issue would preclude further, wholesale reform taking place in the future, if that is what political parties favour. Therefore, we recommend that hereditary peers should not be replaced in the House of Lords when they die and we welcome the provisions contained within Baroness Hayman’s Private Member’s Bill which seek to achieve this goal.
Removing persistent non-attendees

20. The issue of non-attendees was discussed in detail in the 2011 Report produced by the Leader’s Group on Members Leaving the House chaired by Lord Hunt of Wirral. By removing those who have not engaged with the work of the House of Lords, the headline figures for the size of the House would, in theory, be reduced at a stroke. Written evidence we received from Dr Barber suggested that such a move “should prove relatively uncontroversial.” A number of other written submissions, for instance those from the Green Party, Dr Gordon and Alan Renwick, supported in principle the idea of a removing non-attendees.

21. Dr Ballinger stated:

There is a strong argument to mitigate reputational risk by removing those who do not contribute to the work of the House. The Writ of Summons requires attendance. Newer peers are often told that they are expected to contribute, and if membership is to mean more than very occasional speaking and voting then a minimum level of familiarity with the workings and business of Parliament, shown through attendance, should be maintained by members.

Dr Ballinger went on to argue that this would be best achieved through carefully crafted legislation otherwise, “if you are too tough, you will bring the backwoodsmen out and more people will turn up as a result, which will be deeply counterproductive.” Professor McLean also warned:

Non-attenders who do not have a guilty conscience, or who value the opportunity to attend, however rarely, will have an incentive to continue to attend on the minimum number of occasions required to retain their membership.

22. There are different ways in which attendance could be defined. In his written evidence, the Rt Hon David Blunkett MP suggested that voting could be used to determine whether peers should be considered to be ‘non-attenders’. He argued that peers who had not voted in more than 10% of divisions for three sessions out of the last five should be removed from “a formal role”. He added that: “they would of course remain Peers and could be allowed access to the restaurants and bars (but not offices, research and other working facilities). This would be commercially prudent.” However, Baroness Hayman cautioned that equating attendance to voting would disproportionately penalise Cross-benchers who often abstained more frequently than party-political peers to avoid being drawn into...
political arguments, or because the subject did not tally with their areas of subject expertise. 53

23. Lord Cormack drew attention to the fact that attendance does not necessarily equate to effective participation. He suggested that rather than focus on levels of non-attendance it may be more useful to consider the quality of the contributions of existing Members:

There are those who attend very regularly indeed and do precisely nothing. They do not speak; they do not take part in committees; they vote. That is in fact very convenient for the Executive or for the official Opposition, but it is not being a participating Member of the House of Lords. I believe that one has to have the courage to look at that and to say to these people, “You have been 300 times in the last year. You have not spoken at all. You have voted, but what contribution have you made?” One has to look at that, because I think that would have a dramatic effect. 54

24. Our witnesses were clear that proposals to remove persistent non-attendees should not penalise those suffering from ill health or a temporary change in circumstances. 55 Lord Jay, Lord Hennessy and Lord Norton all said it would also be important to ensure that those who were not able to attend because they continued to work outside the House, and who could bring that experience to Lords’ scrutiny, should be exempt from provisions for non-attendance. 56

25. The issue of non-attendees is addressed in Baroness Hayman’s Private Member’s Bill. The relevant provisions state that peers who do not attend during a session would cease to be Members of the House at the end of the session. This would not apply to those with authorised leaves of absence 57 or where the session was shorter than six months. Non-attendance would be determined by the Lord Speaker upon certification that the peer did not attend at any time during the Session, “having regard to attendance records kept by officials of the House”. 58

26. A number of submissions argued that a statutory non-attendance scheme would only have a superficial impact. The Campaign for a Democratic Upper House argued that by reducing the headline size of the House, it would “have the appearance of change, while doing nothing to address the main problems identified by proponents of so-called “housekeeping” measures.” 59 Dr Russell also suggested that rather than non-attendance, “[i]t is the increase in attendance that is causing the problems. Yes, you would get the numbers that appear on the House of Lords’ website down, but removing the people who already do not turn up wouldn't really change very much in terms of how the House is functioning”. 60 Both Baroness Hayman and Lord Steel accepted that, in the bigger scheme

53 Q 55
54 Q 191
55 Ev w32
56 Q 77-82; Q 148
57 Leave of Absence provides an opportunity for those who are unable or unwilling to play a full part in the work of the House, to step down from active membership. This could be, for instance, a result of professional commitments, ill health or infirmity.
58 Ev w29
59 Q 133
of reform, this proposal was of marginal importance, but they added that it was one of a number of matters of principle which should be attended to sooner rather than later. Lord Hennessy stated that “I think it is worth trying. It is fraught with peril and it might not produce much, but we need to look at all possible avenues.”

27. It is clear that there is broad support for tackling the issue of persistent non-attendance. Members of the House of Lords should be, and should be seen to be, actively engaging in the work of the House. Where this does not occur, action must be taken. In crafting an appropriate scheme on non-attendance, care must be taken to ensure that it does not penalise those who face ill health or a temporary change in circumstances or those whose ongoing work outside the House enables them to enhance the Lords’ scrutiny function. There are a variety of ways in which non-attendance can be defined but the formulation contained in Baroness Hayman’s Bill on House of Lords Reform, which states that peers who do not attend during a session would cease to be Members of the House at the end of the session, with the exception of those with an authorised leave of absence, appears to us to be broadly along the right lines.
4 A moratorium on new peers

28. Dr Russell told us that between 2011 and the summer of 2013 the Prime Minister seemed to have been “constrained by the outcry” that he knew would occur if and when new appointments to the Lords were made.\textsuperscript{62} She continued: “as a temporary stopgap, this unofficial moratorium thus appears to have worked, and numbers in the chamber gradually dropped (though still not to their pre-2010 election levels).”\textsuperscript{63} However, the situation changed in August 2013 with the announcement of thirty new political peers.

29. We asked witnesses whether a further, short-term moratorium up until the next General Election would be helpful, but there was only limited support for the idea. Lord Steel said: “I would not be against that, but I can’t say I would go to the barricades for it”.\textsuperscript{64} The Green Party’s written submission stated that if a moratorium “was only expected to last for a few months until an elected system is put in place then we would support it.”\textsuperscript{65} Similarly, the Campaign for a Democratic Upper House argued that “it could be acceptable only as a step to a further reform, of which it formed an integral and agreed part as the current political make up of the Lords is not representative of the will of the people”.\textsuperscript{66}

30. We also asked witnesses whether a longer-term moratorium would be an appropriate way of helping to reduce the size of the House. Dr Barber suggested that a moratorium “might also neutralise the disincentive of the executive to carry through on reform.”\textsuperscript{67} However, for the most part, those who submitted evidence did not support the introduction of a moratorium. A number of submissions argued that a moratorium would deprive the House of Lords of experience which, according to John Smith, a member of the public who submitted written evidence in an individual capacity, “is the lifeblood of any organisation”.\textsuperscript{68} The Liberal Democrat Parliamentary Policy Committee went further, describing the idea as “ridiculous and repugnant.” It reasoned: “to advocate a moratorium of this kind is to argue that the existing membership is perfect, and unable to be supplemented by any better or more recent wisdom than that which resides in the present House.”\textsuperscript{69} Lord Steel told us that a moratorium “is going down the wrong road, trying to tackle the numbers question the wrong way [...]”.\textsuperscript{70} Alan Renwick calculated that to bring the membership down to 500 by moratorium alone would take in the order of twelve or thirteen years. In the meantime, he argued, the Chamber would “be starved of fresh blood for far too long” and the “problem of ever-rising numbers would only return once the moratorium was lifted”.\textsuperscript{71} Equally, Dr Ballinger noted that a moratorium “would reduce
the size of the House only slowly, and by attrition, and would inevitably reverse as soon as the moratorium ended”.72

31. Concerns were also raised about the negative impact a moratorium could have on party balance. The Campaign for a Democratic Upper House stated:

If there were no provision for like-for-like replacements on the death of a member, the balance would be likely to be affected over time to the disadvantage of one or more of the parties, or the Crossbenches; which in turn would affect the degree to which the House could hold the government to account.73

For Unlock Democracy, a moratorium would result in “the government abandoning its stated aim of appointing new peers to reflect the vote share received by political parties in the 2010 General Election”, because the only mechanism for adjusting party balance within the House of Lords would no longer be available.74 Dr Gordon suggested that, for this reason, a moratorium would be “very unlikely to command widespread support”.75 Finally, Dr Ballinger told us that a “key problem” was that a moratorium would not be enforceable without legislation given that “the right of the Prime Minister to recommend peers cannot be extinguished by edict”.76

32. There is a third option which falls somewhere between a full, long-term moratorium and a short-term one that would freeze new appointments until the end of this Parliament. This third form of moratorium could require the removal of two or more peers for every new peer appointed. We think that it would be worthwhile for the party leaders in the Lords to discuss this option further, particularly as this could offer a way of tackling the issue of the parties’ relative numerical strength without increasing the overall size of the House of Lords.

33. We conclude that the positive short-term impact of a moratorium in helping to avoid further increases in the size of the House would be outweighed by the loss to the House of Lords of new perspectives and fresh thinking. There was little support for a moratorium in the evidence we received and we conclude that there is little, if any, prospect for securing a broad-based consensus in favour of this proposal.

72 Ev w45  
73 Ev w29  
74 Ev w33  
75 Ev w22  
76 Ev w45
Fixed-term appointments for new peers

34. Internationally, life membership of a legislature is extremely unusual. It is far more common for legislators to have time-limited terms, albeit often with the possibility of renewal. Fixed terms are also widely used in domestic public life and indeed the recently appointed Chair of the House of Lords Appointments Commission will undertake his duties on a five year non-renewable term.

35. In recent years, multiple reports and studies into longer-term Lords reform have recommended that Members, either elected or appointed, should serve fixed rather than life terms. Many of our witnesses supported the idea, too: Baroness Hayman, Lord Jay, Lord Goodlad, Lord Hennessy and Dr Ballinger all spoke in favour of fixed terms when they gave evidence to us. Written evidence was also supportive. Lord Howarth, for example, argued that “vacancies have to be created without forever increasing the numbers in an overcrowded House, and it should be sufficient privilege for anyone to serve for a limited period [...]”. Alan Renwick stated that “a fixed term would allow the size of the chamber to be set and principles of partisan balance to be implemented”.

36. In practice, any scheme would have to address a range of issues including: the appropriate length of term; whether terms should be related to the electoral cycle of the House of Commons; whether there would be restrictions on fixed-term peers seeking election to the House of Commons after their term in the Lords had expired; and whether re-appointment should be permitted.

37. Previous reports which have discussed the issue of fixed terms have most commonly proposed a 15 year period of tenure. However, in order to avoid a loss of legislative expertise and institutional memory, Dr Russell suggested that the ability for Members to serve a second term, possibly for 10 years, and in exceptional circumstances, might be “desirable”. Dr Ballinger thought that a fixed term covering three Parliaments would ensure both continuity and turn-over, and could be extended for one further period “if the appointing authority was satisfied that a re-appointment is more justifiable than bringing in a new member”. On the issue of who should have the power to reappoint, Dr Russell argued that, if such a power lay with party leaders, it would “compromise members’ independence” and therefore this task should fall to “the House of Lords Appointments Commission, based on strict criteria.”
38. The provisions in the Life Peerages Act 1958 state that peerages are for life. In his written evidence, the Clerk of the Parliaments, David Beamish, acknowledged that a compulsory scheme to limit the terms of new Members would require legislation, but also noted that it would be possible to introduce a non-statutory voluntary scheme. He argued that "while the impact would not be directly felt for a while, it could help to give momentum to other measures." He explained that an arrangement could be introduced whereby nominees were invited to give an assurance that (assuming that there had been no substantial reform of the House in the meantime) they would retire after a certain number of years (say 15), or at a certain age (say 75), or whichever came first (or second!).

As regards Crossbenchers, such an arrangement could be introduced by the House of Lords Appointments Commission. There is a parallel with the stipulation which the Appointments Commission introduced some years ago (now overtaken by the Constitutional Reform and Governance Act 2010) requiring nominees to undertake to be UK residents for tax purposes. As regards other nominees, an announcement of such an arrangement by the Prime Minister would suffice.

39. Not all the submissions we received supported the idea of fixed terms. Some dismissed the idea on the basis that it would perpetuate a system of appointment as opposed to election and would thus stray into the wider area of wholesale reform. For instance, the Liberal Democrat Parliamentary Policy Committee stated that "[i]t will be no more legitimate for someone to be appointed to Parliament by Party Leaders for fifteen years (or three parliaments) than it is for them to be so appointed for life." The Campaign for a Democratic Upper House stated:

This proposal [...] would raise the issue of the proper basis for the composition of the Lords, and would be widely seen to be a decisive step in the direction of an all-appointed house, and away from a democratic basis for the second chamber; again without a proper national debate of the rationale.

Unlock Democracy wrote that peers who are appointed for fixed terms would be "far more likely to be loyal to the leader who appointed them than peers who have been there a long while", while Dr Barber warned that, as Members leave, over time it would increase the proportion of those who owe their appointment to the Prime Minister or party leaders of the day, thus potentially reducing the chamber’s independence. The Green Party argued that, while "this may be appropriate as a transitional measure to an elected system, [it] is not a long term solution".
40. Fixed term appointments for the Lords have a long track record of support and this was reflected in the evidence that we received, which highlighted strong backing for a move away from appointments for life. However, a compulsory scheme would undoubtedly require new legislation to give effect to the proposal and, for it to be truly successful, it would most likely need to be accompanied by other reforms. Compulsory fixed terms should be discussed as part of any future debate on wholesale reform of the Lords. In the meantime, we support proposals for a non-statutory scheme under which nominees would be invited to give an assurance that they would retire after a certain number of years. While we accept that it lacks the strength that a statutory regime could provide, we conclude that it has the potential to have an impact on the size of the House of Lords over time and could help to give momentum to other smaller-scale reforms. Accordingly, we invite the party and cross-bench associations in the Lords to make their views on this matter known to us in writing.
6 The introduction of a retirement age

41. As Dr Ballinger’s written evidence makes clear, the idea of a retirement age is not entirely unknown to the House of Lords: currently 26 Members of the House of Lords (the Bishops) are subject to compulsory retirement at age 70, though some are kept on beyond retirement by being appointed life peers.\(^{92}\) However, for the vast majority of Members of the House of Lords, appointments to the Lords are for life. The introduction of a compulsory retirement age would require legislation to remove the Writ of Summons from those who have been given it for life.

42. In 2011, the Leader’s Group on Members Leaving the House looked in detail at whether a compulsory retirement scheme ought to be introduced. It found that, based on the membership figures at the time, a retirement age of 70 would remove almost half the Members of the House. A cut off point of 75 (mirroring the arrangements for Supreme Court judges) would have removed 221 Members, and even raising the age to 80 would have removed 115 Members. More recent evidence that we received from Dr Russell stated that introducing a retirement age of 80 would result in the departure of around 130 current Members of the Lords, and a retirement age of 75 would result in the departure of around 230.\(^{93}\)

43. Although a retirement age could reduce the size of the House, the proposal prompted concern among witnesses. A number of submissions suggested that the introduction of a compulsory retirement age would be an arbitrary and discriminatory measure. Reflecting the views of a number of individuals and groups that submitted evidence to us on this particular issue, the Liberal Democrat Parliamentary Policy Committee stated: “it is difficult to justify such an arbitrary provision and particularly at a time when fixed retirement ages are being abolished across the public sector”. It argued that the peers that would be removed would not necessarily be the least useful, “they would simply be the eldest.” It continued: “age discrimination of this sort would be no more democratic or acceptable than the imposition of a minimum age”.\(^{94}\) Alan Renwick noted that many Members of an advanced age make “an exceptionally valuable contribution”.\(^{95}\) Dr Ballinger told us that “it would be very difficult for a Parliament, having said that most organisations should not have a retiring age, to impose one on one of its Houses of Parliament”.\(^{96}\) He added:

> A retirement age would not, without a drastic and arbitrary effect, solve the issue of the size of the House of Lords' membership; nor would it accord with the principles of competence, rather than age, on which other organisations are now for the most part required to take decisions about their employees.\(^{97}\)

---

\(^{92}\) Ev w46

\(^{93}\) Ev w41

\(^{94}\) Ev w7. See also Ev w2; Ev w10; Ev w25; Ev w29

\(^{95}\) Ev w23; See also Ev w29, Q 68 [Lord Tyler]

\(^{96}\) Q 128. See also Q 158

\(^{97}\) Ev w46
44. Other concerns focused on the political implications of such a scheme. Dr Barber warned that introducing a retirement age could have the unintended consequence of increasing the proportion of Members who owe their allegiance to the Prime Minister or leadership of the day, possibly affecting the independence of Members.98 A related point was made by Alan Renwick when he wrote that it could give party leaders an incentive to appoint young Members upon whom they could exert influence for many years. He stated: "while there is much to be said for having larger numbers of younger members, this should be done rationally rather than in response to perverse incentives".99 The Campaign for a Democratic Upper House argued that the proposal would "break the rationale for the alleged independence of the House, that its members are there for life."100 Nor would retirement of those over 80 be party neutral, according to Dr Russell, because there are fewer Labour and Liberal Democrat peers over 80, compared to Conservatives and Crossbenchers.101

45. Dr Russell, Dr Ballinger and Professor McLean all suggested that if a compulsory retirement scheme were implemented, there ought to be an appeals procedure for peers reaching the retirement age who wished to show (to a body that would have to be set up for the purpose) that they continued to make an important contribution.102

46. We accept the view that the introduction of a retirement age in the House of Lords would be both arbitrary and discriminatory and could result in the loss of much-valued expertise. It could also have an undesirable impact on party balance. For these reasons, we reject the option of a compulsory retirement age as a way of reducing the size of the House of Lords.

98 Q 134
99 Ev w25
100 Ev w30
101 Ev w43
102 Q 131. See also Ev w8; Ev w15
7 Voluntary retirement

47. Procedurally, until 2011 the only option available to peers to “retire” was to take a leave of absence. However, in line with the recommendations of the Leader’s Group on Members Leaving the House, an informal voluntary retirement scheme was introduced in 2011. This scheme allows Members to write to the Clerk of the Parliaments indicating their wish permanently to retire. As of July 2013, only three Members had taken advantage of the scheme, and two of those had been non-attenders for some years. The broad consensus in the written evidence we received was that the current voluntary retirement scheme had not been effective and had had no notable impact.

48. According to David Beamish, “the fundamental weakness of the informal voluntary retirement scheme is the lack of an incentive”. Lord Hunt of Wirral told us that, at present, “the benefits attaching to membership” are a “significant incentive to stay”. David Beamish explained that Members are entitled to claim £300 in respect of any day on which they attend the House of Lords. He also highlighted other benefits to membership, including IT equipment and access to facilities and papers, before noting that, “in the absence of any offsetting incentives, retirement is unlikely to be an attractive option for many members”.

49. The 2011 Leader’s Group report suggested that it would be worthwhile to investigate whether a “modest pension, or payment on retirement” would provide peers with an incentive to take up voluntary retirement whilst also providing an overall saving to the taxpayer. This idea was discussed in some of the written and oral evidence we received. David Beamish’s evidence confirmed that savings could be made, “provided that those retiring are not replaced by new appointees, as the compensation would relate only to the daily allowance, whereas the savings would extend to travel costs which would no longer be incurred, and to the provision of accommodation and facilities.” However, despite this, there was little support for this type of financial incentive among those who gave oral evidence to us; Lord Hennessy, for instance, stated that the public “would not understand” the rationale behind such a move. Another financial alternative discussed in David Beamish’s evidence was a proposal that the House might withhold some financial or other support from those who have, for instance, reached a certain age, or served for a certain number of years, or attended fewer than a certain proportion of sittings, or some

---

103 Ev w50
104 Ev w2; Ev w5; Ev w15; Ev w30; Ev w32
105 Ev w50
106 Q 92
107 Ev w50
109 Ev w9; Ev w10
110 Ev w50
111 Q 72 ff
combination thereof. David Beamish noted that "gradual withdrawal of financial support would provide a way of showing that the House is serious about retirement".112

50. Another option we discussed with witnesses was the introduction of a ceremony to mark the service of retiring Members. As Lord Hennessy stated, the lack of take-up of the voluntary scheme is partly due to the fact that "if people depart they would like some recognition of what they have done for the House. It does not necessarily have to be financial, but some sort of acknowledgement of services rendered might be worth exploring."113 He suggested creating a "decommissioning ceremony" and argued that "people would like rites of passage and the recognition of good service and so on. It could be done with dignity."114 Lord Hunt of Wirral concurred: "When we introduce a peer, there is a ceremony. Why shouldn’t there be a ceremony to mark the distinguished contribution of a peer who has decided to retire with dignity?"115

51. The evidence we received suggested that, if the voluntary retirement scheme is to be more successful, it is imperative also to address the key political disincentive that is currently hindering take-up, namely that peers are reluctant to leave voluntarily because they are concerned about the impact their departure will have on party balance. As Dr Russell explained: "any member taking voluntary retirement at present simply weakens their party/group, with no guarantee that they will be replaced. Until a proportionality formula is established, any such system is likely to fail."116

52. Lord Hunt of Wirral suggested that voluntary retirement could be more actively promoted by party leaders and the convenor of Cross-bench peers and that "they should appeal to the recognition of the institutional interest of the House rather than individual interest in just seeking retirement of those who do not contribute effectively [...] and they could invite them to consider their position. There should be more political agreement about what proportion of seats for each party and the Cross-Benches there should be".117 Dr Russell suggested that an appropriate goal might be to establish equality between the two main parties in the short term, with volunteer retirees sought to reach this target if necessary. She noted that here, the present position is "propitious because Labour retains only a small numerical advantage over the Conservatives (222 to 213)." She went on to argue that:

Equality might therefore be relatively easily achieved. But agreeing such a formula would be delicate, and would almost certainly need to be agreed through cross-party talks, particularly if party peers were being asked to cooperate with the retirement element. No such formula would succeed if it were merely imposed.118

112 Ev w51
113 Q 72 [Lord Hennessy]
114 Q 109
115 Q 192
116 Ev w41. See also Ev w52 [David Beamish]
117 Q 164 [David Beamish]
118 Ev w43. See also Q 131
53. There was broad consensus in the evidence we received that the voluntary retirement scheme introduced in 2011 has not been a success and it has clearly had no notable impact on the size of the House. We believe it is incumbent upon the party leaders in the House of Lords and the Convener of the Cross-bench peers actively to encourage peers to consider retirement. Although this will undoubtedly be a delicate task, it is very much in the interests of parties and Cross-benchers to see the size of the House reduced in an equitable manner. We support the idea that some form of ceremony in recognition of service provided to the House should take place for peers who decide to take voluntary retirement.

**A strengthened leave of absence scheme?**

54. One other option we discussed with witnesses is whether the current leave of absence scheme could be strengthened. As recently as 2012 the scheme was bolstered to bring it into line with the recommendations of the Leader’s Group chaired by Lord Hunt of Wirral. As a result of this, the Clerk of Parliaments now writes at the start of each session to Members who have attended rarely in the previous session inviting them to apply for a leave of absence. The invitation can be accepted or declined according to the decision of the individual Member. Members who do not reply within three months are granted a leave of absence automatically. Since May 2012 it has led to 16 peers agreeing to take a leave of absence and a further four being granted a leave of absence after failing to reply within three months. As a result, the number of peers on a leave of absence is now 42, much higher than in recent years. Lord Hunt of Wirral told us that the fact that the innovation had encouraged a number of peers who had been attending to take a leave of absence highlights its success.119

55. In his written evidence, David Beamish detailed how the scheme could be further strengthened through changes to Standing Orders, “making more forceful use of the leave of absence scheme to reduce numbers”.120 He suggested:

> The House could set a minimum level of attendance required of its members [...]. Such a rule would have to allow for exceptions, where members had a valid and time-limited reason [...] for being unable to attend. It has also been suggested to me that there ought to be a mechanism (perhaps via a committee) for exempting especially distinguished members. [...] The question then arises – what could the House do to those who failed to comply? [...] I do not believe that a Member could be suspended in such circumstances. However, I believe that it would be within the House’s power to deem such Members to have applied for leave of absence. Such leave is, by definition, voluntary—enforced leave of absence, without the option of terminating it, would be tantamount to suspension, as well as being a contradiction in terms. It would therefore be essential that leave granted in such circumstances could be terminated in the normal way, by the Member giving three months’ notice of his or her intention to return to the House. This would allow Members to mend their ways, and return to the House, on
the understanding that they would henceforth attend more regularly. On this basis, I believe a strengthened leave of absence scheme would be lawful.\footnote{Ev w52}

56. Since the House of Lords strengthened its leave of absence scheme, take-up has increased. We welcome suggestions to bolster this scheme further by setting a minimum level of attendance, with appropriate exceptions. As with the issue of voluntary retirement, we believe that the political parties in the Lords ought to do more to encourage take up of the leave of absence scheme and should offer their support for a strengthened scheme, with a view to implementing it within this Parliament.
8 Expelling peers convicted of a serious offence

57. In both the oral and written evidence we received, there was unanimous support for the idea that peers convicted of a serious offence should be expelled.\textsuperscript{122} Unlock Democracy’s submission, which was typical of many of those which we received, stated:

The fact that at present members of the House of Lords can be convicted of serious offences, from fire starting to false accounting and perjury, serve custodial offences and remain members of the legislature, damages the reputation of the House of Lords. It reinforces the notion that politicians are somehow a class apart who are not treated in the same way as the rest of the country.\textsuperscript{123}

58. Proposals on expulsion were included in the previous Government’s Constitutional Reform and Governance Bill, the Coalition’s 2012 House of Lords Reform Bill, and also in a number of Private Members’ Bills sponsored by Lord Steel. More recently, Baroness Hayman’s Bill states that a peer convicted of a criminal offence by a court in the United Kingdom or elsewhere, and sentenced, imprisoned or detained indefinitely for more than one year would cease to be a member of the Lords. If introduced, this would mirror the disqualification provisions for the House of Commons for serious criminal offences, a point that was supported by numerous witnesses who argued there should be no difference between the two Houses.\textsuperscript{124}

59. Giving evidence to us on this issue, Baroness Hayman suggested that she was minded to add a provision which would allow for the expulsion of any peer who brought the House into disrepute. This idea found also favour with Lords Goodlad, Hennessy and Norton when they gave evidence to us.\textsuperscript{125}

60. \textbf{We conclude that there is a consensus in support of the introduction of provisions to enable the expulsion of peers convicted of a serious offence. We strongly support the proposal contained within Baroness Hayman’s House of Lords Reform Bill which addresses this matter.}

\textsuperscript{122} Ev w2; Ev w7; Ev w9; Ev w10; Ev w15
\textsuperscript{123} Ev w33
\textsuperscript{124} Q 96; Ev w5; Ev w47; Ev w7; Ev w10
\textsuperscript{125} Q 96
9 The desirability, composition and remit of a Statutory Appointments Commission

61. The House of Lords Appointments Commission was established by the then Prime Minister Tony Blair in May 2000. The Commission has seven members, including the Chairman (currently Lord Kakkar and preceded by Lord Jay). Three members represent the main political parties and ensure that the Commission has expert knowledge of the House of Lords. The other members, including the Chairman, are independent of Government and the political parties. The Commission recommends individuals for non-party-political membership of the House of Lords, based on merit and their ability to make a significant contribution to the work of the House. The Commission must ensure that the individuals it recommends are independent, have integrity and are committed to the highest standards of public life. The Prime Minister decides the number of recommendations to be invited from the Commission; in practice this usually totals about four to five nominations a year. The Prime Minister also reserves the right to nominate directly to Her Majesty the Queen in any one Parliament up to 10 distinguished public servants, on their retirement, for non-party-political peerages. The Appointments Commission vets such nominees for propriety. In total, the Commission controls around 20% of all appointments to the House.126

62. Many of those who submitted evidence commended the current Appointments Commission for its work. Dr Russell stated: “it has helped to transform the Cross-benches into a more active place, where members arrive better prepared, and there is now a clearer distinction between independent and party peers. It has also been possible to use these appointments to somewhat improve the gender and ethnic balance in the chamber, and fill clear expertise/professional gaps.” Lord Jay told us that, by focusing on merit, quality and diversity, the Commission had helped to bring much-needed experience to the cross-benches. He added: “figures for gender diversity, ethnic minorities and disability on the cross-benches are considerably higher than they are for members of the House of Lords as a whole”.127

63. Placing the Appointments Commission on a statutory basis has featured in all Government-sponsored reform proposals since 1997.129 When we heard from Lord Jay, he too stated that he was firmly in favour of a statutory basis. He said: “there are […] some quite good practical reasons, and if there was an idea that the Appointments Commission should do more than it now does, particularly if it is going to be choosing among party political lists, I think it has to be on a statutory basis and has to be accountable to the House rather than to the Prime Minister of the day for that.”130 We also heard from Alan Renwick, another of those in favour of a statutory basis, who argued that without it there is a “danger

126 Ev w41; Q 73
127 Ev w41
128 Q 145
129 Ev w47
130 Q 144
that it [the Commission] might be interfered with by an unchecked prime minister,\textsuperscript{131} and from Lord Howarth, who wrote:

While the existing Appointments Commission acts with scrupulous care and excellent judgement it is not satisfactory, to itself or anyone else, that it has no statutory basis, it invents its own remit and makes up its own rules as it goes along. There should be a statutory Appointments Commission, its task defined in general terms by Parliament and plain for the public to see.\textsuperscript{132}

Dr Ballinger stated:

If it can now be argued that it has established the independence it needs without a statutory footing, then nothing can be lost by giving it one; if the Commission suffers from any perception of non-independence, then it certainly should be reinforced by statute. The protection of the Commission by Parliament is an important safeguard, and a re-assurance to the public that it is a genuinely independent Commission.\textsuperscript{133}

A number of submissions stated that they would support a statutory Appointments Commission only if a fully elected Lords was not an option.\textsuperscript{134} For instance, the Campaign for a Democratic Upper House argued that, “in the context of proposals for a membership without a democratic element, the creation of a statutory Commission would represent, and be seen to represent, a decisive step to a permanent appointed House.”\textsuperscript{135}

64. Others argued that it was more important to focus on the Commission’s remit.\textsuperscript{136} Dr Russell, for instance, stated that the existing non-statutory Commission could be given additional powers by the Prime Minister and that “getting these powers right is thus of far more fundamental importance than whether the Commission is made statutory or not.”\textsuperscript{137} Dr Russell’s evidence raised the possibility of extending the Commission’s role so that it could play a role in the appointment of party political, not just non-party, peers. She also suggested that the Commission’s role could be extended to have oversight of the size and party balance in the chamber and to report each year on the state of membership.\textsuperscript{138} Dr Ballinger argued that any significant change in remit would strengthen the case for placing the Commission on a statutory footing.\textsuperscript{139}

65. Baroness Hayman’s Bill includes provision for a statutory appointments commission which would have exclusive competence to make appointments (although the Prime Minister would be able to make recommendations to the Commission). The Bill also provides guidelines on how appointments should be made. These include an attempt to balance giving the Government a majority over the Opposition with not allowing the

\textsuperscript{131} Ev w25
\textsuperscript{132} Ev w16
\textsuperscript{133} Ev w47
\textsuperscript{134} Ev w5; Ev w7
\textsuperscript{135} Ev w30
\textsuperscript{136} Q 142 [Barber]
\textsuperscript{137} Ev w42
\textsuperscript{138} Q 141
\textsuperscript{139} Q 142
Government to dominate the House as a whole. It also guarantees the Cross-benches and non-affiliated Members at least 20% of seats. Lord Jay told us that he thought the proposals contained within Baroness Hayman’s Bill for “the size of the House, for the size of the commission, for the functions of the commission and so on are perfectly workable.” He did however, note that “there are one or two points that I think would need a little further work”. He explained that “at present we have a committee of seven of whom four are independent and those who are independent are appointed by the public appointments process. I would personally like that to continue because I think it is important that, even if you have a statutory commission, the independent members are not just chosen by the Speakers but are appointed through some kind of appointments process so they are seen to be independent of the House.”

Lord Jay also queried whether the Prime Minister would be prepared to agree that the commission should be on a statutory basis. He told us:

There is a degree of quite desirable patronage in the present system that Prime Ministers may well think they would like to keep. As I say, I think that it would be good if it were on a statutory basis, and if it were on a statutory basis, it could more or less work as set down here in the draft Bill. I am not at all sure that that will come to pass, although I hope it will.

Lord Richard also doubted that “Prime Ministers will ever give up voluntarily the right to try to appoint people that they think should be in the House of Lords.”

66. In the evidence we received, the case for placing the Appointments Commission on a statutory basis was strong. So, too, were the arguments that the Appointments Commission could play a role in monitoring and overseeing the size and party balance in the Chamber and in extending its locus in terms of political appointments. While we support the idea of placing the current House of Lords Appointments Commission on a statutory footing, we believe that changes to its remit would be best discussed in the context of wider reform of the House of Lords.
10 Determining the relative numerical strengths of party groups in the House of Lords

67. In our terms of reference we asked witnesses to offer their views on the scope for establishing a consensus about the principles which should determine the relative numerical strengths of the different party groups in the House of Lords, and for codifying such principles.

68. In his written evidence, Lord Howarth explained how the current political balance is determined:

The process whereby members of political parties arrive as members of the House of Lords is obscure and random. It is controlled by the Prime Minister who determines how many appointments each party leader can make. This produces an inflationary ratchet: incoming Prime Ministers create masses of new peerages, offering some to other parties but always making sure they strengthen their own party’s relative headcount in the division lobbies. The party leaders reward old friends, donors, superannuated colleagues who have behaved themselves and so forth. The House gets larger and larger. It is indeed indefensible. 143

One of the problems with this system, according to Alan Renwick, is that “the composition of the chamber can be substantially altered at the whim of the serving prime minister” leaving “the Prime Minister great scope to change those strengths to his or her own advantage”. This, he argued, is a problem of principle: “it is wrong for the Prime Minister to have such great power over the composition of one of the chambers of Parliament.” 144

Dr Russell concurred:

[The] biggest single problem with the current composition of the Lords is the Prime Minister’s unregulated patronage with respect to party peers. S/he continues to decide how many should be appointed, when, and with what balance between the parties. This is an inappropriate power for the head of the executive to hold over the composition of parliament, and could allow legislative outcomes to be manipulated (e.g. by a Prime Minister wanting to prevent Lords defeats by “packing” their own side). Furthermore, it is this unregulated power that has led to the growing size of the chamber. 145

69. The written evidence suggested various ways in which relative numerical strengths could, and should, be determined. For instance, the Electoral Reform Society believed that the principles determining party strength should take account of the balance between party and independent peers. It stated that “the independence of the upper chamber and the balance between party and Cross-bench MPs should be considered as part of any

143 Ev w17
144 Ev w24
145 Ev w42
codification. No party should have an overall majority in the House of Lords. It should be a forum where all interests are heard but none dominate.”

Dr Baldwin and Dr Ballinger both also referred to the idea that no individual party should have an overall majority in the House, with Dr Ballinger suggesting that there seems to be “some measure of agreement that no party should seek a permanent majority in the upper House”.

These principles are contained in Baroness Hayman’s Bill which would give the Government a majority over the Opposition without allowing it to dominate the House as a whole as well as guaranteeing the Cross-benches and non-affiliated Members at least 20% of seats.

70. In terms of how the relative strengths would be calculated, many submissions recommended that party balance in the Lords should reflect the shares of the popular vote at the most recent General Election. This mirrors the Government’s objective in the 2010 Coalition Agreement of “creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election”. Dr Barber’s evidence stated: “electoral support can be the only principle upon which any formal determination of party representation could be made,” while Dr Baldwin argued: “balance should be derived from the level of popular support achieved at the most recent general election or from an aggregate of the level of popular support achieved at the two most recent general elections.”

Both the Liberal Democrat Parliamentary Policy Committee and the Green Party expressed a preference for allowing the electorate to vote for peers directly. However, the Green Party accepted that “until legislation is enacted to enable that to happen then as a very minimum, as per the Coalition Agreement, it should be reflective of the share of the vote secured by the political parties in the last general election.” Professor McLean stated: “if the House is to become a fully nominated one [...], a minimum democratic requirement would be that its party members should in some sense reflect (probably lagged) public opinion as expressed in votes for the House of Commons.”

71. However, a number of submissions expressed concern about basing the composition of the House of Lords on the share of the popular vote of the last General Election result. The Campaign for a Democratic Upper House, for instance, stated that this would “significantly under-represent small parties and independents”.

Professor McLean addressed this point:

The rule might be, for example, that parties are represented in proportion to the (unweighted) average share of their national vote at the last three General Elections. A threshold of, say, 5% of the popular vote could be set; but parties which contest seats in only one part of the UK should only be required to obtain 5% of the vote in

---

146 Ev w19
147 Ev w47
149 Ev w5
150 Ev w9
151 Ev w21
152 Ev w15
153 Ev w34
the part of the UK where they have run for the Commons. After each General Election, this balance would have to be re-weighted. [...] \(^{154}\)

72. The Campaign for a Democratic Upper House also argued that basing party strength on previous General Election votes would “fundamentally change the nature of the franchise. Voters would effectively be voting for two chambers.” \(^{155}\) Dr Russell argued that although the Coalition has not retracted its commitment to balance the House of Lords on the basis of the 2010 General Election vote, with less than two years to go before the next General Election “it would make no sense to return to it now, more than halfway through the Parliament [...]” \(^{156}\)

73. Several submissions addressed the impact that basing the composition of the House of Lords on the last General Election vote could have on the size of the House. For instance, the Electoral Reform Society argued that unless it was coupled with reforms aimed at removing Members, it would increase rather than decrease the size of the House. Dr Russell stated: “any attempt to align the chamber’s membership with general election votes would operate as “an upward ratchet” (unless perhaps some members were forced to depart the chamber at the same time).” \(^{157}\) Indeed, in 2011 the Constitution Unit calculated that a further 82 new Conservative Peers and 97 new Liberal Democrats would be required to make the party balance in the Lords reflect the votes cast at the last General Election. This would bring the size of the House up to over 1,062, while its membership would need to increase to 1,142 if the present proportion of Cross-benchers were to be maintained. The Liberal Democrat Parliamentary Policy Committee noted that:

> These figures were contingent on the Prime Minister deciding not to appoint any further Labour Peers, since their numbers already exceed those justified by the 29% share polled by Labour at the general election. However, on present evidence, it appears the Prime Minister like his predecessors does not wish to appoint members only of the governing parties. This admirable altruism towards the Opposition makes the task of creating balance in the House of Lords all the more difficult.\(^{158}\)

Unlock Democracy concluded that “without term limits for members of the House of Lords, it is simply impossible to maintain party balance in the second chamber without its size rising exponentially.” \(^{159}\) Another possible option in this context could be to re-visit a form of moratorium which would see more than one peer removed every time a new peer was appointed, in line with an agreed party balance and an agreed size for the House. This would in effect ensure that new appointments could in fact help to reduce the overall size of the House.

74. Both Dr Russell and Professor McLean suggested that it may be more helpful if new appointments were required to reflect General Election votes, rather than this formula

---

\(^{154}\) Ev w15  
\(^{155}\) Ev w34  
\(^{156}\) Ev w42  
\(^{157}\) Ev w42  
\(^{158}\) Ev w8  
\(^{159}\) Ev w34
being applied to the Chamber overall.\textsuperscript{160} This has been recommended by the Royal Commission, and numerous others (including the Public Administration Committee and the Government)\textsuperscript{161} who have previously proposed a long-term Lords membership that includes some appointed party peers. Dr Russell argued that applying the formula only to new appointments has the benefit of clarity and transparency, and would also tend to level out the effect of electoral fluctuations if Members are appointed for long terms. Such a formula could be applied to batches of appointments (of say 10 or 20), but equally could be used if Members were appointed individually (for example on a one-in-one-out principle, following deaths or retirements).

75. However, for this formula to work, Dr Russell argued that there would need to be agreement not only on the share of appointments between the parties, but also on their overall number. She added:

> Most parliaments have a fixed size, and most previous proposals for reform have envisaged this for the Lords. Without a size cap, a Prime Minister might remain tempted to make large numbers of appointments, as the proportionality formula would still tend to favour their party while they are in power. Hence a limit on the size of the chamber, and/or a limit on the number of appointments per year, is essential.\textsuperscript{162}

Dr Russell continued:

> There would need to be agreement about the proportion of appointments that should go to independent Cross-benchers. Again, there has been near-consensus from previous proposals that this proportion should be set at 20%. It is the remaining 80% of appointments, therefore, that would be shared proportionally between the parties.

76. Dr Ballinger suggested:

> Perhaps the most practicable method for reducing the size of the House, without entirely altering the basis of its composition (such as through fixed-term appointments, detached from the peerage) would be to insist that each party group in the Lords (and the crossbenchers) had to reduce their numbers—the numbers can be chosen according to general election votes cast, or some other agreed measure (and could be changed periodically). The number of seats in the upper House would therefore be limited, and not all Life Peers would be Members. This has precedents not just in the selection of hereditary peers since 1997; but also in the selection of members of the Scottish and Irish peerages before 1963, and in the selection of Lord Bishops since 1847. It could be left to each party group to determine their preferred method and criteria of selection, within their number cap.\textsuperscript{163}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{160} Ev\textsuperscript{w15}; Ev\textsuperscript{w42-43} \\
\item \textsuperscript{161} A House for the Future, (Cm 4534); 5\textsuperscript{th} Report of the Public Administration Committee, 2001-02, The Second Chamber: Continuing the Reform, HC 494 \\
\item \textsuperscript{162} Ev\textsuperscript{w42-43} \\
\item \textsuperscript{163} Ev\textsuperscript{w46}
\end{enumerate}
\end{footnotesize}
77. It is noteworthy that although Baroness Hayman’s Bill does not introduce a formal cap on the size of the House, it moves very softly in that direction insofar as it states that “[...] the Commission shall have regard to the need to achieve a membership not exceeding that of the House of Commons”.

78. Views differed on the prospect for securing a consensus on the issue of party balance. The Campaign for a Democratic Upper House thought that there would be little scope for consensus164 while Professor McLean stated that the problem is that “self-regulation potentially collides with partisan interest”.165 However, Alan Renwick pointed out that the principle that no party should have a majority in the House of Lords had underpinned all recent reform proposals and was apparently accepted on all sides of the House.166

79. There were various suggestions as to who, or which body ought to take responsibility for codifying the principles by which the relative numerical strengths of the parties should be determined. Professor McLean stated: “the body which commands respect in this area is the Electoral Commission, which already has experience of some of the gaming issues likely to arise (e.g. parties which pretend to merge or split in order to cross thresholds or prevent their rivals from crossing thresholds).”167 Dr Ryan suggested that the role of establishing the numerical strengths of party groups in the House of Lords could be discharged by an independent Appointments Commission “with the formula for doing so set out in statute.”168

80. A number of witnesses including Dr Russell stressed the crucial importance of involving the parties in decisions as to what the composition of the House should be.169 Dr Russell said: “You have to get people from the party groups to sit down and agree between them what the party balance should be and what size the cap should be. If you can get that agreed, I think the party groups will be able to sort it out for themselves, encouraging people to go.”170

81. Agreement on how to determine the relative numerical strengths of the different party groups in the Lords would not only be a valuable end in itself, it would also pave the way for the implementation of the majority of the other small-scale reforms we have discussed in this Report. Of all the issues we have discussed it has the most potential to have a positive impact on the size of the House. Inevitably, it is also the most contentious. We have referred in this Report to various suggestions as to how this could be approached. However, the reality is that it is up to the party groups to engage in dialogue with a view to reaching an agreement on the next step forward. We recommend that in its response to this Report, the Government sets out its position on this issue. We also encourage the individual party groups and Cross-benchers to provide their views in writing to us with a view to making progress on this issue before the next General Election.

164 Ev w30
165 Ev w15
166 Ev w26
167 Ev w15
168 Ev w10
169 Q 191
170 Q 134
Conclusions and recommendations

No longer replacing hereditary peers in the House of Lords when they die

1. The evidence we received on no longer replacing hereditary peers in the House of Lords when they die showed that there is broad-based and significant support for this idea and that this could be realised by ending the by-election system which perpetuates the current system. We accept that doing this would not have a large or swift impact on the size of the House but, as a means of gradually reducing numbers we conclude it would be worthwhile. It would also serve to reduce the reputational risk to the House which results from the existence and use of the current by-election system. We do not believe that taking action on this issue would preclude further, wholesale reform taking place in the future, if that is what political parties favour. Therefore, we recommend that hereditary peers should not be replaced in the House of Lords when they die and we welcome the provisions contained within Baroness Hayman’s Private Member’s Bill which seek to achieve this goal. (Paragraph 19)

Removing persistent non-attendees

2. It is clear that there is broad support for tackling the issue of persistent non-attendance. Members of the House of Lords should be, and should be seen to be, actively engaging in the work of the House. Where this does not occur, action must be taken. In crafting an appropriate scheme on non-attendance, care must be taken to ensure that it does not penalise those who face ill health or a temporary change in circumstances or those whose ongoing work outside the House enables them to enhance the Lords’ scrutiny function. There are a variety of ways in which non-attendance can be defined but the formulation contained in Baroness Hayman’s Bill on House of Lords Reform, which states that peers who do not attend during a session would cease to be Members of the House at the end of the session, with the exception of those with an authorised leave of absence, appears to us to be broadly along the right lines. (Paragraph 27)

A moratorium on new peers

3. We conclude that the positive short-term impact of a moratorium in helping to avoid further increases in the size of the House would be outweighed by the loss to the House of Lords of new perspectives and fresh thinking. There was little support for a moratorium in the evidence we received and we conclude that there is little, if any, prospect for securing a broad-based consensus in favour of this proposal. (Paragraph 33)

Fixed-term appointments for new peers

4. We support proposals for a non-statutory scheme under which nominees would be invited to give an assurance that they would retire after a certain number of years. While we accept that it lacks the strength that a statutory regime could provide, we conclude that it has the potential to have an impact on the size of the House of Lords
over time and could help to give momentum to other smaller-scale reforms. Accordingly, we invite the party and cross-bench associations in the Lords to make their views on this matter known to us in writing. (Paragraph 40)

The introduction of a retirement age

5. We accept the view that the introduction of a retirement age in the House of Lords would be both arbitrary and discriminatory and could result in the loss of much-valued expertise. It could also have an undesirable impact on party balance. (Paragraph 46)

Voluntary retirement

6. There was broad consensus in the evidence we received that the voluntary retirement scheme introduced in 2011 has not been a success and it has clearly had no notable impact on the size of the House. We believe it is incumbent upon the party leaders in the House of Lords and the Convener of the Cross-bench peers actively to encourage peers to consider retirement. Although this will undoubtedly be a delicate task, it is very much in the interests of parties and Cross-benchers to see the size of the House reduced in an equitable manner. We support the idea that some form of ceremony in recognition of service provided to the House should take place for peers who decide to take voluntary retirement. (Paragraph 53)

7. Since the House of Lords strengthened its leave of absence scheme, take-up has increased. We welcome suggestions to bolster this scheme further by setting a minimum level of attendance, with appropriate exceptions. As with the issue of voluntary retirement, we believe that the political parties in the Lords ought to do more to encourage take up of the leave of absence scheme and should offer their support for a strengthened scheme, with a view to implementing it within this Parliament. (Paragraph 56)

Expelling peers convicted of a serious offence

8. We conclude that there is a consensus in support of the introduction of provisions to enable the expulsion of peers convicted of a serious offence. We strongly support the proposal contained within Baroness Hayman’s House of Lords Reform Bill which addresses this matter. (Paragraph 60)

The desirability, composition and remit of a Statutory Appointments Commission

9. In the evidence we received, the case for placing the Appointments Commission on a statutory basis was strong. So, too, were the arguments that the Appointments Commission could play a role in monitoring and overseeing the size and party balance in the Chamber and in extending its locus in terms of political appointments. While we support the idea of placing the current House of Lords Appointments Commission on a statutory footing, we believe that changes to its remit would be best discussed in the context of wider reform of the House of Lords. (Paragraph 66)
Determining the relative numerical strengths of party groups in the House of Lords

10. Agreement on how to determine the relative numerical strengths of the different party groups in the Lords would not only be a valuable end in itself, it would also pave the way for the implementation of the majority of the other small-scale reforms we have discussed in this Report. Of all the issues we have discussed it has the most potential to have a positive impact on the size of the House. Inevitably, it is also the most contentious. We have referred in this Report to various suggestions as to how this could be approached. However, the reality is that it is up to the party groups to engage in dialogue with a view to reaching an agreement on the next step forward. We recommend that in its response to this Report, the Government sets out its position on this issue. We also encourage the individual party groups and Cross-benchers to provide their views in writing to us with a view to making progress on this issue before the next General Election. (Paragraph 81)
Appendix 1

For ease of reference, the full text of Baroness Hayman’s House of Lords Reform Bill [HL] 2013-14, as introduced, is reproduced below:

A BILL TO Make provision for permanent leave of absence from the House of Lords; to provide for the expulsion of members of the House of Lords in specified circumstances; to make provision for the appointment of a Commission to make recommendations to the Crown for the creation of life peerages; and to restrict membership of the House of Lords by virtue of hereditary peerages.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1 RETIREMENT

1 Retirement

(1) A peer may retire as a member of the House of Lords by giving notice in writing to the Clerk of the Parliaments.

(2) The notice must specify a date from which the retirement is to take effect.

(3) At the beginning of that date the peer ceases to be a member of the House of Lords.

(4) Retirement may not be rescinded.

2 Non-attendance

(1) A peer who does not attend the House of Lords during a Session ceases to be a member of the House at the end of the Session (subject to subsections (2) and (3).

(2) Subsection (1) does not apply—

(a) to a peer who has leave of absence in respect of the Session, in accordance with Standing Orders of the House, or

(b) in respect of a Session that is less than six months long.

(3) Subsection (1) is to be taken to apply to a peer in respect of a Session if, and only if, the Lord Speaker certifies that the peer—

(a) did not attend at any time during the Session, having regard to attendance records kept by officials of the House, and

(b) did not have leave of absence in respect of the Session.

(4) In this section a reference to attendance is a reference to attending the proceedings of the House (including proceedings in a Committee of the House or a Joint Committee of the two Houses).
(5) This section applies in respect of the first Session beginning after Royal Assent, and later Sessions.

**PART 2 CONVICTION OF SERIOUS CRIMINAL OFFENCE**

**3 Conviction of serious offence**

(1) A peer who is convicted of a serious offence ceases to be a member of the House of Lords (subject to subsections (2) to (5)).

(2) A peer is to be treated as having been convicted of a serious offence if, and only if, the Lord Speaker certifies that the peer has been—

(a) convicted of a criminal offence by a court in the United Kingdom or elsewhere, and

(b) sentenced or ordered to be imprisoned or detained indefinitely or for more than one year.

(3) A certificate takes effect on the day on which it is issued.

(4) If the Lord Speaker decides that subsection (2)(a) and (b) no longer apply to a peer by reason of a successful appeal against or challenge to conviction or sentence—

(a) the Lord Speaker must issue a further certificate to that effect, and

(b) the original certificate under subsection (2) shall be treated for the purposes of this Act as never having had effect.

(5) The Lord Speaker shall not issue a certificate under subsection (2) in respect of a conviction outside the United Kingdom if the House of Lords resolves that subsection (1) should not apply to the conviction by reason of special circumstances.

**4 Effect of ceasing to be a member**

(1) This section applies where a peer (whether life or hereditary) ceases to be a member of the House of Lords in accordance with this Act.

(2) The peer becomes disqualified from attending the House of Lords (which includes sitting and voting in the House, and attending proceedings in any Committee of the House or Joint Committee of the two Houses).

(3) Accordingly, the peer shall not receive a writ to attend the House (whether under section 1 of the Life Peerages Act 1958 or by virtue of a hereditary peerage; and a hereditary peer ceases to be excepted from exclusion under section 2 of the House of Lords Act 1999); and the peer may not attend the House in pursuance of a writ already received.

(4) The peer is not, by virtue of being a peer, disqualified for—

(a) voting at elections to the House of Commons, or

(b) being, or being elected as, a member of that House.

**PART 3 LORD SPEAKER**
5 Certificate of Lord Speaker

(1) A certificate of the Lord Speaker under this Act shall be conclusive for all purposes, and shall not be questioned in a court of law.

(2) A certificate may be issued on the Lord Speaker’s own initiative.

PART 4 APPOINTMENTS COMMISSION

6 Commission to recommend life peerages

(1) There shall be a Commission (“the Commission”) to make recommendations to the Crown for the creation of life peerages.

(2) No recommendations for the creation of life peerages shall be made other than by the Commission.

(3) All recommendations shall be presented to the Crown by the Prime Minister.

7 Commission membership

(1) The Commission shall consist of nine members.

(2) The members of the Commission, including the Chairman, shall be nominated jointly by the Speaker of the House of Commons and the Lord Speaker of the House of Lords.

(3) In making nominations under subsection (2), the Speaker and the Lord Speaker shall consult such other persons or bodies as they deem appropriate.

(4) In making nominations, the Speaker and the Lord Speaker shall have regard to the need to ensure that, in respect of members affiliated with registered political parties, the Commission is politically balanced.

(5) At least four of those nominated for membership shall be independent of any registered political party.

(6) The persons nominated under subsection (5) shall include the Chairman of the Commission.

(7) At least four of those nominated shall be Privy Counsellors.

(8) No-one shall be nominated under subsection (5) if at any time in the preceding two years he—

(a) has been a member of a registered political party;

(b) has given public support, by way of public speaking or appearance, to a registered political party; or

(c) has made a financial donation to any registered political party.

(9) No-one shall be nominated who is a Minister of the Crown or holder of a national office in any registered political party.
(10) Following nomination by the Speaker and the Lord Speaker under subsection (2), the members shall be appointed by the Crown.

(11) Except as provided for in subsection (12), a member of the Commission shall serve for a non-renewable term of five years.

(12) On the first occasion that the Commission is appointed, three members shall be nominated to serve for a term of four years, three members for a term of five years, and three (including the Chairman) for six years.

(13) A member of the Commission may be removed by the Crown on an address by both Houses of Parliament.

(14) A member of the Commission may resign and in that event, or on the death of a member or on the removal of a member under subsection (13), the member appointed to replace the former member shall serve for the remainder of the term of that former member and may be re-appointed for one further term.

8 Commission to determine rules and procedures

Except as provided for in subsequent sections in this Part, the Commission shall determine its own rules and procedures.

9 Proposals for new peers

(1) Proposals for new peers may be made to the Commission by—

(a) any individual other than those listed in paragraphs (b) and (c) in respect of non-party members (“non-party nominees”);

(b) the leader of any registered political party specified under subsection (2) (“party nominees”); and

(c) the Prime Minister acting as Prime Minister and not as the leader of a registered political party (“prime ministerial nominees”).

(2) For the purposes of subsection (1)(b), the Commission shall normally consider nominations made by the Leader of a registered political party that has achieved representation of at least six seats in the House of Commons at the preceding general election.

10 Nominees to meet specific criteria

(1) Any recommendation made by the Commission for the conferment of a peerage shall comply with the criteria specified in this section.

(2) The principal criteria for recommendation for a peerage shall be—

(a) conspicuous merit; and

(b) a willingness and capacity to make a contribution to the work of the House of Lords.

(3) The Commission may propose additional criteria as it deems appropriate.
(4) In proposing additional criteria, the Commission shall have regard to the diversity of the United Kingdom population.

(5) The criteria proposed by the Commission under subsection (3) shall be laid before both Houses of Parliament as an order made by statutory instrument by a Minister of the Crown and subject to annulment in pursuance of a resolution of either House of Parliament.

(6) The criteria shall be not varied other than on a proposal made by the Commission and subject to the procedure specified in subsection (5).

(7) The Commission may propose criteria that relate to an individual or, in the case of proposals made under section 9(1)(a) and (b), the criteria that relate to the balance and diversity that it wishes to achieve.

(8) The Commission may make such enquiry as it considers appropriate to ensure that any person proposed for a peerage fulfils the criteria and it shall be a duty on public bodies to co-operate with any such enquiry.

11 Guidelines

(1) The Commission may issue guidelines setting out how it will interpret and apply the criteria established under section 10.

(2) The guidelines issued under subsection (1) shall be laid before both Houses of Parliament as an order made by statutory instrument by a Minister of the Crown and subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The guidelines, once approved, shall be publicised by the Commission in such manner as it deems appropriate.

(4) The guidelines shall not be varied other than by the procedure specified in subsection (2).

12 Certificate to be conclusive

Where the Commission certifies that a person recommended for a peerage meets the published criteria, its certificate shall be conclusive.

13 Principles to be followed in making recommendations

(1) At least once in each calendar year, the Commission must publish, with reasons, proposals for the creation of new peers under section 4(1)(a) and (b), or a proposal that no such creation should be made.

(2) In determining how many new peerages to recommend, the Commission shall have regard to the following principles—

(a) not less than twenty per cent of the membership of the House of Lords shall consist of members who are independent of any registered political party;
(b) no one party, nor a coalition of parties forming a Government, shall have a majority of members in the House of Lords;

(c) the Government of the day (or in the event of a coalition of parties forming a Government, the largest party in the coalition) shall be entitled to have a larger number of members than the official Opposition, but the majority of that party over the official Opposition shall normally be no greater than three per cent of the total membership of the House of Lords.

(3) For the purpose of determining its recommendation under subsection (1), the Commission may consult such persons or bodies as it deems appropriate.

(4) For the purpose of determining the membership specified in subsection (2)(a), a person shall be deemed to be independent of any registered political party if in the two years prior to his nomination for a peerage he—

(a) was not a member of a registered political party;

(b) had not given public support, by way of public speaking or appearance, to a registered political party; or

(c) had not made a financial donation to any registered political party.

(5) In giving effect to the principle embodied in subsection (2)(c), the Commission may at its discretion phase in the requisite number of recommendations over a period of two sessions following a General Election.

(6) Subject to the principles embodied in subsection (2), the Commission shall have regard to the need to achieve a membership not exceeding that of the House of Commons.

(7) The Commission shall seek to achieve the membership stipulated in section 7(5) within whichever is the longer of eight years or the course of two full Parliaments.

(8) The members of the House of Lords included for the purpose of calculating the percentage under subsection (2)(a) shall not include the Lords Spiritual or the ex officio members under the terms of the House of Lords Act 1999, but shall include those Lords of Appeal in Ordinary who have ceased to serve in that capacity.

14 Party leaders to furnish information to Commission

(1) Where names are submitted to the Commission by a leader of a registered political party under section 9(1)(b), the leader shall inform the Commission of the procedure and criteria adopted by the party for the purposes of selecting the name for submission.

(2) The Commission shall satisfy itself that the procedure and criteria adopted by a registered political party for the purpose of making nominations are reasonable and consistent.

(3) Leaders of registered political parties submitting names to the Commission shall supply such other information as may be requested by the Commission.

PART 5 EXCLUSION OF HEREDITARY PEERS
15 Exclusion of hereditary peers
(1) Section 2 of the House of Lords Act 1999 is amended as follows.
(2) For subsection (2) substitute—
“(2) No more than 92 people shall be excepted from section 1.”
(3) For subsection (4) substitute—
“(4) Any vacancy resulting from the death of an excepted person occurring after the coming into force of the House of Lords Reform Act 2013 shall not be filled.”
(4) Omit subsection (5).

PART 6 SUPPLEMENTARY PROVISIONS

16 Short title, commencement and extent
(1) This Act may be cited as the House of Lords Reform Act 2013.
(2) Parts 1 and 3 of this Act shall come into force at the end of the period of three months beginning with the day on which this Act is passed.
(3) The remaining provisions of this Act shall come into effect on the day on which this Act is passed.
(4) This Act extends to England and Wales, Scotland and Northern Ireland.
Formal Minutes

Thursday 10 October 2013

Members present:
Mr Graham Allen, in the Chair
Paul Flynn
Sheila Gilmore
Fabian Hamilton
Mr Andrew Turner

Draft Report (*House of Lords reform: what next?*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 81 read and agreed to.

Summary agreed to.

A Paper was appended to the Report as Appendix 1.

*Resolved*, That the Report be the Ninth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Thursday 17 October at 9.45 am.]
Witnesses

Thursday 6 June 2013
Rt Hon Lord Steel of Aikwood and Rt Hon Baroness Hayman Ev 1

Thursday 13 June 2013
The Rt Hon the Lord Goodlad, Professor The Lord Norton of Louth, Lord Hennessy of Nympsfield and Lord Tyler Ev 13

Thursday 27 June 2013
Dr Meg Russell, University College London, Dr Stephen Barber, London South Bank University and Dr Chris Ballinger, Oxford University Ev 28
Lord Jay of Ewelme Ev 36

Thursday 4 July 2013
David Beamish, Clerk of the Parliaments Ev 40
Rt Hon Lord Hunt of Wirral, Rt Hon Lord Richard and Lord Cormack Ev 44
List of written evidence

(published in Volume II on the Committee’s website www.parliament.uk/pcrc)

<table>
<thead>
<tr>
<th></th>
<th>Author</th>
<th>Evidence Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Christopher J Hartigan</td>
<td>Ev w1</td>
</tr>
<tr>
<td>2</td>
<td>James A Ware</td>
<td>Ev w3</td>
</tr>
<tr>
<td>3</td>
<td>Dr Stephen Barber</td>
<td>Ev w4</td>
</tr>
<tr>
<td>4</td>
<td>Liberal Democrat Parliamentary Policy Committee</td>
<td>Ev w6</td>
</tr>
<tr>
<td>5</td>
<td>Dr Nicholas DJ Baldwin</td>
<td>Ev w8</td>
</tr>
<tr>
<td>6</td>
<td>Mark Ryan</td>
<td>Ev w9</td>
</tr>
<tr>
<td>7</td>
<td>Charlie Thacker</td>
<td>Ev w11</td>
</tr>
<tr>
<td>8</td>
<td>John FH Smith</td>
<td>Ev w11</td>
</tr>
<tr>
<td>9</td>
<td>Rt Hon David Blunkett MP</td>
<td>Ev w12</td>
</tr>
<tr>
<td>10</td>
<td>Professor Iain McLean</td>
<td>Ev w14</td>
</tr>
<tr>
<td>11</td>
<td>Lord Howarth of Newport</td>
<td>Ev w16</td>
</tr>
<tr>
<td>12</td>
<td>The Electoral Reform Society</td>
<td>Ev w19</td>
</tr>
<tr>
<td>13</td>
<td>The Green Party of England and Wales</td>
<td>Ev w20</td>
</tr>
<tr>
<td>14</td>
<td>Dr Michael Gordon</td>
<td>Ev w21</td>
</tr>
<tr>
<td>15</td>
<td>Lord Cobbold</td>
<td>Ev w23</td>
</tr>
<tr>
<td>16</td>
<td>Dr Alan Renwick</td>
<td>Ev w24</td>
</tr>
<tr>
<td>17</td>
<td>The Campaign for a Democratic Upper House</td>
<td>Ev w26</td>
</tr>
<tr>
<td>18</td>
<td>Unlock Democracy</td>
<td>Ev w31</td>
</tr>
<tr>
<td>19</td>
<td>Martin Wright</td>
<td>Ev w35</td>
</tr>
<tr>
<td>20</td>
<td>Simon Cramp</td>
<td>Ev w37</td>
</tr>
<tr>
<td>21</td>
<td>Imran Asim Hayat</td>
<td>Ev w38</td>
</tr>
<tr>
<td>22</td>
<td>Dr Meg Russell</td>
<td>Ev w39</td>
</tr>
<tr>
<td>23</td>
<td>Michael P Clancy, Law Society of Scotland</td>
<td>Ev w44</td>
</tr>
<tr>
<td>24</td>
<td>Dr Chris Ballinger</td>
<td>Ev w45</td>
</tr>
<tr>
<td>25</td>
<td>David Beamish, Clerk of the Parliaments</td>
<td>Ev w47: Ev w61</td>
</tr>
</tbody>
</table>
**List of Reports from the Committee during the current Parliament**

The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

### Session 2010–12

| First Report | Parliamentary Voting System and Constituencies Bill | HC 422 |
| Second Report | Fixed-term Parliaments Bill | HC 436 (Cm 7951) |
| Third Report | Parliamentary Voting System and Constituencies Bill | HC 437 (Cm 7997) |
| Fourth Report | Lessons from the process of Government formation after the 2010 General Election | HC 528 (HC 866) |
| Fifth Report | Voting by convicted prisoners: Summary of evidence | HC 776 |
| Sixth Report | Constitutional implications of the Cabinet Manual | HC 734 (Cm 8213) |
| Seventh Report | Seminar on the House of Lords: Outcomes | HC 961 |
| Eighth Report | Parliament’s role in conflict decisions | HC 923 (HC 1477) |
| Ninth Report | Parliament’s role in conflict decisions: Government Response to the Committee’s Eighth Report of Session 2010-12 | HC 1477 (HC 1673) |
| Tenth Report | Individual Electoral Registration and Electoral Administration | HC 1463 (Cm 8177) |
| Eleventh Report | Rules of Royal Succession | HC 1615 (HC 586) |
| Twelfth Report | Parliament’s role in conflict decisions—further Government Response: Government Response to the Committee’s Ninth Report of Session 2010-12 | HC 1673 |
| Thirteenth Report | Political party finance | HC 1763 |

### Session 2012–13

| First Report | Recall of MPs | HC 373 (HC 646) |
| Second Report | Introducing a statutory register of lobbyists | HC 153 (HC 593) |
| Third Report | Prospects for codifying the relationship between central and local government | HC 656(Cm 8623) |
| Fourth Report | Do we need a constitutional convention for the UK? | HC 371 |

### Session 2013-14

<p>| First Report | Ensuring standards in the quality of legislation | HC 85 (HC 611) |
| Second Report | The impact and effectiveness of ministerial reshuffles | HC 255 |
| Third Report | Revisiting Rebuilding the House: the impact of the Wright reforms | HC 82 |
| Fourth Report | The role and powers of the Prime Minister: the impact of the Fixed-term Parliaments Act 2011 on Government | HC 440 |</p>
<table>
<thead>
<tr>
<th>Fifth Report</th>
<th>Pre-appointment hearing: The Chair of the House of Lords Appointments Commission</th>
<th>HC 600</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sixth Report</td>
<td>Introducing a statutory register of lobbyists: Government Response to the Committee’s Second Report of Session 2012-13</td>
<td>HC 593</td>
</tr>
<tr>
<td>Seventh Report</td>
<td>The Government’s lobbying Bill</td>
<td>HC 601</td>
</tr>
<tr>
<td>Eighth Report</td>
<td>Parliament’s role in conflict decisions: an update</td>
<td>HC 649</td>
</tr>
</tbody>
</table>
As a sort of intro, may I say that, in my view, if the authors of that Bill had read their history properly, they would have realised that after my even more distinguished predecessor, Mr Asquith, produced the Parliament Act A911, and made the major reform then, he appointed a very distinguished commission, which included the Archbishop of Canterbury and at least one former Prime Minister, and it reported in 1918? I have the report in front of me and will read one sentence: “it was forcibly argued that a Chamber elected on the same franchise” as the House of Commons “would inevitably become a rival of the House of Commons”. There was no need for the great debates that we have had over the last year. If people had read their history, they would have known that they were running into trouble by producing a Bill of that kind. I welcome the work that the Committee is now doing and believe that these housekeeping measures are urgently needed.

Q2 Paul Flynn: It is refreshing to be reminded of the achievements of the last Liberal Government, considerable as they were. Do you think that Asquith and Lloyd George, if they could see the situation now, would be astonished that the Silver Stick in Waiting continues to prance around in ermine to this day and that we have not had a fundamental reform of a system that is indefensible—what Tony Benn called the first-past-the-bedpost system?

Lord Steel: I quite agree, and perhaps I may quote another sentence from the manifesto on which I first fought as leader of the Liberal party in 1979. It said: “The House of Lords should be replaced by a new, democratically chosen, second chamber which includes representatives of the nations and regions of the United Kingdom and UK members of the European Parliament.” That picked up the 1918 recommendation that there should be an indirectly elected Assembly with the House of Commons having a major role. Now that we have a Parliament in Scotland and Assemblies in Northern Ireland and Wales as well as Members of the European Parliament, you can see that a reformed upper House could have a genuine, democratic mandate with indirect election and not be a competitor to the House of Commons.
Q3 Paul Flynn: But after more than 100 years of endeavour and wonderful dreams in prospect, between the dream and the reality falls the shadow, and the shadow in this case is the enormous power of inherited titles, royalty and a whole system that is fundamentally undemocratic and based on privilege. That continues and, if I may say so, the reforms in your Bill, which seem to be worthwhile, will be minute and incremental; they will take us a foot into the chasm, perhaps, but we will not cross it.

Lord Steel: To take just one item from the Bill, the ending of entry into Parliament by heredity, that would be worth achieving. I agree with you that it does not deal with the wider issue. The items on your agenda in this Committee are urgently required now to make the upper House more effective than it is.

Q4 Paul Flynn: Can I take up one matter, then, which is not in your Bill but seems to be crucial, and topical at the moment? Last year I reported one of the noble Lords for what I felt was egregious behaviour as far as lobbying was concerned. The House of Lords authorities agreed that there was a prima facie case, sat on it, deliberated and came to a conclusion that I thought was perverse, which really was that Lords could do anything with lobbying: they could take money from the Cayman Islands—as in that case—and behave exactly as they wanted. It is up to them to judge whether they are doing it as parliamentarians or as people who are outside Parliament. It did not get a great deal of attention, although it was publicised in the press at the time and was based on information from the Bureau of Investigative Journalism. But it does seem to indicate that controls on lobbying, which are very weak in this place and long overdue for reform, are even weaker in the House of Lords.

Lord Steel: I cannot comment on that case, because I do not know anything about it, but I think that you are fundamentally correct in your assumption that the lobbying rules need to be tightened. You may like to ask Baroness Hayman—I know this is in her mind, because I have talked to her about it—about adding something to the Bill where we are dealing with expulsion. We have no power in the House of Lords on that. You have power in the Commons to expel Members, but we have no such power in the Lords. That is one thing that needs to be put right. Even short of expelling Members, we need to deal with those who bring the House into disrepute, if you like, and I think she is minded to secure an additional item in the Bill when it reaches Committee stage to deal with that point.

Q5 Paul Flynn: Do you think it is a justification of behaviour of this kind that Lords are not paid and are therefore fully entitled to earn their money by outside activities, which might be influenced by the fact that they carry the title of Lord?

Lord Steel: You are asking me to stray into matters of allowances and payment and so on, which I do not really have any strong views on.

Q6 Paul Flynn: Tell us, then, what are the small-scale reforms that you think would help to reduce the size of the House and would be worthwhile?

Lord Steel: I think a retirement scheme is absolutely essential. I take it that the Committee has seen the report, “Members leaving the House”, which Lord David Hunt chaired three or four years ago now. It has not been acted on. It recommended that there should be a scheme allowing and encouraging Members to retire by giving them a modest payment. There is an appendix to the paper, written by the Clerk of the Parliaments, which I hope the Committee has seen—Annex D.

Q7 Paul Flynn: At what age would the attempt be made to bribe them into retirement?

Lord Steel: They did not specify an age. They simply said, “Please allow the House of Lords the power to end placement in Parliament for life.” We did ask the Clerk of the Parliaments to produce a paper, which he has done and which I certainly hope your Committee will have, which includes, at Annex D, a note from the director of finance showing quite clearly that if such a scheme were introduced and made available at age 75 or 80—he produced a table showing the two alternative ages—there would be a substantial saving to the taxpayer, even if the take-up was only 50%. It should all be done within the House of Lords budget—no extra money should be given for this purpose—and we would get the numbers down to manageable levels.

Paul Flynn: You won’t get much of a reception from me, as at my age, which is approaching octogenarian, and feeling about halfway through my time of life—

Lord Steel: I would not throw you out, but I would have a voluntary inducement for you to leave.

Q8 Paul Flynn: What is the bribe to be? You were suggesting that bribery was part of it.

Lord Steel: In this paper I have in my hand from the finance director, he does not specify a sum, but in discussions in the Lords I have suggested that there should be a cap on what anybody could be given and that it should be no more than the amount that they claimed in expenses in the previous year, so that after one year there would be a net saving on the cost of operating the House of Lords.

Q9 Paul Flynn: What needs to be done to secure a consensus for your Bill in the Lords? Are you near a consensus? You say that you agreed on the decision before. Do you think it will go through?

Lord Steel: There was a real consensus. The Bill, in the end, went through unanimously, minus the hereditary by-election item and the appointments commission. The reason why we did not keep the appointments commission in the Bill was that the Government’s Bill had a different version of an appointments commission. There was no point in going through a long rigmarole when the Government had a live Bill with that in it. The other issues are the retirement age, or rather the retirement incentive, and the idea of removing those who commit offences. That is very important, and we have totally agreed.

Q10 Paul Flynn: To go back to the feeling that your Bill is a very small and insignificant sop that would help to dissuade people from pushing for the
fundamental reform that is necessary, which I understood Nick Clegg to say the other day—I was in the House when he made the remarks you mentioned—that is entirely reasonable. If you are going for the full loaf, you are not going to be satisfied with a crumb.

**Lord Steel:** It is a crumb; you are absolutely right. It is not related to the wider case for reform, which I think remains. I remain committed to that, like many in the House of Lords.

**Q11 Paul Flynn:** I want to ask you about not replacing hereditary peers. It is a very strange system whereby there are peers who boast that they were elected to the House because they were elected by fellow peers. Would you like to see an end to the by-election system? This is not related to the wider case for reform, which I think remains. I remain committed to that, like many in the House of Lords.

**Lord Steel:** The by-election system came in as an amendment during the passage of the legislation in the late 1990s, and I am happy to say that I voted against it at the time. I think that it is increasingly ridiculous to have these by-elections, especially, if I may say so, in the Labour and Liberal Democrat parties. Although they are supposed to be by-elections, in many instances those on the Cross Benches or the Conservatives because they have a large number of hereditary peers, in the Labour party and the Liberal Democrats they are ludicrous. We have had one each. I think that in the case of the Liberal Democrats there were three electors to elect a Member of Parliament. Old Sarum seems very respectable in comparison.

**Paul Flynn:** Thank you.

**Q12 Chair:** Helene, welcome. I thought that it would be helpful, when you arrived to join us, to say that the witnesses are not exactly at odds on most of these issues, so if the colleagues who are going to ask questions can ask them of both witnesses, that will be helpful. Just to do a reprise and give you a chance to make some general comments—I know that David has to go by 11—Paul was asking general questions about whether these changes are really on a very small scale. Do they get in the way of a longer-term change to the composition of the second Chamber? You may want to express a view on that. Also, the question about ending by-elections for hereditary peers came up at the end. I do not know whether you would like to make some general comments to start with, Helene, and then I’ll come back to David.

**Baroness Hayman:** Perhaps I could just say, taking up those issues, that I was thinking before coming here today about the Constitutional Reform and Governance Act 2010 and whether, if the provisions in the then Bill had been passed rather than dropped in the wash-up in 2010, that would have inhibited the Government from bringing in the House of Lords Reform Bill as they did. My answer to that is, absolutely not. It has always been my position, although I do not favour an elected House, that in many ways dealing with some of the transitional issues before embarking on addressing the major question of whether or not you want the second Chamber to be elected, or the party political Members of the second Chamber to be elected, would clear the undergrowth—that is the phrase I used to use—for that debate to be about a clear issue of principle, so that it could be decided without all these extraneous issues that make passing legislation much more difficult. I have never felt that it was a barrier. I have, in fact, always felt that it would in some ways start the momentum of recognising the need for change. I also think there are other radical changes outside the scope of David’s Bill, which I have now taken over and that Dan Byles is going to introduce in the Commons. That could make a big difference and, again, make it easier to put forward the proposition for an elected House.

**Q13 Mr Chope:** One of the small-scale reforms proposed was to remove persistent non-attendees. We have received evidence saying that at best that would be of marginal importance, and at worst it might be counter-productive, because those people might start turning up and not doing very much, just coming through the doors and registering. What do you think about that?

**Lord Steel:** I think it is very marginal. The fact is that we have got a number—I think it was 32 at the last count—who never turn up at all. Yet, they have to get all the papers; some of them even have desks in the building. It is just a tidying-up piece of administration but I agree it is not important.

**Q14 Mr Chope:** What about the moratorium on new peers? There is a threat that there is going to be another swamp of new appointments being made, purportedly in pursuance of the coalition agreement, although we are more than 60% through this Parliament and far closer to the next election than to the previous one, and at a time when the minority coalition partners are being eclipsed in the opinion polls in dramatic fashion by the UK Independence party. Do you think that there should be a moratorium on new peers? If not, do you think we should put in a lot of UKIP peers? What do you think we should do?

**Lord Steel:** You used the word “threat” of another list of peers. That is in fact the word used commonly at the other end of the building, because, frankly, there is nowhere to put them. We are overcrowded; we have already extended and taken away public seats at the back and put peers out there where they cannot speak but they are able to sit in the Chamber. The place is overcrowded. I cannot say that I am in favour of a moratorium, because as long as we have this ridiculous system of appointments it clearly has to go on. It could be argued that 40 have died since the previous list, so the party leaders are entitled to another one. It is not an issue I feel strongly about, I must admit.

**Q15 Mr Chope:** Does Baroness Hayman want to say anything?

**Baroness Hayman:** Yes. Going back to your issue about the marginal effect of non-attendance, yes, I think it would be marginal. It depends where you put the threshold, of course, of how you define a non-attender. I think it is an important issue of principle about being the working House of Parliament. You would not reduce the numbers very dramatically—hopefully—by barring those who have
been convicted of criminal offences from returning to the House. However, I still think it is the right thing to do. In terms of emphasising that responsibility of acting as a working parliamentarian, if you have the privilege and honour of being a member of the House of Lords, the non-attendance thing is important. As far as a moratorium is concerned, like David, I do not think that you can have a complete moratorium, because the House’s value derives, at least in part, from having people with contemporary experience of a wide range of outside activities. If you only have people whose experience is 25 or 30 years old you are not performing that function.

However, I think there is a real problem in doing the one-for-one around the sad deaths that have occurred, because those are not people in the main who have been very effective. So you are talking about non-active peers with people who come in bright-eyed and bushy-tailed and want to make a contribution. So there is the problem about Committees and over-subscription for debates. Yesterday in the Chamber I really wanted to come in on a question, but I did not go in for prayers. It was the day that the Cross Bench had their meeting, and the House was very crowded. I managed to sit rather than stand, which I had done the day before, but I had to sit in the area of seating that had been opened up, where there are no microphones and you cannot speak from.

Q16 Mr Chope: How about a moratorium for 23 months until the next general election?

Lord Steel: I would not be against that, but I can’t say I would go to the barricades for it.

Baroness Hayman: It has one advantage. I am sure at some point we will come on to the issue of balance and proportionality in the House. You cannot, for example, start appointing UKIP peers because of the opinion polls or what is happening between general elections. I certainly would not be against a moratorium, but that, can’t say I would go to the barricades for it.

Lord Steel: It is not a proper retirement scheme at all, and I get very annoyed when I keep reading that no one is taking it up. The reason is that it is not retirement. That is why the case for a statutory retirement scheme is very clear.

Q17 Mr Chope: So you would be in favour of fixed-term appointments?

Baroness Hayman: We can perhaps discuss that. I am in favour of fixed-term appointments, but with some nuances—if I can put it that way—which I am happy to discuss at some point.

Q18 Mr Chope: Very few peers have taken advantage of the voluntary retirement scheme that was introduced in 2011. Why do you think that is?

Lord Steel: It is not a retirement scheme. It is simply an extension of what we already have, which is leave of absence. It is a permanent leave of absence. People who think they have retired will find themselves receiving the writ of summons after the next election. It is not a proper retirement scheme at all, and I get very annoyed when I keep reading that no one is taking it up. The reason is that it is not retirement. That is why the case for a statutory retirement scheme is very clear.

Q19 Mr Chope: But you would be against a fixed retirement age. Is that right?

Lord Steel: Personally, I am not against a fixed retirement age, but that is not what we are proposing. We are proposing a voluntary scheme. Your Committee could decide to recommend a fixed retirement age. However, we do not have one in the Commons, and I do not quite see how you would justify having one in the Lords.

Q20 Mr Chope: Where do you think the consensus on a fixed retirement age would rest?

Lord Steel: In the wider world, people such as judges and lords lieutenant retire at 75. I think that in the Lords there would probably be a consensus at around 80. You should maybe start at 80 even with a voluntary scheme, see how it goes, and if it is not effective enough then bring in 75.

Baroness Hayman: May I add to that? I think the transitional arrangement—this is why I talked about having a bit of flexibility and nuance—have to take account of the fact that we are a predominantly elderly House at the moment. That is why I think it is better not to put this in statute, but to get serious cross-party talks, based on the size of the House and the number of retirements you want to see, and then look at the sort of formulas that give you a mixture of age, length of service and, indeed, contribution to the House and participation. Then the party groups find a way of finding the numbers within their groups in order to reduce. In the longer term, for new appointments, there is nothing to stop the Prime Minister now, saying to new appointees, "I would expect your appointment to be for 15 years, and if by then we have not got a statutory 15 years, I would expect you to retire at that point," and asking the appointments commission to do the same thing.

My own view is that 15 years—looking at the length of service, again in the Commons, and the value of
having some corporate memory—needs a bit of flex. I would be on a 15-year term with a possibility of renewal perhaps for another 10 years on recommendation to the appointments commission. You know—working out a bit of flex like that.

**Lord Steel:** The key thing is that we need the statutory power to consider all these things. That is what we are asking. If you gave us the statutory power, it would be a matter for the House Committees themselves to work out a sensible scheme. I don’t see why you in the House of Commons need be bothered about that. What we need is something that says we have the statutory power to bring to an end the system of membership of the House of Lords for life. That is all.

**Chair:** I am very conscious that you have only about half an hour, so I am going to ask colleagues to address the bulk of their questions to David. Helene, we have, thankfully, got you after 11, so we will have you speaking thereafter.

**Q21 Mr Turner:** I am trying to work out the numerical strength of different parties and the effect of a not quite moratorium, but a sort of moratorium. What numbers would be appropriate by which we would slow down the number of appointments, recognising that some people are dying, clearly, and some people may replace them? On the other hand, we do not need 150, or whatever it was two or three years ago. What is the maximum and the minimum—assuming for the moment that we are not altering anything else—that would make it slow down and almost stop?

**Lord Steel:** One can argue endlessly about numbers. If the press reports are true that we are likely to get a list of another 30 or 50, we are going to top 800 Members of the House of Lords. I believe that the second Chamber should be smaller than the House of Commons. That is my starting point. We really want to get it down below 600. In fact, the 1918 commission, which I quoted earlier, recommended a figure of much below that—I think it was about 350—so we are way over what any sensible upper Chamber should be. Getting it down is going to be quite tricky. The director of finance’s paper does not, of course, go into the party political side of it, but assuming his figures are right that there is a 50% take-up, you can look to see that in fact it is pretty even throughout the House. There is not a wide disparity. Each group—the three parties and the Cross Benches—all have a proportion of people who are quite old and who could be encouraged to leave.

One of the things that perhaps is not understood at this end is that if you had a scheme, the party managers would then have the ability to go to people and say, “Look, we would like to get some new blood in. You’ve done very well, thank you very much, but don’t you think you should consider leaving?” At the moment, they cannot do that, because you cannot leave. I am not answering your party political question, because I don’t think it is answerable at the moment.

**Q22 Mr Turner:** So you do think it would be essential to have a statutory power?

**Lord Steel:** Yes. Without a change in the present law, you are a Member of Parliament for life. It is that fundamental thing that needs to be changed.

**Q23 Mr Turner:** But are the people who are there for life actually making the system unworkable? Or is the problem not the people who are unworkable and not turning up, and almost certainly will not for the rest of their lives, but the people who are there, and some extra people, who you are trying to persuade to stay at home and cease to be peers?

**Lord Steel:** Yes, we are trying to make it sensible and normal for people to leave when they reach a certain age. That is not unreasonable in life as a whole, so why should the House of Lords be different?

**Q24 Mr Turner:** One reason is that nobody can be sacked from anything now, unless there is a good reason to do so. There is no fixed—

**Lord Steel:** No, there are fixed retirements. I gave two examples: both judges and lords lieutenant retire at 75.

**Q25 Mr Turner:** You are right—sorry, I should have made it clearer. Apart from those who have a written retirement date, most people can stay doing the job for as long as they wish. I must say that I find that more acceptable, particularly as I come towards 60; I am getting old as well, and I like to feel that I can do things. Are you saying that it would be necessary to have an age limit, or just a collective right?

**Lord Steel:** You could have a financial scheme. I don’t know whether the Committee has seen the paper from the Clerk, David Beamish—if not, I recommend that you get copies, because the financial supplement to the Clerk’s report spells out the figures if the take-up of such a scheme was only half of those who were offered it. The numbers and costs of savings are there quite clearly. I think that there would simply be a new climate in the House of Lords where it was accepted that after you had done so many years and reached a certain age you could leave the place with dignity. It is that we are trying to get into law.

**Q26 Mr Turner:** Right, so Members would have the right to retire, but there would be no great pressure to do so at a particular age.

**Lord Steel:** No, it would not be automatic. Mr Chope asked me if I was in favour of an age limit; I am not against one, but that is not actually being proposed, either by Helene Hayman’s Bill or by mine, or indeed by the one that Dan Byles is introducing in the Commons.

**Q27 Mr Turner:** To recap, assuming 40 peers die in one Parliament—I don’t know whether that is accurate—and 10 replace them, how long would that take?

**Lord Steel:** I think we could work it out—a long time is the answer.

**Baroness Hayman:** Part of the issue is setting the overall target for the size of the House, otherwise you cannot answer your question. The rate of retirement will determine, in a way, the rate of new appointments. I think that 438 people voted on the Marriage (Same Sex Couples) Bill. You talked earlier...
about people being able to continue as long as they were doing the job; this goes back to the definition of “doing the job,” which is really important. You should not continue as a parliamentarian if you are not functioning as a parliamentarian. It is not about age. We have some younger Members who were appointed and have not appeared for months and years. So it is not simply about age discrimination; it is about doing the job.

Q28 Andrew Griffiths: Lord Steel, I suggest, as a supporter of it, that your Bill is important. We have heard some comments saying that it is incremental and tiny in its changes, but as someone who rebelled against the Government on the last reforms, I think it is our biggest opportunity. Can you see any strength in an argument for keeping the status quo?

Lord Steel: No, not at all. In fact, there are very few people in the House of Lords who would stand up and defend the status quo.

Q29 Andrew Griffiths: If that is the case, could you give us an assessment of what you feel, if the Steel Bill or the Hayman Bill were to put to your House, the chances are of getting support for it?

Lord Steel: The record shows that there was total support for the retirement provision and for removing those convicted of offences. Those are the two fundamental bits, along with the non-attendance measure. That went completely through the House of Lords. It was unanimous and there was no Division on Third Reading. We lost the hereditary by-election issue only because two hereditary peers put down 300 amendments, which would have killed off the Bill, so we had to drop that. Even they are a minority among the hereditary peers, because most hereditary peers accept that the by-election system is now indefensible. It was only introduced as a temporary measure to last a couple of years, but it has now lasted 15 years. I cannot say what chance Helene Hayman’s Bill has any greater than mine had, but my view is that if Dan Byles’s Bill, which is the same, is passed by your House and comes back to the Lords, it will be very difficult for even a minority of hereditary peers to accept that the by-election system is now indefensible. It was only introduced as a temporary measure to last a couple of years, but it has now lasted 15 years. I cannot say what chance Helene Hayman’s Bill has any greater than mine had, but my view is that if Dan Byles’s Bill, which is the same, is passed by your House and comes back to the Lords, it will be very difficult for even a minority of hereditary peers to accept that the by-election system is now indefensible.

Q30 Andrew Griffiths: Apart from the hereditary by-elections, were there any other sticking points in your House in relation to the current Bill?

Lord Steel: No, that was the only one. As I said earlier, I withdrew the proposed appointments commission, simply because the Government had their own alternative scheme under way at that time. That has disappeared, and that is why it is right to bring it up again. It was not a sticking point in the Lords. In fact, Lord Jay, who is the chairman of the current Appointments Commission, is on the record as welcoming the idea that it should be on a statutory basis, rather than being appointed by the Prime Minister and responsible to the Prime Minister.

Q31 Andrew Griffiths: If the Hayman/Byles Bill is not successful, what is your assessment of how long it would be before we got any meaningful reform of the House of Lords?

Lord Steel: Before you came in, I was waving the 1918 report. I have got another quote from it, which shows that life goes on. Lord Bryce, who was chair of the commission, wrote to the Prime Minister and said: “In particular we have been obliged to undertake the grave task of finding a basis for any Second Chamber which should be different in type and composition from the popular assembly, by including other elements which might be complementary to those which give its character to the House of Commons. Not less difficult was it to adjust the respective functions and powers of the two Chambers, resting in the Lords and Commons, and to enable it to act as a moderating influence in the conduct of national affairs, and yet not so much power of delay as to clog the machinery of Government.” These issues were fully explored a century ago and we are still talking about them today, so the answer to your question is: if it has been going on for a hundred years, it could easily go on for another hundred years, and that is why you need these immediate measures now.

Baroness Hayman: The only counterpoint I would put is that, as I always say, the House of Lords is not unchanged since the Bryce commission. What seemed to be small reforms at the time can make a major difference. When I was a schoolgirl taking my 11-plus in Wolverhampton, there was not a single woman in the House of Lords, and everyone was a hereditary peer apart from the Law Lords and the bishops. There are now women on every Bench in the House of Lords except the bishops’ Bench, and the House has changed dramatically in that time. It was also a fairly useless Chamber in 1957; it hardly met and it did very little. It is now, I think, a functioning and useful part of Parliament.

To me, some consensus did come out of the last Session’s debates on the House of Lords Reform Bill, namely that the function that people want to see the Lords undertake is pretty generally shared: not to challenge the elected Chamber but to add to the legislative process and the holding to account of Government. If we have reached that consensus, and the debate is simply between those who believe that an elected Chamber could not challenge the House of Commons and those who do not, it is possible to build
on that and start looking at a variety of measures. Some of them are legislative, which are minor, but some of them could be much bigger than that if we start the ball rolling and do some incremental work.

**Q32 Andrew Griffiths:** As somebody who was educated in Dudley, I think we ‘Black Country’ people have got to stick together, and I agree with you. Lord Steel, do you have a sense of frustration that the party you led is prepared to reject any meaningful reform now in the hope of bigger reform in the future?

**Lord Steel:** In fairness to the Deputy Prime Minister, he has rather changed his view. In fact, he spoke to a private meeting of the Lib Dem peers just a few weeks ago. What he said in the House of Commons on Tuesday is what he said to our private meeting. In other words, he now accepts that there is a good case for these housekeeping measures, but he thinks for some reason that you can tack it on to some other Bill. I would love to see the long title; it would have to end with the phrase “and for disconnected purposes.” I do not see how you can do it, and that is why I fully support Dan Byles’s effort to put through a Bill on its own.

**Q33 Andrew Griffiths:** There was, as I am sure you are aware, a real sense of frustration in our Chamber that such an important constitutional issue or such a constitutional matter was not receiving the scrutiny and the time on the Floor of the Chamber that we felt it deserved.

**Lord Steel:** I sat in the peers’ Gallery and I listened to a lot of your debate. As I say, it echoed much of what people were arguing about in 1918, and you were absolutely right, in my view, to express constant concern about another Chamber that would be a mirror of the House of Commons, with elected senators wandering around your constituency saying, “I am here for 15 years and I have been elected too.”

**Andrew Griffiths:** “I am here for five years and I have been elected too.”

**Lord Steel:** Yes, and, “My party has told me to be keen to see something like that, which is not there at all?”

**Baroness Hayman:** Yes.

**Q34 Andrew Griffiths:** I will come to a conclusion. Are you saying, Lord Steel, that, given the statements that the Deputy Prime Minister made to the Lib Dem peers of the time, statements that he made in the House, you feel more optimistic about the chance of there being agreement on reform?

**Lord Steel:** Yes, I do. I think that he has accepted, in what he said to your House two days ago, that three basic provisions are necessary. It is just that he thinks that, somehow, it can be tacked on to a Bill that deals with something else. I am not quite clear how that can be done, but, frankly I do not care. I am very happy that it be done in some way.

**Q35 Mrs Laing:** I think that I ought to declare an interest of some sort: when Lord Steel’s Bill passed through the House of Lords, it then had to come to the House of Commons. I had the privilege of adopting it at that point, and it became my Bill for several months until it fell at the end of the Session. Clearly, my interest is that, obviously, I agree with every word in Lord Steel’s Bill. I tried to take it through this House, but, of course, owing to the way in which private Members’ Bills work, on several Fridays it dropped further and further down the list.

In an attempt to keep the spirit of the Bill alive, at the beginning of this Session I submitted an early-day motion that encouraged my colleagues to adopt Lord Steel’s Bill, if any of them had a chance to do so in the private Members’ ballot. Fortunately, Dan Byles did. But, clearly, once again, my interest is clear. I happened to be the in the House of Lords—actually, I was there deliberately—when you introduced your Bill, Baroness Hayman. I can tell the Committee—sorry, I ought to put this in the form of a question—

**Chair:** It would be nice.

**Mrs Laing:** Baroness Hayman, would it be the case that, when your Bill was introduced, there was an enormous cheer in the House of Lords, which would indicate that it has very good support there at present?

**Chair:** I think a one-word answer to that would be okay, because I want David to use the last ten minutes.

**Baroness Hayman:** Yes.

**Q36 Mrs Laing:** Thank you. There—I formed it into a question. Would you say, Lord Steel, that a moratorium on the appointment of peers at present would be the worst of all worlds, because then we would have no progress at all?

**Lord Steel:** For the reasons that Helene mentioned earlier, I just do not think that a moratorium would work. It is going down the wrong road, trying to tackle the numbers question the wrong way, whereas the right way is the way that you are now looking at. May I express my thanks to you for having taken up the Bill? But, as you rightly said, it needed a Member who was high up in the ballot, and now we have one in Dan Byles. We have all been pushing the same piece of legislation. We just need to make sure that we get it through, with the possible amendment that Helene hinted at. We need to deal with the lobbying question and the capacity to give the House of Lords the authority to deal with those who are outside the conviction measure, which is in the Bill, but also to deal with those who bring the House into disrepute for other reasons. Helene has indicated that she would be keen to see something like that, which is not there at the moment, added to the Bill. I am quite sure that that could be done in the Commons when the Byles Bill goes to Committee.

**Q37 Mrs Laing:** And it would be likely to gain support?
Lord Steel: Yes, absolutely.

Q38 Mrs Laing: And, certainly, it would be parallel to measures that have been introduced in the House of Commons.

Lord Steel: We want to bring our Chamber up to the same level of sensible competence that you have here already in the House of Commons.

Paul Flynn: You lack ambition.

Q39 Mrs Laing: That is very worthwhile. Can I ask if you would like to give an opposite view to that expressed by Mr Flynn, when he suggested—is that a leading question? Are we not allowed to say that? All right. Let me phrase it in a different way.

Chair: David is with us for 10 minutes, so I am keen that he gets a chance to say a few things.

Mrs Laing: Mr Flynn suggested that the measures within the current Bills are small and insignificant. Would you agree with that?

Lord Steel: They are small, I quite agree, but not insignificant. As Helene has rightly said, over the years since the Parliament Act, there have been fundamental changes to the Lords. The last big step forward was in the 1990s. This would be another step forward; that’s all it is. It is not fundamental change. Those who want fundamental change, including me, can still argue for that, but we should get on with tidying the place up.

Q40 Mrs Laing: Was there disappointment in the House of Lords when we asked the Deputy Prime Minister in this Committee at the end of last year if he would support what was still your Bill—it was just finishing its passage through the House of Lords—and bring it to the Commons and implement it? His reply then, as Mr Griffiths said, was no, if he could not have everything he wanted, then he was having nothing. Was there disappointment at that in the House of Lords?

Lord Steel: I think there was more than disappointment in the Lords. People in the Lords were actually very rude about it—not me, because I am very polite to my party leader, but others were very rude about it. Mr Williams is looking at me very suspiciously, but I am very polite about it. I have had quite a lot of conversations with Nick Clegg about this. In the last one, I said to him that his kind of work that the House of Lords does. As a working Chamber.

Lord Steel: I think there was more than disappointment in the Lords. People in the Lords were actually very rude about it—not me, because I am very polite to my party leader, but others were very rude about it. Mr Williams is looking at me very suspiciously, but I am very polite about it. I have had quite a lot of conversations with Nick Clegg about this. In the last one, I said to him that his problem is that he knows as little about the working of the House of Lords as I did when I was leader of the Liberal party. That is a polite way of putting it.

Q41 Mrs Laing: That’s a very polite way of putting it. Would you say that you have learned a lot in the intervening years? Would you like to tell the Committee anything that you have learned since you were leader of the Liberal party until now, which we might not appreciate but which we ought to know?

Lord Steel: Quite seriously, I have come to appreciate the kind of work that the House of Lords does. As a revising Chamber, it is an essential element of our parliamentary system, but it is not a rival to the Commons. I really did know very little about it, even at the time when I was appointing people to the House of Lords. To be frank, I knew very little about how it worked. I think that that is true of most Members of Parliament, if I may say so—even distinguished members of this Committee. I suspect that, because you are going into this now, you are probably on a steep learning curve. It is seen from the House of Commons as a rather fun, fuddy-duddy place where people dress up in fancy gowns, as Mr Flynn said earlier. That wretched photograph appears in the papers all the time, even though we dress up only once or twice a year. But it has an air of fussiness and unworldliness about it. In fact, it is an effective working Chamber.

Q42 Mrs Laing: Indeed. Those of us who served on the Joint Committee on House of Lords reform, looking at the Government Bill, learned a great deal about the way in which the House of Lords operates. One of the things that struck me was the optimum size of the House of Lords. I think it had been suggested by the Government that 300 would be about right. But that Committee took evidence that suggested that something like 450 members would be necessary to do the work. Do either of you have anything to tell the Committee on that?

Lord Steel: I think that Committee report was about right. Something in the region of 450 or 500 sounds about right to me.

Baroness Hayman: I agree. Part of the value is not being a full-time House—having people who are not there all the time. I think 300 would have reduced it too much. I am around those sorts of numbers as well.

Q43 Mrs Laing: So terrific progress would be made if 800 was brought down to 450 who were actually working.

Lord Steel: Yes. That is a sensible sort of number.

Chair: David, I know that you have to go, but I will give you the opportunity to summarise.

Lord Steel: I don’t think I need to summarise. I am very happy with your Committee’s agenda. I don’t know whether you have a target for reporting but I hope you will report in time to help Mr Byles with his Bill going through the Commons. If the Government come up with a way of tackling on these housekeeping measures to something else, I will welcome that. But I will believe it when I see it.

Chair: We may help, but we will certainly inform the progress of that Bill. David, thank you so much for your time this morning. We really do appreciate it. Stephen, we now have Baroness Hayman with us.

Lord Steel: I ought to stay for one question in case my colleague wants to ask a question.

Stephen Williams: I was about to say that you had saved me from the embarrassment of cross-examining my former party leader.

Chair: You have four minutes, so if you want to do that.

Stephen Williams: We talk enough privately.

Chair: Okay. Fire away.

Q44 Stephen Williams: Has the inflation of peers debased your currency?

Baroness Hayman: It is a difficult question. When I went into the House, the paper membership was 1,100. It went down dramatically in 1999 and it has
increased dramatically—not as dramatically, but a great deal—since then. People find it very hard to understand why other second Chambers can manage on much smaller numbers and why the House of Commons can manage on much smaller numbers. When you explain to people that not everyone participates, that opens up another “debasement” of one’s reputation: “What are they doing being Members of the House of Lords if they don’t turn up?” That comes back to this issue about participation. It has been a problem, and it is a practical problem. Going back to the 1,100, when there were 1,100 Members, the average daily attendance was something like 100 less than it is now, because they were non-participating hereditary peers in a great number of cases. So the problems we have with oversubscription of short debates so people get a minute and a half to speak, and those sorts of issues of not being able to participate come from the fact that we have a lot of recent appointments of people who want to participate.

Q45 Stephen Williams: One of the things I was getting at was that when we discussed House of Lords reform last year a point made repeatedly by people who are opposed to House of Lords reform—so it was not made by me—was that your House is a repository of wisdom. I wonder, if you constantly add people to this repository of wisdom is it collectively more clever or wise and does it become increasingly a collection of people with rather eccentric views?

Baroness Hayman: Well, I would not like to comment on the views of my colleagues. It is in danger of becoming a collection of people whose expertise, rather than wisdom—because that is a more difficult thing to judge—is less and less contemporary and potent, because of the length of time that they have been effectively retired from those areas of expertise that they bring to the House. When we talk about stem cell research and we have Members who conduct stem cell research themselves, that is enormously powerful because it adds a quality to the legislative process that I do not think it would otherwise have. We have some fantastic people who were thought leaders in their professions 25, 30 or even 40 years ago who cannot do exactly that now. That is why I am interested in renewal, but I am very interested in moving people through. I am not sure that I get wiser as I get older.

Q46 Stephen Williams: But expertise is a narrow concept. The House of Lords has Select Committees in the same way as we do. These people who have expertise, whether it is in stem cell research or the retired generals perhaps, who contribute to a debate on what we should do in Syria, could be summoned to one of your Select Committees. Indeed, their membership perhaps could be restricted to particular Committees if the House chose to work in a different way. Perhaps they could have a self-denying ordinance not to vote on same-sex marriage, in which they have no expertise whatsoever.

Baroness Hayman: On the number of Members of our House who participated in the Marriage (Same Sex Couples) Bill debate who had experience, who wished to have such marriages themselves and who had children whose right it would be to have such marriages, if you compared the two debates, I am not so certain that you would find this great disparity of the House of Lords being completely outside that experience. Putting that to one side—

Q47 Stephen Williams: The difference is, though, that if I found the opinions of a fellow Member of the House of Commons objectionable, which in the context of that debate I would have done, I or my party can campaign to remove them and urge their electors to vote against them. If I found the opinions of General Dannatt, who said that he had not spent 40 years in the Army to see this happen—in other words, he did not think that my freedoms were at all important—I could not do anything about getting rid of him.

Baroness Hayman: That is absolutely true.

Q48 Stephen Williams: What expertise did he have when he was speaking in that debate?

Baroness Hayman: Let’s take this back. Let’s come back to powers. We do not have, because ultimately the voices of people in the House of Lords, whether on areas of their expertise or on general policy—in terms of practicalities, I do not like the idea of Houses of Parliament that have two-tier Members with some who can do one thing and some who can do the other. I think that is very messy and very difficult to administer. In principle, I do not like the idea. Of course, you can have advisers, and I have to say to you that for some of the ministerial appointments that have been made because of a particular expertise it would have been better to appoint those people as tsars, or whatever you want to call them, than necessarily as parliamentarians. Equally, I would like to see short-term ministerial appointments when you did want Ministers in Parliament, so that they did not continue as an ongoing thing, but that is a bit of an aside.

Going back to power, ultimately, whatever any Member of the House of Lords, for or against an issue such as same-sex marriage, says, that is not where power resides. Power resides in this House and any vote in the House of Lords can be overturned within the legislative process. In those circumstances, having people allowed to express their personal opinions, and you may well have found people with as—How can I phrase this? On issues of conscience, a person’s background does not necessarily determine their viewpoint.

Chair: These are very important debates and issues. However, the Committee is trying to focus on small changes in the House of Lords that can command a consensus, so much as I am fascinated by this exchange, that is where I would like the Committee to be pointing.

Q49 Stephen Williams: It is relevant, Chairman, in the context of why people arrive there in the first place and what is expected of them once they arrive. I concede that a retired general quite clearly has something useful to contribute to Parliament on questions of national security, but we are legislators,
which means we have a broad breadth of things to vote on. The second point is about purpose and role.

**Chair:** Stephen, I think you have made your point very well indeed.

**Baroness Hayman:** An institution is the sum of its parts; it is not just the individuals. You cannot have your nice stem cell scientist or a retired general, who are fantastic on the technicalities—these people have been hugely successful in their careers overall and together they come to a corporate body that you hope, represents a wide frame of opinions and expertise—and then start saying, “You can vote on this and you can vote on that.”

Q50 **Sheila Gilmore:** I was wondering whether you felt it would be helpful at this stage, when you are doing some of these reforms, to have some clarity about the purpose and role of the House of Lords. One thing a lot of people felt uneasy about with some of the earlier debate on House of Lords reform was that that question was never asked. It got very involved in things such as whether they should be elected, how they should be elected and so on, but not the underlying question about purpose and role.

**Baroness Hayman:** I always found that difficult in terms of the debate. Often, those who want an elected Chamber started from the premise that we do not want the second Chamber—the House of Lords—to do anything different from what it does now. We do not want it to have more powers over legislation or to be able to block the Commons.

There are honourable exceptions to that, but in the main—this is why I was talking about consensus earlier—they wanted a Chamber that was revising and brought expertise to the legislative process, that contributed to the holding of Government to account, that had the expertise for Select Committees and that provided a forum for debate with a wide range of contributions. I always think you can function better and there are ways in which we can improve our performance, but I think the function issue implicitly has been agreed.

There are those who believe you can keep the functions—and it was in the infamous clause 2 of the original Bill—exactly as they are but bring in legitimacy through election. In many ways, the whole debate revolved round whether that was true or whether, if you brought in the legitimacy (although not the accountability, in the scheme of election proposed) you could keep the House of Lords “knowing its place”, as I describe it, in terms of power.

I do think that form follows function. I think the function is pretty well what we want it to be. I would like to see it doing it even better, but it is there. I would like to see us joining up better between the two Houses to create a better whole Parliament that did its job better. I don’t think there is a great angst over function. Even the Deputy Prime Minister used to prefix his speeches with, “No one is saying that the House of Lords is not doing a useful or good job.” I do not think there is a great move for a wholly different function.

There are people who think more radically about that. I know that there are colleagues who think that there is a lot of major, macro-constitutional change in the air and that our relationship with Europe and the relationships within the United Kingdom could change quite dramatically. There could be a time when we had a debate as the United Kingdom about how we want nations and regions to be represented, whether the whole parliamentary set-up should be changed and whether there was a role for a completely redefined House of Lords in that. I think we are a long way from that, frankly, but there are possibilities.

**Chair:** A couple more quick questions from colleagues. Andrew first.

Q51 **Andrew Griffiths:** Baroness Hayman, in your first statement, you alluded to nuances in relation to fixed terms. Could you give us a little more flesh on the bone with that, please?

**Baroness Hayman:** I think I would be anxious about a 15-year cut off in every case. We ought to have proper discussions about whether we should possibly have a slightly longer term or a 15-year term with the possibility of extension for 10 years in a fixed proportion of cases—25% or 30% of cases if you wanted—or just the possibility of renewal for another 15 years. I do think, and I go back to my very short experience in the House of Commons many years ago, that having people around who have done more than 15 years in an institution can be of value corporately to that institution.

**Chair:** I agree very strongly.

**Baroness Hayman:** All I am saying is that there are two issues here. One is the transitional issue, because we have to deal with getting from where we are now to the size of House that we want without throwing—I was going to say the babies out with the bathwater, but the great grandparents out with the bathwater. Equally, looking forward, if what you want out of the House is that breadth of experience and expertise—all the things I have been talking about—a simple 15-year term might not give it to you.

Q52 **Andrew Griffiths:** Do you envisage that decision to extend being taken by the Appointments Commission?

**Baroness Hayman:** I think I would be very careful here. I would not want it to be a Whips’ decision in the party groups—let me put it like that. There has to be some sort of mechanism of people applying for it and being supported by their party groups as a whole, and then a level of scrutiny by the Appointments Commission to see that they are people who are still contributing. I am not didactic about the exact mechanism for doing it.

**Chair:** Andrew, on the items in front of us?

Q53 **Mr Turner:** Well not quite, because they are not there, but that does not mean that I have not thought about them. Where do peers come from? That is to say do most of them come from within 100 miles of London now? Before, they used to be spread over the whole country, and indeed the Republic of Ireland. What is the current position, and would you say it is more local to London?

**Baroness Hayman:** I think it is really difficult. I am not sure whether I, or any of us, have the baseline for
pre-1999, because people’s addresses were not necessarily kept, or anything else. I think there is a regional diversity. I set up a peers in schools programme, trying to get peers into schools all over the United Kingdom, talking about the House of Lords and Parliament. I got peers all over the United Kingdom going into their local schools, but there were undoubtedly areas of the country that were more difficult to cover than others. I think some analysis has been done of whether there is a south-east bias in the membership. I certainly think that a statutory appointments commission should have a remit to take into consideration geographical bases as well as other forms of diversity and representation. I would have that as one of the things they should look at.

Q54 Mrs Laing: Baroness Hayman, can I ask you—just to get it on the record—the absolute fundamental question? You have experience as a Member of Parliament and as a Member of the House of Lords. What is the basic difference between the House of Commons and the House of Lords? I appreciate, Mr Chairman, that this could take three hours.

Chair: I am sure it won’t.

Baroness Hayman: I had a friend who used to describe being a Member of the House of Commons as being anointed by the popular vote.

Q55 Stephen Williams: Can we come back to the difference—the gradation—between membership, attendance and participation? Would you care to put a number on each of those? We know what the membership is, I suppose, but there is obviously a difference in attendance and active participation between working peers and people who theoretically might turn up, get the £350 and go off and do something else.

Baroness Hayman: It is £300, £150 or nothing. There is a substantial tranche of people who claim no allowances at all. We have the numbers on attendance, although I do not have them in front of me. I think something like 50% of peers attend more than 50% of the time, but those figures are available. On participation, is voting participation? Is that how you measure it, or do you measure it by questions and contributions? The Cross-Benchers always come out badly if you take participation as voting, because they are more likely to abstain on issues on which they consider themselves not to have expertise or that they consider to be a party political argument on a particular point of sophistry, or whatever it is, but they may have been there and listened to the whole debate before deciding to take that view. Whereas there are party political Members who may not have listened to any of the debate, but who are coming in as whipped Members and consider that their duty. Then you have—this is one of the difficulties and joys of the place—the hugely distinguished people. Perhaps I can cite Nick Stern, the environmental economist, who came into the House and, for a year, was hugely involved in global issues on climate change, but he was not there very often. You would have put him down as a bad attender, but he came, spoke and added his expertise in Committees and debates in a way that was invaluable to that bit of the Lords function—not revising legislation, but informing debate. That is why I talked earlier about the corporate whole being a mixture of those things. I am no defender of people who never come, and I am no defender of inflating the size of the House and the cost to the public purse by having people who come in, often when they are very elderly and do not want to do so, but who will not leave because they think they are diminishing the strength of their party in the House if they do. That is one of the issues we have to deal with internally when we talk about retirements.

Q56 Stephen Williams: Do you think it would be a worthwhile incremental reform completely to do away with the daily attendance allowance of £300 and have salaried peers? Mr Flynn mentioned the geographical balance, but isn’t a disadvantage of the current system that, out of that £300, a peer from, say, Lancashire has to fund overnight accommodation in London, whereas it is basically pocket money for peers who live in London?

Baroness Hayman: They don’t have to fund their overnight accommodation, but I think “pocket money” is a bit of a demeaning term. The salary issue is very difficult in a part-time House.

Q57 Chair: And it is not addressed in your Bill, is it?

Baroness Hayman: No.

Q58 Stephen Williams: My question was whether it should be, given the scandals.

Baroness Hayman: The reason why we do not have overnight allowances any more—we have a flat-rate system—is because of the concern about people having two different residences, some of them out of London, in order to have geographical diversity. It is very difficult to get a perfect system.

Q59 Paul Flynn: Margaret Mackworth, who became Viscountess Rhondal, battled for 40 years to claim a right to sit in the House of Lords. The Bill passed in 1958, after being blocked by F. E. Smith in the ’20s. It was a fortnight after her death. I mention this because last Sunday we celebrated the 100th anniversary of the day she tried to blow up a post box in my constituency—not very successfully, because the post box is still there, now decorated with suffragette ribbons. On the basis of the slowness of change, can you give us a ray of hope that there is real will in the House of Lords to reform, particularly in the area of lobbying?

Chair: Paul, there has to be a question.

Paul Flynn: There is. Is there a ray of hope?

Baroness Hayman: Yes, I think there is a ray of hope, absolutely. We changed our rules some time ago, and we now have an independent Commissioner for Standards. You cannot say that no one will ever break a rule, but we now have a system for disciplining people who do. As I say, I would like my Bill to be
extended so we have further sanctions beyond those
that we have for people who have committed
disciplinary offenses.
Chair: I am sorry to be a little terse with colleagues,
but this is the debate that we all said we would not
have. I would like to focus on the Bills that are before
us and the possibility of our helping to achieve a
consensus, however small. I know that Chris will help
me in that.

Q60 Mr Chope: I will try. I am sorry, I had to go
out to ask a question about wind farms. Can I ask you
whether you would now wish to add to your Bill a
provision that would prevent any more appointments
to the House of Lords up until the next general
election? Both you and Lord Steel seemed
sympathetic to that proposition.
Baroness Hayman: No, I would not, because I think
it would diminish the chances of getting the Bill
through. That is the reason.

Q61 Mrs Laing: While the provision for allowing
the replacement of an hereditary peer with another
hereditary peer is still in place, do you consider that
the system would be improved if the campaign that
has been started to change the law of male
primogeniture for the peerage, as it has been for the
royal family, were brought in so that women could
succeed their fathers?
Baroness Hayman: I am tempted to answer that by
saying that I think that really would be small and
insignificant, to use Mr Flynn’s phrase. I am in favour
of it because I am a feminist and an egalitarian, but I
do not think it would make a lot of difference. I am
going to sound like the Deputy Prime Minister here,
but I do not want to do anything to give any credibility
to the system of by-elections because I think it is a
nonsense.
Could I just add something, because I was not here
right at the beginning when Mr Flynn talked about
“small and insignificant”? These are small and limited
measures. I do not think they are totally insignificant,
because I believe that if we started to make some
progress in this area, there are other areas in which
Government could take the lead, the party leaders in the
Lords could take the lead and the Lords follow on
from this. You cannot have the argument both ways,
which I think some opponents of Lord Steel’s Bill did,
by saying, “These are minuscule and unimportant and
they would make no difference, but we cannot have
them because they would entrench the House of Lords
as it is now and we would never get major reform.” I
think there is total logical inconsistency in that
position.

Chair: Thank you very much for your evidence this
morning.
Baroness Hayman: Just one last point, because I did
not get the chance to speak about the Deputy Prime
Minister’s comments on Tuesday. I am worried about
inclusion in another Bill for two reasons. One is that
we had it in CRAG and we lost it, and you are never
sure of it. The other is that he said he would be
prepared to consider incorporating this “in a wider
Bill if the need arose during the coming period.” The
need has arisen since 1999, so I would like to get on
with it.

Chair: Excellent. Helene, I think we would all say
amen to that. We have probably demonstrated how
difficult it is to keep the focus on small changes,
because everyone has a view on the bigger changes.
I thank my Committee members for their discipline
this morning.
I think it is very clear, even from the exchange today
with you and Lord Steel, that the tighter we keep the
focus on this and the less extraneous matter and ability
for debate there is around, the higher the chances of
achieving a Bill that can find consensus in both
Houses and that will pass, potentially, before the next
general election, which I think is the direction of your
remarks. Thank you so much for coming this morning,
and thank you, colleagues, for your patience.
Thursday 13 June 2013

Members present:
Mr Graham Allen (Chair)
Mr Christopher Chope
Paul Flynn
Sheila Gilmore
Fabian Hamilton
Mrs Eleanor Laing
Mr Andrew Turner
Stephen Williams

Examination of Witnesses

Witnesses: The Rt Hon the Lord Goodlad KCMG PC, Professor The Lord Norton of Louth, Lord Hennessy of Nympsfield FBA and Lord Tyler gave evidence.

Q62 Chair: It is very good to see you and thank you for sparing the time. Would anyone like to make any opening remarks?

Lord Norton of Louth: In the context of your inquiry, just to say how I see the Lords at present, which is essentially that it is a complementary Chamber to the elected Chamber, and therefore our role is to add value by fulfilling tasks that the Commons may not have the time or the political inclination to do. We see our role not as challenging the House, but as seeking to help it. That is within the existing framework and I think there would be general agreement that the functions presently fulfilled by the Lords are appropriate. What we are seeking to do is to look at ways in which we can fulfil them more effectively.

Lord Hennessy of Nympsfield: Just briefly to say I am terribly glad you are doing this inquiry. Lords reform is the Bermuda Triangle of British politics, or one of them. Every generation or so people go into the Bermuda Triangle. Some never reappear; others appear singed, vowing one thing, never to return. But, to mix metaphors, Lords reform is like quantum mechanics. It is a thing of waves and particles. The waves are the big things, the scene-shifters: 1911, 1949, 1958 and 1999. You are the particles bit of the quantum mechanics of Lords reform, but important nonetheless.

I have one worry about where we are now, which is that I am not at all keen on tacking serious functions presently fulfilled by the Lords. We have heard from Lord Hennessy what he thinks of that, but I share the view that it is very significant change here. Alastair, are you passing?

Q63 Chair: That is very helpful, Peter. Before I call anyone else, it gives me the opportunity to say—and I think my colleagues on this side of the table will have already had the lecture—that this is a very highly focused inquiry. We will return to the medium term, Peter, I am sure, but for now this is about stuff that we feel could achieve some sort of consensus across all parties and across both Houses. It is very limited, and I will call you to order if you stray beyond that, as my colleagues already know, because this is something that I think could be completely helpful and productive. With a Private Member’s Bill in both Houses there is some real opportunity to do small but significant change here. Alastair, are you passing?

Lord Goodlad: I share the view that it is very welcome that the Committee is taking a fresh look at all these things, and I think it is timely.

Lord Tyler: I think this is a very good opportunity for that focused look. We know there is going to be two years at least before any bigger operation is set in motion. I am a believer in the primacy of your House, the Commons, and therefore I take very seriously the vote last July, but that is past history now, for the time being at least. I hope it is only temporary—my colleagues may not share that view—but for the moment I think it is extremely important that we look at some of the issues, because some of these possible solutions have been promoted as if they are some alternative to wider reform. I do not believe that, but that does not mean they do not have a value in themselves.

Q64 Mr Chope: Last week the Deputy Prime Minister said that he would consider supporting minor technical housekeeping changes to the Lords. We have heard from Lord Hennessy what he thinks of that, but can I ask each of you what you would consider to be minor technical housekeeping changes?

Lord Hennessy of Nympsfield: I think Lady Hayman’s Bill is much more than that. I do admire Nick Clegg, but he has an unfortunate turn of phrase when the House of Lords comes across his style that he absorbs unbelievable quantities of time and nervous energy over many Parliaments.
reform”. Heavens, I sound like a university teacher, but it is an improvement on what he said last year. I do think Lady Hayman’s Bill is of real substance. These are not minor little twiddles, and there will be considerable resistance at the other end to one or two bits—or one bit in particular, as you know. It may be particles but they are substantial particles.

Lord Norton of Louth: I think we can distinguish. The minor housekeeping matters are essentially matters that are in the gift of the House itself. There is lots we can do in our own practice and procedures, and indeed Lord Goodlad chaired a working group on that, so we have rather a lot of recommendations before us on which we are making some progress to improve our own working practice and how we go about things. That is essentially within our gift. I agree with Peter that this goes beyond that, because we are looking here at matters that would require primary legislation to enhance the House in fulfilling the tasks that it fulfils. Because it requires primary legislation, there is clearly some significance to it, so it goes beyond that. It is not just within the House. It is about ensuring that the House, as the second Chamber, is enabled to fulfil the functions we ascribe to it, which—picking on Peter’s point—therefore enhances Parliament as a whole. It works because the two Chambers fulfil complementary roles.

Lord Goodlad: I think that it is helpful to take an iterative approach to these things and to try to do, from time to time, what can be achieved. The Hayman Bill is currently what there is a substantial consensus for in the Lords, but not unanimity, and if it were to be progressed it would need Government time. I think Private Members’ procedure would probably not take the trick.

Q63 Mr Chope: You have just described these as very modest proposals, yet you have already said you are against them and you do not think they are going to get cross-party support.

Lord Tyler: No, I am not saying I am against them at all. I think they are all useful, but they are modest and there are, unfortunately, some people in our House who see them as an alternative to a long-term structural change in the way in which the second Chamber of Parliament works. I do not believe they are.

Q66 Mr Chope: But do you think that there will be cross-party support for these proposals?

Lord Tyler: My colleagues and I have different experience. I think that, given the experience of my colleague David Steel’s Bill, when we get to the hereditary by-elections there will be considerable resistance. Some of it is on very strict matters of honour and reputation. In 1998–99 the deal was struck that it was only going to be for a relatively short time, as was explained by the then Leader of the House and others, the by-elections would simply continue for perhaps a year or two. Of course, several years later they are still there and the resistance to Lord Steel’s original mark 1 Bill produced, I think, 300 amendments—Lord Norton was very much more involved than I—simply on that issue. Some felt that the honourable deal that was done effectively meant that the hereditary by-elections should only go when the full reform of the House happened, which of course is not in prospect.

Lord Norton of Louth: To answer your question, one can distinguish support within the House, although the House passed without a division the Bill that reached this place, the cessation of membership Bill that Lord Steel brought forward. The House has agreed on the provisions for removing people who are convicted of serious offences, for example. No problem with that. There is a majority but not unanimity on the hereditary peers by-election option. As Lord Tyler has indicated, that is a sticking point, but we did have a division on one occasion on that provision in the Bill and there was a clear majority in support of it. So there is majority support, but with it being a Private Member’s Bill you only need relatively few to stop it getting through. The other distinction to draw is that the Bill is not concerned primarily or exclusively with...
the size of the House. Therefore, it is fulfilling a range of purposes including a reputational one.

*Lord Goodlad:* I think that it is a chimera to think that there can be a permanent solution, because Parliament cannot bind its successors and we have seen immense changes, even in our own lifetimes, in the House of Commons and the House of Lords. So there can be no permanent solution.

Q67 Mrs Laing: Is there a general consensus in the House of Lords that it would be beneficial and desirable to reduce its size?

*Witnesses:* Yes.

Q68 Mrs Laing: Thank you. We were sort of taking that as read, but I just wanted to put it on the record. I had rather assumed that because the Bill put forward by Lord Steel was passed in the House of Lords. If Lord Tyler is right in saying that the current measures that are being discussed would not have the effect of radically reducing the size of the House—I don’t just mean the hereditary by-elections, because obviously that will take a very long time, one hopes, for the sake of the health of your colleagues—are there other measures that would radically reduce the size of the House?

*Lord Hennessy of Nympsfield:* Retirement age might, but that is a very difficult concept as well. The most radical one would be to require each group to do what the hereditaries had to do in 1999, which is to ballot among themselves to get the numbers down, but that is deeply distressing for lots of people. Also, if you did not have a retirement age but, for example, you proposed that all future appointments should be for 20 years fixed-term—I think Lady Hayman said there might be an extension for some and so on. The notion of extension is very difficult, because what kind of marbles test do you apply to those who perhaps are not quite as sharp as they once were? All the ways of getting the numbers down have real problems, and I am very much opposed to the state paying money for a retirement package. I think that is just wrong and, even if I did not think it was wrong, I think the public would not put up with it.

*Lord Tyler:* I think I should just qualify that, if I may. Mrs Laing will recall that there have been suggestions that the overpopulation issue, if I may put it like that, is exaggerated. I do not know, Chairman, whether you have had any evidence from the Leader of our House, but he set out the other day a very interesting pattern of active involvement in the work of the House. Others will recall that Lord Hill pointed out that at various stages in the House we have had not only more Members but more active Members. This is, over a longer period, perhaps not the issue that it seems to us to be now.

Our particular problem at the moment, I think, is that a lot of relatively newly appointed Members wish to be more active more regularly than has been the recent experience. The overpopulation issue has to be taken a little bit in that context, and if Lord Hill is not going to give evidence or has not given evidence, maybe you can just look at that particular point.

The other thing is, I am on principle opposed to some form of age limit. I know every so often we are told that judges have to retire at 70.

*Lord Hennessy of Nympsfield:* 75.

*Lord Tyler:* 75. I am sure my colleagues will agree that some very important, useful contributions come from some of our older Members. Mrs Laing may recall that when Lord Cormack appeared before our Joint Committee on the Bill and suggested that the answer was an age limit, a number of our noble colleagues sitting in the public part of the Committee Room looked very worried, because the majority of them looked as if they were for the exit door. I don’t think it would go down a bundle. Even if you were not taking a principled stand on ageism, I don’t think it is right for a parliamentary institution to say, “At 70 or 75 you no longer have a contribution to make to the nation’s affairs”.

*Lord Norton of Louth:* Your starting point is that there is a general acceptance in the House that we are too big. That is probably where the consensus ends, because you then have the problem of how big we should be. You might not get agreement on that. As Lord Tyler has indicated, the nature of the problem is twofold. We have a problem with those who do not attend, which is a reputational one. We have a problem with those who do attend because of the sheer pressure now on the resources of the House—space and so on—in order to operate effectively. We take the view that we are too large. The problem, therefore, is how large should we be and how do we get from here to there. Do we go for measures that are immediate where you say, “There is an age limit”, or, “We remove such-and-such from the House”, or do you do it over a period of time with a mechanism that is gradual? There is the problem that Lord Tyler mentioned. I am very wary of doing something that is arbitrary, because you might then lose some of our best Members, and I think there is a danger of going for some scheme that has that effect. The problem therefore is finding one where you retain those who have something to contribute in a way that is fair, equitable and transparent.

*Mrs Laing:* There is the rub.

*Lord Norton of Louth:* Yes. How do you do that? Lord Hennessy has touched upon one possibility, which is that since Members of the House know who the active Members are who have something to contribute, you replicate something like 1999 with the hereditaries who were chosen to stay on. It was a method, of, in effect, internal election, and those who were chosen to stay on were those who had contributed to the House and still had something to contribute. It was, in that sense, a sensible election. It was not done on the basis of who knows who or family connection. It was those who had something to contribute to the House. That might be something worth looking at.

Q69 Mrs Laing: Could we explore that a little bit further? Lord Hennessy mentioned that as well. It does seem reasonable on paper from a purely practical point of view, but Lord Hennessy thought that it
Lord Hennessy of Nympsfield: I wasn’t there, I watched it from the outside, but I think it was very distressing for a great many people, and indeed it is, having to sit in judgment on other people.

Lord Norton of Louth: I think there is a major qualitative difference in terms of numbers, because there you were getting rid of most of the hereditaries—there were just a small number who were remaining—whereas to some extent this would arguably be almost the other way round. You would not necessarily be getting rid of most Members, but it would inject some degree of flexibility into the system.

Lord Hennessy of Nympsfield: You would get rid of about 300. I suspect. From around 800 to 500, I suspect, and that is quite a lot, but it is not of the magnitude of 1999.

Lord Norton of Louth: It doesn’t have to be extreme. You could incorporate in that taking off the books those who do not attend, getting rid of those who do not attend or who attend 10% or less.

Q70 Chair: Is this in the current Bill?

Lord Norton of Louth: It is in the current Bill in terms of those who do not attend the previous Session. That is what I put in the original, and we have maintained that. You could have a sliding scale. I just did a de minimus, “If you don’t attend that’s it, you are out”, but you could do it on a sliding scale, so it is if you attend less than 10% of sittings. That, combined with non-attendance, would get rid of, I think, a three-figure number.

Lord Tyler: There is one other advantage, which is of course that, you will not be surprised to hear, everybody is going to be quite sensitive about: party balance. If you go for any other system—age, not attending or whatever—it can throw completely the party balance. If it was very clearly identified that each party group and the Cross Benches had to reduce, over a period of years, by so many numbers in tranches, then you could tackle that.

I agree with both my colleagues. The problem is getting that mix absolutely right, the time scale and how you do it, and trying to avoid some of the problems that arose in 1999. That is very, very difficult. Colleagues around the table will recall that when Jack Straw looked at this problem with his White Paper in 2008, he produced a number of different scenarios to try to tackle this particular problem. Again, Mrs Laing will recall that we didn’t really face up to it in the recent Joint Committee.

Q71 Mrs Laing: Although, if my memory serves me correctly, the Joint Committee did take and publish evidence that showed the statistics to which you are all referring about the way in which it could be done—non-attenders and so on. On the subject of encouraging people voluntarily to leave the House, Lord Hennessy had doubts about that too, and the use of—

Lord Hennessy of Nympsfield: I just don’t think money should come into it. We are all volunteers in the House of Lords. You are in this place too, obviously, but in a different way we are all volunteers, so it is not a sort of redundancy circumstance if you come in on the basis that we have all come in on.

Q72 Mrs Laing: Can we explore the line of thinking that you are all volunteers? Is there no justification for saying someone who has given many decades of service is more than a volunteer and has in fact made a lifetime’s work of their service in the House of Lords, so possibly it could be justified that they should be given a package?

I put this forward as an example to consider. In a different Select Committee last week I happened to be there when evidence was given about the retirement of public servants in Scotland, and they referred to the “rule of 85”—that if the sum of the number of years’ service and the age of the person came to 85, they could retire on a very reasonable pension. It struck me that is an illustration that might be worth exploring. Would that be impossible?

Lord Hennessy of Nympsfield: I would be very resistant to that, personally. It is not for me to say for others. I think the public would not understand.

Lord Norton of Louth: From a formal point of view, you could not offer a pension because there is no salary, but I take your point about whether, if it was recognition of active service, you could find some incentive, some reward, which may not necessarily have to be financial. I think part of it is that if people depart they would like some recognition of what they have done for the House. It does not necessarily have to be financial, but some sort of acknowledgement of services rendered might be worth exploring.

Lord Goodlad: The Committee might want to look at the report prepared by the Clerk of the Parliaments on the subject of a terminal payment, which shows that at a certain level it would save public money immediately, which might make it more palatable to people who objected to it, but it is quite clear there is no consensus on this matter. Consensus can only be achieved on the anvil of debate on primary legislation.

Lord Tyler: Just to illustrate Lord Goodlad’s point, I think one suggestion was that if you took account of the attendance allowance claimed over the previous 12 months before legislation was introduced, the individual to whom you are referring, who perhaps gave long service over a long period but has in recent years not been so active, would get very little, while somebody who just turned up over the last year to vote every so often, or perhaps more than every so often, would do rather well. That was put forward as a suggestion because it looked like a saving; if somebody goes who last year cost X, they are not going to be here this year to cost X. Perhaps the Treasury would wear that, but my colleague Lord Steel was promoting that idea once and I don’t think he referred to it in his evidence. I have not been able to quickly go through it. I think that is a non-starter, for the reasons that Lord Hennessy has illustrated.

Q73 Mr Turner: What I am concerned about is which peers are generalists and which peers are
specialists. I am aware that there is no such clarity, but would you like to say a bit about that?

**Lord Norton of Louth:** I can add a further distinction, because you can distinguish between specialists and experts. You get people who come in who take a particular interest in an area. They might have long service on a Committee and they acquire a body of knowledge about it. They are specialists, but they are not actually experts. They have not been trained in the subject, they do not have qualifications and so on. You have your experts, you have your specialists and you might have your generalists.

The other point to make is that the categories are not necessarily mutually exclusive because, of course, somebody can be an expert in a particular area but none the less range over others and contribute to debate. I think it would be very difficult to come up with hard and fast figures as to how you would categorise the membership. If you just looked at qualifications for expertise, that would not give you the figure for those who specialise and can contribute something, and of course you might have an expertise in a particular area that is relevant for carrying over to another. I think it would be difficult to quantify.

There are a number of us, particularly if we have an academic background, who tend to stick to our subject, but others at the other end of the spectrum who range very broadly and tend to be heard on virtually every subject we discuss.

**Lord Tyler:** I agree very much with what Lord Norton says. We are a very mixed bag. You have a fairly mixed bag here. You have two former Members of Parliament and they tend to be—I am not saying exclusively so—the ones who are there night after night. We are trained in your House to stay up late. Then you have two very distinguished people who have come from academia.

**Lord Norton of Louth:** And work very late.

**Lord Tyler:** Of course, but they are exceptional. The point I was going to make is that we do have a real problem about ex-experts, because expertise moves so fast now. It just so happens that we have one or two notable people in the later age groups who have kept up with their particular brand of specialisation, in health for example. But on the whole, the fact that we have at the last count—maybe you have had evidence on this—14 Members over the age of 90 and two under the age of 40 means that up-to-date expertise is a real problem. This is going to be very relevant, looking at it from a very different perspective. That is quite stimulating and quite helpful.

**Lord Hennessy of Nympsfield:** There is a problem with the Appointments Commission, though. The Prime Minister asked Lord Jay, the Chairman of the Appointments Commission, who I am pretty sure will be coming to give evidence to you, to curb the flow by 50% from one year to two a year. That makes it more difficult, I would imagine, to fill the gaps and also to meet the diversity requirements, which are very much in their remit. I think a 50% cut in the flow might be problematic.

**Q74 Mr Turner:** What is your view on that? Part of the remit of the House of Lords Appointments Commission that brings in the Cross Benchers is to bring in people who have something to contribute with special knowledge and background and so on, but also one is encouraged to keep the profession going and not drop it, so it should be mutually refreshing. Also, I think one can overdo the ex-expertise. We have a lot of very distinguished scientists, and I am a great admirer of the scientific approach because it is quite beyond me. I think one always admires things that one can’t do oneself. But the state of mind, the necessary scepticism that top-flight scientists bring, does not go even if they have not been in the lab every day for the past few years, so one can overdo the ex-expertise. This sounds a bit mushy, but it is a state of mind as much as anything else.

**Lord Norton of Louth:** Just to reinforce Lord Hennessy’s point, I was just thinking that if you are looking to the future, in a way it is partially addressed now through the Appointments Commission, because it is not just looking at individual merits. It is moving more towards identifying whether there are any gaps in the knowledge of the House, and where does the House need reinforcing, to bring in people who can cover that particular area. I think there is an awareness of the issue in terms of Members coming in, so I think it is helpful that is being addressed. You have the wider problem of membership simply as a consequence of numbers. We are a mixed bag, but in a way that is useful because it is sometimes useful if you are bringing a topic forward as an expert. It is a bit like when you have students who raise questions that have never occurred to you because they are looking at it from a very different perspective. That is quite stimulating and quite helpful.

**Lord Hennessy of Nympsfield:** There are roughly four a year coming in through that mechanism and it is now two because the Prime Minister wanted it cut in half.

**Lord Norton of Louth:** It is about whether one can persuade the parties to think in those terms as well, because some of the peers who come in as party nominees are specialists or experts in particular areas; it is about whether you can develop that and get some recognition on the part of the parties of that value.
numbers. Let’s just stick with the numbers. Let’s have no more than 800 for the first five years”? I am very concerned that people are expected to be here all the time. Why should they not be here once a week or once a month? I don’t quite understand what it is that makes it necessary for them to be there all the time. They need to be there when they think it is important.

Lord Tyler: I think that this is a critically important issue of comparison between the two Houses. I don’t want to sound as if I know what is exactly happening in the House here, but I suspect that, looking back to the experience of Members round the table, increasingly a Member of Parliament has become such a full-time occupation, you have few people who maintain an interest in any other walk of life. That was not true when I was first in and it may not have been always true for other Members, but I think it is largely true now. This is one of the reasons why a consensus developed in the Joint Committee on the recent Bill that we should not have, as the White Paper and the draft Bill said, 300 full-time parliamentarians. That is what it said; that is what the Government went for. We all decided, relatively quickly, on the Committee that that was too small, because we thought 450 was the absolute minimum if you still had people who were going to maintain a professional, business or other interest outside Parliament, so that we could have a quite deliberate distinction between the role of a senator, as we were talking about, or a Member of the House of Lords, and a Member of the House of Commons. We thought that that was important. I have a lot of sympathy for what you say, but I think it is also pragmatic. We are not going to suddenly go from the present 800 down to 450 anyway, so perhaps one of the merits of that is that over this transitional period we should try to make it possible for somebody who has a fairly busy other life to still contribute to the work of Parliament.

Lord Norton of Louth: I largely agree with that. The attendance is rather good. The daily attendance is about 500 and some people conclude from that that we could survive with a membership of 500. Of course, it is not the same 500 every day. That is the point. But you are right, attendance has gone up over time. It is partly as a consequence of numbers and partly, as you say, because now there is a change. I think there are two things that draw people in. One is simply a vote, so whether you are an expert or not there is a vote and in some instances you want to be there. The other is the expectation now that when you become a Member of the House you are going to contribute to it. I think that does build up the attendance. It is still possible to have a full-time job and attend the House even if you have to travel, as I do, rather some distance, and I am not the only one. I am over 200 miles away. Baroness Finlay of Llandaff has a full-time post in palliative medicine and she comes in from Cardiff. It is still doable. It means you can’t be here all the time, but it means you can be here to contribute and, particularly if you are focused on a particular area, to contribute especially in that area. I think that is what we benefit from.

Q75 Mr Turner: Do Lord Hennessy and Lord Goodlad agree with that?

Lord Goodlad: Yes, I do. Lord Hennessy of Nympsfield: Absolutely. I think the way to see it is that in the House of Lords, the 490 to 500 average that turn up is a coalition of the willing. I do not understand the whipping arrangements. I am an innocent. I leave it to the pros on all that. There are lots of former Chief Whips with us here, but we are not whipped on the Cross Benches. It is very much a coalition of the willing, but it is interesting how many are very consistent attenders. If you look at the expertise of the former Chiefs of the Defence Staff or the former Cabinet Secretaries, there are lot of those, and the Queen’s Private Secretaries—I am interested in the constitutional side and the military, so I see them. It is a very agreeable form of adult education, apart from anything else. I have never found a better one. Also, I have never been able to find this study—it reverts to what we were talking about a moment ago—but I think it is in Emma Crewe’s very good book on the House of Lords. Somebody did a study that suggests if you go into the House of Lords you live 15 years longer than the average—

Lord Tyler: 14.

Lord Hennessy of Nympsfield: 14, because the little grey cells are stimulated—

Lord Tyler: Which might cause the entire problem.

Lord Hennessy of Nympsfield:—and you are cossed, so it adds to the problem. People do find it very refreshing to sit in on debates that they are not experts in.

Lord Norton of Louth: Absolutely, and I think that is a very important point. People are not here simply because they feel they ought to be. They attend because they want to. It is a very conducive environment. It is very stimulating. The atmosphere in the Lords is very different from the Commons. We are far less adversarial. People are more engaged. I am going to a debate, perhaps not intending to be there for the whole debate, but you stay for the whole debate because you are learning from what is going on. It is extremely stimulating and you benefit from that and peers do listen to what other peers are saying. It can influence outcomes.

Q76 Mr Turner: Baroness Hayman gave me the impression that she would like full-time peers. Maybe I misunderstood what she was saying, but you are not in favour of full-time peers?

Lord Norton of Louth: No. That is the benefit. That is why I say we are complementary to the Commons. All the pressures on the Commons side over the years moved Members in the direction of just being committed to the work of the Commons, because the demands are now so great in a way they were not before, whether it is within the House, Committee work, legislation or constituency demands that have grown exponentially. That therefore limits the opportunities. Members may come into the House having had a previous career but it is very difficult to keep up with that previous career. You can still do that in the Lords and still maintain that engagement with outside bodies of a different sort to constituents. I
think that is the value the House has, because it produces a different body, different type of composition, different type of work. So we are not replicating, we are not duplicating the Commons, and I think that is the value.

Lord Tyler: Just a footnote to that. Sometimes people think that the Cross Benchers are the only ones who come with expertise and are still maintaining a role outside. That is not true. Lord Winston is an obvious example, or Melvyn Bragg or Lord Fellowes. They are all very active people but bring a particular contribution to the House. As Mrs Laing will again recall, one of the reasons that we had a consensus on the Joint Committee about 450 was that we were not simply saying that the Cross Benchers, the independently appointed, may wish to continue to have an outside role, but that parties may deliberately want to put people on the electoral list—when there were going to be elected Members—who were still involved in other walks of life so that the second Chamber of Parliament still had that beneficial effect.

Lord Hennessy of Nympsfield: Can I reinforce what Paul says? I am still relatively new in the House of Lords and I quickly realised, as I had not as a journalist watching it, how the what you might call talismanic figures in some cases are all over the Benches because of the knowledge that they bring and also their approach. Quite often votes can be turned, and they are as often turned on the party Benches as they are on the Cross Benches. There are people who really know, and who are listened to in a particularly careful way. It is a very courteous way of doing it, but one must be careful of that, because courtesy can be used as a weapon. You quite often do not realise you have been sliced up until several minutes later, so courteously is the rapier wielded.

Q77 Stephen Williams: It is very interesting. I have heard the House of Lords referred to as the most luxurious and expensive day centre in the country before, and now I learn it is the most expensive adult education centre in the country.

Lord Norton of Louth: I have not heard the House of Lords referred to as the most overactive adult education centre that Mr Williams was referring to. I can’t speak for Lord Hill, but I think you should look at what he has said about this because, in effect, he is saying the problem is not totally overpopulation. It is about trying to find ways of making better use of our current membership.

Q78 Stephen Williams: You seem to be saying that there is a consensus that the House is too big, but presumably there isn’t a consensus as to who should leave in order to make it smaller, and that is the problem.

On the issue of persistent non-attenders, the figures we have, which are from 2010, said there were 79 peers who did not attend at all in the 2010 session, and the average attendance was 475. As one of you was saying earlier, the number within that obviously changes. If one of the incremental changes was expulsion of persistent non-attenders, might that then give a perverse incentive for some of those persistent non-attenders to turn up because they would not want to lose their membership of this expensive day centre, adult education centre, gentlemen’s club or whatever else you want to call it?

Lord Norton of Louth: Yes. If you are going to do it to make that effective, you would have to do it on the basis of those who had failed to attend before rather than do it, say, on the present Session, for the reasons that you have given, because somebody will just turn up for a day and therefore they would not be eligible for going out. Having said that, you have the question of why it would matter to them anyway if they are not turning up at all. What would be the benefit of turning up just to stay on the books unless there was some future intention of attending? Otherwise, if they are persistent non-attenders, the only consequence is for the reputation of the House itself—we have these Members who do not turn up—but there is no practical implication, because they are not a drain on resources. They can’t claim anything because you have to be physically present.

Lord Hennessy of Nympsfield: We were worried in the Joint Committee about doing it retrospectively without any warning in terms of due process. Somebody might judicially review it or whatever if the Bill had turned into an Act. I think we spent quite some time on that sort of natural justice approach.

Q79 Stephen Williams: To pick up what Lord Norton was just saying, presumably there is more to being a Member of the House of Lords than the educational and legislative opportunity. There are other opportunities to host events and use the dining rooms, and that does not count as attendance, does it?

Lord Norton of Louth: No, you have to come to the Chamber. You might be using the facilities but you are a non-attender. Even if you are using the facilities, you are not attending.
Q80 Stephen Williams: Is there any evidence that some of these 79 persistent non-attenders in the Chamber or the 300 or so who do not participate are doing something else?

Lord Norton of Louth: They might use the facilities but that would be one of the incentives for part of retirement. You say if you retire, nonetheless dining rights still come in or something like that. That is essentially at the margins. We did that with the hereditaries, but that had no great impact in terms of resources because so many are outside London there was no great reason why they would come and use the facilities. So as I say, I think that is essentially at the margins. Of course if you say to them, “You are a non-attender, you are no longer a Member”, it does not have any great consequences because they do not lose the title. You are still a Lord whether you are a Member of the Lords or not.

Q81 Stephen Williams: Do the people who are hereditary but used to be Members of the House of Lords retain any membership rights in the House of Lords, to belong to all-party groups or anything like that?

Lord Norton of Louth: The party groups could allow the former hereditaries or continuing hereditaries to be involved. Those that ceased to be Members I think were still allowed dining rights, if you can call it that, just to come in and use the facilities but, as I say, they were not extensively used.

Lord Hennessy of Nympsfield: The ex-bishops can come in and dine, can’t they? The bishops cease to be Members of the House of Lords when they retire from their bishoprics, although the archbishops are usually life peers.

Lord Norton of Louth: Yes.

Lord Tyler: There is a genuine dilemma here, for the reasons are more or less touching on now. If you indicate in advance that this is the intention, it might increase the number of people who come in. Even now, Chairman, with this discussion going on and this Bill and so on, there may be people who think, “I haven’t been for a bit, perhaps I ought to go”, but if you do it entirely retrospectively then there might be a legal challenge. Just to give you an indication, a couple of weeks ago for a particular Bill that may be of interest to colleagues on all sides we had 530-something people who voted and probably another 20 or 30 who didn’t vote because they thought it was an inappropriate thing to do on that particular amendment, so 550-plus. I don’t know whether any of those thought, “I’m still a Member, I had better pop down there”, or possibly thought, “I ought to keep my attendance record up and this is a good one”. I think we are in very difficult territory here. It seems simple from the outset but it could be quite a tangled operation to get very few people to go who are presently active, presently occupying an office or presently have any sort of involvement in the House. It might not be worth the candle.

Lord Norton of Louth: Having said that, I went through all 538 names of those who voted. There were a couple of rather prominent figures but, that aside, on the whole it was those who would come in. So it sort of maximised the attendance of those who normally come. I think would be the way of expressing it.

Lord Goodlad: This was on the same-sex marriage Bill Second Reading and the amendment.

Q82 Stephen Williams: Paul Tyler was just saying it might not be worth the candle having some rule about persistent non-attenders. Is that the view of all of you—that it is simply not worth trying to agree definition, maybe because there would be a legal challenge?

Lord Hennessy of Nympsfield: I think it is worth trying. It is fraught with peril and it might not produce much, but we need to look at all possible avenues. Tony Wright, the wonderful Tony—I think it was in his farewell Political Quarterly speech—said, “The moment the House of Lords will turn is when you can’t get a table for tea on the busier days”. Do you remember that? That is just to cheer us up a bit, but quite seriously I think we should look at all possible avenues because it is not easy, unless you went for the brutal option of voting the numbers down, which also is fraught with peril.

Q83 Stephen Williams: Here is a multiple-choice question for the four of you. Could you, in order, give us the three things that you think would make the most difference in dealing with this problem of there being too many Members? I assume that a rule on non-attendance would be third in all cases, but what would be your top and your second choice for making a significant difference to overcrowding on your Benches?

Lord Norton of Louth: You need to distinguish because, of course, non-attendance does not affect overcrowding. Getting rid of those who don’t attend does not have an impact on the current pressure on resources. Getting rid of non-attenders is more of a reputational matter. If we look at the pressure on the House and slimming it down, that is where we come to the points I mentioned. It is about whether you go to the more immediate ones like saying to the parties, “From the next election you will have X number” or something like that or, as was embodied in the Bill, to the more immediate ones like saying to the parties, “That means you have X number” or something like that or, as was embodied in the Bill, you do it over two Parliaments and bring in a scheme. What we incorporated in the Bill was this idea that you would have the aspiration of having the second Chamber smaller than the first. That was the goal, to try to make the House smaller than the Commons and seek to do it ideally over the course of two Parliaments. It is about whether you do that by saying to the party groups, “That means you have X number and therefore it is up to your own internal mechanisms as to how you select who should go”—that might give us the degree of flexibility that we have mentioned to keep those who might be elderly but still have a lot to offer, and perhaps some of those will go who are not that old but nonetheless have not contributed much—or whether, as we have discussed, you do it on the more arbitrary basis of an age limit and say, “All those over such-and-such shall go”.

Q84 Stephen Williams: What would your first choice be, to answer my question?
Lord Norton of Louth: I am inclined towards leaving it to the parties.

Q85 Stephen Williams: But that still means you would have to have a method for reducing the number, wouldn’t you? If there is a goal, it is not a means of doing that.

Lord Norton of Louth: You would have to have agreement on what the numbers would be. It could be as we put in the Bill. You can take it from there, so the largest party has a majority but no more than 3% over the Opposition, for example. You can work out what the number should be and then leave it to the parties, which is what you have at the moment with the hereditary peers—an election of X number.

Q86 Stephen Williams: You can’t leave it to the parties, can you? You can’t reduce the number of Labour, Lib Dem and Tory peers without having some legislative agreement on what the method of reduction should be? What I am trying to get to is what the method of reduction should be.

Lord Norton of Louth: You could repeat the 1999 provision.

Lord Goodlad: I think it would be extremely difficult to legislate for elections within groups, because there are, of course, the big groups—the Labour party, the Conservative party, the Cross Benchers and the Lib Dems, but there are a very large number of small groups and there could be more and more small groups in the future. How are you going to legislate for that? I think that the long-term solution—there is no quick fix, as we have discussed—is probably a fixed term for future life peers. Parliament would have to decide what that was and what the size of the House should be, but there is no quick fix.

Q87 Stephen Williams: Paul, do you have a first preference?

Lord Tyler: You are challenging us in a way that takes us back, I am afraid, to the Chairman’s original warning.

Stephen Williams: No, the first choice for incremental measures.

Lord Tyler: The fact is that our House is particularly concerned with precedent. The fact that we did do it on hereditaries, but before my time, has some attractions, but it is not comfortable, and this is not the first attempt to look at this issue. Everybody keeps inventing this, but we have been at it for over 100 years. I have personally been at it for not quite that long but quite a long time, and with Jack Straw we looked at it very carefully. We did not get beyond a number of options. We looked at it again in the Joint Committee, and it does take us back to the long-term big operation on which we have differing views, but I don’t see any quick fix.

Lord Hennessy of Nympsfield: I am with Alastair on this. I think ending the hereditary by-elections and a fixed term, which I would put at 20 years, as I mentioned earlier, for all new appointments is the way to do it. If Parliament said, “This can’t go on”, and the brutal option with all its imperfections was required, I think the only way is to do the 1999 precedent, but that would be most unfortunate.

Lord Norton of Louth: We do have legislation, so you can provide for election. That is what we have at the moment. In response to your question, I was not identifying what I regard as the most desirable option. It was the least undesirable.

Q88 Stephen Williams: Sticking with that 1999 precedent on hereditaries, you all seem to agree that stopping the by-elections would take 50 years or whatever to make a difference. Could you use that 1999 precedent to say that there shall be 42 hereditaries from 2015 onwards in the House? Is that attractive to any of you? Then they decide who they are.

Lord Norton of Louth: There are two separate aspects you are covering. I think. One is using it as a precedent for election within the parties. The point about closing off the by-election option is not so much that it would have any impact on numbers, other than because in the future you would just stop new ones coming in, so gradually the 90 would go over a long period of time, but that is not the reason for doing it. It is not a numbers issue in that respect. It is more reputational from the point of view of the House.

Q89 Stephen Williams: If having hereditaries is a reputational issue, why not remove the whole lot?

Lord Norton of Louth: It is not the fact of the hereditaries. It is the means by which they continue to come in. It is the actual by-election provision itself rather than the fact that we have hereditary peers.

Q90 Stephen Williams: Yes, but that implies that there is an embarrassment that someone owes their membership to who their father was. It is the same thing.

Lord Norton of Louth: Strictly speaking, who their father was makes them eligible to be on the list to be considered for election.

Stephen Williams: That is the embarrassment, surely.

Lord Norton of Louth: No, the embarrassment is the means by which they are then chosen, that you might have the Lib Dems choosing one person to come in. I think that is the issue.

Lord Tyler: The extra twist, of course, is that they are disproportionately from one party group, so that is tricky. Incidentally, we have, Chairman, at the moment a current by-election where, of course, we will elect as the whole House, because there was another little quirk here. Another extraordinary factor is that because the departed Member was a deputy chairman, the whole House will vote and it could be anybody who is signing up to any of the four groups who is elected. We are doing it, of course, by the alternative vote, which is a very good way of selecting the right candidate. I am sure you would agree.

Lord Goodlad: Can I just ask a question? They do not have to sign up for one of the four groups, do they? They could be UKIP, they could—

Lord Norton of Louth: Oh yes, anybody can be on the list. I just want to make the point as well that if you get rid of the by-election option then the
remaining hereditaries become de facto life peers. It is also worth bearing in mind that we have more hereditaries than the statutory 92. Some have been very able and been brought back as life peers. Most Labour hereditary peers before 1999 are back in the House but they are not back elected as hereditary peers, they have been given life peerages to enable them to continue to contribute to the House because they are just very good people.

Q91 Paul Flynn: I was going to ask about retirement, but I think we have covered this. I presume you are all saying that having a retirement age is really not on. I was looking at the numbers of people we would lose or would have already lost from this side—Peter Tapsell, Dennis Skinner, David Wimnick, Austin Mitchell and Gerald Kaufman, people who really do contribute a huge amount to the House and are well over 75. We are irreparably short of octogenarians. I was struck by what Lord Hennessy said about the scientific wealth that you have in yours compared to ours. Recently a Member of this House said in my presence in the Chamber that he believed that a surgeon conducted fewer operations when there was a full moon because of the effect it has on the way that blood congealed. That person has just been elected to the Science Committee to give us further benefits of his scientific wisdom on the subject. We are desperately short of scientists or people who think on scientific principles.

You are in danger of converting this long-standing opponent of Lords into a fan because of the contribution you have made, so I find it very disconcerting. If compulsory retirement is barbaric, as we know it to be, and it is ageist—you would not dream of doing anything that was sexist or racist in any way—it is really dead. You can’t put an age limit there.

Lord Tyler: I want to reinforce Mr Flynn’s enthusiasm for reform. I think the expertise that is available to parliamentarians should be people who are here as witnesses. What we want in whichever House is judgment. Judgment, of course, is developed over experience and expertise. The specialists should not be there; they should be here giving evidence to parliamentarians. I have been in a Committee in the Lords where there were these very distinguished former soldiers who were in charge at the time of the Falklands, and the poor guys over here think, “God, look, here are these people of huge wisdom and experience, but they are 20 years out of date”—in that case rather more than 20 years out of date. So I think we should take with a pinch of salt this idea that it is terribly important to have scientific or any other expertise. It should be here, across from the parliamentarians’ horseshoe giving evidence. I hope that view will not encourage Mr Flynn to tear up his card as a Lords reformer.

Lord Hennessy of Nympsfield: It is, however, very useful to have the scientists and all the people with special knowledge engaged in the detailed slog of the Committee work on the face of a Bill. I am a great fan of Select Committees, but it is qualitatively different if you have them in there absolutely on the case.

Lord Goodlad: To comfort Paul in his fear that he, as a long-standing opponent of the Lords, might be in danger of becoming a supporter, my experience is that the longest standing and most vociferous opponents of the House of Lords, once they have joined the House of Lords, become the most zealous converts in its portal.

Q92 Paul Flynn: That is very alarming. We all have our titles around the table and it is a choice we have. We can be Mr, we can be Mrs, we can be Ms. I can’t be “Citizen” though. If I want to be called Citizen Flynn, that is not allowed. You are sitting there as Lords and you mentioned about the rights to have tea there, and I do not know what part the ermine plays, or being Lords. How important would it be if we gave it another title and took away the Lords? “Lords”—I mean, it’s the Almighty, isn’t it? There are all kinds of wonderful overtones of being a Lord. How much of an attraction is it, and would it encourage those who are contributing not in an effective way?

Lord Goodlad: I don’t think it is an attraction at all. I would much rather be called Comrade.

Paul Flynn: I will do that from now on.

Lord Norton of Louth: Or Citizen.

Q93 Paul Flynn: Yes, or Citizen. What about wives being called Ladies and the Baronesses’ husbands presumably being called Mr?

Lord Norton of Louth: I think that is a separate issue and I do have a solution to it, which I will share with you afterwards if you are interested, which I think is equitable. It is that all spouses cease to take a title and simply be called Honourable, and that solves the problem. You know then who has the title on merit. On your other point, I think there are some differences, the slightly party differences in the House in terms of attitudes towards the use of title, whether you prefer to use them, whether you prefer not to use them. My view is that I suspect if you got rid of titles you then might have to start paying Members.

Paul Flynn: To take this general point, I am not alarmed at that, but after just emerging from the—

Chair: Paul, can we hear from the other two witnesses and then come back to you?

Paul Flynn: Of course, yes.

Lord Hennessy of Nympsfield: I think it should be seen as a job being in the House of Lords and what you are called is secondary, “Senator” is all right; other countries have senators. It does not matter what we are called as long as people do see it as a proper job, which makes it more than the sum of the parts of the parliamentary system as a whole. We are obsessed with status and title in this country, and we will never get out of it until the second coming. I don’t know when that is going to be. I have no insight on that one.

Q94 Chair: Let me ask Paul for a view and then we will come back to Paul Flynn.

Lord Tyler: Lord Hennessy is a self-confessed peacock. He enjoys some of this stuff and since—

Lord Hennessy of Nympsfield: Oh, flummery is terrific.
**Lord Tyler:** I have read his book, you see, which is dangerous, obviously. I think there are some Members—not very many, but some—who do simply want the title and then do not turn up. I think that is crazy. The sooner we can disentangle the honours system from active involvement in legislation and the other roles of Parliament the better. But I do not think, Chairman, that is going to be possible under this Bill unless perhaps colleagues in your House start trying to amend this Bill, which would be perfectly healthy. I have not found, I have to confess, any practical advantage in the title. The misunderstandings about our place are legion, not least of course because every time there is any reference to some disaster of reputation there, we get that picture of some Members dressed up looking like Father Christmas. I have a deal with my wife that we are not going to attend the State Opening until the last one, when the guillotine is being sharpened outside and the tumbrils are rolling, when just for the fun of it we will dress up. But I am not going to get involved in all that because I simply do not want to be photographed looking like a complete ninny.

**Lord Norton of Louth:** I think there was a serious point about the relationship between titles and what we are talking about in terms of activity. There are a fair number of Members who regard being given a title, being elevated to the peerage, as an honour, and you feel obligated that you owe something in return, which is to apply yourself to the work of the House. It may be different if you did not have that sort of recognition then in terms of the activity that one might engage in.

Q95 Paul Flynn: Having been in this House for a long time now, purely in the interests of adding to my life expectancy, I long for the day when we pass legislation on the basis of evidence. Almost all legislation is evidence-free. It is determined on the basis of perception, which is often framed by the tabloids, by the pressure, which can be partly the wisdom of crowds but usually the stupidity of crowds, and prejudice. Those are the three main elements in this place, under all Governments virtually. One thing you can always guarantee in this place, under all Governments virtually, is evidence-free. It is determined on the basis of perception, which is often framed by the tabloids, by the pressure, which can be partly the wisdom of crowds but usually the stupidity of crowds, and prejudice. Those are the three main elements in this place, under all Governments virtually.

**Chair:** I know this is a preamble to a question. I feel it.

**Paul Flynn:** It is. Is the Lords providing a suitable, rational balance and is it desirable that we carry on with it?

**Lord Norton of Louth:** I think it is. I am going to respond to what Paul was saying earlier. I fully take your point; we have to be very alert because a lot of it is the “something must be done” mentality. Part of the problem as well is that Parliament sees—Ministers do this but MPs as well—legislative success as a Bill coming in and Royal Assent rather than the effect of the Bill. So you need more post-legislative scrutiny. I think the value of the Lords—this is what Peter was touching on—and the value of Committee work is a detailed examination. I disagree with Paul about those who are either specialists or experts being Members, because they are then able to engage with those outside in the field as well, so you get a proper informed discourse. You not only know what questions to ask but you can evaluate the quality of the answers to make sure there is the evidence base there. I think that is the value of the Lords. We are less concerned with the principle of the legislation, that is what you are there for, but our role is the detail and this is why the membership is so important.

**Chair:** I think this is fascinating—

**Lord Norton of Louth:** We are a body of legislative scrutiny. We focus on the detail. That is why you need the type of membership we have, I think, precisely for the very reason you are touching upon.

**Chair:** We have just done a thing on better government and the legislative process, so I will move on.

Q96 Fabian Hamilton: Apologies for being late. The late Robin Cook, when he was the newly created Leader of the House of Commons, once remarked to a parliamentary Labour party meeting that after the State Opening of Parliament he felt rather out of place because he was the only one not dressed to look like a playing card. So I think that rather emphasises your point, Lord Tyler.

Last week Baroness Hayman gave evidence to this Committee, and one of the things she told us was that she was minded to include a provision in her Bill that would allow for the expulsion of peers who brought the House into disrepute. Do you think that there would be a consensus in Lords on this issue?

**Lord Norton of Louth:** Yes. I regret I did not put that in the Bill, the original Steel Bill. The wording of the Bill was to bring it into line with the Commons for anybody who committed a serious criminal offence, so I merely put in what the position was in the Commons. I regret that I did not extend it to do the same for giving the House the power to expel a Member, the same as the Commons. You can get Members who commit serious improprieties that damage the reputation of the House, which are not necessarily unlawful but they are on such a scale that the House ought to have in reserve that power to expel a Member. I think there would be general agreement on that.

**Lord Goodlad:** I think that there would be agreement for that in the Lords. It would be extremely difficult to expel somebody from the Commons who had been legitimately elected just because everybody else ganged up on them, if they had not committed a crime. That would be extremely difficult, but I think in the Lords there would be a consensus along the lines described by Lord Norton.

**Lord Tyler:** One thing you can always guarantee in the House of Lords is that if somebody says there is a consensus, there will be somebody who does not agree. I do think that this sounds great in principle, but just think of the practicalities. For example, we have some—how should I put it delicately—really able but maverick views expressed in the Lords, and long may they be so. It could be circumstances where somebody who is dissatisfied with the way in which the House is operating, and the way in which the main parties are operating, makes quite a stink about this in the media or whatever. It would be a very easy, knee-jerk reaction for the majority in the House of Lords to
say, “That is bringing the House into disrepute” on political grounds. On political grounds it would be quite easy to do so. It sounds very simple, but I think the practicalities are not easy, and maybe we would have to have a two-thirds majority or something of that sort. It is not as simple as it sounds.

Q97 Fabian Hamilton: But if you have a clear definition of what bringing the House into disrepute actually means, for example being convicted of a criminal offence, then surely that would be a lot easier. It would not be used politically, it would be used—

Lord Tyler: No, but I would say that it applies if you are convicted for a criminal offence for which there is a custodial sentence, and that is within the proposals. I think I am right in saying that you are a lawyer, Mr Hamilton, and if you can write that definition to satisfy every single Member of the House of Lords, good luck.

Lord Norton of Louth: There is a difference between consensus and unanimity. You can do it, because it is not simply about saying that the House can simply expel someone. You would have some mechanism by which the matter would be, say, before a judicial committee before it could come to the floor of the House. You can do it legislatively, because the Constitutional Reform and Governance Bill, just before the last election, did include that provision, but it was one of the provisions that was lost because of the wash-up.

Lord Tyler: It was a great misfortune that that provision failed at the last minute.

Lord Norton of Louth: Yes.

Chair: Fabian, just before you go on, Alastair, I know you have to leave. Please do not hesitate when that moment arrives.

Q98 Fabian Hamilton: We will not be offended, will we? Surely the issue then, Lord Tyler, is a proper process with a clear set of principles or guidelines, just as a judicial process would work.

Lord Tyler: That is why I think Lady Hayman’s Bill, section 2, “Conviction of serious criminal offence”, is the right starting point. Brining the House into disrepute I think would give an impression—it may only be a perception—of a rather different role.

Lord Norton of Louth: We certainly feel that the present sanction we have, which is all the House can do at the moment—and we had long deliberations before we agreed we had the power—is simply to suspend someone, which can only be at the maximum until the end of the Parliament, and that is it.

Lord Goodlad: I think the prospect of there being a sort of kangaroo court, offending against the principles of natural justice, is absolutely unthinkable.

Q99 Fabian Hamilton: So a proper process, clearly laid out with clear guidelines, would be acceptable.

Lord Norton of Louth: Yes. If you look at our membership, of course we have the membership, particularly of those who are former Law Lords and others, that could form a committee that I think would be appropriate for fulfilling that particular role.

Q100 Fabian Hamilton: Presumably it would have to be a committee of peers, wouldn’t it?

Lord Norton of Louth: Yes.

Q101 Fabian Hamilton: You couldn’t have any other committee, any outside body deciding on this.

Lord Norton of Louth: No, because it is intrinsic to the House, the same as the powers of the Commons, to expel a Member. You already have the powers. My point is that we simply want to bring the Lords into line with the Commons.

Q102 Fabian Hamilton: We have been discussing diversity in the House. Do you think that the House of Lords Appointments Commission has made any difference to the composition of the House in terms of diversity? Has it been doing its job properly? How would you assess the work that it has been doing?

Lord Hennessy of Nympsfield: I think 64 or 65 have come through that process since it was established 13 years ago, and 38% are women. I do not have the latest breakdowns. I am sure Michael Jay will bring all that with him. So it has made progress but, again, I go back to what I was saying a bit earlier, that if you have two a year rather than four—it has been cut in half—getting all that over a period of time is going to be that much harder. But certainly, as far as I can see from the outside, the Appointments Commission has had that in the forefront of its mind right from the beginning.

Q103 Fabian Hamilton: It is very important, obviously, that we have a proper gender balance, but how are we going to make sure that the Lords better reflects the diversity of society in terms of racial or ethnic background?

Lord Norton of Louth: We have a higher proportion of Members drawn from ethnic minority backgrounds than in the Commons, and that is the value of appointment, because you can move fairly quickly to bringing in people from a diverse range of backgrounds. What we did in the Bill was to say that if appointment was put on a statutory basis, it then had to have regard to the diversity of the United Kingdom. But I see that essentially as confirming what it already does, because if you look at the Members who have come in through the Appointments Commission in terms of the range of backgrounds, not just gender but ethnic minority backgrounds, disability and so on, then you see that if it could be improved it would be improving on a good process already. There is that recognition that one needs to have regards to the diversity. I think in that respect it is doing its job and the House is benefiting enormously from that fact. We are a fairly diverse House in various respects so to add to it I think is valuable and the House does benefit enormously from that.

Lord Tyler: Ironically, the worst shortfall is geographical. During the period of the last Government two-thirds of the appointments on all sides, party as well as Cross-Bench, came from London and the south-east.
Lord Norton of Louth: Or they live in London and the south-east, but then if you do a study of MPs where they now live, it is not that much different. For the obvious reason that this is where the institution is, they tend to gravitate. It is only those of us who have jobs elsewhere who continue to live elsewhere.

Q104 Fabian Hamilton: Or homes in communities elsewhere. In other words, we are part of the communities we represent.

Lord Norton of Louth: That is a good point about the Lords. If you look at it in terms of where they live, as distinct from their titles, their geographic titles where they still feel that sense of affinity, that link, then you get a very different picture.

Q105 Fabian Hamilton: Can I ask one final question, if I may? One of the reasons I support the Lords as it stands at the moment is because I feel it has kind of transformed from the Upper Chamber into more or less a committee of experts. We have been discussing expertise and specialisms earlier. Do you think that the value of the Lords really is that it is a group of people who do not have to look over their shoulders to the next election, therefore they can take independent views? Whether they are experts or not, they can use their judgment in a way that is different to that of somebody elected in the Commons. That therefore enhances the work of the Commons and the Lords never, or rarely, decides that it should override the view of the elected Chamber, more than it should inform and advise.

Lord Norton of Louth: Just to reinforce that, you are quite right because one can take a different time frame, but the fact that there isn’t election fundamentally affects the relationship between the parties. I think that is the reason why we are not that adversarial. We are far less partisan than the Commons because you are not having to compete against the party who is sat opposite you to be where you are, so you do not think of it in those terms. You are not up for re-election, and you are therefore not thinking of it necessarily as, “How can I get party advantage from this?”

Lord Goodlad: I certainly find that is true of myself. Having been 25 years in this place and now for a few years at the other end, it does certainly affect the way one thinks. As you say, the primacy of the House of Commons on political matters is universally respected in the House of Lords.

Lord Hennessy of Nympsfield: There is a human factor too. I think people are beyond ambition in the House of Lords, by and large. I was chatting to the wonderful Alf Dubs not long after I came in and he made this point. He said, “We are all on a permanent farewell tour in here”. That can be an advantage. I am not in favour of gerontocracy. I never believed in the cult of youth even when I was one, so I must not overdo this, but that is certainly a factor.

Lord Tyler: It is easy to exaggerate the difference. I am afraid that despite the thought that somehow we are all above party politics, the vast majority of votes in the House of Lords are on party lines. Meg Russell’s work will demonstrate this. I keep saying to people that it underrates the extent to which the House of Commons, in recent years in particular, has become more independent. You are all more revolting than you used to be, if I may put it that way.

Lord Hennessy of Nympsfield: Long may you be so.

Lord Tyler: The work that has been done on that is very interesting. I think it is important not to allow that to colour our judgment. The difference between the Houses is not that great.

Lord Norton of Louth: Well, there is a big difference but it is not that one. Paul is quite right, because Meg Russell’s research, and even my own, shows that MPs are far more revolting than they have ever been. We do tend to vote on party lines when we vote; we don’t vote that often. But it is the Cross Benchers who make the difference. So it is not about Ministers trying to appeal to the individual Members of the House, it is about having to appeal to the groupings in the House, because you cannot carry something solely on the basis of your own supporters. You have to have a proper dialogue to make sure you get your measures through, and I think that is the fundamental point. I am not saying that there is not a party element to the House. My point is that we are less adversarial than the Commons, far less partisan. If you look at Hansard you will rarely see, in brackets, “ Interruption.”

Q106 Sheila Gilmore: To follow up further on the question of the Appointments Commission, do you think it is necessary to change the remit or the basis of the current Appointments Commission? Baroness Hayman has a particular proposal on this. Do you think that would be good, and do you think there would be support for that?

Lord Norton of Louth: I know the Chairman of the Appointments Commission would like to have it put on a statutory basis, and we have always supported that. Does she have a particular proposal on this? Do you think that would be good, and do you think there would be support for that?

Lord Hennessy of Nympsfield: I know the Chairman of the Appointments Commission would like to have it put on a statutory basis, and we have always supported that line. I think there are two benefits. The Appointments Commission is independent, but it not only has to be independent, it has to be seen to be independent, and I think that is one of the values of putting it on a statutory basis. That then protects its independence. The other advantage in the provisions as drafted, of course, is that they bring more of the law into the process if the Appointments Commission wants to add to the criteria, and the guidance it publishes has to be brought forward by order. In other words, it is subject to the negative resolution procedure. So it brings Parliament into the process, whereas at the moment it is detached and it is purely about the nominations of the Commission. Although you would not be involved in that, there would be some parliamentary involvement in approving the guidance and making sure that the criteria were not added to without parliamentary assent. I think those are the advantages. It would mean that it was protected. It is not under threat from prime ministerial decision or anything like that at the moment, but it would protect it, it put it beyond the reaches of the Prime Minister of the day.

Lord Hennessy of Nympsfield: I agree absolutely with that. There is one element where the Prime Minister can interfere. Well, not interfere—he does affect the
numbers going through, as I have mentioned already—but there is a provision in the Appointments Commission where he has the final say, and that is on security grounds. In fact, the Appointments Commission gets papers from Special Branch, tax, MI5 and MI6 on all the people, so they do all that as well, but the Prime Minister can override if there is special knowledge that he has that others might not. As far as I know that has not been used. I agree entirely with Philip. There have been organic changes in the Appointments Commission, which Michael Jay will no doubt tell you about, one of which is that in recent years a bit more width of expert knowledge has been looked for from the Cross Benches. They have always gone for expert knowledge, obviously, but I think they have looked for a slightly wider portfolio than initially. So it has not been a static picture, but it will make a big difference when it is a statutory body rather than a prerogative body, which I suppose it is now, isn’t it?

Lord Tyler: I think there is near unanimity about the provisions, and they have been worked over now by so many people, so I think Lady Hayman’s provisions are pretty well agreed. ‘The principal criteria for recommendation for a peerage shall be…conspicuous merit…and a willingness and capacity to make a contribution to the work of the House of Lords.’ The only point I would make is that when the present commission was set up, expectations were very high that people’s peers would get in, and there were lots of references to hairdressers. I do not know why hairdressers were picked up, and then the first appointee—

Sheila Gilmore: Probably a bit like taxi drivers who know how to run the country, we should just make them—

Lord Tyler: Yes, maybe. But the first appointee was Elspeth Howe who was not only the wife of a very prominent politician but of one who I think was probably already in the Lords, wasn’t he?

Lord Norton of Louth: He was, yes.

Lord Tyler: So it was a job share rather than anything else. It is very important that if this is going to continue, it is not some alternative long-term permanent arrangement that means we do not have to have any suggestions of any other reforms in due course, but an important bit of tidying up.

Lord Hennessy of Nympsfield: It was the Prime Minister’s press secretary who called them people’s peers, wasn’t it? There is always a problem in the UK when the people are brought into it.

Lord Goodlad: Elspeth cut Geoffreys’s hair. Did you know that?

Lord Tyler: That proves that it is all right after all.

Q107 Mrs Laing: I have been thinking about what Lord Hennessy said about the 1999 precedent of each group electing its own or choosing its own to remain, and that would be brutal. Would it be so brutal that it would not command consensus? You see, we are used to brutality of elections in this House.

Lord Hennessy of Nympsfield: It would be brutal, and also there is a danger that people would lobby and so on. The press naturally would get very excited by all this and there would be speculation and bets taken and so on. Heaven knows if we would have to produce manifestos, Alastair will know this. They have to do manifestos in your party when a hereditary dies, don’t they?

Lord Norton of Louth: It used to be you could do 75 words.

Lord Hennessy of Nympsfield: A 75-word manifesto.

Lord Goodlad: It would be widely seen as extremely undesirable, in my view.

Lord Norton of Louth: It depends how brutal and it depends on numbers, but if you think of the options we discussed, you might regard them as not mutually exclusive, so if you had this process it might encourage some peers to think about retirement if they were reaching a stage where they thought it was appropriate to go.

Q108 Mrs Laing: Yes. The group could almost, perhaps not quite, be self-selecting. If people were faced with the option of either standing for sort of election and producing a 75-word manifesto or saying, “Well, maybe it is time I took a step aside” it could be self-selecting in that way.

Lord Norton of Louth: Yes.

Lord Tyler: But I think we have to recognise that there is a real reputational problem here. It would look incredibly incestuous if the parties within a House of Parliament were sorting who should legislate in future rather than the electorate. I know we are not going there at the moment, but I would just put a very severe warning shot across this proposal. It would not be just about the embarrassment within the House of having to face this, which would be considerable, I agree with my colleagues. I think trying to present that to the public as even an interim solution would be fraught with real problems.

Chair: But as you say, we are not going there, so I am sure, Philip, you are not going to pursue that. I am going to ask Eleanor if she has another question about the Bill.

Q109 Mrs Laing: I do. This comes out of the evidence and the discussion we have had this morning. Thinking about the retirement age—of course, this Committee entirely accepts the point that there are many people aged 40 who are not nearly as good as some people aged 90, but that is life’s lottery in a way—would it be more acceptable and possibly less brutal if the retirement age worked in such a way that rather than on your 80th birthday, or 82nd birthday, there was this ignominy of walking out of the House forever, there was a system whereby peers would automatically retire at the end of the Parliament during which they attained their 82nd birthday, let’s say? Supposing it was done like that so that then as a Parliament ends a whole tranche of people over the age of 80 would all leave?

Lord Goodlad: Yes, that would be less undesirable.

Lord Norton of Louth: Less undesirable.

Q108 Mrs Laing: It used to be you could do 75 words.

Lord Hennessy of Nympsfield: A 75-word manifesto.

Lord Goodlad: It would be widely seen as extremely undesirable, in my view.

Lord Norton of Louth: It depends how brutal and it depends on numbers, but if you think of the options we discussed, you might regard them as not mutually exclusive, so if you had this process it might encourage some peers to think about retirement if they were reaching a stage where they thought it was appropriate to go.
passage and the recognition of good service and so on. It could be done with dignity.

Q110 Mrs Laing: Would it give it more dignity if it was done as a group of people rather than one every week?

Lord Hennessy of Nympsfield: Yes.

Lord Norton of Louth: Yes, it would ease it. The key problem is the one you have identified. Your question is based on whether there will be an age limit as a way of getting people out, and I still prefer my method, just to respond to what Paul was saying. Of course, what we are talking about there is not bringing people in; it is people going.

Q111 Mrs Laing: Yes, I have got that. One final question. Although some of my colleagues and others characterise the House of Lords as a sort of overgrown gentlemen’s club, predominantly consisting of old men who are out of touch, does the House of Lords’ overwhelming vote in support of the equal marriage Bill last week show it to be, in fact, more progressive than the current House of Commons?

Chair: A one-word answer, thank you, gentlemen.

What a sneaky question.

Lord Tyler: I am not going there.

Lord Goodlad: No comment.

Lord Hennessy of Nympsfield: It would be impertinent for me to say.

Lord Norton of Louth: Well, I think you could say that. We couldn’t possibly comment.

Q112 Mr Chope: Last week in evidence Baroness Hayman and Lord Steel both said that they would support a total moratorium on new appointments until the next general election. What are your views about that?

Lord Tyler: I think it is crazy, frankly. I have worked very closely with David Steel for many, many years, he is a lovely guy, he is a good friend, but frankly I think this is just ridiculous because that would suggest there is no opportunity for fresh blood to be brought into the place. As we have already indicated, we do have a problem of ageing, out-of-touch—I am not saying this is everybody—

Q113 Mr Chope: Sorry for interrupting you, but surely in the House of Commons itself we get elected for a five-year term. Nobody is arguing that we should have to leave after three years because at this stage in the Parliament we need more new blood. All we are saying is that there should be a moratorium until the next general election.

Lord Tyler: I think there is a good case for saying to the parties over a rather longer period. “We aren’t going to appoint any new Members to your group”—this applies to the Cross Benchers as well—“until we start introducing some form of exit”. That seems to me to be a much more radical and sensible approach. But simply to pull down the shutters—very so often we have Ministers dropped in on us, for example. Are they going to stop that happening? I just think it is not practical politics, and I am very surprised that anybody thinks that it could be.

Lord Hennessy of Nympsfield: We need a trickle of refreshment, I think, but the problem will be overshadowed because we are going to get 40 political appointees, are we not, at some point? It has been imminent for a very long time, and that will open up all sorts.

Lord Norton of Louth: You could distinguish between moratorium and putting a cap on present numbers, because there is a difference. Some Members will die off, it is possible one or two may retire. You could do it on the basis that you still have Members come in but say, “You will only bring in one new Member for one going out,” or have a relationship between the number you lose and the number you bring in. So over time you are losing Members, you are bringing in new Members but without the size of the House growing significantly.

Chair: Thank you, Alastair, Philip, Paul, Peter. Thank you so much for coming today. Fascinating, as always. We will produce a report that hopefully will go with the flow and go with the consensus that appears to be building on some small changes in the second Chamber. Thank you for your attendance this morning. Thank you, colleagues, for being so well behaved.
Thursday 27 June 2013

Members present:
Mr Graham Allen (Chair)
Mrs Eleanor Laing
Mr Andrew Turner

Examination of Witnesses

Witnesses: Dr Meg Russell, University College London, Dr Stephen Barber, London South Bank University, and Dr Chris Ballinger, Oxford University, gave evidence.

Q114 Chair: Meg, Christopher, Stephen, thank you so much for joining us this morning. This is part of our ongoing inquiry on the small changes around House of Lords reform, so House of Lords Reform: what next? I warn you that some of my colleagues may try to lead you into big-scale questions on the second Chamber. Resist that temptation and they will do their best to resist that temptation. This really is about what we think we can achieve, what we can get consensus around, what we can get broad support around to move a few things on a little bit, not reopening the whole question about fundamental House of Lords reform.

Would you like to kick off by saying anything by way of an opening statement, or do you want to jump straight into questions?

Dr Barber: First, it is a really welcome development in the wake of what has happened with the 2012 Bill, and one that—certainly on the grounds of the proposals that have so far been discussed—seems to have some support across both Houses, which I think is welcome, and the idea that even fairly modest reforms can have quite a significant impact over time.

On that basis, I suggest that not only does the Committee think about things in a package rather than individual measures, which I think has been the nature of the discussion so far, but in terms of not just the immediate impact, but what might happen in years to come, given that we have been waiting for full-scale reform for quite a long time. In doing that, perhaps it might be instructive to think not just about the practicalities but the principles behind which a package of measures is proposed. For the most part, reformers have been less interested perhaps in the efficiency than the legitimacy arguments and so any attempt to increase legitimacy, perhaps even democratic legitimacy, would encompass the idea of principle, but might even increase the ability to command consensus across the Houses.

Q115 Chair: Meg, did you want to say a few words?

Dr Russell: I would say three things by way of context and to point to what I think are the key points. The first one, as you are well aware—and as Chris Ballinger will tell you—is that historically, as well as internationally, the facts tell us that large-scale second chamber reform is very difficult to achieve. Historically in this country, it has been the small incremental reforms, which were seen at the time as inadequate and simply dealing with the most urgent and problematic issues, that have succeeded and large-scale reform has failed. That is the historical context.

In terms of what those most urgent problems are, from looking at the evidence that you have taken so far and reading through the written evidence, you have been focusing a lot on routes out of the Chamber. I think the more urgent question is about routes into the Chamber and regulating appointments, not just thinking about how people leave. I don’t deny that thinking about how people leave is important, but the danger is that you somehow manage to reduce numbers through the kind of mechanisms you were talking about, for example, with Peter Hennessy and Philip Norton, of parties voting down their numbers and so on. You get down to a manageable size but if you are not regulating those who come in, the same problem will simply recur.

The third thing is that there has been a lot of emphasis on what can be done with legislation, and obviously the Private Member’s Bill going on at the moment and the things that Nick Clegg has said, but I don’t think you should rule out what can be achieved without legislation. Particularly that route into the Chamber is entirely in the hands of the Prime Minister and a lot can be achieved by the Prime Minister simply changing his practice. You can put a bit of political pressure on the Prime Minister and you can achieve a lot without the need for a Bill, although a Bill may be important for other changes to occur.

Q116 Chair: Chris, did you want to make a statement?

Dr Ballinger: I will say three things. First, despite what Meg says about the ability to do a great deal without legislation, I think really the key blocks, and particularly the nature of the membership of the House and writ of summons and the appointments process, need legislation to tidy them up, otherwise we are at risk of getting hamstrung for years to come on the complexities of peerage history and tradition. A short Bill that will draw a line under all that and say, “Right, this is how Members of the Lords are appointed and this is the basis on which they are appointed” would clear out all of that. I think back to those long discussions with the Committee for Privileges of the House of Lords—about the nature of the peerage and whether you can or can’t exclude Members—from 1999. We need to get rid of all of that now, We are not in the 13th or 14th centuries; we are in the 21st century and we need just to say, “This is how it works”.

Secondly, everything you will discuss in your report has already been discussed in many reports in the last 100 years—and I can provide your Clerk with previous Clerks’ reports, if she likes, to save her
time—but don’t be too bound by history, pick and choose what is relevant to now. The world is very different from when Lord Bryce published his report; it is very different from Lord Rosebery’s Select Committee; it is enormously different from when Lord Salisbury was debating this in 1956. So pick and choose the bits that are relevant for now.

Thirdly, do not worry too much about consensus. Everybody strives for consensus, but consensus has never been at the heart of House of Lords reform. All those piecemeal reforms that have gone through were enormously controversial at the time and deeply opposed. Thinking even of life peers, Lord Salisbury said, “We shall have to force the [Life Peers] Bill through against the opposition of Labour, just as they had to force their Bill through against our opposition in 1911. There are things that we now see as accepted were deeply controversial. Choose something that is appropriate, reasonably fair and achievable and then let people realise 20 or 30 years later that of course they agreed with it at the time.

Q117 Mrs Laing: Looking at consensus, the watered-down, final version of the Steel Bill, as it left the House of Lords, achieved consensus in the House of Lords. Dr Russell, you referred to something that you also said in your written evidence to us, that the lesson of history is that incremental reform matters and that it has a far greater chance of success than more ambitious proposals. That has become quite obvious to this Committee, which is why we are doing this inquiry. Would you like to expand upon that?

Dr Russell: I think I would like to invite Dr Ballinger to expand on that. I can tell you a bit about history—
I have a chapter in my forthcoming book on history—but he has written an entire book on the history of Lords reform, so that might be better directed to him.

Dr Ballinger: I should probably table my book. On the question about incremental reform and consensus, I was looking back in advance of this hearing to the 1950s, just before life peers came in. There was a big question, do you have life peers or do you have a slightly wider Bill that limits the number of hereditaries and so on? The consensus in the House of Lords at that time was that the longer Bill, with a limit on the hereditary peers numbers, with election of themselves by themselves, would be absolutely the way forward, and probably even a cap on the number of life peers. There was widespread consensus among Members of the House of Lords at that time. It did not get through. It didn’t get through because it did not suit the House of Commons and it did not suit the Government of the day.

It depends how one looks at consensus. Often we find there is consensus on the principle, “We think there should be fewer Members, we think there should be a cap, we think there should be some kind of change”, but when you get down to the detail, that consensus melts away or you find that it is a consensus among reformers and those who are very keen, as we found in the 1960s, but the consensus is not shared by the workaday people on the backbenches in the Commons who say, “This will make the Lords more powerful not more sensible and we didn’t get elected to the House of Commons to do that”.

Q118 Mrs Laing: Fair point. Dr Barber?

Dr Barber: I think Chris makes a very sound point on consensus. My interpretation of what the Committee is trying to do, which is small-scale reforms that can command consensus, is not the idea of getting agreement right across both Houses, but sufficient agreement to be able to get something—a package of measures—through. What are the limits of that, and what is the most ambitious package of reforms that can be achieved under current arrangements? I also agree with the comments about how the relatively modest incremental change has altered completely the nature and composition of the House of Lords over time.

Q119 Mrs Laing: That is a very good point. Would you care to expand upon that, how those incremental changes—
Dr Barber: Again, Chris is the real expert here, but if we compare the House of Lords today with the House of Lords 100 years ago, even 60 years ago, it is a very different beast in terms of the people who are in it and how they got there. There are very few hereditaries these days compared with appointees. There are far more cross-benchers or independents and so forth, and greater representation of women for instance, which pretty much reflects the representation in the House of Commons. That is all a result of incremental change, some relatively large, some much more minor. But I think in saying that, even a package of welcome small-scale reforms is not a substitute for properly sitting and looking at full-scale reform of the House of Lords in time, and obviously that is a question for other people on a different day.

Dr Russell: I agree with my colleagues that consensus is an overused term. If you go out seeking consensus in the broadest possible and the most proper sense of the term, you are never going to achieve it. Of course, it was the watered-down Steel Bill, as you referred to it, that got through the House of Lords and it was pretty weak. It was voluntary retirements and removal of those with serious criminal convictions, I think, nothing else.

As Chris says, often the problem is not the House of Lords, but the House of Commons. If the House of Commons could agree on what was needed, we would have had reform before now, and that is the serious obstacle. But some things can be achieved through a consensus of just one—the Prime Minister. I think legislation is desirable, and we can go on and talk about things like removal of the remaining hereditary peers and so on that can only be achieved through legislation, but I am a realist and I think you need to go for the low-hanging fruit. If there are things that you can achieve without a Bill, you should press for those as hard as you can.

Q120 Mrs Laing: Thank you. You talk about “obstacle”, because the obstacle is the elected representatives of the people coming to a conclusion in the House of Commons. Obstacle to what? We are all trying to achieve a better House of Lords, a more relevant House of Lords, and you have all alluded to that.
Just to get it on the record, Mr Chairman, we all, around this table and people who pay attention to this issue, know that the House of Lords today is not as the newspapers describe it. Every time we have a state opening of Parliament, you have that same photograph of lots of elderly gentlemen wearing ermine, whereas day to day, if you walk through the House of Lords, let me put it this way, are you likely to meet an elderly gentleman wearing ermine—or who are you likely to meet? What is the difference between the House of Lords today and the House of Lords of 50 years ago?

I don’t mean 100 years, we are not doing history. We are talking about how things are developing in the current age. What is the difference between 50 years ago and has any progress been made?

Dr Russell: That is a very nice example and it is not a frivolous or a trivial one, I think. I put some evidence to the House of Lords Information Committee a few years ago when it was looking at communications and outreach by the House of Lords, and I said perhaps one of the most important things—the most important thing—that the House of Lords could do if it wants to change its image with the public is for peers to cease wearing those robes on the day of the Queen’s Speech, because if they did not wear them those photographs could not be broadcast around the world and reproduced in all the newspapers, making people think it is this kind of antiquated institution.

There are undoubtedly lots of things that need to change, so I don’t think it is a perfect institution by any means, but if you go up there, you see pretty ordinary men and women wearing pretty ordinary clothes, going about their business of legislating and scrutinising, as you would in any parliament around the world. It has the same proportion of women as the House of Commons, it has larger numbers of minority ethnic members than the House of Commons does, and it is, ironically, more representative in party proportional terms of the way that the electorate voted at the last general election than is the House of Commons.

Q121 Mrs Laing: But is that ironic? It is deliberate, is it not?

Dr Russell: It is not entirely deliberate. One of the things that I noticed that was overstated, I felt, in written evidence to you was the extent to which there is a conscious rebalancing after every general election. I say in my evidence, and we said in our House Full report that was published a couple of years ago from the Constitution Unit, that it is a completely unachievable and crazy goal to try to change the balance in the House of Lords to match the last general election. If you did that every time, the numbers would be through the roof. David Cameron has not done that; Tony Blair did not do it. It was notably, having come into Government in 1997, not until 2006 that Labour had a single peer more than the Conservatives. So you can overstate the extent to which that rebalancing goes on, but there is clearly a tradition of appointing from all sides. Thankfully, unlike in Canada, where the Prime Minister appoints only from their own party, there is that tradition and it does result broadly in something that is kind of proportional, but it is not an exact science.

Q122 Mrs Laing: But you are assuming, in saying that about the growth in numbers, that there would be only appointments and you said a few moments ago—very sensibly, if I may say so—that we shouldn’t just be looking at going out but coming in. So the remarks you have just made about numbers increasing presupposes that nobody leaves. Could I turn my question to a possible approximation to rebalancing by removal of some peers and appointment of others? Have you considered that?

Dr Russell: I think that is not quite right. Even if you have an exit route, if you have an attempt to rebalance the House as a whole to match the last general election, you are going to have a real problem keeping a cap on numbers. The only way that you could achieve that would be by requiring a certain number of people to leave by party. You wouldn’t achieve that, for example, by having 15-year terms and one-third appointed every five years because you might not be able to achieve through that incoming third the balance that you needed, depending on the existing balance among the other Members. So you would have to have quite a curious mechanism. My argument has been that if you are going to have an element of proportionality, you need to do what every package for either an elected or an appointed House over the last 15 years has proposed, which is have balance among those going in, not attempt to balance the House as a whole.

You would have the perverse result, if you tried to balance the House as a whole, that it would be completely proportional to the last general election vote and therefore could argue that it was more legitimate than the Commons, albeit appointed. Even the proposals for election have been that you have a proportional tranche going in making up one-third, and the remainder have been there for longer, and therefore the House itself can never claim to be fully proportional, and that is probably a good thing.

Q123 Mrs Laing: Would it be so awful to require people to leave?

Dr Barber: I do not think so. You had an interesting discussion two weeks ago, I think, about the idea of different groupings in the House of Lords having a vote along the lines of how the hereditaries did back in 1999.

Q124 Mrs Laing: In fact, the word that was used by our witnesses then was “brutal”. Need it be brutal?

Dr Barber: Peter Hennessy’s argument against it was that it might be distressing. The idea that people should have a seat in Parliament for life because otherwise it might cause them distress is a rather strange constitutional principle.

Mrs Laing: Especially to those of us who are elected.

Dr Barber: Especially to those of you in the House of Commons. I think the kind of more serious reservations of it would be partly the things that Meg has just alluded to. It is not just about dealing with the House as you see it now, but what of the future? Is there going to be a cap and therefore what does that
mean about future reflecting of popular opinion, or are you going to have a trigger—every time you hit 600 or 700 there is a vote in the House? That is problematic. The other side of it is back to this idea, and I think it is not what most people want, of a self-selecting and self-appointing Parliament. I can see why, within the Westminster bubble, that sort of thing would be attractive—we can have these votes in and we can decide upon this—but I am not sure voters and taxpayers out there will quite understand. They will wonder why these decisions are being made for them.

Q125 Mrs Laing: I do not quite understand that point. Don’t they make the decisions when they elect the House of Commons?

Dr Barber: There are two points. One was the question that you asked, which was about removing Members of the House of Lords, and the discussion you had two weeks ago was about party groupings within Parliament, therefore deciding who stays and who goes, and that excludes the decisions of voters.

Q126 Mrs Laing: Don’t parties normally do that anyway? In every election for the House of Commons, the party chooses its candidates in every place, and in every election for a county council or a district council or a parish council, the party or grouping chooses its candidates. Isn’t it so?

Dr Barber: They do, but the electorate then also has a vote against a name on a ballot paper, and increasingly there are some moves towards primaries. I am not sure if they will take off. But it is slightly different from groups within Parliament deciding who are the best people to be in here.

Q127 Chair: I am having trouble deciding whether Eleanor is leading the witnesses astray, or whether the witnesses are leading Eleanor astray, or whether the witnesses are leading Eleanor astray, or whether the witnesses are leading Eleanor astray...

Dr Russell: Could I go back to your original question? I do not want to give the impression that I am opposed to measures to get people to leave. I think that is a necessary part of a package, but I don’t think it is sufficient. If all you do is come up with a set of proposals that reduces numbers, the numbers will very quickly balloon again unless you have something at the other end controlling those who enter.

In terms of the brutality point, I didn’t entirely agree with Peter Hennessy. I am not sure it has to be brutal. I think the key thing, as I say in my written evidence, is coming up with a formula for what we think the party balance should be. We need that for who comes in, for new entrants, and I think that is relatively easy. It is based on the last election, elections every year or entrants once every five years or whatever. What is more difficult is agreeing the starting point. Do we consider the current balance fair to build upon, or do we think that ought to be rebalanced in some way? I think it would not be right to balance that to the last general election and then have incomers based on the previous general elections, because that would give an advantage to the existing Coalition, but obviously if you rebalanced over the last three general elections you would be giving a bit of benefit to Labour. The suggestion in my paper was that maybe equality between the two main parties, which is where we roughly are now, would be a good starting point. In order to get the numbers down, you have to have some agreement about what party balance it is that you are trying to achieve. I think the main reason why the voluntary retirement scheme thus far has failed is because there is no guarantee that if somebody removes themselves, retires, they are not simply weakening their party, because there is no agreement about what the party balance should be. So, getting that agreement is essential. If you got it, you could then have a mechanism within parties to reduce, and I think it is quite likely that you would achieve quite a lot of reduction through voluntary retirement rather than forced retirement, if you like, voluntary redundancy before compulsory redundancy, through voting if necessary. But people are not going to retire voluntarily until there is a cross-party agreement about what the balance should be. That is the main obstacle.

Q128 Mrs Laing: That is a terribly important point. Dr Ballinger wanted to come in on that.

Dr Ballinger: Can I come in on the question of brutality? In 1999, 90% of the hereditary peers were ejected from the House of Lords at the same time. If you are worried about brutality, you would never have tolerated that. That is far more brutal than any suggestions I have seen, so there are good precedents for brutality. My problem with the brutality of a retirement age is that now it is expected that most organisations do not have one and I do think it would be very difficult for a Parliament, having said that most organisations should not have a retiring age, to impose one on one of its Houses of Parliament. So there is a fairness argument, perhaps, rather than a brutality argument, and that is why I think it is much more helpful to move to a system where you appoint people on the basis that they will be there for a fixed term, whether it is 12, 15 or 20 years. 100 years ago Lord Bryce recommended 12, and that was seen as a very sensible idea at the time, so it is not revolutionary.

It is much clearer to manage people’s expectations when they go in and then you do not have the problem of somebody saying, “I am 80 but I am still compos”. You say, “You have served 15 years and thank you very much. That was the deal”. I think that is the way to go. The Wakeham Commission did a calculation and they worked out that if you gave every life peer in the House a 15-year term instead of their life peerage, you would have only about 43 members left at the end of those 15 years. So, in a sense it dealt with the problem of transition from one system to another and you could adopt that again now.

Q129 Mrs Laing: That is a very important point. How would you encourage people in their 30s and 40s to accept an appointment that was only for 15 years?

If somebody is doing very well in whatever walk of life they are in and they are aged somewhere between 37 and 43, then you try to persuade them to accept an appointment to the House of Lords, knowing that in their mid-50s they will be out, what would they do then?
Dr Ballinger: They would become president of the World Bank or they would become a leading QC or they would go and sit as a High Court judge, which they couldn’t do as a member of the House of Lords. So I can imagine some lawyers would rather like to come in for 15 years before they go on the bench.

Q130 Mrs Laing: It would probably suit lawyers wanting to go on the bench, but what about the other 99% of the population?

Dr Ballinger: Some people would say, “This is not the right time of life and I am not ready and I don’t have enough to give yet” and that would be fine. Some people would say, “I am in the prime of my existence, I am vigorous, I am energetic. I have my experience dealing with an aspect of the real world and I want to bring it to the service of Parliament”’. Life is not over at 55. The state pension retirement age is going up and up and up, so there is plenty that they can do.

Q131 Mrs Laing: That is exactly the question I am asking. It certainly is not over and people of 55 have enormous financial and other obligations and then, having done a fulltime job for 15 years, they would be out.

Dr Russell: I think you can overstate the problem. If you look back at appointments over the last 15 years—I can’t remember off the top of my head what the number is; I know it is in a footnote in my book—there have been about five people appointed under 40. The majority of people appointed to the House of Lords go in at 55-plus, so 55 through to 70 is not a bad term. As Helene Hayman said, and as I said in my written evidence and some other people said in their written evidence, I think you probably would need some kind of mechanism. Iain McLean, talking about the retirement age in his evidence, called it an appeals procedure. You would need some kind of a procedure to allow some people, perhaps in exceptional circumstances, to stay on, because having people who have the benefit of more than 15 years in Parliament is a good thing. It occurs in the House of Commons as well in the House of Lords and you would not want to lose that institutional memory. So you are talking about maybe 15 years plus a possible 10 years more and, if you are appointed at 55, that is plenty.

Q132 Chair: We are going to have to move on now. Another small-scale change could be the ending of by-elections for hereditary peers. What is your view on that?

Dr Russell: I think it is a highly desirable reform. I think it is difficult in practice to achieve because it requires legislation. David Steel tried to do it in his Bill. There is a very small but vocal minority in the House of Lords who oppose it. The great majority of peers support it. I think they see it is necessary in order to improve the standing of their House, because again the other thing that goes around the world, along with those pictures of people in their ermine-trimmed robes, is the news that it contains people who are there by accident of birth, and that doesn’t do the reputation of the British Parliament any good. So, mainstream opinion wants to end it, but in practice you can only end it with legislation and that can be opposed. Even a Government Bill would face opposition from a small vocal minority and the Government would have to be prepared to face that down and see it through. Personally, I think they should, but it would take a little determination, because it is not entirely consensual.

Dr Barber: I think it is time to end the by-election. The simplest way is just to convert them into life peerages and it would be less brutal in that case, of course. David Steel’s Bill I think found 300 amendments against that particular provision, aimed really at stopping it. Of course, many of the hereditaries believe there was a deal put in place there in 1999 that said that they would stay until or unless there was second-stage reform. While the kind of outcome of this inquiry, or indeed the Bill that is currently before the House, cannot be considered as that second stage, I wonder if, within a package of reforms, there was some inclusion of a very modest amount of democratic legitimacy, whether some of arguments would be at least neutralised, if not overcome.

Dr Ballinger: It is perfectly timely to abolish the by-elections. I am not sure why they were ever put in and I am not sure that those who were behind the Bill are quite sure why they ever agreed to them either. The manifesto in 1997 for the Government was extremely clear, that the complete removal of hereditaries was not at all dependent on any form of second stage of reform. For political reasons, they thought it best to allow 92, then for unfathomable reasons they thought it best to allow the 92 to self-perpetuate. But for all those who think that a deal was done in 1999, first, of course we have moved on and the House has moved on. Secondly, I would like to see any of them argue that a Parliament can bind its successors and that a Government of one complexion can bind a Government of another complexion. So, in a sense, it is a nice political debating point. There is no constitutional bar at all to their removal by legislation and it is a question of whether it is worth the candle in terms of the political fallout because, of course, the Government—or indeed any backbencher—can’t guillotine this through the House of Lords in the way that it could programme and then guillotine it through the House of Commons.

Dr Russell: I think Chris is completely right in all that. In retrospect, that deal was a mistake, and certainly agreeing to the by-elections was a mistake, because gradually the hereditary peers would have been dying off were it not for the by-election provision. I think in your report you could present this as a small, incremental but radical and modernising step that a Deputy Prime Minister who wants to be remembered as having done something important for the House of Lords could notch up against his name. I think it does take a bit of determination to do it and it would be an achievement that this Government would be remembered for. There is something else, as you—

Mrs Laing: Mr Chairman, I wanted to ask Dr Russell to say that again, just to make sure everybody gets that.
Dr Russell: It was in the Constitutional Reform and Governance Bill, and I think one of the great tragedies of the last 10 years is that the Constitutional Reform and Governance Bill was lost in the wash-up due to opposition from, it has to be said, people who are now in Government. I suspect that they regret that in the same way as Labour might regret the 92 hereditary peers.

It might be worth considering whether there is anything that can be done to make the hereditary by-elections less bad through changes to standing orders. The requirement to have the by-elections is in the 1999 Act, but the detail of how those by-elections happen is in House of Lords standing orders, and they are much easier to change. So you could, for example, change this crazy system whereby it is only the hereditary peers in the Labour Party and in the Liberal Democrats who choose successors, which can result in an electorate of two or three. You could change it to elections by the whole House, for example, simply by changing standing orders.

Q133 Chair: I am going to move on, because we have our next witness coming in at 11, so if I can move on a little quicker. Not everyone needs to comment, unless you really feel obliged to. Non-attendees, should we remove those? If so, how?
Dr Russell: Not very important, I think is the answer. The problem in the House at the moment is the number of active Members. It is not the overall number of Members. If you look back over time, we had about the same number of Members, 789 in 1968, and only 291 of them attended a third of sittings, but today we have nearly 600 attending a third of sittings. It is the increase in attendance that is causing the problems. Yes, you would get the numbers that appear on the House of Lords’ website down, but removing the people who already do not turn up wouldn’t really change very much in terms of how the House is functioning.

Dr Ballinger: If you want an effective system, you have to do it by legislation. There is no effective system that I can see by voluntary not turning up or by standing orders but, as Meg says, the issue now is the same as it was in the mid-1950s when this was being introduced. If you are too tough, you will bring the backwoodsmen out and more people will turn up as a result, which will be deeply counterproductive.

Q134 Chair: Is retirement a way to reduce the size of the House, as a small change? Should there be a retirement age and, if so, what is your ideal? Stephen?
Dr Barber: I agree with the comments that Chris made a few moments ago. Where you have things like the Equalities Act and it is now illegal in other walks of life to discriminate against people on grounds of age, it would be a retrograde step to introduce it within Parliament. I also have the other kind of concern that may or may not materialise, but if you were to introduce a retirement age, it could have the unintended consequence of increasing the proportion of Members who owe their allegiance to the Prime Minister of the day or the leaderships of the day and so it could have a maybe marginal effect on the independence of Members who sit there.

Dr Russell: A retirement age of 80 would get rid of about 130 Members. Many of those are probably in the non-attending category. A retirement age of 75 would get rid of about 230 Members, so it would be a simple way of getting the numbers down but it has these equality problems. I think the way forward is to agree what the party balance in the Chamber needs to be. You have to get people from the party groups to sit down and agree between them what the party balance should be and what size the cap should be. If you can get that agreed, I think the party groups will be able to sort it out for themselves, encouraging people to go. There are many people who attend the House out of duty to their party. Frankly, they would probably rather retire, but they don’t want to give up their seat because they feel it would strengthen the other side. If you can get cross-party agreement about what the size should be and what the balance should be, I think it can be easily sorted out through discussion in party groups and you would get volunteers. Of course, many of those would be over 80, but you might get some over 80 who remained, who are active and whose contributions are still appreciated.

Dr Ballinger: But you can’t enforce retirement without legislating to remove the writ of summons from those who have been given it for life. If you are legislating, you might as well do something intellectually and socially more interesting, like fix the terms, rather than impose an arbitrary retirement age.

Q135 Chair: Would expelling peers who have committed serious offences, as a small-scale reform, help the situation?
Dr Russell: I think everybody agrees with that.
Dr Ballinger: But it would not reduce the numbers radically—at least one hopes not.

Q136 Mr Turner: I think we are still trying to be too radical, although we are very unradical in what you are doing. I wonder whether we could, as you suggested, approach it from a different angle. Let us assume the number of peers is going to remain at 800. Could we at least legislate that there should be no elections less bad through changes to standing orders.

Q138 Chair: I think we are still trying to be too radical, although we are very unradical in what you are doing. I wonder whether we could, as you suggested, approach it from a different angle. Let us assume the number of peers is going to remain at 800. Could we at least legislate that there should be no elections less bad through changes to standing orders. Would expelling peers who have committed serious offences, as a small-scale reform, help the situation?
Dr Russell: I think everybody agrees with that.
Dr Ballinger: But it would not reduce the numbers radically—at least one hopes not.

Dr Russell: I think that is maybe realistic, to cap the size of the House where it is now. You could move to a formula of one in, one out; for example, you can’t appoint anybody unless somebody goes, but I think you will run into difficulties—I am sorry to keep coming back to this—unless you have an agreed proportionality formula. The risk is that if you introduced a hard cap and then the Prime Minister could appoint up to that cap, you might gradually move to the Canadian situation, where the Prime Minister does only appoint from their own party and it is a sort of rush to fill the seats until your party is out and then the opposition starts trying to fill it with their people. That does the reputation of the institution
no good and the danger is you move away from proportionality.
If Tony Blair had appointed only Labour peers—I know he has a reputation and he did appoint a lot of peers and he appointed more Labour peers that non-Labour peers—that would have been 400-odd Labour peers put in and then David Cameron would be frantically trying to catch up by putting in Conservative peers. You can’t have that, so you need a proportionality formula as well as a cap.

Q137 Mr Turner: Just before you leave, I do not know what the figures are, but if 800 was the upper limit, how many die over five years?
Dr Russell: I have the figures here. In 2010, 24 died, in 2011, 11, and in 2012, 21. That is an average of 19 per year. David Cameron has put in 120-something, which means it is going to take, at current rates, about seven years for that to be compensated for by death. So we are well ahead of the death rate, if you like. Even if no more appointments are made, we are still on an upward trajectory.

Q138 Mr Turner: So we are on about 20 per year die and therefore, assuming 20 gaps were filled, it could not be more?
Dr Russell: Yes, but if the kind of people that Eleanor Laing is talking about are put in, that death rate is going to go down and another thing you have to be careful about. That is a problem with introducing a retirement age: you create a perverse incentive for a Prime Minister to appoint younger people so that their people will be there for 50 years. If you appoint somebody at 30 with a retirement age of 80, you will guarantee that that Labour person or that Conservative person, assuming they do not change their allegiance, is going to be there for 40 or 50 years. So there are all sorts of perverse incentives that can be created, and ultimately you have to regulate the party balance. I just keep coming back to that.
Dr Ballinger: If you think you can legislate for a number cap, I would rather that you thought about legislating for a cap on the number of Lordships of Parliament, not a cap on the size of the peerage, that is to say the number of peers who could sit in the House of Lords and who could be summoned to the House of Lords. That would produce a cap on the number of people sitting and voting. The Prime Minister could recommend for appointment however many people he liked and, when you have that cap of numbers of Lordships of Parliament, you can then move to the discussion, if you have not agreed it beforehand, of how the proportions of that 400 or 600, or whatever you want, would be formulated, probably a discussion including the Appointments Commission as regulator, in a sense.

Q139 Mr Turner: Sorry, I am a bit behind here. You are suggesting that there be peers who are not peers of Parliament who are created, which is a kind of badge but nothing more?
Dr Ballinger: Yes.
Mr Turner: But my 20 or so would remain and those peers would get the summons, so there is nothing else beyond that that is different from what I proposed earlier?
Dr Ballinger: No, but it would lay the foundations for the next stage of incremental reform to refine this system. Once you start detaching the number of seats in the upper House from the number of people who are created with the honour of a peer then—

Q140 Mr Turner: But doesn’t that exist already in creating, for instance, Scottish peers or Irish peers or—
Dr Ballinger: You could create, of course, a hereditary peer without adding to the numbers of the House but very few Prime Ministers—I think nobody since Margaret Thatcher—have done that. So, in a sense, we would be at that system. The Governor of the Bank of England could be created a peer on retirement but he would not necessarily get a seat in the House of Lords as a result, unless he was selected for that on some other criterion. That would produce the cap and then there could be a discussion, which may be a constitutional one or it may be one within party groupings, about how people then wanted to select their 20 or their 100 within that.
Mr Turner: I see what you mean.
Dr Russell: This possibility of breaking the link between the peerage and membership of the House of Lords is an incremental reform that wasn’t in your issues and questions paper but it is an incremental reform that has been part of almost every reform package published over the last 15 years, that there is a break between becoming a peer and becoming a Member of the House of Lords. I think there would be some merit in doing that in order to allow purely honorific peers to be given. I think there is still a small element of confusion about whether, when you are awarded a life peerage, it is an honour or it is a job. Increasingly, it is a job, but that is an example that Chris just gave, of people retiring from certain positions who perhaps we want to honour but we might not necessarily always want to give them a seat in the legislature.
Dr Ballinger: I will take the last 15 years and add the last 115 years. It has been a very constant and very forward position, couched in different language, but it has been a constant theme of detaching the peerage from the membership.

Q141 Mr Turner: The problem is that I feel it is much more likely that you would get a fixed number and you could then spread it among the parties, and of course they, whoever they are, would try to ensure that the appointments would be made for a relatively young peer rather than elderly peers. We are talking about the Prime Minister making them all young, but that would happen over the whole width if we gave these nominations to the different parties.
Dr Russell: Going back to your point about the cap of 800, I have heard you in previous sessions questioning this, how quickly can we get the numbers down and the idea of one in, one out and so on. I would suggest a slight modification to your proposal, which is that maybe you have an absolute cap of 800, although we are above it at the moment, of course, and you must not be misled by the figures on the
House of Lords’ website that say there are 750 people. There are over 50 people out there who have the right to return. Quite a lot of non-attenders, following the publication of David Hunt’s report on retirement, were encouraged to take leave of absence. The leave of absence figures have gone up a lot, so there are a lot of people who have the right to return. I think there are over 800. But suppose you had an immediate cap of 800, rather than a rule of one in, one out, how about a rule of one in, two out until you get to a lower cap of 650? The ultimate cap is no bigger than the House of Commons, so you can say every year, we evaluate how many people have died, how many vacancies there are, and the number of vacancies created is half the number of departures, and we do that until we get to 650. It would take quite a long time, but I think that would be a defensible system. It has occurred to me in preparing for today that one of the difficulties with the present system—and again this is something I think you could usefully recommend, and I do not know whether Lord Jay is here, because he might have views on it—is that nobody at the moment has oversight of the size and party balance in the Chamber. The House of Lords Appointments Commission does a very good job of picking independent Members and vetting for propriety, but nobody has oversight of the Chamber as a whole, how it is ageing, how many people have left, what the balance between the parties is doing, who deserves more appointments and so on. I think it would be a proper next step to give that responsibility to the Appointments Commission to report every year on the state of membership, for example. If you were saying something like one in, two out, an annual report that said how many vacancies there are and proposed what the appropriate balance between the parties for those vacancies might be, based on general election votes, I think would be a useful way forward—no legislation required—very gentle, easy to do, and the Prime Minister can respond to it as he sees fit.

Q142 Chair: I am interested in exploring your views on the Appointments Commission. Meg, you just mentioned a couple of things that they might consider, but do other colleagues have any views on the role of the Appointments Commission, its remit, its basis, its future?

Dr Barber: The question that was put by the Committee was whether the Appointments Commission should be put on a statutory basis. I do not feel very, very strongly about it because I think in the immediate term at least it will make very little difference, it will not change the way it operates unless you want to change its powers, which is perhaps more substantial. It might be seen as somewhat premature before we have even a sense of what the constitutional settlement might be in the medium term around the House of Lords, and that might emerge around the time of the next general election. My other reservation is back to the point I made a few moments ago, which was about how we are drifting towards perhaps installing a self-selecting, self-appointing Parliament, and just be careful if that is really what we want, and what we want to recommend.

Dr Ballinger: If there is no need to put the Appointments Commission on a statutory basis, there is nothing to be lost by having it on a statutory basis. If you think there is something to be gained, we should certainly have it on a statutory basis. That is the first question. The second is: what should its remit be? At the point at which we get down to this question of having perhaps a cap on numbers and relative compositions we need some kind of body to refer these questions to. Historically, the arbiter of things like leave of absence has been the Clerk of the Parliaments. I think it would be more helpful to take that out of the Clerk’s remit. He has an ongoing relationship with those who are appointed. I do not know his views on it but it would be very interesting to canvass those. If you are going to put it somewhere, it seems that creating the Appointments Commission as regulator of this—light-touch regulation.

If parties are choosing their 100 Members within the cap, maybe they choose and then they put their mechanism for choice to the Appointments Commission, who then scrutinise it and say, “Well, this seems not to be discriminatory”. It may be at that level of scrutiny, but you need some kind of body to report to and some kind of body to say, “Right, so the mechanism we have agreed is going to have this effect in the next Parliament”. That seems to me a very appropriate job for a statutory Appointments Commission. So at that point it would need the independence that a statutory footing would give it.

Dr Russell: I think the Appointments Commission should be the body that polices the size of the Chamber and the party balance of the Chamber, and ideally it would do that to an agreed formula and an agreed cap that the parties themselves had established. It would then report every year how many appointments were due to each party and invite nominations from the party leaders. I would like to see it go one step further, as the Public Administration Committee in the past has suggested, that parties should put forward long lists of candidates from whom the Appointments Commission can choose, or, at the very least, the Appointments Commission should be able to steer the parties a little in terms of the types of people it is looking for in order to deal with things like regional imbalances, gender imbalances and even imbalances in professional expertise. They try their best to do that. I think they do a very good job of appointing independent Members and considering the balance in the House as a whole but they have no control whatsoever of the balance that comes from the parties. Again, there is no body at the moment with oversight of that balance across the Chamber, and I think that would be a useful way to go.

Q143 Chair: I am conscious that our next witness is here, but one last quick question from us is about redundancy and pension payments as an incentive to retirement. Do you have a snapshot view on that question?
**Dr Barber:** I personally would not have any problem with it. I heard David Steel suggest that it could be the total sum of the previous year’s allowance and that might be an appropriate way to go in order to justify it to the public purse.

**Dr Russell:** I am not sure that financial inducements in the end are going to be the thing that does it. As I say again, ad nauseam, the thing that is going to do it is the parties agreeing the balance between them. You then leave it to the parties and the cross-bench group to negotiate with their Members. If it turns out you can’t get enough people to go without some kind of financial settlement, maybe there has to be an element of that. I think you might get volunteers even without, but you need that formula.

**Dr Ballinger:** Peers are not employees of the House and so I have some issue with the concept of redundancy payments. Give them due notice that, when the reforms are implemented, say at the next general election, they will have had to look for other things and allow them to rest on their wits to get another kind of occupation that will pay them enough. If you are worried about the very old, one hopes that they already have the kind of pension provision that may not be available to the younger generation in 30 years’ time anyway.

**Chair:** Chris, Meg and Stephen, thank you very much indeed. You have been extremely informative. Thank you so much for coming in.

---

**Examination of Witness**

*Witness: Lord Jay of Ewelme GCMG, Chairman, House of Lords Appointments Commission, gave evidence.*

**Q144 Chair:** Lord Jay, welcome. Thank you for joining us this morning. Would you like to start with any comments or are you happy to jump straight into questions?

**Lord Jay of Ewelme:** I am very happy to answer questions, Chairman.

**Chair:** Fantastic. You have been patiently sitting listening to our witnesses. Perhaps the first question should be what do you think of what you have heard from them and us so far about the Lords Appointments Commission?

**Lord Jay of Ewelme:** I just came in at the last few minutes. I agree with much of what was said. We may get on to the question of a statutory basis. I have always been in favour of having the Appointments Commission on a statutory basis, for two main reasons. One is that I think if you are appointing people to the legislature you should be accountable to the legislature for those appointments rather than accountable to the Prime Minister of the day. I also think that if we are moving more towards seeing the House of Lords as a member of the legislature, which does not challenge the House of Commons, but complements it, that should be on a statutory basis rather than accountable to the Prime Minister of the day. I think there are two almost constitutional reasons for wanting to see it on a statutory basis.

There are also some quite good practical reasons, and if there was an idea that the Appointments Commission should do more than it now does, particularly if it is going to be choosing among party political lists, I think it has to be on a statutory basis rather than accountable to the Prime Minister of the day for that.

**Q146 Mr Turner:** Would I take it that the cross-benchers whom you have appointed contribute to this excessive number and excessive activity that makes the House of Lords a problem, when before there were 250 who turned up occasionally and 400 or 500 who did not?

**Lord Jay of Ewelme:** That has been the trend, as I understand it, over the last 30 years or so. The decision was to abolish most of the hereditary peers and replace them over time with people, whether from the cross-benches or whether party political appointees, who play more of a part in the affairs of the House than was the case, say, 20 or 30 or 40 years ago. I think having cross-benchers who play an
important role in their field of expertise and more widely has contributed to that, but I do not think it is the major factor.

Q147 Mr Turner: What is the major factor?

Lord Jay of Ewelme: I think the abolition of most of the hereditary titles and their replacement over time with people, whether from the cross-benches or as party political appointees, who are appointed very largely because they are going to be playing a full part in the affairs of the House. That has shifted the balance away from those who are there for hereditary reasons and who might turn up from time to time, and those who are there because they are going to want to and will play a full part in the affairs of the House.

Q148 Mr Turner: Okay, but what is a regular contribution?

Lord Jay of Ewelme: That is an interesting question and it is one that we are asked at virtually every interview we have. I don’t think it can mean being there all the time, because one of the benefits of the House of Lords is that you have people who have had and who still have and are gaining expertise in other things that they then bring to the House of Lords. That is very important in holding the Government to account. It is very important in the legislative process. Sorry, I have forgotten your question.

Mr Turner: What is a regular contribution?

Lord Jay of Ewelme: I say to people if they ask that question that we would expect you to be there a good two days a week at least and to be there when there are important debates and votes in which you wish to take part. You can’t say to people who are doing an important job somewhere else as well, “Be there a full four or five days a week” but you can say, “You must turn up pretty regularly and be seen pretty regularly and be playing an active part either on the floor of the House or on committees”. I think that is working quite well. It is harder and harder and harder. Democracy has broken out among the cross-benches and you now have to apply to be on a Select Committee rather than its being done somehow rather opaque behind closed doors. There are an awful lot of people who want to be on Select Committees, more than are able to be accommodated, which I think is a good sign.

Q149 Mr Turner: What is your view of the new Appointments Commission as envisaged by Baroness Hayman, which will give exclusive competence to your commission?

Lord Jay of Ewelme: I think the proposals in her Bill are, for the most part, perfectly workable, provided of course the commission is on a statutory basis. You can do those functions only if you are on a statutory basis, it seems to me, and if you are reporting to the House. I do not think you can easily do it if you are reporting to the Prime Minister and you are unsure how many you are going to have to appoint each year and so on. But I think the proposals that she has put forward for the size of the House, for the size of the commission, for the functions of the commission and so on are perfectly workable.

There are one or two points that I think would need a little further work. At present we have a committee of seven of whom four are independent and those who are independent are appointed by the public appointments process. I would personally like that to continue because I think it is important that, even if you have a statutory commission, the independent members are not just chosen by the Speakers but are appointed through some kind of appointments process so they are seen to be independent of the House. I think that would be one point.

Q150 Mr Turner: Am I right or am I wrong that Baroness Hayman is saying—this is something I should have checked before I arrived this morning—on exclusive competence, that they are the only appointments through which membership of the House of Lords should follow?

Lord Jay of Ewelme: Except for the bishops, I think I am right in saying.

Q151 Mr Turner: What you are saying is that the Prime Minister will not be allowed to appoint anyone and you think that will pass in the House of Commons?

Lord Jay of Ewelme: Does someone have the text? I don’t think it says that. The Prime Minister can still put forward nominations and there will be nominations, as now, to the cross-benches. But it will be the role of the Commission to approve those nominations, taking into account, for example, diversity. Party leaders will continue to put people forward and under these proposals the Prime Minister can continue, as he now does, to make certain prime-ministerial appointments but those will then be judged by or agreed by the commission on the basis of certain criteria that are set out. I think that is doable.

Q152 Mr Turner: Do you believe that the Prime Minister is willing to hand this power over to you?

Lord Jay of Ewelme: That is a different point.

Mr Turner: I am sorry. I thought that is what you were saying.

Lord Jay of Ewelme: No, that is a completely different point. I thought the question was whether, if we were to have a system such as that proposed in Baroness Hayman’s Bill, I think that would be workable. Yes, I think it would be workable, with one or two points that I think would probably need a bit of amendment when the Bill was going through the Commons and the Lords. Whether I think the Prime Minister would be prepared to agree that the commission should be on a statutory basis is another matter altogether. There is a degree of quite desirable patronage in the present system that Prime Ministers may well think they would like to keep. As I say, I think that it would be good if it were on a statutory basis, and if it were on a statutory basis, it could more or less work as set down here in the draft Bill. I am not at all sure that that will come to pass, although I hope it will.

Q153 Mr Turner: I understand. Finally, as you know, the number of appointments to the House of Lords has slowed down quite considerably recently. Can you explain why?
Lord Jay of Ewelme: Yes, I can. It is true that the appointments through the Appointments Commission have slowed down. When I took over five years ago it was agreed by the Prime Minister of the day that the commission should continue with the rhythm that it had had in the past, which was five or six appointments a year. That continued until about 18 months ago when it looked for a moment as though reform might happen, or at least be proposed, and at that point I think the view was that it would be sensible to wait, have a sort of moratorium before reform happened. When it became clear that reform was not going to happen, I think there was a view that both political and cross-bench appointments should continue. Whereas we were operating on the basis of five or six a year, we are now operating on the basis of two a year. That is just two appointments through the Appointments Commission.

I should make it clear that, in addition, the Prime Minister has the right by convention to appoint up to 10 cross-bench peers in each Parliament. That is the convention, so that is two a year. Supreme Court judges, when they stop being Supreme Court judges, come back into the Lords. I think there have been three in the last year or so. The Prime Minister also has the right to make ministerial appointments, of which I think there have been six since the last election. In addition to the two coming in through the commission, there are now other routes in that are, by comparison with the two, quite substantive.

The other point, if I can just make a point on diversity, is that the vast majority, if not all those coming in through other routes are white males, against whom I have nothing, as you can imagine, except that I think that the House of Lords should be genuinely diverse.

Q154 Mrs Laing: Do you agree with our previous witnesses to this Committee who suggested to us that the House of Lords is at present too large?

Lord Jay of Ewelme: Yes.

Q155 Mrs Laing: Is there a correlation between the size of the House of Lords and its effectiveness, or is it just that we perceive that there are too many people to do the work that has to be done; it is too expensive, not enough space for them?

Lord Jay of Ewelme: I think there is a correlation on effectiveness because people come into the House of Lords and they want to play a part in the House of Lords. They want to be able to speak in debates. They want to be able to ask questions. They want to sit on a Select Committee or a Joint Committee with the Commons. That is getting harder. In my view it is not a question of whether you can find a seat. It is whether you are able to make a useful contribution to the work of the House, and that is becoming harder. I think that, as it goes on going up inexorably, that will become more of a problem and it also makes it more difficult.

Going back to a question I was asked earlier, "How often should I be there?" the harder it is to find something useful and productive to do, the harder it is to explain to busy people that you think they ought to be in the House two or three days a week. I think there is a correlation between size and effectiveness and commitment of Members of the House of Lords to the work of the House.

Q156 Mrs Laing: That is a very interesting answer. Thank you. I think it takes us steps ahead in what we are looking at. You have just described the House of Lords. For the record, would you like to make a comparison between the public perception of the House of Lords, due to the photograph that the newspapers and television always print on the day of the state opening of Parliament of hundreds of old men in ermine? Is that the House of Lords as you perceive it?

Lord Jay of Ewelme: No, it is not. It is like when you go abroad, if someone wants to characterise an Englishman they have him wearing a dark suit and a bowler hat. It is outdated. It is useful, it is helpful, but it is completely wrong. The House of Lords today is largely composed of people who are there because they want to be part of the legislature. They are serious about taking part in debates, serious about taking part in committees and serious about voting. Of course, there are gradations of seriousness, if you like, but for the most part, the people who are there are there because they want to play a part in the legislative process of this country, and I think that is right and good. What worries me slightly is that the larger the House gets, the harder it becomes for that to be the actual and perceived role of the House of Lords. We need a second Chamber. We will not get on to the question of appointed or elected, but the role of a second Chamber, not in any way to rival the Commons but to complement what the Commons does, I think is very important for a democracy of our size and complexity.

Q157 Mrs Laing: Thank you. You will be aware, I am sure, of proposals for small-scale reforms that could reduce the size of the House. Would you like to comment on any of those reforms, and which do you think would be the most effective, if any?

Lord Jay of Ewelme: I have read Baroness Hayman’s Bill and I find it quite difficult to see how the measures in it are going to make a substantive difference in the near future in the size of the House. Certainly, I think the measures in that Bill are important and necessary and will have an effect, but I think if you are going to reduce the size of the House from its present 775, say, down to the size of the Commons, or ideally less than that, there is going to need to be some other method.

I was listening to what Meg Russell was saying earlier. I think there is quite a lot of scope for the parties agreeing among themselves how they are going to do this and then the parties and the cross-benchers saying to people, “Look, we have agreed we need to reduce by a certain number over the next five years. People who leave will keep their title and maybe they can keep some sort of dining rights, but we do need to continue the process of getting the House of Lords down to a size where it can operate as a really effective second Chamber”. It can be done and needs to be done, but it will need something more, in my view, than is in this draft Bill.
Q158 Mrs Laing: If there were a retirement age of, say, 75 or if there were a fixed term for life peerages—the amount usually mentioned as an example is 15 years—would that make it more difficult for you to find high quality people who wanted to come into the House of Lords under your Appointments Commission?

Lord Jay of Ewelme: I don’t think these days you can have a retirement age. There are people who are extraordinarily active and make really important contributions in their 80s, and at times in their early 90s, and I don’t think you can say, “You are just too old”. I do think that you could certainly have a time limit of, say, 15 or 20 years. I do not think that would make any difference to people coming in. If you are thinking ahead 15 years, whatever age you are, it is quite a long time. If you are going to have 15 years as a Member of the House of Lords, with the other advantages that brings, that is going to be quite an attraction.

Q159 Mrs Laing: Thank you. Are there any other small-scale reforms that we have not as yet discussed? I know you are aware of the reforms that are on the table. Are there any others, particularly ones that would not require primarily legislation, which would help improve matters? There might not be. I don’t ask the question with anything in mind.

Lord Jay of Ewelme: There is nothing that strikes me as being something that is not in the Bill and that you have not been looking at that would make a big difference. You can always tinker around the edges a bit with things.

Q160 Mrs Laing: If the provisions in Baroness Hayman’s Bill—or what was Lord Steel’s Bill that is now coming in as a Private Member’s Bill introduced by our colleague, Dan Byles—were to be introduced, do you think the effectiveness would be limited?

Sorry, that sounded like a leading question but I think you said something like that earlier. Lord Jay, what do you think the effectiveness would be?

Lord Jay of Ewelme: I think it is a very good Bill. I have spoken to David Steel quite a lot about it over the years. I have been very much in favour of it. I am sorry he dropped the statutory basis for the Appointments Commission when it went through the House of Lords, although I understand why. I am glad it is back now and I hope it stays, although, as I said earlier, I am not certain that it will. I think it is an important and necessary Bill that will make a difference. However, as I said just now, I don’t think that in itself it will bring the House of Lords down to a size that would be the right size for an effective second Chamber in our legislature.

Q161 Chair: Lord Jay, thank you very much. Are there any points you feel are left unsaid or any summary that you would like to put in front of us?

Lord Jay of Ewelme: One point in Baroness Hayman’s Bill that is a good proposal is that the Appointments Commission would be required to apply the diversity test to all the various streams that it was looking at, because I think in that way you would end up with a more diverse House, a House that was seen to be more representative of 21st century Britain. The commission could go back to the Prime Minister or go back to the party leaders and say, “There are some really good people on this list, but it does not reflect the diversity of Britain as a whole”. In that way, over time, I think you would also help increase the perceived legitimacy of the House because it was seen to be more representative of Britain.

Chair: Lord Jay, thank you so much for your time this morning. Obviously, you are at liberty to drop us a line if you have any further thoughts on any of the things we have talked about. Thank you very much for coming.
Thursday 4 July 2013

Members present:

Mrs Eleanor Laing (Chair)
Mr Christopher Chope
Paul Flynn
Sheila Gilmore

In the absence of the Chair, Mrs Laing was called to the Chair.

Examination of Witness

Witness: David Beamish, Clerk of the Parliaments, gave evidence.

Q162 Chair: Good morning, Mr Beamish. Thank you very much indeed for coming to the Committee this morning. We really appreciate it. First of all, may I give the apologies of the Committee’s Chairman, Graham Allen, who has, unavoidably, had to be somewhere else this morning? He has asked me, and the Committee has agreed, that I should take the Chair this morning, but he seriously apologises for not being here to hear your evidence.

As you know, the inquiry that we are undertaking is not about the future of the House of Lords in general; it is not about the future structure of Parliament; and the Chairman has been very keen to avoid discussion of general issues that have been examined in other fora. What we are looking at are small-scale reforms and how immediate improvements or fairly immediate improvements could be made to the workings of the Upper House. I wonder if there is anything you would like to say to begin with. We are grateful also for your evidence that you have already put before the Committee. Thank you very much.

David Beamish: Thank you, Chairman. Perhaps I could start by thanking you for inviting me. I was pleased to have the opportunity to come along, because, in October last year, in the light of the loss of the House of Lords Reform Bill in the House of Commons, a number of Members came to see me about possible things in particular that the House could do without legislation. I had a number of discussions and attended some meetings—one of which you were at, Chairman—and came up with a paper collecting some of the ideas in this area, just the sort of thing the Committee is looking at.

I have revised and updated that, but most of what you are getting in the paper I have submitted is not new, but perhaps the advantage of that—I know Lord Steel, for example, referred to my Annex D with some stuff about the costs of paying off Members who were retiring. The annexes are identical to the ones in the paper that I circulated in December, so I hope they are helpful, and I am delighted to take questions.

Q163 Chair: They are very helpful. Thank you very much indeed. If we could look first of all at the size of the House of Lords, would you like to expand upon the idea that it is important to reduce the size of the House of Lords, and if you think that it is, why?

David Beamish: I should perhaps start with a sort of health warning. Because of my position, I think I have to be careful about expressing opinions on the desirability or otherwise of different reforms. My concern has more been with the workability or achievability of these things. I think what I can say is that there is certainly considerable interest among Members in the light of, in particular, crowding in the Chamber and a certain amount of pressure on facilities, what might be done in relation to either the size or the level of attendance, and I have dealt with those two separately in my paper. I suppose one problem with all these things is that so long as appointment of Members remains a matter of the royal prerogative, if you start removing Members by some means, it is not obvious how you prevent them being topped up. Those who are following me may have ideas on that.

Q164 Chair: I rather think that they will. Thank you. Looking slightly more widely, would you care to enlighten us on any small-scale reforms that would considerably reduce the size of the House and make the workings of the House, the practicality of running the House, better at present?

David Beamish: One of those who is following me, Lord Hunt of Wirral, chaired a group that produced a report with the title Members Leaving the House a couple of years ago, and I think that is perhaps the area in which there has been most interest. If one could find some means of encouraging Members to bow out gracefully or whatever, then that might have a useful impact.

The initial recommendations came up with a couple of things. One was for a retirement scheme, where, so far, only three Members have chosen to go for it, and two of those were Members who had not attended for some years anyway. Perhaps the problem with that one is that, for Members who belong to a party, the concern is that if they go then they might get replaced by somebody from a different party, and therefore they are being said to be disloyal and unhelpful to their own party. I think, if one was to make more progress with that, one might need some kind of informal arrangement between the parties to make sure the impact was not too uneven.

It is perhaps worth saying, although my Annex D shows that from a financial point of view, and wearing my hat as an accounting officer, I think you could find some means of encouraging Members to be topped up. Those who are following me may have ideas on that.
from the Leader of the House. So, whether it is worth pursuing that one I am not too sure.

Using financial means to discourage Members is another area, limiting the available remuneration, but again, these things get very sensitive. Suppose you cut off the financial support to anyone over a certain age; that would bear differently on Members living in London and Members living far away. So there are difficulties with these things, but I think retirement of some sort is probably the one that people are most interested in.

Chair: Indeed. Thank you very much.

Q165 Fabian Hamilton: Mr Beamish, I wonder, apart from retirement, can you explain what other smaller-scale reforms might be the most urgent and, if you are able to do that, why they might be the most urgent?

David Beamish: I am not sure that any of these things are urgent. I suppose the reason that I got involved in Members’ discussions of this was a feeling that if a House composed something like it now is was likely to be with us for quite a few years then there was something tidy up that would be desirable. Which of these things are urgent? I don’t think I would say any of the things we have at the moment cause us serious difficulties in running the place, so it is more a case of desirability than urgency. My paper rehearses the various things. I suppose the thing I found interesting when I was doing my consultations was that quite a lot of Members were concerned about excluding Members who had gone to prison and that sort of thing, which, in terms of impact on numbers, is probably neither here nor there, especially if it was not retrospective. I know quite a lot of Members are concerned about that, and that is perhaps another area.

Q166 Fabian Hamilton: If there was either a statutory retirement age or a retirement scheme of some sort, what impact would that have on the day-to-day running of the House? Indeed, some of the other reforms that have been mooted: what impact would they have on the day-to-day running?

David Beamish: Plainly, it depends a bit whether those leaving were replaced by newcomers, in which case from my point of view it might lead to more to do, rather than less, because you might be replacing inactive Members by more active ones. Otherwise, I think I would say comparatively little, except in terms of possibly easing pressure on facilities, whether it be providing desk space for Members or catering or whatever.

Q167 Fabian Hamilton: The main concern, though, seems to be on the House getting out of control in terms of size, and, as you say, the effect that has on the facilities and the ability of the House to do its job. In a smaller House of Lords, would that change its legitimacy in any way? Would it be less legitimate if it was smaller or it had a different party balance?

David Beamish: Those are two different questions. That is perhaps for others to say. As regards smaller, it is notable if you look at other second Chambers around the world that they are typically smaller than the Lower House—the USA would be a good example—and larger ones than most would include France and Italy, which are around 300. I think you could go down quite a lot below the present size of the House of Commons. It might be a different sort of Chamber, because it is an unsalaried Chamber in which many Members contribute on what they are most interested in, and therefore you do not expect all Members to be full-time, plainly. The range of specialisms you would have might be reduced if it was much smaller, but beyond that I do not see any problems.

As regards legitimacy, I think I had better duck that one and say that is for others to decide.

Fabian Hamilton: I quite understand.

Chair: You are absolved from that.

Q168 Sheila Gilmore: There have been various small-scale reforms suggested that could be done without legislation. Could you perhaps tell us what you think those are, and how in practical terms that could be done?

David Beamish: We already have the retirement scheme and, although that is informal, I think it is fair to say it does work. On the other hand, the impact has not been great, so finding some political will to encourage more Members to retire would be the answer to that one.

I have mentioned that the scheme for financial support for Members is something entirely within the power of the House to vary, but beyond something, say, done by age or whatever, it is difficult to know what would be effective. I think perhaps a conclusion from my consultations in the autumn was that although, as I said earlier, the starting point was what the House could do itself, the kind of thing that might be done by a modest piece of legislation such as Lady Hayman’s or Mr Byles’s Bill might be more helpful.

One thing I think we probably ought to have, though it might not have much impact on the size of the House, is a statutory retirement scheme, because the Constitutional Reform and Governance Act 2010 left us in a slightly odd position. A lot of the Bill was lost in the wash-up at the end of 2009–2010 Session, but what got through included the provision on the tax status of Members of both Houses. We now have a position that all those Members, apart from five who chose to retire in 2010 under that Act, if they chose to, so to speak, retire to the South Seas, could not become non-doms because there is no way out, and that seems to me anomalous and it would not have happened if the Act had got through in its original form. Apart from that one, I think it is not for me to express a view on what should and should not be changed.

Chair: It is very useful to have the technical facts before us. That helps us in considering our report. Thank you.

Q169 Mr Turner: In your written evidence, you stated that a non-statutory scheme to limit the terms of new Members could be introduced. Can you say how this works? Could you also say that such a scheme could help to give momentum to other measures? What other measures are you thinking of?
**David Beamish:** I think the way it would work would be that, when Members accepted a peerage, they would be invited to give an undertaking that they would not remain an active Member beyond a certain period. Therefore, they would be on their honour to bow out at the end of that period. This is obviously very much a second best, but Members were interested in defining what could be done short of legislation, and it was felt that if the party leaders and the House of Lords Appointments Commission made it a sort of condition of office that people made such an undertaking, that might stick. I suppose, on further measures, what I was thinking of was that you would at least have started the ball rolling with the idea that active membership should not be for life, but beyond rolling the pitch for legislation and getting people used to the idea I would not suggest any specific follow-ons.

**Q170 Mr Turner:** All right, so you would accept that this is limiting the length of peerages in a way that I, for instance, would not like, and therefore it would cease to be a small-scale reform that would easily get through?

**David Beamish:** It could easily get through in the sense that it would need the party leaders to sign up to adopting this when putting forward lists of names. It would not need a decision by the House, but at the end of the period that people signed on for it would be a matter of honour that they went, and, because it was for a period, it would not have any impact other than as a gesture for quite some years. Perhaps it is better than nothing. The context of this was that Members were looking for ideas, and I treated this as a bit of a brainstorming exercise and incorporated in my note most of the ideas that emerged.

**Q171 Mr Turner:** You have referred to it in your papers at paragraph 18, and I guess that is saying the same thing.

**David Beamish:** Exactly.

**Mr Turner:** Thank you.

**Q172 Mr Chope:** Your paper does not really address the issue of having a moratorium on new peers. We heard evidence from Baroness Hayman and from Lord Steel that they would support a moratorium, for example, until the next general election. What impact would a moratorium have on your House?

**David Beamish:** It depends what you are comparing it with. If there was to be a big list in the next few months, then that would put pressure on facilities, certainly pressure on space in the Chamber. It would slightly fossilise things. For example, in the last couple of weeks, we have had two new peers announced and they are on their way. The Prime Minister wants to appoint Mr Ian Livingston as a Minister, and the Governor of the Bank of England is to become a life peer on retirement. I suspect there would be unease if either of those sorts of things became impossible, so I suppose it would send out a signal that we were not topping up any more, but it would also have downsides, which some people might be unhappy about, in the sense of no opportunity for new blood.

**Q173 Mr Chope:** If there was a moratorium between now and the next general election, by how many numbers would the size of your House decline, taking into account natural attrition?

**David Beamish:** That is an actuarial question that I have not done my homework on, but I am very happy to have—

**Chair:** I think we will forgive you for not taking bets on how many peers might be promoted upwards.

**David Beamish:** In any case, it would depend on how active that was, but—

**Q174 Mr Chope:** I think we have heard evidence that there is a rough attrition rate of about 25 a year. Does that fit in with your experience?

**David Beamish:** Not far off.

**Q175 Mr Chope:** You say that there is a prospect or there may be a prospect of a “big list”. When you say “big”, what do you mean by that?

**David Beamish:** I didn’t say there was a prospect. If there was to be a big list, the bigger the list, the bigger the impact. I was not trying to forecast. I have the wrong bit of paper. I did have some figures about how many have died in recent years, but I can perhaps find them and send them in if Members are interested.

**Q176 Mr Chope:** Thank you. Would the Prime Minister, for example, consult you and say, “We are thinking of giving you a big list of new peers. What do you think about that; the impact on issues of workability and achievability?”

**David Beamish:** Absolutely not. It is worth remembering that in 1999, before the House of Lords Act came into force, we had over 1,200 Members, so it is more the attendance levels than the numbers that are at issue.

**Q177 Mr Chope:** Do you have a back-of-envelope calculation on roughly the additional costs to your House of each additional 10 peers, for example?

**David Beamish:** It is difficult. One can do averages in terms of the remuneration. We have got much better at providing a base for Members. Not that many years ago, before we had Millbank House, many peers did not have a desk, and we now aim to provide that. That required one big expenditure on the building, and it is not as if each extra peer you can put a cost on their desk space because, I think, unless we had a very big change, we would attempt to fit within what we already have. It is quite difficult to do a straight calculation of what—

**Chair:** I think we might find that some of the annexes to Lord Richard’s report provide this information.

**David Beamish:** Good.

**Q178 Mr Chope:** When the Prime Minister says he wishes to reduce the costs of democracy, has that had an implication for you in your House? Obviously, he is talking about wanting to reduce the size of our House, but at the same time he seems to be increasing the size of your House.
**David Beamish:** This is something that we just have to respond to, and there hasn’t been any similar exercise, though, in rather the same way as the House of Commons has had a savings programme, we in the Lords have been doing similar things to manage our costs. But we recognise that the number of Members, their attendance levels and the consequential costs are some things that we just have to take as they come.

**Q179 Mr Chope:** Finally, Lord Hennessy said that taking action against non-attendees would be fraught with peril. You rather agree with that, do you?

**David Beamish:** The first point to make is that taking action against non-attendees does not have much practical impact. One little success of Lord Hunt of Wirral’s report, in addition to the retirement scheme, was a proposal that at the start of each Session I should write to those Members who have attended very infrequently in the previous Session and encourage them—in fact, invite them—to consider taking a leave of absence. The number of Members on leave of absence has gone up quite dramatically as a result of that exercise a year ago, and it is now on 43. At least, we have removed from our headline figures some of those who do not genuinely participate, but because they were rare attendees the practical impact is small. It is certainly the case from a legal point of view that the House could not evict Members on grounds of non-attendance.

**Q180 Chair:** Does that mean that, although those 43 do not now attend, there is no practical difference because they did not attend before?

**David Beamish:** Precisely.

**Q181 Chair:** So there is no financial difference because they did not attend and did not presumably have any financial reward before, but there is a statistical difference in that the numbers are reduced by 43?

**David Beamish:** Precisely, and they have to give three months’ notice if they want to come back.

**Chair:** Thank you. Andrew, you wanted to come back briefly, because we appreciate, Mr Beamish, that you have to be in the Chamber.

**David Beamish:** Yes, I am all right for five more minutes.

**Q182 Mr Turner:** Good. Paragraphs 32 and 33 suggest two alternative remedies, one of which allows peers extra money if they attend frequently, and the other gives them less money if they attend frequently. I am quite interested in this because here I think lies the centre of the question: what kind of peerage do we wish to have? What is your view?

**David Beamish:** I think that is probably a better question for those who are going to follow me.

**Chair:** You are not required to answer that question.

**David Beamish:** Thank you.

**Q183 Chair:** It is a matter of opinion, but if there are any facts that you would like to put before us, we would be delighted to hear them.

**David Beamish:** I think I would say, in terms of achievability, there are probably issues with both of them. If you want a House where Members with particular specialist interests come and talk about those, then to discriminate against those who have other things to do and therefore cannot be full-time Members might be controversial. Equally, to have a cap so that Members attending more than 75% of sittings stop getting support, it might be seen as aimed at the regular full-time Members. Both of them might not be uncontroversial. I think that is fairly factual.

**Q184 Chair:** That is a very neat way of putting it. Mr Beamish, thank you very much. Is there any matter that we have not covered in our questions that you would like to draw to our attention?

**David Beamish:** This might be treading dangerously, but one thing that was not in my paper but is within the scope of your inquiry is the by-elections to replace hereditary peers. There is a very good reason why I did not focus on it, because it is quite controversial, and I would perhaps say to the Committee, if one is looking at a Bill that might command general assent, whether it be Mr Byles’s or some other vehicle, I think the inclusion of the ending of by-elections probably makes it a whole lot more controversial in the Lords. There are a number of the 92 who are quite concerned about this, and that may be a relevant factor in deciding what is the best package to try to go for.

**Q185 Chair:** I understand that the difference between Lord Steel’s Bill and Mr Byles’s Bill is that that provision is not in Mr Byles’s Bill.

**David Beamish:** That may be very good tactics by Mr Byles.

**Q186 Chair:** Thank you very much. Mr Beamish, we are very grateful to you for coming to see us this morning and very grateful for your evidence, which has added a lot to our consideration of this matter. Thank you very much.

**David Beamish:** Thank you for inviting me, and I am sorry I won’t be able to stay to hear firsthand those who are following me.

**Chair:** We will send you the minutes. Thank you.
Examimation of Witnesses
Witnesses: Rt Hon Lord Hunt of Wirral MBE, Rt Hon Lord Richard, PC QC and Lord Cormack DL

Q187 Chair: Good morning, my Lords, and thank you very much indeed for coming to give evidence to our Committee this morning. As I said at the beginning of the session, but I will say again, may I reiterate the apologies of the Committee’s Chairman, Graham Allen? He was unavailable unable to be here this morning, and the Committee has agreed that I should take the Chair temporarily in his absence.

We are delighted that you are here because we appreciate that we have an opportunity to benefit from your collective wisdom, and that each of you in different fora has undertaken long-term and in-depth projects in examining the issues about the future of the Upper House and, indeed, of Parliament.

As you know, the inquiry that we are now undertaking is not a general inquiry about the future of the Upper House. I know that Lord Richard in particular will be delighted to hear that, as he chaired for more than nine months the Joint Committee that did look in depth at this matter, and that his report and Lord Hunt’s report do already give us very valuable evidence on which we will call in producing our report. What we are looking at now is short-term or almost immediate, possibly non-legislative, changes that could improve in the short term the workings of the Upper House.

Before we begin questions, would you like to say anything about the reports and the work that each of you have already done, which might help this Committee in its deliberations? Lord Hunt? Lord Richard?

Lord Richard: I would like to make two or three general points, if I might. First of all, can I urge that this Committee should not be overly obsessed by the concept that you have to have consensus in House of Lords reform before any action can take place? If you seek consensus on this issue before acting, and indeed if you make it a precondition of any legislation, then you can end up in the situation that Steel’s Bill found itself. There was eventual consensus, but it was a consensus about very little.

Did seem to me, therefore, that you should approach these proposals with a degree of caution. At best, they are small and incremental. At worst, they can be seen as entrenching the present position of the House and making subsequent reform more difficult.

It does seem to me, therefore, that you should approach these proposals with a degree of caution. At best, they are small and incremental. At worst, they can be seen as entrenching the present position of the House and making subsequent reform more difficult.

Q188 Chair: Thank you very much. Impeccable logic, Lord Richard, and we appreciate that you have spent many months looking carefully at this subject. Lord Cormack.

Lord Cormack: Impeccable logic if you accept the premise, which I don’t. I am here, and delighted to be here, because I act as Chairman of a group called Campaign for an Effective Second Chamber, of which you, Madam Chairman, and others in this room are aware. We founded it over 10 years ago, Lord Norton of Louth and I, when I was in your House, because we believed in the primacy of the House of Commons. We believed in an unambiguous democratic mandate, which should be the mandate of the House of Commons. We believed in the advisory and revising role of the House of Lords, and our slogan, if we had one, was “House of Lords reformed but not elected”.

I am glad that you are concentrating on the nuts-and-bolts issues. We have sought to do that. It was from our group that the original Steel Bill emerged.
We do believe that there is enormous value in the sort of Second Chamber we have in this country at the moment, and I will not rehearse all the reasons because it would take far too long, save to say that the presence of almost 200 Cross Benchers, independents, alone justifies the existence because it means that within its limited scope and powers the House of Lords can act as something of a break on the Executive. The real danger to parliamentary democracy today is not the lack of an elected Second Chamber; it is the overweening power of the Executive, and I refer to whichever party or coalition is in office. We look at it from that point of view. Yes, things can and should be done. We should work towards a cap on size. Of course we should. We should look at various alternatives for reducing the size. We should certainly—although it would make no difference radically to the size of the House—have the same sort of powers of expulsion that the House of Commons currently enjoys, because we do not wish to bring Parliament into disrepute, and there is a danger of that.

**Q189 Chair:** Do you consider, Lord Cormack, on that very point, on the current powers that the House of Commons has for expulsion, having listened to the discussions within your House, although Lord Richard says there is no need for consensus, would there likely be consensus on bringing about such—

**Lord Cormack:** Yes. I am absolutely sure there would, and I do not despise consensus in any way because Meg Russell, I think it was, giving you evidence, said that if you look at the history of the House of Lords it is by incremental reform that it has changed.

**Chair:** She did say that.

**Lord Cormack:** Whatever side of the argument one takes, the House of Lords in 2013 is radically different from the House of Lords in 1913. All hereditaries now are virtually all life. One could go on and on. You know this as well as I.

**Q190 Chair:** Indeed. Thank you very much. Lord Hunt?

**Lord Hunt of Wirral:** Thank you very much for inviting us today, and I reinforce what Lord Cormack has just said, and I think it is by incremental reform, although I recognise what Lord Richard has said is equally important, that we must not in any way believe that we can postpone the need to consider fundamental reform. I would just summarise by saying, when we were asked to sit as a group by the Leader of the House just under three years ago, it was to identify options for allowing Members to leave the House permanently. We concluded that the House of Lords is at its best when it is a reforming Chamber, but it does have to move with the times and does need infusions of new blood from time to time. We put forward 22 different recommendations, some of which have been implemented—very few—and there are others that can now be considered. If one compares the numbers between 2000 and this year, there is no great huge difference, because one of the recommendations, as the Clerk of the Parliaments just explained, was that in the year 2000 there were four Members who sought leave of absence. Now there are 43. Of those 43, when we conducted our inquiry, it was a very small number who did not attend at any time in the previous year. Therefore, please understand that the proposals on leave of absence did encourage a number of those who had been attending really to decide no longer to attend. That aspect of the reforms was successful.

Where we still await developments—and this is why I greatly welcome the contribution that this Committee will make—is the way in which we approach the whole question of permanent retirement. Looking back to 2000, I think it was 695 Members of the House of Lords. That has increased to 754. Therefore, there has been an increase, but it has not really taken the House of Lords back—and you have all the figures—to the day when we had a slightly influx of Members from time to time when the hereditaries swarmed in, and we had figures that were well over 1,000, who would attend on a key vote. Therefore, I would just say we have to keep moving forward. There is a need for incremental reform, but at some stage we are going to have to deal with the second stage of fundamental reform.

**Q191 Chair:** Thank you very much. Can I ask each of you, before we look more generally at the recommendations, if you agree—and it seems that just about everyone agrees—that the House of Lords is at present too large? We have not heard evidence from anyone who has suggested that it is too small at present. Are there any small-scale reforms that you would particularly like to draw to our attention that would significantly reduce the size of the House? I appreciate that you have all referred to this, but to get it on the record very succinctly. Lord Richard?

**Lord Richard:** It is a very difficult one. As you will remember in the Joint Committee, we went round and round and round this, and devised in the end a slightly intricate formula, whereby what you did was you did not tell people you were going to look at their attendance records. We looked at it for the period before we announced that attendance was going to be a criteria, so that people could not then just rush in once they heard, “We may be thrown out.” We looked at the two Sessions before that announcement, and we did then come to the conclusion that you could do quite a lot in terms of reducing the size of the House if you looked at attendance records. However, as David Beamish said, the problem with the House of the Lords is the people who come, not the people who do not come. If we get rid of the people that do not come, we are still left with the fact that we have an awful lot of people who are beaviing away and want to go on beaving away, and indeed are looking for work and anxious to do it. You do not deal with that in any easy way, it seems to me. I think attendance is probably the area that it is most profitable to look at to see whether you can devise some scheme, but in the end you have to leave it to the parties to decide how they are going to work the reductions.

Can I just make one other general point on this? I was very impressed with Meg Russell’s evidence because she kept saying—and the more I thought about it, the
more I think she is right—that when you are considering how you would reduce the size of the House, you could only do it against the background of a broad agreement between the parties as to what the composition of the House should be. In other words, various general principles that no party should have an overall majority in the House, and that, indeed, if you can agree upon the broad proportions as to how many Labour should have, how many the Tories should have and how many the Lib Dems should have and how many Cross Benchers there are, when you come to reducing the size of the House you can just apply that formula to such gaps as you have. If you just wait for deaths, which, at the moment, are 20 a year, you are going to be waiting an awfully long time before you get a major reduction. I don’t think that reduction in the size of the House is easy, and I think the most fruitful ground to explore is the attendance one. I would finally say that I don’t think, for all sorts of reasons, not least my own age, that an age limit on membership of the Lords is indeed practicable.

Lord Cormack: I would broadly agree with Lord Richard. I think I would take it a stage further. I think that you cannot be a contributing member of any organisation unless you do attend a reasonable amount of time, and therefore I would fix a figure of maybe 10%. Of course there are exceptions, and they have mostly taken leave of absence. I am thinking of people like Baroness Ashton and Baroness Amos with their international responsibilities and when those end they will very properly come back and make an enormous contribution because of the experience that they have acquired doing those jobs. But I think you can say to the generality, “If you have not turned up 10% or 15% of the time, really you are not contributing.”

There is another thing that I would rather more controversially put to the Committee, and it is difficult to say this but it has to be said. There are those who attend very regularly indeed and do precisely nothing. They do not speak; they do not take part in committees; they vote. That is in fact very convenient for the Executive or for the official Opposition, but it is not being a participating Member of the House of Lords. I believe that one has to have the courage to look at that and to say to these people, “You have been 300 times in the last year. You have not spoken at all. You have voted, but what contribution have you made?” One has to look at that, because I think that would have a dramatic effect.

Q192 Chair: Is that something that you and others consider could be practically calculated? Could evidence be produced?

Lord Cormack: Well, of course. We have Hansard like you have Hansard, and we have Committee Hansards like you have Committee Hansards. I think it would be an uncomfortable exercise because some of the people in question are very delightful people, but if you are part of a parliamentary assembly you have to contribute in various ways to it. After all, the totally silent Member of Parliament has been elected by his or her constituents who can make their judgment at the end of a Parliament. We are there for life, I do understand when Lord Richard says that it is very difficult to have an arbitrary retirement age, although I think one could sensitively and over a period work towards that, but that is another issue. I do think one has to look at who does what.

Lord Hunt of Wirral: May I please be allowed to adopt a less brutal approach than my noble friend Lord Cormack. I believe our Committee did find that there was a broad consensus that the current House is too big and the overall size should be reduced. We did invite Members of the Lords to let us have their views, and I have nearly 100 responses, which I am very willing to make available to the Committee.

Chair: Thank you.

Lord Hunt of Wirral: Just to summarise, there was a general consensus that we should not be too draconian; otherwise there would, as a result, be a lot more Members seeking to speak and to ask questions in order to justify their existence.

Chair: Of course, like Members of Parliament do.

Lord Hunt of Wirral: Yes. Well, there are constituents to satisfy, but in this case if you started to introduce a test as to what the contribution was I think, even though there are no constituents, the test would be fulfilled by those who had to be done. So, we concluded that the best way forward was to find a mechanism for voluntary retirement. It is a matter of regret that our recommendations have not really in essence been implemented on voluntary retirement. There is a whole series of them, and we have only had three. I would not put that at the door of there being no legislation in support of voluntary retirement, because I don’t think you need it, but certainly I think we could address a number of points. First of all is the lack of incentive. The benefits attaching to membership are significant incentive to stay. I think the Clerk of the Parliaments started to identify ways in which those incentives might be reduced. Voluntary retirement could be more actively promoted by party leaders and the convenor of Cross-Bench peers, as we recommended. I think they should appeal to the recognition of the institutional interest of the House rather than individual interest in just seeking retirement of those who do not contribute effectively—and they know who they are—and they could invite them to consider their position. There should be more political agreement about what proportion of seats for each party and the Cross-Benches there should be. Voluntary retirements could well take place much more easily at the end of a Parliament, and we suggested that—and this was listening to Members of the House of Lords—they would rather like an occasion where tributes would be paid. I know the Lord Speaker is very happy with this. When we introduce a peer, there is a ceremony. Why shouldn’t there be a ceremony to mark the distinguished contribution of a peer who has decided to retire with dignity? That was said to us by several Members.

Q193 Chair: Could I ask you to clarify that? We did discuss this with previous witnesses a couple of weeks ago. That would presumably be at the end of a Parliament and at a time when people were leaving the House of Commons and would then leave the House of Lords, as you say, in a dignified manner,
rather than being there on a Friday, reaching a certain age or not having completed a certain number of attendance issues, and suddenly gone on the Monday. This would be in a dignified fashion at the end of the Session.

Lord Hunt of Wirral: Yes. There were, though, members of my group who felt that there had to be some provision for a financial incentive at no additional cost to public funds, and we suggested that could be done in one of two ways. First of all, there could be a special hardship fund contributed to by existing Members of the House of the Lords, which would always be there to cover particular problems that arose after the retirement of a Member of the House of Lords. But then a number of peers felt, “I know we are not paid; I know we only receive an allowance, but could we please just have some way of recognising the contribution we have made in financial terms that does not cost the public purse a thing, which is based on what we would receive had we continued?” We encouraged the Administration Committee, the House Committee, to have a look at ways in which that could be done at no additional cost to public funds. So in that way we believe voluntary retirement could be made much more meaningful than the three who have so far taken advantage of it. The retirement of Lord Bramall at the end of session 2012–2013 was marked by a small informal party, held by the Lord Speaker, and was a very successful occasion—

Lord Cormack: The statement from the Woolsack, too.

Lord Hunt of Wirral: And there was a statement from the Woolsack. I think that begins to demonstrate a way in which it could be done much more effectively.

Q194 Chair: That is very helpful and marks a step forward in our deliberations, because it is a positive step that could be taken and that I assume would command a considerable amount of support in your House?

Lord Cormack: Almost consensus, perhaps.

Chair: Almost consensus. I am trying to steer away from the word “consensus”, but it would receive considerable support. Thank you very much for that.

Q195 Fabian Hamilton: Lord Cormack and Lord Richard, you both quoted Dr Meg Russell, who has given a fair bit of evidence to this Committee over the years and especially on this particular issue last week. I think, Lord Cormack, you quoted part of what she said, and I will read you the rest of it. She said in her evidence that, “The lesson of history is that incremental reform matters and that it has a far greater chance of success than more ambitious proposals”. Would you agree with her thoughts?

Lord Cormack: Very much so, and that has been the guiding philosophy of the group that I chair and Lord Norton convenes. We believe this very strongly, and I think that the evidence bears it out. She, of course, would give you chapter and verse of everything, and I could give you a number of things. I think yes, it is, because you are taking people and not dragging people, and that is always better. Lord Hunt referred to my remarks as being brutal. I am sorry if they sounded that way. They were not meant to be, because I think one has to be incredibly sensitive when you are dealing with colleagues. It is very important to handle it sensitively. I believe that everything that Lord Hunt said, with which I would associate myself, is in no way contradictory to anything that I said. One has to have a combination of approaches here, and one will reach the stage where there is probably a finite size to the House of Lords. It may even be that in the future one has to look at the precedent of the two Acts of Union. You know that, in 1707, 45 Scottish peers were elected at the beginning of each Parliament to come and serve at Westminster. It may well be that if we want to have a cap on numbers the parties have to elect from among themselves the requisite number at the beginning of each Parliament, but these are what I would call incremental reforms, and you work towards them.

Q196 Fabian Hamilton: Thank you, Lord Cormack. Given what you said, Lord Richard, earlier in your opening remarks, I would imagine you do not agree with Dr Russell?

Lord Richard: No, I do not.

Fabian Hamilton: Please elaborate.

Lord Richard: It does seem to me that all the major constitutional advances in this country have been achieved in big bang procedures, rather than crawling. If you take just the 1911 Act, for example, the chances of getting Parliament Acts through in 1911 by consensus were nil. On the other hand, it was needed and it went through, and on the whole it has proved rather beneficial to the health of the British party politics. I think the same is true of things like representation of women. I think it is also true, going further back, to things like the 1832 Reform Bill and, as I said earlier, the franchise Acts in the 19th century. None of this could have been done if what we were doing was saying, “We must have a consensus before we proceed.” I don’t think that is right. The other thing I must come back to is: what do you actually mean by incremental reform and incremental reductions and so on? If you mean that you are advancing slowly towards an end that is perceived and which you are trying to achieve, although it may take a long time to do it that way, that is one thing. On the other hand, if you want to be doing it and saying, “Yes, we believe in incremental reform, we could do this and we could do that,” and then what you have done in effect is to set in concrete the existing system that a big bang would change if a big bang was going to happen but it is not going to, that does not seem to be reform at all. It is exactly the opposite.

Q197 Fabian Hamilton: Before Lord Hunt answers my question, can I come back to you, with the Chair’s permission, and suggest to you that what you are saying, effectively, is that we really need a written constitution?

Lord Richard: You are tempting me to stray. I am delighted to stray, though, or at least to poke my nose around the corner. I think if you had a situation in which the House of Lords was elected, you would have to have some clear statement of the relationship between the House of Lords and the House of
Conservative hereditaries were able to vote. I may have the numbers slightly wrong, but I think it was no doubt that it will come. I think it was Lord Rodgers trying to preview the second stage of reform. I am in not by in any way affecting the first stage of reform or it was not clearing the undergrowth; it was finding a whole thing is radically changed. My argument would be that Lord Hunt of Wirral: I find myself in the middle of this argument because in the debate on 11 May 1999 there was not a great battle, thanks to the Weatherill amendment, which I recall the Lord Chancellor, Lord Irvine of Lairg, described in this way, which really meets my noble friend’s point. He said the Weatherill amendment represents “an inspired way forward by consensus towards major constitutional change”. My recollection is that the noble Lord Richard was in the Chamber at the time when those words were spoken, but they were spoken in the context of quite a fundamental reform, which then went through. If I recall, it went through by a very substantial majority in the Commons as well. Lord Weatherill’s amendment was, of course, conditional on the 92, and it was generally accepted at the time that the 92 hereditary peers would remain until the second stage of fundamental reform. So, on this idea, as the Clerk of the Parliaments explained, that you can tinker around with the Weatherill amendment, I just urge the Committee to read that debate on 11 May 1999. You can achieve incremental reform in between, but I don’t believe you should start trying to interfere with the Weatherill amendment before the second stage of fundamental reform.

Q199 Fabian Hamilton: Thank you for reminding us of that, Lord Hunt. I had forgotten the date, although I remember the Weatherill amendment. Baroness Hayman argued, I think, at this Committee that incremental change would clear the undergrowth for wholesale reform. Isn’t there some value in that? Lord Hunt of Wirral: My argument would be that the Weatherill amendment made fundamental reform acceptable to both Houses of Parliament and therefore it was not clearing the undergrowth; it was finding a way through a very complicated situation. There is a bit of undergrowth, and I agree with Baroness Hayman that it is a very good idea to try to clear it, but not by in any way affecting the first stage of reform or trying to preview the second stage of reform. I am in no doubt that it will come. I think it was Lord Rodgers in that debate who had the divine foresight to say, “Oh dear, I think the consensus will mean that we won’t have any fundamental reform for at least 10 years or perhaps longer,” and I must say to Bill Rodgers how right he was.

Chair: Not an exaggeration. Lord Richard: Can I just add a word on the Weatherill amendment? I hope that Lord Hunt was not suggesting that presence in the Chamber signified consent, because it didn’t. I was in charge of that Bill in 1997–1998, and my proposal to the Tories was they should have a certain number of life peers and they could decide among themselves who should have those life peers, but that all the hereditaries would go. At that stage, I thought the Conservatives would have accepted that, and I think the Lib Dems would have accepted that. Negotiations did take place, however, which I had nothing to do with, as a result of which 92 hereditaries came and still remain. Maybe the way of dealing with those 92 hereditaries now is in fact to offer them life peerages. If you do that, you may come back to what I wanted to do 25 years ago or 15 years ago or whatever it was, but that is not necessarily an argument against it. If that resolves the position, so be it.

Q200 Chair: If that were to be done, that might have a practical effect in the immediate term, but Lord Hunt suggests that that would get over the principle of the fact that the Weatherill amendment was not just an amendment but part of a deal. Would that be right? Lord Hunt of Wirral: Yes; and Lord Steel echoed Lord Richard’s view, as did Lord Rodgers, to say, “Surely, the right answer here is to make them life peers,” but that was not part of the Weatherill agreement that was endorsed by both Houses of Parliament. It was decided not to go down that route.

Q201 Chair: By the way, I think I might have to declare an interest here. I seem to recall that I introduced it in the House of Commons from the Back Benches, because it was to be a Back-Bench amendment, and I think I did. Lord Cormack: I think you did. I was constitutional affairs spokesman for our party at the time, and I think you did.

Chair: I think you were, Lord Cormack, and I think you approved of my introducing it as a very new, little, young Back Bencher—the Weatherill amendment.

Lord Cormack: How could I not have?

Q202 Chair: But even though I clearly approved of it then and still do, which is irrelevant, is it not the case that all these years later it would be worth going back to that again and seeing if the House of Lords would accept a different deal? Lord Cormack: Madam Chairman, I think that the problem that we have here is not with the Weatherill amendment and the numbers of people involved; it is with what people perceive to be the absurdity of the by-elections. This is the problem. We recently had a by-election vacancy for a Conservative, and only the Conservative hereditaries were able to vote. I may have the numbers slightly wrong, but I think it was
27 candidates and 45 electors. It was of that order. But of course, had it been a Labour hereditary peer who had died, it would have been three and possibly 10 candidates or more, and the same sort of thing with the Liberal Democrats. That is the problem. We have a by-election the week after next, but because the hereditary peer, Lord Reay, who died was a Deputy Speaker, all of us, Lord Richard, Lord Hunt and I, every peer, has a vote. That, of course, is much less absurd.

Lord Richard: But all the candidates are Conservatives.

Lord Cormack: No, they are not. I am told we have already had two Cross Benchers who have declared. It is only a convention that it should be Conservatives and not a rule. It was announced at our meeting last night and I would add the word “brutal”. Those who were not Conservatives standing. It is perfectly possible that one of them might be elected, so we will see. The only point that I was making was with that much bigger electorate it is much less absurd. That is all.

Q203 Chair: That is a very good point: larger electorate, less absurdity.

Lord Hunt of Wirral: Lord Weatherill did deal with all these points and said clearly, “Our intention is that there must always be 92 while the system lasts,” and the Liberals did say that they wanted life peerages. They abstained, but nevertheless the House of Lords voted by an overwhelming majority in favour of the Weatherill amendment, and so did the House of Commons.

Chair: Thank you very much for getting that on the record.

Q204 Sheila Gilmore: You have maybe answered quite a lot of this first question already, so perhaps just very briefly, and it is the question of non-attendees, although I would comment that twice in the last few weeks I have taken visitors into the Gallery of your House and been slightly embarrassed to see that attendance on Benches was probably greater than it often is at our end. Question time was absolutely chock-a-block, and it was not Equal Marriage. So, obviously attendance, even of people just sitting at a normal debate, seems quite high. Lord Hennessy thought that removing non-attendees could be fraught with peril, which seemed quite a strong statement. Would you agree?

Chair: Yes, Lord Hennessy did say that he thought it was fraught with peril, and he and other witnesses on the subject of people being removed in any involuntary way used the word “brutal”.

Lord Richard: One of the problems with attendances in the House of Lords is that you are deemed to attend if you are seen in the Chamber or you attend the meeting of a Committee or you vote. It is unlike the House of Commons where it is recognised that MPs can participate fully in the workings of the House of Commons without setting foot in the Chamber from weekend to weekend, but this is not true in the House of Lords. If you want to get on the list as an active participant, you have to show your face in the Chamber. Maybe that is what Peter Hennessy was talking about; I don’t know.

Lord Cormack: Yes, it may well be. Madam Chairman, as you know, I have a problem today. I did advise your office that I am speaking in a debate in the House of Commons and will have to go, with great apologies, in a moment or two.

Q205 Chair: Let us make sure that you have told us everything that you would like to tell us before you depart.

Lord Cormack: That is extremely kind. I think most of the points I would wish to make I have made. It is difficult, but anything is difficult. The Bill that Mr Byles is due to introduce into the House of Commons on 18 October is very modest—it is housekeeping; it is minor incremental—but I think it will improve things a little and I hope very much that it will have a fair passage, both through your House and through ours. Baroness Hayman is introducing a rather more ambitious Bill at a later stage, no date yet determined, in the House of Lords, which will bring back on to the agenda both the hereditary by-elections—and we have already heard from Lord Hunt that there are strong feelings there—and the suggested need for a statutory appointments commission.

I personally think—I will just leave the Committee with this—that the end of the hereditary by-elections would be the appropriate thing. The peers remain until they die. I would have just one exception. There are not 92 as 92, there are 90 plus two, and I would keep the two hereditary Officers of State, the Earl Marshal and the Lord Great Chamberlain, because I think that they have a particular ceremonial role to perform at great moments in our history, coronations and all those things. I think that they are special, and I would keep them. On the 90, I would allow, as they died, no vacancies to be filled, although clearly the parties might wish to have regard for the balance, as they were appointing new peers. But that is the way I would deal with it. I would favour a statutory appointments commission, like Lord Jay himself does, the chairman of the present commission.

Q206 Mr Chope: Before Lord Cormack goes, can I just ask him to expand upon his statement earlier that he would support a cap on size? At what level would he set that cap?

Lord Cormack: I said there is a strong case for a cap on size, and if we were to have a cap, I would make it no bigger than the House of Commons, and I personally would make it no bigger than the House of Commons was going to be had it not been for the recent events—namely, 600. That would be my cap on size, but that is a purely personal reflection. Others, who know far more about the subject than I, would argue for 500 or 450. I think it would be sensible to have a cap on size, but it would then be necessary to have some form of adjustment after each general election to reflect what had happened and it would be necessary to have a finite number of Cross Benchers to preserve the crucial position in the House of Lords. Others take a different view and would not have a finite cap on size, and it is not something I would go to the stake on.
Q207 Mr Chope: Following on from that, would you be against a big list of new appointees in the next few weeks?
Lord Cormack: It is entirely for any Prime Minister, in consultation with the other party leaders, to produce and to revive and to refresh. I am not against a modest list, but I would be certainly very troubled if it were the three-figure list that somebody talked about a little while ago.

Q208 Chair: How would the adjustment to which you just referred be achieved? You referred to an adjustment after a general election.
Lord Cormack: It would have to be done within the parties, wouldn’t it? They would have to decide which of their colleagues would stay and which would go, and that would be a necessary part of any cap. That is why I say there are others who take a different view and I would not go to the stake for it, but that is the way I would do it if it happened.

Q209 Chair: Thank you very much. We have taken evidence on this previously and such an adjustment process was described as potentially brutal, which was of course quite difficult for those of us who stand for election regularly to sympathise with, as we experience brutality and understand it quite well.
Lord Cormack: As I spent 40 years in your House, Madam Chairman, I do understand that.
Chair: I know you do, Lord Cormack, and Lord Hunt most certainly does. Lord Cormack, thank you very much indeed for giving us so much of your time and your experience. We do find that the work that you are continuing to do helps on this inquiry. Thank you very much indeed.

Q210 Mr Chope: Can I follow up on this issue of size with Lord Hunt? He gave us some very interesting figures: 695 in 2000 and 754 now. Are those figures inclusive or exclusive of those who have taken leave of absence?
Lord Hunt of Wirral: Exclusive, both.

Q211 Mr Chope: That is really 699, as against—
Lord Hunt of Wirral: 806.

Q212 Mr Chope: That is a very significant increase, and obviously, as we have heard, it is open to anybody who has taken leave of absence to give three months’ notice and then come back. So the real numbers are the gross numbers, I would submit, rather than the net numbers, and if you look at the gross numbers, there has been a significant increase. Would Lord Hunt agree that there should be a cap on size?
Lord Hunt of Wirral: I don’t like the idea of a cap on size at all, but I do think there must be a reasonable approach taken. I greatly welcome the new blood that has come in, including the new blood at hereditary by-elections, some of whom have been quite outstanding in the service they have brought to the House. So I would constantly want to see new blood coming in, both through the hereditary by-elections and through appointments. This is why I would advise the Committee, if I may, to concentrate on ways of encouraging voluntary permanent retirement. In many ways my group did feel that the leave of absence formula was a temporary stopgap before we could move to wider proposals on permanent voluntary retirement.

Q213 Mr Chope: Thank you. You say there is a need to refresh, but in the House of Commons, apart from the occasional by-elections, we now have the same House for five years, so in a sense you could still have a moratorium on new appointments to the House of Lords between now and the next general election, for example. Would you agree with that?
Lord Hunt of Wirral: No, because death is no friend of balance and we have lost quite a lot of, say, the Conservatives, particularly just very recently, and we have come down from 233 Conservatives in the year 2000 to 208 as of today.

Q214 Mr Chope: Is that including those with leave of absence or not?
Lord Hunt of Wirral: No, these figures exclude those with leave of absence because they are not included in the party balance. Therefore, I think there is a constant need just to look at the balancing figures, which is why we advised that in any scheme of permanent voluntary retirement the party leaders had a key role to play in persuading those within their number who they felt the time had come for them to retire permanently.

Q215 Mr Chope: How about the need to reflect in your House the rise of the support in the country for the UK Independence Party, for example? How do you think that should be reflected in the membership of your House?
Lord Hunt of Wirral: That is a difficult question, because we do have UKIP represented in the House of Lords. I think it is a matter of looking at the number of Members of Parliament elected in the Lower House that historically party leaders have sought to adjust the membership of the House of Lords. As yet, I am not aware of a rise in the number of UKIP Members of the House of Commons. If that were to happen at the next general election, I can see that there would be an argument in that direction.

Q216 Mr Chope: In the coalition agreement the Liberal Democrats have tried to put, as the basis for their membership in the House of Lords, the numbers based upon their vote at the general election rather than on the numbers of MPs elected. By analogy, one could say that after the next general election the votes of UKIP should be reflected in a proportionate number of peers. Do you think that would be a good idea?
Lord Hunt of Wirral: No. I am sorry to keep answering Mr Chope in the negative.
Chair: There is absolutely no obligation to agree with Mr Chope, Lord Hunt.
Lord Hunt of Wirral: I think there is a historical basis for this. I would just say that the number of Liberal Democrats has increased from 63 to 89. I thought that was on the basis of seats, but if it is on the basis of votes, then certainly Mr Chope has a point.
Lord Richard: Could I add one word on this? I think the bit in the coalition agreement that says that at each
general election you should adjust the House of Lords so as to reflect the result at the general election to the Commons is nonsense. I can think of nothing, frankly, that would ratchet up the size of the House quicker than the adoption of that, and I hope, therefore, that if this Committee considers that, which I imagine it will—

Q217 Chair: That is assuming, of course, that the numbers were increased. We have touched upon this, but can we look at it again? On the point about party balance, and Lord Cormack mentioned about an adjustment among the parties themselves, is it at all possible that the House of Lords in general might agree to a system whereby each party elected from among its own Members those who remain after a general election? Presumably, the Cross Benchers would have to do the same in a balancing way.

Lord Richard: Do you mean you would have an expulsion sort of system? After the election you would have a system whereby a certain number of existing Members of the House of Lords would be expelled in order to make room for the changes reflecting the party balances at the new election.

Q218 Chair: It would come very close to an elected House, Lord Richard.

Lord Richard: No, it wouldn’t, not in my book.

Q219 Chair: I accept that. I was just trying the question.

Lord Richard: I think the idea that you can adjust the House of Lords after each general election, and you could only do it in the present system by creating peers, and each Prime Minister after the election would have the right to adjust the figures in the House of Lords to reflect his new position in the polls is a recipe for disaster.

Lord Hunt of Wirral: I would be very interested to know whether Mr Chope had a further follow-up question.

Q220 Mr Chope: I was going to ask Lord Richard about whether he was in favour of a big new list for their lordships’ House and whether he would be in support of a moratorium between now and the next general election?

Lord Richard: No, I am not really in favour of either of those. I think the point that Meg Russell was making, which I referred to earlier, which is that you have to view all these questions of party numbers in the House of Lords against the background of a broad agreement between the parties as to what they should have in the House of Lords, is very important. If you could get an agreement at party leader level that there should be no overall majority, no one party should have a majority in the House, and broadly the Labour Party and the Conservative Party should be in a position of equality in terms of membership of the House, then you would have to fit all these arguments about moratoriums and all the rest of it into that framework. That makes it in some ways easier to deal with because you know at the end of the day you are going to end up with something that is broadly the same as what you have at the moment.

Q221 Mr Chope: But isn’t one of the problems with all this that the House of Lords is becoming increasingly party-politicised, and isn’t that detracting from the contribution it makes to our constitution?

Lord Richard: The House of Lords has been party-politicised ever since I have been there, and I have been there 23 years now. There were Whips in 1990 when I went there. We were whipped going into the lobbies. When we were in opposition we had little ambushes in order to defeat the Government of the day. When we became the Government there was a whipping system. Most of the divisions in the House of Lords take place on the basis of party Whips.

Q222 Mr Chope: Does Lord Hunt agree that it is just as party-politicised as it ever was?

Lord Hunt of Wirral: If I reflect on the Chamber rather than numbers for a moment, in the Chamber there has been an influx since the last general election of a number of former Members of Parliament who have taken a little while to adjust to the new circumstances in which they find themselves.

Chair: That sums it up precisely and we understand just what you mean, very diplomatically.

Q223 Mr Turner: If I may make an observation for a moment, one of the observations is that Conservatives are never political. It is just natural that they should be Conservatives. One of the proposed changes to the Hayman Bill and Lord Steel’s Bill was expulsion in specified circumstances. I take it that without legislation that would require the House of Lords to suspend people for one Parliament only, is that correct, or one year?

Lord Richard: That is a very interesting question. It was generally believed until a few years ago that the House of Lords did not have the power to suspend anybody. They had the power to expel or not. It was not until Lord Mackay exercised his legal ingenuity and persuaded the House of Lords that they did in fact have the power to suspend that they suspended three or four Members. There was a lobbyist scam against three or four of them, as a result of which they were all suspended. That seems to be a newly recognised power that the House of Lords possesses, so they can do it; they can suspend.

Q224 Mr Turner: They can suspend, and they previously had the power to expel and they still do have that power?

Lord Richard: I don’t think they have the power to expel, but I am not 100% sure on that.

Lord Hunt of Wirral: May I refer to page 3 of the Clerk of the Parliaments’ evidence where he believes that there is the power to suspend and it has been suggested to him it could be used to exclude Members who failed to attend, but his conclusion is that it would require legislation. He argues the arguments and he sets out in appendix A his reasons for believing that the reasoning of that 2009 report to which he refers does not support suspension as a sanction for non-attendance and he thinks it would require legislation. He sets out the arguments and the conclusion is that it would require legislation.
Q225 Chair: But you answered earlier that that legislation would be likely to command overwhelming support, and in our House, too.

Lord Hunt of Wirral: Yes, I believe that to be the case.

Lord Richard: I think the general principle people would agree with is that the Lords should have basically the same powers as the Commons.

Q226 Chair: While that would be a very good step forward in principle and would command support, and would probably even command some kind of acknowledgement that it was the right thing to do in the media, but in the world in general, it would have very little effect on the size of the House. One would hope it would be minuscule.

Lord Hunt of Wirral: Of course it would have nil effect unless it were to be retrospective.

Q227 Mr Turner: I do understand that and the question is one that we should perhaps ask of a particular Minister when he comes before us next. What I was going to ask was how receptive would peers be to the idea of a retirement scheme that involved a tranche of peers retiring together at the end of a Parliament—for instance, at the age of 80, or something else that is not necessarily age-related?

Lord Hunt of Wirral: The evidence that was presented to our group was that there would be general support for such a move.

Q228 Mr Turner: The peers in other groups—

Lord Hunt of Wirral: When I say “our group”, the leader’s group did seek to have every view expressed and certainly the submissions we had from the nearly 100 peers who did contribute was very much leading to the belief it would be, by agreement, the right move.

Q229 Chair: We have taken some evidence that has suggested that a retirement age—and Lord Richard referred to this just a few moments ago—would be massively resisted. If it were suggested that it might be a good idea for people to volunteer not to sit in the House if at the end of the Session they had attained, let’s say, the 82nd or 83rd birthday, not to go on the birthday in a brutal way but to be there until the end of the Parliament during which a certain age had been attained and that such a move would also be voluntary—which is what Andrew was saying—would that command any support?

Lord Richard: I don’t think that the Lords as a whole would like any kind of age limit.

Lord Hunt of Wirral: That is certainly my conclusion as well, and of course it is a case that hard cases make bad law. As soon as you start to propose any retirement age at all immediately there are flagged up a number of colleagues who contribute very positively to the work of the House of Lords who most people would not want to see disappear in a surge of voluntary retirement. We found that there was no real appetite for compulsory departure, but a considerable appetite for voluntary departure, provided it was done properly, with opportunity for people to leave with dignity, without reference to age or service but tributes paid, the Lord Speaker playing a part and of course, above all, some form of safety net to catch those who might otherwise find it very difficult to survive, who have no pension or very little pension. One also has to bear in mind that there are a number of people who might want to move to other jobs outside Parliament who find themselves unable to do so because of their own financial environment, which is back to the hardship fund, particularly if they took posts in a charity or voluntary organisation.

Chair: That is very helpful.

Q230 Mr Turner: Could I just ask—and this is a genuine question—are peers entirely prevented from attending the House of Lords where they live in other countries at the moment?

Lord Richard: No, certainly not. I can think of a number of our colleagues who live in France, for example, and commute, some of whom have been very distinguished Ministers in the House of Commons.

Q231 Chair: Have I misunderstood your question? We do have rules about Members of the House of Lords requiring to pay tax in the UK.

Lord Richard: Non-doms is another matter. Yes, I quite agree with that. Were you talking about tax?

Q232 Mr Turner: It is a good thing I am not a tax expert. Could you tell me which peers are allowed to live in other countries and which are not allowed to live in other countries?

Lord Hunt of Wirral: Under the Constitutional Reform Act, there was provision for lords who wished to be non-doms to exercise that right. My recollection is that five did so, but there was a time limit and that has now passed. It is no longer possible to opt in that way. But as far as I am aware, every Member of the House of Lords, wherever they live, is domiciled for tax reasons in the UK.

Chair: I am quite certain that was in the Bill that was passed just before the last general election, most certainly with the agreement of all parties.

Q233 Mr Chope: Can I ask a question about the Appointments Commission? Baroness Hayman has some proposals in her Bill for what seems quite a radical Appointments Commission. Does that have any consensus in your House?

Lord Richard: No. I don’t think it has been looked at in sufficient detail and I don’t think there is a consensus on it. Broadly speaking, I think most people seem to feel that the existing Appointments Commission is doing rather a good job, given its remit. It is now down to recommending three or four a year, some relatively small number. Of the ones that it has recommended, on the whole people think it has been a success. Where I do think there is a problem in having an Appointments Commission that perhaps has very large powers is that I don’t believe that Prime Ministers will ever give up voluntarily the right to try to appoint people that they think should be in the House of Lords. It has been a prime ministerial privilege for a very long time, and I imagine most Prime Ministers would wish it to continue. The
Appointments Commission has a role in looking at the list of people that the Prime Minister submits and going through them and saying, “He is all right; we have checked him. There is a doubt about him, so we don’t think perhaps he should come into the House of Lords.” That is a terribly useful and valuable function, but to have them take over the recommendation, which at the moment is being made by the Prime Minister, would be very difficult.  

Lord Hunt of Wirral: I agree.

Mr Chope: Good. We end on a good note, then. You agree with me.

Q234 Chair: One thing that we have touched on but not looked at carefully is fixed-term appointments. I think you mentioned, Lord Hunt, tangentially on another matter, that it might be possible, again on a voluntary basis, to make it clear to a new Member who was being appointed that they were expected, in an honourable way, to leave after a certain amount of time. Is that something that might work?  

Lord Hunt of Wirral: We made a number of recommendations in this direction, which are contained in the report. First of all, we felt that people who did retire voluntarily should still be entitled to enter the premises and to have a pass. We thought that in future the honour of a life peerage should not automatically entail appointment to membership of the House unless the individuals were singled out as people who would make a significant contribution to public service in Parliament, so you would separate the title from the right to sit. There are a whole series of recommendations contained in our report that are still out there waiting for implementation. We did look at whether or not there should be a fixed term, but that would require legislation, as we understood it, under the Life Peerages Act because peerages are for life.  

Lord Richard: I agree with that.

Q235 Mr Turner: Looking at appendix A, which we looked at earlier on this morning, it seems to me it says that it is only for the lifetime of one Parliament, if I am reading it correctly very quickly. If that is the case that would mean that you would be unable, without changing the law, to expel someone permanently. Would it be legal to reinstate the expulsion, if it is let’s call it a five-year period, if they could then re-impose it at the beginning of the next Parliament and so on? The reason I am suggesting this is because, frankly, I find it hard to believe that even the best and most popular proposals are going to be allowed by the Liberals.  

Lord Hunt of Wirral: We are dealing with appendix A to the Clerk of the Parliaments’ paper, aren’t we?  

Chair: Yes. Sorry to have bowled you a difficult one that has to be researched, so you had better check.  

Lord Richard: I don’t know the answer to that.