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Political and Constitutional Reform Committee

House of Lords reform: what next?

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Written evidence

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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.

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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).

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List of written evidence

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

Written evidence

Written evidence submitted by Christopher J Hartigan

Introduction

I am a member of the public with an interest in constitutional matters and Lords Reform in particular. I previously gave evidence to the Joint Committee on The Draft Lords Reform bill where I set out a fuller analysis of what I believe Lords reform should look like. I hope that my views in this context will be considered by the select committee and be found useful.

Learning the Lessons of Previous Attempts…

In my view the evidence from recent attempts at Lords Reform have revealed that the democratic underpinning of our Constitution properly belongs within the House of Commons and therefore direct elections are for that house alone at this time. It also revealed that the power of the executive is not to be extended within the House of Lords if it is to maintain its focus of wise independent reflection and knowledge which are its hallmarks for good legislation. The House of Lords needs to apply, in its work of scrutiny, the influence of common sense, right judgement and a wider sense of the people's best interests. An effective and well respected house should be able to; curb the traits of political expediency; dogmatic posturing; knee jerk responses that governments and political parties are prone to. The primary means of reform must be evolution not revolution. Supporting that process will bring about a balanced and adaptable house that meets the needs of our Constitution. Relatively small measures have brought about effective change since 1911 and the House of Lords has already evolved into a well respected and effective second chamber. Change should not now be set in concrete but should have a flexibility foundation to evolve further. This might or might not lead eventually to a directly elected house but if it does it will come through a process that responds to the needs of the time and the people not political dogma.

The Way Forward

I would like to draw your attention to the evidence of Baroness Hayman to the Joint Committee on the Draft Lords Reform Bill who advocated small doable measures as the way to achieve Lords reform.

I feel that a flexible foundation might well trigger such a process. I would also like to highlight Lord Steel's bill, House of Lords (Cessation of Membership) Bill [HL] currently before the commons which is very practical, much needed, and has got this far by having a level of consensus with members of both houses that ought to enable it to pass into law. The previous bills Lord Steel has brought forward have also had wide consensus and speak of reforms that this committee may wish to consider. It is my hope that your work and this bill may move forward in unison. It is also my hope that Lords Reform will move forward by means of secondary elections. The report on the Draft Lords Reform Bill did ask for such proposals to be considered (Page 99 para20 & para120). It might be helpful to see if there was enough of a consensus for this to happen. Lords reform is dogged by everyone having a scheme and I am no different. Most of these fall into three types: direct elections, indirect elections or just appointment. It is therefore difficult to bring people together for a consensus even on smaller measures but I believe a loose consensus should be sought somewhere in the middle which can grow by smaller measures into something we can all be comfortable with even if not our own hearts desire.

My Small Measure

A house, based only on appointments, will have to live with an ever greater clamber for its reform as it fails to meet the more engaging expectations and perceptions of the general public as judged seemingly by political parties who can not resist having something in their manifestos. I believe the House of Lords should move from a purely appointed house to one enhanced with secondary elections. I would like to see a House of Lords about 500 existing life peers who, using there own internal list system, predicated upon the total number of votes for the Commons at the previous General Election. The votes cast would determine the percentage of seats for each party and the crossbench representation being calculated from nonvoting electors. It is simple and understandable. It is a foundation upon which reform can easily evolve by small measures in the future. It also meets the stated apparitional aims for party balance and size of the House of Lords. This process proportionally represents nationwide how people have voted in a general election without challenging the democratic role of the Commons it also makes it unlikely that any one party would have a majority in the House of Lords. If a consensus for such a measure could be found it would be an investment in constitutional stability with great potential for development through small measures. It could be seen as giving something to everyone or nobody getting what they want. My cup remains half full!

Individual Small Measures

Many of the individual small measures you will want to consider are, as you know, already within the Steel bill but I will look at some of them as individual proposals. All agree that there is an urgent need to reduce

the number of peers and the government recognises this but appears set to be continuing to add to this problem for there own party advantages.

Retirement

Not replacing Hereditary peers is clearly practical, effective and desirable as is the removal of non attending members. Fix term and retirement ages are more difficult as they raise fundamental issues that are controversial and not easily resolved. Ageism is also on the agenda and it is true that "many a good tune is played on an old fiddle". These two proposals should only be used as a temporary or emergency measure to restructure the house. Voluntary retirement has not worked however it should be encouraged and effective incentives considered.

Moratorium

A moratorium on new peer seems like an obvious answer to ever growing numbers and it might create an incentive for governments to get on with reform. However this would curb the effectiveness of the house and create a last ditch rump perspective that would damage the respect that the house has earned by its acknowledged excellent service. It is however incumbent upon the government to be restrained in the number of appointments it makes.

Expelling Members

There needs to be an accepted system, similar to the commons to deal with criminal activity. It is clear that the public do not understand why one is not in place already. Steel bill also addresses this question effectively. This is an area clearly has a supportive consensus.

Patronage/Appointments Commission

Having a largely appointed House of Lords, the question of patronage is always on the agenda and even as far back as Lloyd George there was always a whiff of impropriety in the air. To address this area there needs to be a system of appointment that is reasonably transparent and acceptable to the general public. It needs to be as open as possible while meeting the needs of government, legislators, and to the public sensibilities. A responsible body needs to be in place to regulate this process and itself should be regulated by an independent body-double lock. Its remit will need the wisdom of Solomon since the process has to deal with Party Appointments, Governments appointment of Ministers and the evolving roles that crossbench peers to represent various sections of society or of experts in various fields in their appointment process, while demonstrating its independence from the influence of the executive. I believe most people would accept that such a body is needed to authenticate the appointments of suitable people who can be seen to be acceptable. I believe such a commission makes sense for most people and is desirable. It will be effective if it is set up on basic principle, with scrutiny and leaving room for it to evolve with the evolving role of the House of Lords. This, at some point, may need to be a statutory body to define its role as independent of the executive.

Membership

The membership of such a body may well determine how acceptable and effected the body is. They should not just be government or party nominees. Members should be diverse as such bodies tend to appoint people like themselves and perhaps the House of Lords of the future might need to develop a much greater diversity to meet the evolving demands being made on it. It must be said that it already does this much better than many other bodies, including the Commons, in its diverse makeup. This is an area that might need some inspired process to meet all that will be required of it but it must be addressed to make it effective and acceptable.

Cap

The way that current appointments are made is not sustainable and is damaging to the functioning and dignity of the second chamber. It might well be a role of a statutory appointments body to manage this process in future. At the moment the process of constantly adding new peers must stop regardless of party balance until a formula can be agreed. An alternative might be the setting of a cap and managing it down to the level required. I believe the balance in the House of Lords should rest upon the percentage of votes cast for the particular party in relation to other parties (not ignoring crossbench peers—re non voters). Once a new government agree (from the election data) what the proportion should be then that balance becomes the aim. It should be pursued over the period of a government and would be sought not just with new appointment but through voluntary retirements, deaths etc. It should be a shared aim of all parties to avoid increasing numbers and thereafter the house might have an upper number limit set and appointments made only within it, and perhaps a cap set of about 500 to prevent a further race to add new party representatives. An appointments commission might regulate the working of the cap within the balancing aim set at the start of a parliament.

Urgent Approach to Rebalance Numbers

The House of Lords clearly needs urgent rebalancing and it might be worth seeking one off, programme for reducing the house numbers. A redundancy scheme! To do this is desirable, certainly effective but perhaps not the best way to reward loyal service. A generous compensation scheme should be considered as many will have given long and faithful service. It can also be justified as we would get a house of 500 that works much better and able to be more effective in its role. Perhaps the most simple way is the cap, calculated by asking for voluntary retirement then look at the peers attendance rating of remaining life peers in order and those 500 with the best attendance records stay and the others retire. It is crude but fair and simple but takes no account of party balance within the 500 remaining. From the Leaders Group on Members Leaving the House, Interim Report 2010, Table 3 would suggest that this might affect those attending roughly less than 25% of possible attendances. It would also affect expert peers who only attend when there subject in involved however can the house afford "one trick ponies". Other methods might embrace, sadly, a combination of age limit and time served if a voluntary system had fails. This might lead to the loss of some of the finest and most experienced peers. These would not yield the numbers most seem to think going by the same report data. Alternatively each party might be allocated a number of seats and that group might well decide themselves who stays or goes by internal election or other methods they might prefer. Such action would be a very last resort but the house must be brought down to a reasonable working size within a short period of time. Evolution is better than surgery but time is fast running out and the time for action is now. I much prefer my own measure of secondary election process of existing peers that I have outlined as a functional and foundational reform that I have advocated as it would avoids the need to deal with the crisis in this blunt way.

Conclusion

Doing nothing on Lords Reform is not an option that should be considered. Doing what can be done is a step in the right direction if its direction enables the process to continue. The work of the House of Lords is well respected and often much needed. Reform has become a political football of party dogma which undermines and undervalues its work. It needs to move beyond the reach of constant threat of party wheeler dealing and power politics and face up to the need for reform itself. Parliament itself needs to safeguard its role and functioning against the over powerful executive.

4 February 2013

Written evidence submitted by James A Ware

I am minded that tomorrow in the CofE diocesan cathedral of my birth Justin Welby (Rt Rev Bishop of Durham) is to be legally inducted as Archbishop of Canterbury.

Much is made of the House of Lords having bishops of the C of E ex officio as the 26 "double jury" on the basis of seniority in the post (longest term served) as the basis of the original 1215 Magna Carta reform that sought to change from Saxon gradated aristocratic witans into the House of Lords and Commons of the modern age, with an one intermediary tri chamber parliament of the house of bishops. This is the modern day inspiration for the tri chamber General Synod of the two "home provinces" of the Church of England.

However in state there are two chambers of Parliament. The idea behind that is that so long as people raise the next generation well and ideally as part of the Church of England or one of its recognised denominations or faiths that advise the crown, the common ideals of tolerance are maintained. Hence the idea of the Heir to the Throne to defend faiths and none as well as being the FD title of Henry VIII.

These are only allegorical as the Tudor reforms put due process and the removal of harsh punishments from the united English and Welsh legal systems, now operating into similarly compassionate separate jurisdictions, similar to other Commonwealth jurisdictions.

Now, since 1829 for previous and current abilities and achievements, faith leaders of other churches and faiths sit in the chamber and can offer advice, especially with the end of the death penalty and compassion with legal support. This is based on the ideals of faith tolerance started in the Parliamentary Republic of Oliver Cromwell.

This is regarded as Ken Clarke's compassionate time as Home Secretary through to tough on crime, tough on the causes of crime.

As such the United Kingdom has faith within its "senate" and the question should be, should this continue or not? I would argue that as under the laws of state, non faith organisations exist such as Richard Dawkins and the National Secularist association, have patrons from the Royal Family. As such all should within the ex officio component, similar to the hereditaries under a Government of Britain Bill with a codified constitution passed similar to the European Human Rights Act 1999, as amended and with a right of secession for the territories of Scotland, Wales and the six counties of Northern Ireland by devolution enabling legislation, subsequent developments and Westminster devolved standing orders.

This should be approved by referendum after a constitutional convention as part of resolving the following issues:

> Turning to the hereditaries, in the realism agenda they should be kept in the interim. IN an Age of austerity it is better that they keep their peerages linked to the crown and in an age of austerity this aids those with ability to make wealth to do so lawfully.
>
> This requires proper parliamentary guidelines and company law to include the tax havens and financial instruments such as LIBOR regulated up to Treasury standards for the inflation target. This should be codified into the laws of the Commonwealth and IMF/World Bank to ensure that all play fair and can be held to account to deal with the threats of piracy and smuggling.

3 February 2013

Written evidence submitted by Dr Stephen Barber, Reader in Public Policy, London South Bank University

1. Overview of Response

1.1 For more than a century there have been attempts to reform the House of Lords and since 1911 a number of relatively significant changes have been implemented including the 1911 and 1949 Parliament Acts, Life Peerages Act (1958), Peerages Act (1963), House of Lords Act (1999). These reforms changed both the powers of the Lords and its composition. As such the Chamber has moved gradually from one comprised exclusively male and hereditary to one almost wholly appointed, 22% of whom are women (roughly the same proportion as the Commons).1 The Lords, a revising chamber, cannot veto finance bills and can only delay for a maximum of two sessions. Thus over the period of piecemeal reform, the primacy of the House of Commons has been established and reinforced.

1.2 Since the 1999 Act there have been numerous consultations, discussions and white papers[2] aimed at serious Lords reform and which have all fizzled out in the face of vested interests. It is regrettable that most recent proposals to democratise the upper chamber, this time in the guise of the House of Lords Reform Bill, have once again been abandoned. Consequently were there to be change initiated in this Parliament, it is likely to be both modest and in the long tradition of piecemeal adjustment.

1.3 An important observation is that, for the most part, the desire for reform has not been driven by the belief that the House of Lords performs poorly in its scrutiny of legislation. Rather, the problem is one of democratic illegitimacy and unaccountability. Any reform process must have the concept of improving legitimacy as the fundamental objective and it is against this that any plans should be judged. Incongruously, some of the current proposals to make minor adjustments potentially reduce legitimacy further by placing greater power in the hands of the prime minister, party leaders and the party machines. While many of the proposed mechanisms are desirable and practicable, there is a need for them to go further and to introduce at least a small element of democracy. I address this point in the recommendations.

2. The Desirability, Practicality and Effectiveness of Proposed Mechanisms

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

The 92 hereditary peers who remained after the 1999 Blair reforms served the useful function of a 'temporary' absurdity, supposedly ensuring that the second stage of reform (democracy) happened. Ironically, the 92 represent the only democratic element of Lords composition today since there is a 'blue blooded' election when an hereditary member dies and are one of the few counterbalances in the Chamber to those appointed by the party leaders. The absurdity of the 92, however, has not ensured an overhauled Lords and, as part of a series of modest reforms (if removal in their entirety cannot command consensus) ending the practice of replacing peers when they die (or converting them into life peers) is an essential step.

2.2 *Measures to remove persistent non-attendees*

The 2010 report from the Leader's Group on Members Leaving the House[3] showed that 79 of 741 members in the 2009–10 session did not attend at all and discussed provision for removing inactive peers. There would seem to be a desire and an opportunity presently to reduce the number of members by removing those who have not engaged with the work of the House. This should prove relatively uncontroversial.

2.3 *A moratorium on new peers*

The ability of a prime minister to exert considerable control over appointments to (and consequently membership of) one house of parliament and the counter-balancing alternative of a legitimately elected, independent, chamber which could frustrate a government's programme could be seen as one of the reasons that democratising the Lords has persistently failed gain momentum. A moratorium on new appointments would not only begin to address concerns about the large (and periodically growing) number of members, but might also neutralise the disincentive of the executive to carry through on reform.

2.4 *Fixed-term appointments for new peers and a retirement age for peers*

The danger in introducing fixed terms for new appointments is 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 decreasing the Chamber's independence. The introduction of a mandatory retirement age could have a similar impact and mean that decisions on appointments be influenced by age with the potential for 'gaming' between party leaders. Further, at a time when equality legislation has made age discrimination illegal in the workplace, it would be a retrograde step to introduce it in Parliament. Voluntary retirement, however, should be facilitated.[4]

2.5 *The desirability and scope of a mechanism to expel peers who have been convicted of a serious offence*

There is no legitimate justification for the situation where members convicted of a criminal offence cannot be expelled from Parliament. The rules should be the same for the Commons and the Lords.

2.6 *The desirability, composition and remit of a Statutory Appointments Commission*

In the absence of consensus over reform of the Lords, it would seem premature to place the Appointments Commission on a statutory basis. While independence from the party machines and the enforcement of standards is desirable, the Commission can be viewed as an establishment body which appoints establishment figures to sit in Parliament.

2.7 *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*

Working on an assumed 'party political' House of 557 members (that is discounting the 178 Crossbenchers and 25 Bishops from the current 760 membership[5]) it can be said that Conservative members of the Lords account for about 38%, Labour 40%, and Lib Dems 16%. On this basis, ironically, the Lords is more representative of the proportion of votes cast for parties over recent general elections than the House of Commons. Electoral support can be the only principle upon which any formal determination of party representation could be made. But it would be an affront to democracy to codify such a doctrine. It would be tantamount to vested interests and political elites deciding on the representation that it believes the public wants but not trusting us to make the decision ourselves.

3. Recommendations

3.1 The Committee should propose (1) the conversion of the 92 hereditary members into life peers, (2) the removal of inactive members, (3) a moratorium on new appointments, (4) a requirement for members convicted of a criminal offence to be expelled akin to the rules governing the Commons.

3.2 In addition there should be some modest initiative designed to introduce an element of democratic legitimacy to the Chamber. The Committee should propose the addition of 46 senators, elected by a proportional system at the next general election[6] and representing broad geographic regions. Commanding consensus is a priority for the Committee's inquiry and given that these recommendations would mean the entire active membership of the current House of Lords remains unaltered, the addition of a small cohort of elected members, whose number constitutes half that of the hereditary peers, should not prove controversial.

5 February 2013

Notes

[1] Leys, D. *Women in the House of Lords*, House of Lords Library Note, 14 March 2012 LLN 2012/005

[2] Wakeham Report (2000), *The House of Lords—Completing the Reform* (2000); *Joint Committee on House of Lords Reform First Report* (2002), *Constitutional Reform: Next Steps for the House of Lords* (2003), *The House of Lords: Reform* (2007), *House of Lords Reform Bill* (2011)

[3] Leader's Group on Members Leaving the House (2010), *Consultation on Members Leaving the House*, Interim Report session 2010–11, HL Paper 48

[4] Lord Steel's House of Lords (Cessation of Membership). Bill addresses this issue

[5] Based on membership as at 8 January 2013. http://www.parliament.uk/mps-lords-and-offices/lords/lords-by-type-and-party/ Accessed February 2013.

[6] Election at the next general election is proposed to minimise cost and maximise voter turnout. However, it would be preferable for elections to the second chamber to be out of sync with the electoral cycle of the first; achievable now that the Commons has fixed term parliaments.

Written evidence submitted by the Liberal Democrat Parliamentary Policy Committee

As strong advocates of the Coalition Government's House of Lords Reform Bill, we are of course disappointed that such an inquiry should be necessary when all candidates for the major parties were pledged in their party manifestos to support democratic reform in this Parliament. We believe any interim reforms should sustain and increase focus on that objective, rather than attempt in any way to dilute the ultimate case for all or most of the membership of the Lords to be determined by the electorate rather than by party leaders. In May 2015, whatever the party composition of the Government, this will be unfinished business, challenging all the other issues in the "In Tray" for priority.

Our assessment of the political landscape around House of Lords Reform is that no progress on any front is now likely to be made before another General Election. As Chris Ballinger put it in his recent book *The House of Lords 1911–2011: a century of non-reform,* "seeking a perfect reform through consensus is a fast-track to inertia". In that light, it is our firm hope that that election will return enough pro-reform MPs to move forward, on a sensible timetable, even if not *everyone* agrees.

The Bill for which the Commons voted by a majority of 338 at Second Reading last year is surely the best starting point. Of course, it is likely to be subject to amendment—that is what Parliament is for—but the essential principles contained in the Bill ought to stand as a balanced package which both lends legitimacy to the Lords and maintains the pre-eminence of the House of Commons. This is the balance which had been sought—and, we contend, had been found—through more than a decade of cross-party discussion in the form of a Royal Commission, three Select Committee inquiries, the cross-party *Breaking the Deadlock* report and draft Bill, and the three White Papers published by Labour, particularly that in 2008. This was borne out by the most recent Joint Committee's majority conclusions that, "the reformed second chamber of the legislature should have an electoral mandate" and that, if the Bill had passed, "the remaining pillars on which Commons primacy rests would suffice to ensure its continuation."

The electoral system proposed in the House of Lords Reform Bill would have promoted the nomination and election of a diverse range of candidates, and would by its very nature have ensured proper representation of all parts of the United Kingdom. Our essential contention is that a reformed House of Lords *is* an elected House of Lords, and that no reform short of that will make the second chamber acceptable.

However, despite our preferred starting point, we recognise that in the absence of real democratic reform, some more cosmetic changes may need to be examined simply to make the Lords less absurd. If it continues without any kind of reform, on its present trajectory, it will surely become the world's most ridiculous second chamber in a matter of years. Already, only Kazakhstan and Burkina Faso rival our Parliament in having a second chamber larger than the first.

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

For most people, the clearest outrage which must be addressed in the Lords is the presence of hereditary peers. Liberal Democrats have instinctive sympathy with that argument, and have promoted their removal. It seems to us that the "Cranborne" Agreement of 1999, that 92 hereditary peers must stay until "Stage Two" (democratic) reform was complete, is now redundant. The continued right of these peers to take their seats in the Lords was supposed to maintain momentum for the completion of reform in the near future. Quite clearly, it has failed in that endeavour. However, it is at least understandable that the existing hereditary peers—and some others—continue to argue against the ending of hereditary by-elections on the basis that the promised "Stage Two" reform (elections) has not happened.

To deal with this argument once and for all, we would favour the removal of hereditary peers and their direct replacement with a first tranche of elected Peers, even if there were no guarantee of further tranches. This would be a good opportunity to test whether the introduction of a (small) elected element was really as disruptive as critics have feared. In the absence of such a scheme, provision to end hereditary by-elections (which are absurd) will have to be considered as a separate issue. However, it would not be uncontroversial: 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".

Measures to remove persistent non-attenders

A scheme to end the right to membership of those who do not attend would reduce the headline size of the House of Lords but, by definition, would have no actual effect on the numbers who come to the House each day. We believe any "use it or lose it" provision should contain exceptions to ensure that those who have a legitimate reason to be away from the House for an extended period should not be evicted. After all, those who do not attend are neither paid nor make any demands on the limited accommodation and facilities of the Lords. We also note that such provisions could have a perverse, counterproductive effect of encouraging those who do not presently attend to start coming into the House more often!

A moratorium on new peers

Of all the suggestions made for "incremental" reform by those existing peers who do not favour elections to the Lords, a moratorium on the appointment of new peers is the most ridiculous and repugnant. 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. This is of course a complete nonsense. The present House has a great many "ex-experts", people who once led in their field but have long since left that field. To enhance the diversity and contemporaneousness of the experience in the Lords, tranches of new members will sometimes be necessary. We believe the Committee's focus should be on a regime to remove members whose exit (whether they attend regularly or not) is manifestly overdue, in order to make space for new blood.

Fixed-term appointments for new peers

This suggestion was first mooted only by Andrew Tyrie MP and Sir George Young MP in 2009, only as an interim solution, to rationalise the system of appointments and provide for some useful turnover. It would deal with the folly that those who are in the House now must remain forever, while anyone outside should be banished because they would somehow take up too much room and cost too much money. However, in our view, anything which seeks to legitimise a system of politically appointed legislators is doomed to failure. As Tyrie and Young themselves put it, "*We do not believe that this would provide a durable settlement; election is needed to entrench the legitimacy of the second chamber.*" It 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.

A retirement age for peers

A retirement age has some superficial attractions in that it would reduce at a stroke the number of peers. However, 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. The House of Lords Leader's Group on Members Leaving the House examined this issue in some detail in 2011 and found that at that 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. Yet those removed would not necessarily be the least useful, or those with the least well-received views among the public. They would simply be the eldest. Age discrimination of this sort would be no more democratic or acceptable than the imposition of a minimum age.

The desirability and scope of a mechanism to expel peers who have been convicted of a serious offence

This is clearly a desirable change to make, and should reflect arrangements presently in place for the House of Commons. Sections 26 and 32 of the Government's House of Lords Reform Bill dealt with this issue; if the Bill is re-introduced after 2015, the change can be made then.

The desirability, composition and remit of a Statutory Appointments Commission

A statutory appointments commission is clearly desirable, but only if appointments are to continue. We believe that in the next Parliament the House of Commons will take a view on whether a reformed chamber should be wholly, or only mainly, elected. While the latter remains the option we judge can command most consensus, the former is not to be discounted, particularly in light of the Labour Party's protestations that no one should "contemplate reforming our system on any other basis than full democracy" (Hilary Benn, Shadow Leader of the Commons, 11 May 2011). In this light, the establishment of an expensive new Commission during this Parliament could be considered premature.

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.

In our estimation, by far the most rational way to establish the numerical strengths of different party groups is to ask the public to elect the candidates of their choice to the House of Lords. In the absence of this straightforward solution, it is clear that there is already some *de facto* consensus among the parties about how to approach Lords appointments. It appears that each new Prime Minister will seek to "balance up" the House to include a number of members more proportionate to their most recent share of the vote, after each election. Almost by definition (and save for an instance of a serious failure of our electoral system), a new Prime Minister will be from a Party which got more votes at the most recent election than at the one before. He or she will therefore feel entitled to appoint more Peers from his or her Party. Tony Blair and Gordon Brown together appointed 173 new Labour Peers; David Cameron has already elevated 49 Conservatives. Yet, to avoid accusations of "stuffing the Lords with cronies" Prime Ministers will also appoint a good number of members from their opponents' parties. Tony Blair and Gordon Brown together appointed 68 Conservatives and 56 Liberal Democrats, while David Cameron raised 40 Labour members and 24 Liberal Democrats to the Peerage. This has the effect of increasing still further the number of Peers needed to give a sense of "balance" after an election.

Research by the Constitution Unit showed in 2011 that on the figures in the House at that time, 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 well over 1,062, while its membership would need to increase to 1,142 if the present proportion of Crossbenchers were to be maintained. 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.

Conclusions

"Incremental" reforms to the House of Lords do not enjoy the consensus which is sometimes attributed to them. Anyone who has participated in, or read in Lords *Hansard*, the debates on the "Steel Bill" will be able to see that. In fact, any meaningful reform of the House of Lords requires not the consensus of every MP and Peer, but cross-party *leadership* of the pro-reform majority in the House of Commons. Hereditary peers should certainly be removed, but the principle of heredity should be succeeded by the principle of elections, not by an engorged power of patronage for party leaders. Meanwhile, if party balance is to be achieved in the Lords after each election (and without direct elections to the Lords itself), *there must be a mechanism other than voluntary retirement for the removal of some Members*. Even making new appointments subject to a 15-year term limit would not—in the medium term—stop the exponential rise in the size of the House. This is the nettle we believe the Committee must grasp, if any further changes are to be made in advance of the full democratic reform for which the House of Commons has already voted.

4 March 2013

Written evidence submitted by Dr Nicholas DJ Baldwin

Analysis of the contemporary, post-1999, House of Lords and of its activity highlights a complex set of relationships involving, in most cases, the capacity to influence, rather than determine; the ability to advise, rather than command; the facility to criticise, but not obstruct; the competence to scrutinise rather than initiate; and the desire to ensure that light is shed upon what is going on, rather than to have things covered by a veil of secrecy. In short, what can be seen is the ability of the House of Lords to ensure that the Executive is required to explain and justify its actions (or inactions) and that the House of Commons be "required" to "think again".

Undoubtedly, since the removal of the vast majority of the hereditary peers—all but 92—in 1999, the House of Lords has grown in importance in a variety of ways, not least as a raiser of grievances, as an agent of oversight and, above all, as a forum for scrutiny of the Executive. It can be argued that the House of Lords as it exists today is not only better equipped than previously to scrutinise the Executive but also that it possess both the experience and a unique authority to do so without challenging the ultimate authority of the elected representatives of the people in the House of Commons.

Edmund Burke observed that a constitution must compensate, reconcile, balance, and unite into a consistent whole, the various anomalies and contending principles that are found in the minds and affairs of men.

He saw the British Constitution as standing on an equipoise with steep precipices and deep waters on both sides and cautioned that, in seeking to prevent it from leaning towards one side, there might be a risk of it toppling over on the other.

The way forward therefor is to build on the reform of 1999 in a variety of ways, namely by:

1. Establishing a statutory Appointments Commission (through which all nominations would have to be considered and approved—including those nominated by the Prime Minister in order to be a Minister in the House of Lords);
2. Removing the remaining hereditary members (to be achieved through the mechanism of (a) making each of the individuals concerned life peers and (b) repealing the relevant part of the 1999 legislation);
3. The introduction of either an age of retirement or a requirement to retire after "x" number of years as a member (or indeed a combination of the two).

Turning to each of the specific points raised by the Committee:

— 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: *Covered by item 1 above.*

  [ ] Measures to remove persistent non-attendees:

    [ ] A moratorium on new peers: I do not believe this to be a good idea—although a mechanism to ensure that (perhaps within certain limits) new members could only be

added as replacements for existing members leaving. I would also argue that any new members that are appointed should be appointed not for life but for a limited period—as per item 3 above.

[ ] Fixed-term appointments for new peers: Covered by item 3 above.
[ ] A retirement age for peers: : Covered by item 3 above.

— The effectiveness of the current voluntary retirement scheme for peers introduced following the recommendations of the Leader's Group on Members Leaving the House: *If one is to judge the effectiveness of the scheme by the number of members who have taken up voluntary retirement, it would not appear to have been very effective. In order to encourage more individuals to retire it could be argued that some form of financial incentive (pension) should be provided to those who do retire.*

— The desirability and scope of a mechanism to expel peers who have been convicted of a serious offence: *I believe that any peers who have been convicted of a serious offence should be expelled and that devising a mechanism to achieve this would be very desirable.*

— The desirability, composition and remit of a Statutory Appointments Commission: *Rather than try and reinvent the wheel, I would argue that the current Appointments Commission be put on a statutory basis.*

— 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: *I believe that it would be desirable to establish a cross-party consensus in this regard (taking into account the various party strengths as well as the strength of the crossbenchers). I similarly believe that a consensus could be reached based upon two principles, namely (i) that no individual party should have an overall majority in the House, and (ii) that the balance should be derived from the level of popular support (% of the vote) achieved either at the most recent general election or from an aggregate of the level of popular support achieved at the two most recent general elections.*

6 March 2013

Dr. Baldwin is a member of the Study of Parliament Group as well as an associate of the Centre for Legislative Studies. He has written extensively on politics. His publications include *Mastering British Politics* (2007, 1999 and 1996), *Parliament in the 21st Century* (2004), *Executive Leadership and Legislative Assemblies* (2006), *Legislatures and Executives: An Investigation into the Relationship at the Heart of Government* (2004), *Second Chambers* (2001), *Beyond Settlement: Making Peace Last After Civil Conflict* (2008), *Legislatures of Small States* (2012), and contributions to *The House of Lords: its Parliamentary and Judicial Roles* (1999), *The Law and Parliament* (1998), *The House of Lords at Work* (1993), *Parliament & Pressure Politics* (1990) and *Parliament in the 1980s* (1985) as well as a large number of journal articles, other articles, reviews, etc.

He was special assistant to a group of members of the House of Lords in the early 1980s.

Written evidence submitted by Mark Ryan

1. My name is Mark Ryan and I am a Senior Lecturer in Constitutional and Administrative Law at Coventry University. My submission, however, is made in my own personal capacity and indicates my personal observations in respect of the reform of the House of Lords. It in no way reflects the views of my employer (Coventry University).

2. In the absence of long-term reform of the House of Lords being realised in the foreseeable future, in the interim it is crucial that small incremental steps to reform the chamber are undertaken. This is because the option of standing still and doing nothing is not viable given that it is inevitable that new peers will be appointed during the remainder of this Parliament, thereby further expanding the size of the House. Concern has already been expressed, both within and outside of Parliament, about the increasing number of peers, most recently by the House of Lords itself in a debate and vote on a motion in late February 2013. It is important to remember that any small scale reforms agreed and legislated on at this stage would not prejudice fundamental long-term reform of the House as any incremental measures could be superseded in due course. It must be recognised however that for some there would be a fear that such interim reforms would merely serve to cement an appointed House by addressing anomalies of the present House and thereby dissipate any appetite for more fundamental reform. In order to ensure long-term reform is not side-lined, it is suggested that any small scale reforms (assuming they were set out in statute) should be subject to a sunset clause of five years which would at least force Parliament to revisit and debate the issue of Lords' reform at a future date.

3. There is widespread consensus that there should be no place for a hereditary element in a fully reformed House; however there would be disagreement as to the timing of the departure of the hereditaries. The immediate abolition of hereditary by-elections, therefore, would not be without controversy in some quarters. Although abolition would not remove any existing hereditary peers, but simply not replace them when they died, nevertheless for some, this would still breach the agreement of 1999 that the hereditaries would remain until "Stage 2 reform" (albeit this was not actually defined). It should be noted that if the purpose of retaining

a hereditary element was to act as a spur and catalyst to guarantee further long-term reform, this has clearly failed. Today, 14 years after the passage of the House of Lords Act 1999, fundamental reform is nowhere in sight (at least not during this Parliament). At the very least, not replacing hereditary peers who died would, albeit in a very small way, help reduce the size of the chamber.

4. In theory it would be a sound idea to remove persistent non-attendees; however it could prove problematic in its application. Although any absence resulting from a major illness could be accommodated, any threshold for attendance would necessarily be an arbitrary figure. If for example the threshold was set for a minimum of five attendances during a session, presumably a member could simply turn up on five occasions only and satisfy the requirement. In addition, what exactly would attendance mean: would it mean on the Floor of the House or in a committee and further, would it mean actually contributing to proceedings and/or voting?

5. In order to stop the House increasing in size, it is imperative that there is an immediate moratorium on the appointment of new peers. Alternatively, if this is not realistic, at the very least restraint should be exercised in relation to future appointments as called for in 2011 by the *Leader's Group on Members Leaving the House* and more recently by the House of Lords itself in a motion in late February 2013. It is suggested that the creation of new peers should be related directly to establishing arrangements for the removal of some existing ones.

6. If a moratorium on the creation of new peers is unacceptable, a less drastic, but highly attractive measure would be to have fixed terms for peers (although presumably this would only apply to future members entering the House). The term could be set for a short period of five years in order to demonstrate that the existing chamber was merely a temporary staging post pending long-term reform to be agreed in due course. One obvious disadvantage is the distinct possibility that such a short period might actively discourage appropriately qualified candidates to put themselves forward for nomination.

7. A retirement age could be imposed on peers and this would be consistent with the position in relation to other elements of our Constitution such as judges. It would appear that retirement could have a drastic impact in reducing the size of the chamber (the effect of which would be dependent upon where the age is pitched). There nevertheless remains the problem of forced retirement given that, from a constitutional and indeed ethical perspective, such life peers were appointed on the understanding that it was for their lifetime.

8. Although only a couple of members have taken advantage of the voluntary retirement scheme, it should nonetheless be placed on a statutory footing. In addition, in order to encourage members to retire a financial inducement (albeit modest) should be made available. Although the Coalition Government is opposed to the funding of such a financial incentive, in the grand overall scheme of public finances, such awards would be modest and have the distinct benefit of helping to bring down the size of the chamber.

9. The disqualification arrangements for members who commit criminal offences in the House of Lords should be the same as for MPs in the Commons. As a result, there should be statutory provision that any member who is convicted of a criminal offence with a penalty exceeding one year be expelled from the chamber. After all, the old adage that *lawbreakers* must not be l*awmakers* should apply equally to both chambers.

10. There must be a statutory Appointments Commission with its powers and responsibilities set out clearly in an Act of Parliament. Although from a constitutional perspective the establishment of the Appointments Commission in 2000 was a welcome temporary expedient, given that long-term reform is still some way off, it is now appropriate that the Commission be placed on a statutory footing. As it performs a crucial constitutional responsibility of recommending parliamentary appointments (and would continue to do so), it should be independent of Government and be accountable to Parliament. The Commission should also be overseen by a newly created Joint Committee. The remit of the Commission should include considering the suitability (and not just the propriety) of potential party political appointees put forward by the political parties. In addition, consideration should be given to whether the Commission should require political parties to provide an extended list (ie "a long list") of potential appointees which the Commission could then choose from. The Commission should also determine the overall party balance within the chamber and recommend appointments accordingly. The size of the Commission (ie whether it be 7, 9 or 11 members) is a relatively minor issue, although given that it would be involved in selecting party political appointees it would be appropriate to have a minority of Commissioners associated with the main political parties.

11. In the absence of any exit strategy for members to leave the House, the inherent problem in making interim appointments to the chamber so that it reflected the share of votes cast at the previous general election, is that the composition of the second chamber will inexorably steadily ratchet upwards. In other words, the chamber would be in a constant state of "catch up" and burgeon in size. If, however, the House must reflect the relative strengths of the political parties, then this must be achieved by an independent Appointments Commission with the formula for doing so set out in statute. This formula should nevertheless allow the Commission a degree of flexibility in recommending appointments given the size and composition of the chamber at the relevant time.

6 March 2013

Written evidence submitted by Charlie Thacker

Impose sanctions of expulsion on those lords who constantly aren't punctual for months at a time. Perhaps sanctions of lowered pay and or exclusions for less drastic incidents of lack of punctuality. Similar sanctions to which party whips can impose on their party members. These sanctions will be imposed by a vote in the lords with the individual in question denied a vote in, or by an ELECTED official who remains impartial and unbiased in the matter of choosing sanctions.

March 2013

Written evidence submitted by John F H Smith

I should like to make a submission to the Political and Constitutional Reform Committee's Inquiry, "House of Lords Reform: What Next?".

My credentials for doing so are a longstanding interest in Lords reform—I submitted evidence to the *Wakeham Commission* and the *Joint Committee on the Draft House of Lords Reform Bill*, and had an article on the subject published in the *Church Times* (13 May 2011)—and have recently been working on a way forward with Lord Low of Dalston, Martin Wright, former Director of the Howard League for Penal Reform, and Dr Alex Reid, former Director of the Royal Institute of British Architects. I am a Medallist of the Order of the British Empire, a graduate historian of the University of York, and a Fellow of the Society of Antiquaries. This submission is mine alone.

The title of the Inquiry includes the general phrase, "What Next?" but the remit seems to restrict itself to small-scale changes. However, I wonder if the question, "what next", might include a little more:—as well as clearing the ground, and without going into actual details of more major reform, could not recommendations be made for a longer-term way forward, and a route map and possible timetable for real reform.

Accompanying this submission is my paper, *House of Lords: a proposed model for reform based on a method of selection derived from the function of the House,*[1] which amplifies some of the points made here, and complements the part of your remit asking for suggestions on the relative numbers of the different parties in the House. My paper concentrates on the selection and indirect election of the crossbenchers.

On the points set out in your "Call for Evidence", I should like to make specific comment:

(i) any suggestions for minor reform and the removal of abuses should not have the potential of interfering with proposals for the more major reform of the House;

(ii) I have a general concern over small scale changes applied to any organisation; they have a habit of becoming permanent and result in inhibiting true reform; and

(iii) on the question of the principles that should determine the relative numbers of the different parties in the Lords, Dr Alex Reid has proposed a system that makes a serious contribution to this discussion. He will in all likelihood be making an independent submission to your inquiry, but his proposals are set out in Appendix II of the accompanying paper referred to above.

To amplify my first point, many will agree with a tidying up process, but it is difficult to agree on where this ends and larger reform begins. While mechanisms to reduce the size of the House, such as no longer replacing hereditary peers when they die, or removing persistent absentees might seem admirable, introducing fixed terms or a retirement age for peers is straying into the wider field of reform. (Again, see the attached paper.) A moratorium on new peers seems laudable but also has dangers. It is true that, largely through Prime Ministerial patronage, 117 new peers were created in less than a year after May 2010, and this is an unsatisfactory situation; but it is openness to new expertise and experience that is the lifeblood of any organisation, especially so in the case of the House of Lords. Perhaps any moratorium should be for political appointees only and allow the *House of Lords Appointments Commission* to continue to appoint a small defined maximum number of non-party political peers.

I should like to add that in the light of the recent failure of the *House of Lords Reform Bill* and our present very difficult economic situation, reform of the House of Lords is not considered an urgent topic. But reform is badly needed and it is over a century since the first attempts were made: Parliament Act 1911, Bryce Commission 1918, Parliament Act 1949, Salisbury Convention, Life Peerages Act 1958, Peerage Act 1963, 1968 White paper, House of Lords Act 1999, Wakeham Commission 2000, and the many various parliamentary reports and papers since 2000. Despite its predicament the House still performs a valuable function but reform *is* urgent. It is strongly hoped that this will concentrate on retaining present strengths and reinforcing them, rather than introduce new concepts that may have unforeseen consequences and could undermine the work of the House and upset the delicate constitutional balance.

Clearing the ground with the removal of abuses and introducing small-scale changes as interim measures will, taking into account the reservations I have made, provide a good base for future movement.

13 March 2013

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[1] Background paper not published

Written evidence submitted by Rt Hon David Blunkett MP

I do not wish to repeat the evidence I submitted to the McKay Commission, where I gave both written and oral evidence. Suffice it to say that if you have the opportunity to access material, much of it (including an excellent submission by Vernon Bognador) is relevant to your deliberations.

I also will try to avoid complete repetition of my submission (oral evidence which is written up) to the Joint Committee of the two houses on the future of the House of Lords.

Can I confine myself therefore to three essential points?

The first is what is the purpose of the House of Lords?

The second, the relevance of the makeup of the House of Lords.

And the third, the muddled thinking in terms of the current bizarre Coalition agreement to reflect in the makeup of the House of Lords, the electoral fortunes of the political parties in 2010 (which does not constitute a manifesto commitment from any of the three major parties) and such a commitment being juxtaposed against the legislative proposals which were eventually withdrawn.

Purpose

It seems to me that the purpose of the House of Lords needs to be redefined in the light of other substantial constitutional changes and continuing debate in respect of Scotland's relationship to the United Kingdom, the fluid situation in terms of the constitutional position and powers in Wales, the evolving situation of devolved powers to the Executive and Assembly in Northern Ireland, and the UK's relationship with the European Union.

As I deal with these issues at some substantial length in the McKay Commission, I do not intend to repeat myself here, except to say that the relationship of the Westminster Parliament to English local government and unaccountable but yet responsible bodies in the public arena in England are worthy of attention.

Above all, how the existing and likely future changes impact on the relationship between the Commons and the Lords?

A truly reforming government (or opposition) would be taking the question of reform of the House of Commons in the light of such substantial constitutional changes, alongside the reform of, and the purpose of the House of Lords.

Were such a more comprehensive view taken, it would be possible to deal with the "accusation" that the House of Lords is a "legislature" and "legislatures should be elected". Whilst this might be seen as an extremely narrow view of democracy (which I will deal with under point 3), the way to deal with this is surely to ensure that is it the House of Commons that is clearly the legislature. The Commons and the Lords can both hold the Executive to account, deal with administrative and post-legislative scrutiny, Select Committee, Joint Committee, Inquiry and review functions.

Crucially, the House of Lords could take on pre-legislative scrutiny as a key role. This would not interfere with the role of thoroughly examining legislation coming from the Commons but would clearly streamline and speed up such a process when pre-legislative scrutiny had already taken place.

The Lords would then have the function of putting back to the Commons suggested changes (but unlike the present ping pong, rejection of Lords suggestions would complete the legislative process).

This of course would mean that the Business Managers would have to have a much clearer idea of their priorities and an entirely different approach to the legislative process. Detailed scrutiny would replace Bills starting in the House of Lords, although it would be perfectly feasible to have something that mirrored Private Members Legislation in terms of suggested changes being put to the Commons. After all, other designated "august" bodies have such a function including putting to the Commons Private Bills sponsored by amongst others, local authorities.

Makeup

I think there is widespread agreement that any second chamber should reflect the regions, nations, gender and profile of the United Kingdom. Over time, this is perfectly feasible in relation to the nominations from the main political parties, cross bench nominations and a much more pro active role for devolved elected bodies (Councils, as well as Parliament and Assemblies).

There is currently a distinction between "working Peers" and those nominated in respect of Honours, who are still expected to make a contribution. Greater definition and role for members of the House of Lords would be rational. Nomination of Peers as part of the Honours process could also be differentiated from those nominated to "serve in" the House of Lords. There is no logical reason why a separate category in relation to lifelong service in a whole range of areas of our life, should not be reflected in a Peerage without it necessitating a place in and powers accorded to, such individuals within the second chamber.

Existing membership of the House of Lords could be slimmed down in line with Lord Steel's proposals (extended to incorporate ideas which have become known as "Steel-Plus") and with positive backing rather than indifference or worse from the current Coalition Government, could be implemented speedily. In fact, slimming down could go much further by removing from a formal role all those who have not voted in more than 10% of divisions for three sessions out of the last five. 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.

Instead of (as I spell out in point 3 of this submission) a petulant refusal to accept reform, and therefore to continue expanding numbers in the House of Lords, a rational slimming down could take place in an intelligent fashion, and thereby enable the House of Lords to do its job effectively, to respect membership, offer acceptable accommodation and support services to do the job properly, and remove the absurd pressures which currently exist. In simple terms, to want and therefore to make possible to achieve, an effective second chamber.

Coalition Agreement

Having established that as part of the "reform" of the House of Lords, numbers would be slashed to 300 (later to 450), the Coalition now are set on expanding the numbers towards 850/900.

Having presented the proposition that in a "democracy" election is the only way of reflecting the will of the people, the Coalition put forward a proposition that there would be "open party lists" based on regional/national boundaries, on a proportional representation basis.

They decided that as the House of Lords should be "independent" and therefore not subject to the pressures which member of the House of Commons experience, it would be right to have fifteen year, non renewable terms. In other words, that there would not be direct accountability.

They suggested that "legitimacy" would be established by having the election. However, because effectively the main political parties would have elected from their list their first candidates in order of preference, the electorate would effectively be being asked to endorse what the political parties had already decided.

This brings us back to the proposition of the Coalition expanding the House of Lords in order to better "reflect" the outcome of the 2010 General Election, even though we are now substantially closer (two years to go) to the next General Election.

In other words, the previous proposition for "reform" was all about reflecting the outcome of the election within the parameters of the lists put up by the political parties. The only difference being, that under the "reform" proposition from the Coalition, this would be done in respect of future elections rather than retrospectively in respect of the last General Election!

"Legitimacy" would be achieved by asking the electorate to play along with the top down "political class" determining through their own priorities, the breakdown of political representation in the House of Lords, whilst leaving the electorate to determine the exact numbers by the number of votes cast.

If of course such a process conveyed "legitimacy", it would do so at the expense of the House of Commons. Having established that it would not achieve accountability, we can only presume that the objective was to establish "consent" to the determination of the political elite, and therefore to ask the electorate to ratify what the party leadership (or if devolved, to their membership) had already determined.

That is why a nominated House of Lords with very clear terms of reference and therefore purpose, with a sensible and transparent system of nomination, and with a new and renewed relationship not only with the democratically elected House but with the new Constitutional Settlement, is not only more rational and therefore workable, but also a great deal more honest.

Of course, there are major issues about procedures, about the workings of the House of Lords, about ways in which the dignity and traditions of the Upper House can be maintained whilst bringing the day to day process into the 21st century. After all, respecting breadth of personal experience, of knowledge and perspective achieved through a lifetime of service or enterprise, should surely be valued rather than denigrated. With an ageing population, with a tendency to short termism and lack of "collective memory", an understood and restricted mandate for a House of Lords which allows the reflection of an accumulated lifetime of wisdom, in my view is to be welcomed.

19 March 2013

Written evidence submitted by Professor Iain McLean, Professor of Politics, Oxford University

GENERAL

It is widely believed by both academics and practitioners that the House of Lords is in need of reform. Although some individual academics and Peers have opposed reform, the following points are quite widely shared:

- In its current form the House is unmanageably large and set to become larger. It is believed to be the largest second chamber in the democratic world.
- Although many members make an enormous contribution to its traditional and undeniably important scrutiny role, many do not.
- The opportunity (for whips or *ad* hoc interest groups) to "ambush" business by encouraging peers who never normally attend to come and vote makes its decisions unpredictable.
- Rules and conventions for debate which worked in an earlier and more homogeneous era (eg, the "Salisbury Convention") are under strain.
- That the peerage functions both as an honour and as a means of appointment to the legislature leads to confusion.
- The fact that peerages are for life makes the Lords an elderly house. The average age of Members is 69 (as at 12 October 2011. Source: House of Lords website). This may grant wisdom at the expense of disconnection from many issues of public policy.
- One class of peers (the Lords Spiritual) is currently restricted to men.
- The laws of succession entail that hereditary peers are more likely to be male than female.
- Providing adequate office space for Peers (something they currently lack) would be extremely expensive.

The deal to keep hereditary peers in the Lords until the completion of reform, made in 1999 between the then Conservative leader in the Lords and the then Labour Prime Minister, probably needs to be re-examined unless reform is restarted by a future government. None of the interim measures discussed below can plausibly be regarded as the "completion of reform" which the then Government regarded as the date after which hereditary peers should leave the House.

The right of the Prime Minister to nominate peers, and the desire to retain party balance, work together to ensure that the house will get bigger and bigger. Every time the complexion of government changes at a General Election, the incoming Prime Minister will use the right of nomination to rebalance the House. At any following General Election in which the pendulum swings back, the new Prime Minister will do the same. Therefore the total size of the house has no upper bound.

Most investigations of these matters since 1999 have concluded that the most plausible stable solution to these problems is a scheme of elections by halves or thirds of the members of the house for a fixed, non-renewable term, by proportional representation, to a substantially smaller house. Such a scheme was proposed by the Conservative Party's Mackay Commission in 1999; by the Public Administration Select Committee in 2002; in the cross-party "Breaking the Deadlock" report of 2005; by the Labour Government White Papers of 2007 and 2008; and in the recently abandoned Government Bill.

COMMENTS ON THE COMMITTEE'S SPECIFIC QUESTIONS

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*

This is widely seen as the most minimal possible change. It is unlikely to lead to the removal of hereditary peers until perhaps the 2040s.

— *measures to remove persistent non-attendees*

These are unlikely to achieve anything. A non-attender with a guilty conscience has the right (some might think the duty) to apply for leave of absence (currently 38). 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.

— *a moratorium on new peers*

This has some obvious consequences:

- the average age of peers will continue to rise;
- unless ministerial appointments are exempted, no new Lords ministerial appointments can be made;
- the House cannot be rebalanced to reflect party support in the country;

— if applied to Lords Spiritual, their absolute numbers will gradually reduce; and
— if not applied to Lords Spiritual, their relative numbers will gradually increase.

— *fixed-term appointments for new peers*

This principle applies in virtually all other areas of public and commercial life and therefore would seem sensible.

— *a retirement age for peers*

If implemented, this should incorporate an appeals procedure for a peer reaching the retirement age who wishes to show (to a body that would have to be set up for the purpose) that s/he continued to make an important contribution. Any such extension should be for a fixed period of time but could be renewed.

— *The effectiveness of the current voluntary retirement scheme for peers introduced following the recommendations of the Leader's Group on Members Leaving the House*

There is no evidence that this scheme has been effective.

— *The desirability and scope of a mechanism to expel peers who have been convicted of a serious offence*

The criteria for expulsion should be the same for both Houses, and the decision should be taken out of the hands of the members of the House. They could be aligned with other relevant criteria, eg, for ineligibity to be a charity trustee or company director. Alternatively or in addition, sanctions imposed by a professional body could be taken into account.

— *The desirability, composition and remit of a Statutory Appointments Commission*

If a statutory Appointments Commission were to be appointed then commissioners should be appointed by the standard procedures for public appointments. The Commission should be a non-departmental public body answerable to Parliament (perhaps to a Lord Speaker's Committee analogous to the Speaker's Committee that is responsible for the Electoral Commission). The Commissioners, and those whom they appoint, should be bound by the Nolan Principles. No Commissioner should be nominated by Ministers or by any political party. The remit of the statutory Commission should be essentially the same as that of the present 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*

If the House is to become a fully nominated one, assuming that hereditary peers (and perhaps Lords Spiritual) are to disappear, 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. Such rebalancing would take as its denominator the number of peers currently taking a party whip, ignoring cross-benchers. The standard should be votes, not seats, as the Commons electoral system does not award seats in proportion to votes. 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 the part of the UK where they have run for the Commons.

After each General Election, this balance would have to be re-weighted. Assuming that party peers who die or resign during a parliament are not replaced (so as to leave some room for rebalancing without triggering the boundless growth in House size mentioned above) it will be an empirical question whether the rebalancing would still lead to the House growing after every election. This could be checked with some research on the incidence of death and resignation among party peers in recent years; but a change in rules would change the incentives to resign or seek leave of absence, so the past would not be a reliable guide to the future.

A more modest version of the above plan would apply the latest party balance to the cohort of new party peers introduced after each General Election.

Codifying such principles could be difficult, as self-regulation potentially collides with partisan interest. 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 (eg, parties which pretend to merge or split in order to cross thresholds or prevent their rivals from crossing thresholds). The Electoral Commission could be charged with producing a code for such matters. If the House does not accept the code, there could be a moratorium on new creations until the House and the Electoral Commission have produced a mutually agreeable code.

In summary, most of the changes proposed by the Committee are interim and are unlikely to lead to a viable and credible Second Chamber.

21 March 2013

Written evidence submitted by Lord Howarth of Newport

Mr Clegg and Mr Cameron have accepted—the former with regret; the latter perhaps with relief—that Parliament is not willing to legislate for direct elections to the Second Chamber. Regrettably, however, although it is clear that there is a ready and willing majority in the House of Lords for other substantial and overdue reforms, the Government have said they will not pursue those either. On 6 August 2012, at his press conference answering questions about the abandonment of the House of Lords Reform Bill, the Deputy Prime Minister expressed himself as follows:

> "There are a number of different versions of what I would call House of Lords reform light and I just have to say very plainly that in my book there is no such thing as House reform light without democracy, and in fact if you look at them all in detail they are various wheezes by which you dignify an illegitimate House and I'm not particularly interested in that. I think the central problem of the House of Lords is that it does not have a mandate from the British people and that is not addressed by any of these various palliatives which are proposed as alternatives… I just think it is totally out of date, indefensible and will change. It will change one day; it simply cannot carry on; it just hasn't happened this time."

If a large majority of peers are opposed to introducing elections to the House of Lords it is not out of obscurantism or self-interest but because they have good reason to think that elections to the Second Chamber would damage rather than improve the functioning of Parliament.

Constitutional reform should be based on consensus, should proceed where there is consensus and should not be forced where there is not consensus.

The agenda for reform of the House of Lords that could command sufficient consensus in Parliament to be deliverable is extensive. Over several years peers and MPs of all parties have developed a carefully considered programme of reforms. Some of these have been set out in the Private Member's Bill introduced a number of times by Lord Steel of Aikwood and up until now rejected by both Labour and Coalition Governments as being insufficient. The agenda has been further developed by Baroness Hayman, the former Speaker of the House of Lords, in her evidence to the Richard Committee which undertook pre-legislative scrutiny of the Bill the Government has now abandoned. The essential elements of reform are the following.

The principle of hereditary membership of the legislature should come to an end. 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. Since the Labour Government's reform in 1989 the number of hereditary peers serving in the House of Lords has been restricted to the arbitrary number of 92. When one of them dies, a by-election is held among the remaining 91 to fill the vacancy. This is not, in Bagehot's parlance, dignified. Abolishing the by-elections would lead, gradually and decently, to the expiry of the hereditary system in our politics.

Nor, as many peers acknowledge, should peers continue to serve for life. While the Macmillan Government's introduction of life peerages in 1958 led to the revitalization of the House of Lords, opening it up to all sorts of talent and experience, and most importantly to the participation of women peers, fifty years on it is impossible to justify the continuation of appointments for life. Fine contributions are still made by elderly peers of great distinction. But no one is irreplaceable, new blood is needed, vacancies have to be created without forever increasing the numbers in an over-crowded House, and it should be sufficient privilege for anyone to serve for a limited period, whether the fifteen years that the Government proposed in their Bill for elected peers or until a suitable retirement age.

Peers should be able to retire. The House voted last June to allow members to retire permanently, but legislation is needed to establish that the writ of summons does not override voluntary retirement. There needs also to be provision to remove from membership peers who unreasonably fail to attend and participate, and peers who commit a serious criminal offence.

The system of appointment of new peers ought to be established on a principled basis. As things are now, the size and composition of the House of Lords are the product of hidden and capricious patronage, minimally mitigated by the good efforts of the Appointments Commission. The process of appointment should be made more transparent and the power of Prime Ministerial patronage reduced.

Tony Blair took a step in this direction by creating the present Appointments Commission. It does its work—of vetting the propriety of party nominees and sifting proposals for membership that come from outside politics—on no authority other than that of No 10. 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.

Parliament should determine the size of the House of Lords and the principles determining its composition.

It should determine what proportion of the House should be crossbench peers not affiliated to party, and it should provide guidance as to what balance of gender, regional, ethnic and other diversity and representativeness should be sought by the Appointments Commission in nominating crossbench peers. One

of the advantages of an appointed House is that it is possible to compensate to an extent for the lack of diversity and representativeness produced by first past the post elections to the House of Commons.

As a working chamber of the legislature the House of Lords will inevitably be an arena for the political parties. It is a fantasy to suppose, as some do, that somehow the grubby business of party politics can be kept out of a purged House of Lords and that all the business of the House can be conducted by Platonic guardians on the cross benches. Political issues must be debated, every item of legislation considered—some in depth—and Ministers must be questioned so that the House can do its work of scrutiny and advice. Politicians know how to do this and are willing to shoulder the workload. In the main the former MPs in the House of Lords, mostly being beyond ambition and with waning testosterone, have no desire to replicate the customs and practices of the House of Commons. They have their loyalties, of course, but their main concern is to help their parties and the Government to get the policies right. The House performs better when the Government does not have a political majority and Ministers are required to justify their policies rather than rely on the whip to get their way.

At present 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.

Among all the ideas for reform that were canvassed during the period in which Mr Clegg's Bill was under scrutiny, one that seems to me worthy of serious consideration was a proposal for a simple system of indirect election to the House of Lords. Seats would be allocated to the parties after each General Election in such a way as to produce an overall party balance exactly *pro rata* to their share of the vote at the previous General Election. It would be for the parties to determine how they drew up their lists, but each party would have to publish an ordered list of its proposed peers in advance of the General Election. Assuming that peers should sit for fifteen years, once the system was fully established, two thirds of each party's seats would be carried over after each General Election, with one third retiring and creating vacancies. Provided that no party lost more than a third of its share of the vote between general elections (which has not happened for more than fifty years), exact proportionality would be maintained. Even if a party did lose more than a third of its share of the vote at a General Election, a highly proportional result would still be achieved, with exact proportionality likely five years later. No peer would be required to stand down before the expiry of their fifteen year term.

If there was legislation in this Parliament the transition to such a system could be achieved by 2025. Or it could be phased in over a longer period. The speed of transition between the old House and the new is an issue that should be considered with sensitivity, and with due regard to the need for continuity.

The system could be applied in a House reduced in size, for example, as the Government proposed, of 450 members, 80% or 360 of them party peers, 20% or 90 crossbenchers, plus 12 Bishops.

I do not claim there is a consensus for indirect election among peers who favour reform. The principal drawback of it is that it would be likely to provide a future coalition with a political majority in the House, thereby weakening the capacity of the House to offer its advice to the House of Commons and the Government by way of amendments to Bills. But such a reform may be thought an honourable compromise between those who wish to preserve the virtues of an appointed House and fear that direct elections would inevitably threaten the primacy of the Commons and those who insist that there must be democratic legitimacy in the way the Second Chamber is constituted.

The test of proposed reforms should be whether they would be likely to improve the performance and standing of Parliament. There are two major objections to a directly elected Second Chamber. One is that, claiming at least equal legitimacy (probably deriving from proportional representation), it would regularly assert itself against the House of Commons, at present the undisputed primary House. This, it has to be anticipated, would produce gridlock between the two Houses of Parliament, making it hard if not impossible for the Government to carry its legislative programme. It can be argued that under the "elective dictatorship" of a Government with a majority in the House of Commons it is too easy for the Government to get its way, that we've had too much legislation, that more and better scrutiny is needed, and that the Parliament Acts would enable the Commons ultimately to prevail over the Lords. Nevertheless, an elected Second Chamber no longer feeling obliged, as the unelected House of Lords does, to defer to the democratic authority of the House of Commons, would swing the balance too far the other way. An elected Lords would routinely make mincemeat of Government Bills and would have no inhibition in throwing out secondary legislation that it thought was ill judged.

It is a strength of our existing parliamentary system, in contrast to the federal system in the USA, that our democratically constituted Government is able to secure legislation in what it considers the public interest, after debate and amendment, in good time. Governments in Britain are able to achieve substantial, albeit controversial and contested, legislation in sensitive areas such as health, welfare reform, planning or climate change. Governments in Britain are able to act relatively quickly, decisively and radically, in contrast to the impotence of a US Administration faced with legislative impasse between the White House and two elected Houses of the Congress. Although politics in Britain is relatively consensual, if we were to have an elected

Second Chamber in Britain we would be in an even worse position than the USA, our two Houses routinely facing each other down without the moral and mediating authority of the Presidency to help resolve differences.

At least as important as the debilitation of the Government's ability to carry its legislation would be the impairment of democratic accountability, which is the second objection. As it is, accountability of the Government, through the House of Commons, to the people of the United Kingdom is clearcut. At a General Election the Government, the parties and MPs submit themselves to the judgement of the people. If, however, there were to be two elected Houses of Parliament, both exercising substantial power and able to obstruct each other, how would electors judge where responsibility lay? Democratic accountability would be muddied and democratic engagement probably weakened. So far from completing the construction of a democratic parliamentary system, direct elections to the Second Chamber would undermine it.

Our present bicameral system, of one elected and one appointed House, combines full democratic accountability with the benefit of a Second Chamber whose role is advisory. I agree with the Government's proposition in their White Paper that "In a modern democracy it is important that those who make the laws of the land should be elected by those to whom those laws apply", but that condition is already satisfied. Members of the House of Commons determine the laws created by Parliament. Members of the House of Lords offer advice to MPs by way of debate and amendments—sometimes indeed quite persistently, as for example on civil liberties—but in the end the will of the democratically elected House of Commons prevails. There is nothing undemocratic in having an appointed Second Chamber whose role is no more than advisory.

The good sense of MPs, their intimate knowledge of their constituencies and their appreciation of their constituents' wishes can be supplemented in an appointed House by further experience and expertise that may not be found among elected politicians. With reformed procedures for appointment, members of an appointed House could be drawn from leading practitioners in all walks of life. They may be better placed to think about our obligations to the future—to future generations and to the planet—than MPs constrained by near-term accountability. Elections are not the only source of legitimacy.

What a waste it would be if the next Government were to spend two to three years battling to achieve an elected Second Chamber and being forced, like the present Coalition, to back off. There are better ways for Government and Parliament to expend political time and energy than in tilting at this particular windmill.

As the Deputy Prime Minister himself said, in his statement to the House of Commons introducing the Government's draft Bill and White Paper on 17 May 2011, "the key thing is not to make the best the enemy of the good" and "we are determined, in the end, to act." Clearly we ought to repair and modernize our Second Chamber. It is absurdly negative for the Government, having failed to secure a reform which Parliament has judged misguided, then to set their face against all reform.

At present even a set of procedural reforms, agreed by backbenchers across the parties as being needed to improve the way the House goes about its business, and a matter for decision by the House of Lords itself, has been stalled by the Government. Peers want to do their work better.

There is no excuse for delaying reforms that are widely agreed to be necessary. No doubt Lord Steel's Bill will be reintroduced in the new session, but major constitutional reform can only satisfactorily be legislated by way of a Government Bill.

Most of the reforms proposed in this submission have appeared in the Reports of previous Commissions, in White Papers, in evidence to other committees, in Private Members' Bills and, of course, in Mr Clegg's own Bill. Any legislation on Lords reform will be closely and sometimes fiercely debated, but the Deputy Prime Minister has the opportunity to work with a cross-party coalition of people who believe strongly that far-reaching reforms of the Second Chamber are needed.

The Conservative Party has always approached constitutional reform on a pragmatic, just-in-time basis, and for Labour direct elections to the Lords have not historically been sacred writ. It would be ironic and a great shame if the Liberal Democrats were to be the block against reform. How would that be consistent with Mr Clegg's commendation to his party of the virtues of plural politics and compromise?

No constitutional settlement is ever in fact a settlement. Our unwritten constitution responds, adapts and develops. The structure and functioning of the Parliament of the United Kingdom is being challenged by public disaffection from politics, by the movement for Scottish independence and by political convergence within the European Union. We will be better able to address these challenges from the strong base of a Parliament successfully reformed to dispose of inherited problems including anachronistic features of the House of Lords.

24 March 2013

Written evidence submitted by the Electoral Reform Society

The Electoral Reform Society was founded in 1884 and has over 100 years of experience and knowledge of democratic processes and institutions. As an independent campaigning organisation working for a better democracy in the UK we believe voters should be at the heart of British politics. The Society works to improve the health of our democracy and to empower and inform voters.

The Electoral Reform Society welcomes the Political and Constitutional Reform Committee inquiry into the next steps for Lords Reform but is concerned that by focusing on smaller scale changes to membership such reforms fail to address the main issue of democratic deficit. The first and most pressing issue for Lords reform is giving the Upper House democratic legitimacy.

ERS believes in building a better democracy that gives a voice to citizens and in which politicians are held to account. A parliament in which the second chamber is populated exclusively with hereditary and religious elites and members appointed through political patronage, has no place in our democratic present or in its future.

However, the Society does agree that size is an important factor in the functioning of the Upper House and welcomes moves to look at this issue.

The current Upper House is grossly oversized and growing unstably as each incoming Prime Minister moves to restore party balance by increasing the number of peers. The Society believes that a smaller chamber is necessary to perform as an effective and efficient revising chamber.

Mechanisms for reducing the size of the House of Lords, including no longer replacing hereditary peers in the House of Lords when they die and measures to remove persistent non-attendees, may limit expansion slightly (as would a retirement age) but the bulk of new peerages arise out of the need to readjust party balance with incoming new governments. A moratorium would need to be in place for several elections to affect this but would be difficult to sustain with incoming governments naturally desiring a stronger voice in the Upper Chamber.

Fixed-term appointments for the Upper House have both benefits and disadvantages. Many of the benefits of term-limits only apply to elected representatives (such as militating against corruption and ensuring a more diverse group of people are elected to high office). However, the problems of high turnover and loss of experience would apply for appointed as well as elected representatives and, if term limits were only applied to new peers, could create a two tier chamber. Election would provide a better resolution to the problem of peerages for life.

Apart from size, there are issues with the representativeness of the Upper House that are not addressed by the reforms discussed in this inquiry. The House of Lords, despite some modest progress in recent years, fails to represent the British public in a number of ways. The median age of the House of Lords was 68 years in February 2011 (18% of peers are under 60 and 16% of peers are aged over 80). Women's presence in the Lords has only recently reached 22% and 14% of seats are effectively reserved for men (Bishops and hereditary peers). London and the South East are disproportionately represented in the House of Lords with over 40% of peers stating a London or South East address as their main residence.

The Society strongly believes that a reformed second chamber should fairly represent the diversity and regions within the UK. The reforms considered by this inquiry may address some of the age imbalances but will not help create a House that fully reflects the UK.

Establishing and codifying principles to determine the relative numerical strengths of the different party groups in the House of Lords would be a welcome addition but would not help deal with increases in size unless coupled with a process for resigning peers. More importantly, the independence of the Upper Chamber and the balance between party and crossbench MPs should be considered as part of any 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.

Of the 117 new members of the House of Lords appointed since May 2010, half are either former MPs or former local Councillors. A further one in five are former special advisors, party employees or executives (former party Treasurers, Committee Chairs, Directors). Since 1997, 29% of those granted peerages were formerly MPs or MEPs. Those who have gained their position through party appointment are generally more active, regular attendees. For peers who have been appointed by parties to boost the respective parties' strengths in the Lords, there is an expectation of regular attendance. 70% of the whole House currently takes a political whip. Principles determining party strength should therefore also take into consideration the balance between party and independent peers.

Whilst the reforms addressed by this inquiry may help reduce the size of the chamber and prevent a large increase in the future, they do not come close to addressing all the democratic problems with the House of Lords and crucially do not touch the central and pressing problem of democratic legitimacy.

26 March 2013

Written evidence submitted by the Green Party of England and Wales

SUMMARY

— The Green Party believes that the House of Lords should be a wholly elected second chamber, elected by a fully proportional system.

— An upper chamber that does not have a democratic mandate is questionable under international law.

— The Coalition Agreement on democratic reform is not being delivered.

— Some small changes to the House of Lords would be welcome as a short term measure.

1. Overarching Statement of GP Principle and Policy

The Green Party believes that the House of Lords should be a wholly elected Second Chamber. We wish to see a fully proportional system. This would best be achieved by a single constituency for the country and elections using an open list system with the Sainte-Lague system used to allocate seats as is used in many countries around the globe. Open lists ensure that the electorate can override the list order selected by the party. This places more power in the hands of the electorate. The Sainte-Lague system gives a more proportional result than the d'Hondt system used for the European parliament elections in the UK.

The Parliament Act, brought in exactly a century ago, was brought in with a promise that the Lords would be fully democratised. A century later, we are still waiting—the clause of the Coalition Agreement quoted below should be fully enacted, and the upper House at last elected by the people.

There is a deep sense of malaise in our country's democratic institutions, and a very serious question as to whether Britain is a country in which the people rule (the literal meaning of "democracy") at all. Real Lords reform is one way in which some progress at least could and should be made in this direction.

2. International Legal Position

The continued use of an upper chamber that does not have a democratic mandate is questionable under international law.

We note, for example, that the International Covenant on Civil and Political Rights (ICCPR) provides for rights of political participation and elected representation. The Human Rights Committee (HRC) has interpreted this as requiring elected legislatures. The failure to ensure its legislative bodies are elected breaches the ICCPR.

Also the European Convention Human Rights—Article 3, Protocol 1—requires states to hold "free elections ... under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".

3. The Coalition Agreement

We are concerned that the democratic reforms promised in the Coalition Agreement are failing to be enacted. One important element of the Coalition's proposals to seek to inject some life into the democratic system of this country was detailed as follows, in the Coalition Agreement:

> "We agree to establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation…this bill will advocate single long terms of office… In the interim, Lords appointments will be made with the objective of creating a second chamber reflective of the share of the vote secured by the political parties in the last general election."

While the first part of the first sentence has been acted upon, the rest has not. Failing to fully reform the upper chamber is an affront to democracy and a breach of promise. We welcome the current initiative to seek consensus at least for the interim arrangements, and stand ready to contribute to discussions further if so invited. This is our interim position only. In the longer term, we want to see a reformed second chamber whose make up is decided democratically and we accept that this means that party representation in a reformed "Lords" will not necessarily be related to the strength of the parties in the Commons.

As we understand the final sentence from the Coalition Agreement quoted above, the government is committed to ensuring that all those parties that have representation in the Commons should, if they so wish be adequately represented in the Lords also, as an interim arrangement pending eventual democratic elections. This commitment has not been realised because, despite our repeated requests for representation in the Lords, the Green Party which is represented in the Commons remains without a voice in that other House.

4. Comment on the Suggested Areas

— 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:

    All remaining hereditary peers should be removed as quickly as possible. Not replacing hereditary peers as they die would only achieve this very slowly, probably taking several decades. Better than no change but only just.

— measures to remove persistent non-attendees:

Yes, we would support such measures. Peers who failed to attend a minimum number of days during a session or who exceed some number of days without attending should be expelled. There could be exceptions relating to certain health conditions.

— a moratorium on new peers:

While we support this in principle, because we believe that all peers should be elected, it depends upon how long this arrangement might be expected to last. If this was only expected to last for a few months until an elected system is put in place then we would support it. However if this arrangement is expected to last for many years then we would not support it as the current political make up of the Lords is not representative of the will of the people.

— fixed-term appointments for new peers:

This may be appropriate as a transitional measure to an elected system. However it is not a long term solution.

— a retirement age for peers:

It could be appropriate to allow retirement in a dignified fashion, in order to both reduce the size of the house and encourage a turnover of its members. However the Green party would not support the introduction of a specific mandatory retirement age.

— The effectiveness of the current voluntary retirement scheme for peers introduced following the recommendations of the Leader's Group on Members Leaving the House.

This does not seem to have had any noticeable impact.

— The desirability and scope of a mechanism to expel peers who have been convicted of a serious offence:

This is highly desirable and long overdue.

— The desirability, composition and remit of a Statutory Appointments Commission:

With 100% elected there is no need for an appointments commission. However this is currently not on the table. Consequently a Statutory Appointments Commission would be a better way to appoint new peers rather simply leaving it to party leaders.

— 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:

The relative numerical strengths of the different party groups in the House of Lords should be determined by the electorate. 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. However it must also be noted that votes in a general election using First Past The Post system do not necessarily accurately represent the views of the electorate as a whole because people do not always vote for their preferred candidate or party. There is a lot of tactical voting which distorts the overall result.

The Green Party does not wish to see Bishops have seats in the Lords as of right. Britain is a multi-cultural society and should Bishops or any member of other leading religions wish to represent the electorate, they should seek election via the ballot box.

26 March 2013

Written evidence submitted by Dr Michael Gordon, Lecturer in Law, Liverpool Law School, University of Liverpool

Overview

1. After the collapse of the coalition government's House of Lords Reform Bill in August 2012, the Political and Constitutional Reform Committee's decision to commence this new inquiry is very welcome. Viewed in the light of this recent failure to reconfigure dramatically the upper chamber of Parliament, the committee's cautious approach to the next steps in Lords reform is understandable. Yet it is far from clear that seeking to establish a consensus around "smaller-scale changes to the membership and structure of the House of Lords" is the right way to proceed.

2. Instead, it will be argued below that comprehensive reform of the Lords remains a credible prospect in the next Parliament, and that it should continue to be pursued. Further, it may be that we can best make progress towards addressing the significant concerns identified in the committee's call for evidence through a renewed focus on the *process* by which a broader package of Lords reform could be successfully developed.

Context

3. The 2012 Reform Bill was defeated and subsequently withdrawn in complex circumstances. Two critical factors may nevertheless be identified as having contributed to its downfall. First, the collapse of the 2012

Reform Bill was a result of a failure of political will. A lack of political support for the proposals was evident both within the coalition, and between the coalition and opposition. Secondly, the character of the proposed reform to the House of Lords—or indeed, the matter of whether reform of any kind ought to be implemented at all—crucially contributed to the defeat of the Bill.

4. It is important to note, however, with respect to the interaction between these two factors, that the failure of political will was not entirely the result of dissatisfaction with the character of the proposed reform. While the Conservative rebels who voted against the Bill at second reading can be broadly understood to have done so because of their disapproval of the proposals, the Labour opposition voted in support of the principle of Lords reform, despite doubts about the quality of the proposals. It was Labour's refusal to support a programme motion limiting the time available for debate of the Bill, in conjunction with the prospect of a further Conservative rebellion against the very notion of Lords reform, which led to the withdrawal of these proposed changes.

5. While there is consequently no prospect of reform of the House of Lords being resuscitated in the present Parliament, this does not mean that the issue will inevitably slip off the political agenda following the general election scheduled for 2015. Indeed, Lords reform has already proved to be an issue of remarkable resilience, remaining a matter of debate for over a century. All three major UK political parties now accept that the Lords is in need of reform, having committed to bring about change in their 2010 manifestos (distinguishing this issue markedly, for example, from the also failed attempts to reform the voting system for elections to the House of Commons). That the 2012 Reform Bill failed to achieve this does not mean that these manifesto commitments should be treated as empty, or that they will not be renewed as we approach 2015. Moreover, we should not rule out the possibility of Lords reform being re-employed as a bargaining chip between potential coalition partners—perhaps in particular the Labour party and the Liberal Democrats—depending on the outcome of the next general election.

6. Against this backdrop, there is nothing to compel those who support fundamental reform of the composition and/or role of the House of Lords to resort to seeking to generate consensus around a more modest set of changes to the upper chamber. Although reform of the Lords is not imminent, there is a credible prospect that it may once again become a live political issue in the next Parliament. In such circumstances, it is unlikely that much will be gained by adopting the starting point of attempting to establish consensus around a series of small-scale changes. Indeed, it is arguable that a consensus already exists in favour of *substantial* change—the key difficulty in relation to Lords reform is precisely what kind of substantial change ought to be effected.

Specific Suggestions of the Committee

7. Notwithstanding this broader problem with pursuing small-scale reform of the House of Lords, the concerns identified in the committee's call for written evidence are significant, and deserve attention. In particular, the size of the House of Lords has become impossible to defend, and the proposed mechanisms for resolving this problem could, considered in isolation, be supported in principle. The most attractive of the options proposed would be the non-replacement of hereditary peers upon their death, although the more radical option of removing all hereditary peers outright would be a more effective means of reducing the size of the upper house, and is unquestionably justified on democratic grounds.

8. Measures to remove persistent non-attendees would also be welcome, both to assist in reducing the size of the Lords, and in principle. Similarly, a retirement age for peers could be a useful and effective way to reduce the size of the upper house, given that at 30 April 2012, 50% of peers were aged 70 or over, with 18% of members of the Lords over 80 years of age. A retirement age for peers would also be of value in so far as it might contribute to a reduction in the median age of members of the Lords, which was 69 at 30 April 2012, potentially enhancing the extent to which the upper house would appear to be representative of UK population as a whole (statistics from "House of Lords Statistics", *House of Commons Library*, Note SN/SG/3900, 4 July 2012).

9. A number of the suggestions highlighted in the committee's call for evidence would, however, be more problematic. A moratorium on new peers would be a less appealing means of controlling the size of the Lords than the measures considered above. This proposal would also be very unlikely to command widespread support, as it would limit the ability of future governments to restructure the composition of the Lords to reflect the relative strength of the parties in the House of Commons. This inclination on the part of successive governments indicates that, so far as there is scope to establish a consensus about the principles which should be used to determine the relative strength of the different party groups in the House of Lords, it would be likely to be an undesirable consensus. To codify or politically entrench the principle that each government is entitled to remake the House of Lords in the image of the Commons on a permanent basis would lead to further inflation in the size of the upper chamber, and make a reduction in its membership more difficult to achieve. Further, it is very difficult to envisage an alternative principled solution to this problem which might attract consensus.

10. The committee is also right to identify the way in which (or indeed the very fact that) life peers are selected by the government as being a major cause for concern. Yet the proposal that a Statutory Appointments Commission be created seems to take us beyond small-scale changes to the House of Lords, and back to more fundamental questions about the next steps in Lords reform. To assess the desirability of a Statutory

Appointments Commission—whether with responsibility only for non-political appointments, or with a remit which also encompassed political appointments—requires consideration of the advantages and disadvantages of selecting peers by appointment in and of itself. And for those who would maintain that the members of a legislature should be democratically elected and accountable, a Statutory Appointments Commission, while preferable to the present arrangements, would be an unsatisfactory response to this legitimate concern.

11. It is therefore difficult to evaluate the desirability and practicality of small-scale changes to the composition and structure of the upper chamber without being drawn back into the larger debates about Lords reform. Given the political capital and legislative time which would be required to make even modest changes to the upper chamber, a more attractive way forward would be to try to address justifiable concerns about the size of, and means of appointment to, the House of Lords as part of comprehensive reform package. And this is especially the case because, as argued above, the prospect of complete reform of the House of Lords returning to the political agenda in the next Parliament should not at this stage be discounted.

Constitutional Reform Process

12. That the consideration of small-scale changes to the House of Lords is unlikely to provide a fruitful way forward does not mean that Lords reform should be neglected until political impetus is revived. The critical question remains: what kind of substantial change ought to be effected? At this stage in the long history of Lords reform, we have a wealth of solutions available, but disagreement as to which ought to be preferred. In such circumstances, as Professor Rodney Brazier has long argued (see eg *Constitutional Reform*, 3rd ed. (OUP: 2008)), we might benefit from a focus on the methodology of constitutional reform, rather than the substance of the reform itself. In particular, I have argued elsewhere that a citizens' assembly might be convened to consider the question of Lords reform, with the aim of developing proposals with enhanced authority and legitimacy, and potentially serving to bypass deadlock or intransigence among political elites (M. Gordon, "Time for a Citizens' Assembly on Lords Reform?" UK Const. L. Blog (17 October 2012), available at http://ukconstitutionallaw.org/2012/10/17/mike-gordon-time-for-a-citizens-assembly-on-lords-reform/; see also written evidence submitted with B. Thompson, PCRC, *Do we need a constitutional convention for the UK?* (2012), 29).

13. A citizens' assembly on Lords reform could potentially offer a very useful democratic solution to a problem politicians have been unable to resolve, as well as being a normatively appealing way of increasing popular engagement with constitutional issues in its own right. Yet this is clearly only one way forward, and could well fail to attract the support of political parties, at whose initiative such an experiment would need to be instigated. The underlying point is that to make progress on Lords reform—and perhaps political reform more generally—it is important to reflect on how we can enhance the process by which proposals for constitutional change are developed and approved. And, crucially, we must explore new ways to engage citizens in the process of constitutional change if the democratic potential of the UK constitution is to be fully realised.

14. With respect to reform of the upper chamber of Parliament, if the key objection to the continued existence of the House of Lords is its undemocratic nature, it would be apt for its future to be settled by a group of UK citizens, subject to the approval of the entire electorate at a referendum. The committee might thus consider whether the suggestion of a citizens' assembly is one that it could support as part of a more radical plan for the next steps in House of Lords reform.

25 March 2013

Written evidence submitted by Lord Cobbold

I accept the desirability, practicality and effectiveness of mechanisms for reducing the size of the House of Lords except for the need for a retirement age for peers. People age at very different rates and the present House contains many members of an advanced age who make an exceptionally valuable contribution to the work of the House. I believe that it is preferable to have a fixed-term appointment for new peers, which I think should be 20 years. Of course it should be possible with the agreement of, say, the Lord Speaker to extend the period of service of a peer, who is making an especially valuable contribution.

To successfully introduce a fixed-term period of service into the present House would, I believe, require a transition period of say, five years. One mechanism as to how this might be achieved is set out In the attached copy of the amendment (No 147) that I submitted to the Committee stage of the House of Lords Bill on the 15 January 2008, but which was not debated.

22 March 2013

Amendment No.

After Clause 10 •
LORD COBBOLD

Insert the following new Clause—

"Period of service

147 (1) Subject to subsections (3) and (4), members of the House of Lords appointed under Part 1 of this Act shall retire at the end of the session in which they reach a period of service of 20 years.

(2) Subject to subsections (3) and (4), all other members of the House of Lords shall retire in accordance with the following—

(a) at the end of the session in which this Act is passed all members with 25 or more years' service on the day of prorogation shall retire;

(b) at the end of the session following that in which this Act is passed all members with 24 or more years' service on the day of prorogation shall retire;

(c)• at the end of the second session following that in which this Act is passed all members with 23 or more years service on the day of prorogation shall retire;

(d) at the end of the third session following that in which this Act is passed all members with 22 or more years' service on the day of prorogation shall retire;

(e) at the end of the fourth session following that in which this Act Is passed all members with 21 or more years' service on the day of prorogation shall retire;

(f) at the end of the fifth session following that in which this Act is passed all members with 20 or more years' service on the day of prorogation shall retire.

(3) Subsection (4) applies where a member of the House of Lords ("M") is, In the view of the Lord Speaker, playing an exceptional role in the House.

(4) Any member, other than M, may make an application to the Lord Speaker who may, upon application, extend M's membership of the House for a period not exceeding five years."

Written evidence submitted by Dr Alan Renwick, Reader in Comparative Politics, University of Reading

This submission has three sections: the first sets out the most pressing problems in the current structure of the House of Lords; the second offers suggestions on problems that appear easy to solve; the third offers suggestions on problems where the proposals may be more contentious. The key proposals are that members of the House of Lords should be appointed for fixed terms of three parliaments and that each round of appointments should reflect the spread of votes across the parties at the last general election.

The proposals set out here are based in my research into House of Lords reform. My analysis of the Draft House of Lords Reform Bill, *House of Lords Reform: A Briefing Paper* was published by the Political Studies Association in 2011. I subsequently appeared twice before the Joint Committee that analysed that draft Bill and submitted two sets of written evidence.

Problems with the Status Quo

The first step in evaluating possible reforms to the House of Lords is to identify the weaknesses in the status quo that ought to be addressed. Given that no elected component will be introduced in the foreseeable future and that the bishops will not be removed, the following problems with the status quo are the most pressing:

1. *The present chamber is too large.* There is general consensus on this point among peers and academics. Meg Russell has described the difficulties that are caused in considerable depth. This is essentially a practical problem rather than one of principle, though the cost of running such a large chamber is a matter of legitimate concern unless it generates commensurable benefits.
2. *The composition of the chamber can be substantially altered at the whim of the serving prime minister.* The lack of any principles for determining the relative strengths of the different parties leaves the prime minister great scope to change those strengths to his or her own advantage. While prime ministers are currently somewhat constrained by the perception that the House is full, this constraint would be weakened if the first point, above, were successfully addressed. This problem is one of principle: it is wrong for the prime minister to have such great power over the composition of one of the chambers of Parliament.
3. *The survival of a hereditary element cannot be defended.* The House of Lords has moved since 1958 from a chamber based largely on birth to a chamber based largely on merit. The

meritocratic principle is sound as a basis for choosing people who make decisions that affect citizens' everyday lives. The principle of heredity is not.

4. *There is no mechanism for holding members of the House of Lords to account.* As I argued in my submission to the Joint Committee on the Draft House of Lords Reform Bill, the absence of electoral accountability for members of the House of Lords can be defended, given that the Lords is a revising rather than a governing chamber: the preservation of independent-mindedness is important. Still, non-accountability can be taken too far, particularly where members fail to contribute in any significant way to the work of the House. This problem will become more acute if principles of composition are developed in response to point (2) above: an absentee member will then be denying his or her party its fair share of representation.
5. *The Appointments Commission, while doing good work, lacks a statutory basis.* At least in theory, this creates the danger that it might be interfered with by an unchecked prime minister.

Solving the Easier Problems

The third, fourth, and fifth of these problems can be addressed quite straightforwardly through reforms that ought not to be controversial:

— *Recommendation 1. Elections to replace hereditary peers should be discontinued.* 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. Hereditary peers of individual distinction may, of course, still be appointed as life peers.

— *Recommendation 2. A mechanism for removing absentee peers should be introduced.* Care should be taken in defining "absentee peers" to reflect the variety of ways in which members may serve the chamber. A check might be conducted at the end of each parliament and those peers who have been persistently absent should (unless there have been transitory mitigating circumstances) be removed.

— *Recommendation 3. The Appointments Commission should be placed on a statutory footing.* As discussed further below, I do not see any reason to change the role of the Appointments Commission.

Solving the Harder Problems

Solutions to the first and second problems may be a little more contentious but ought nevertheless to be attainable. Beyond the points already discussed, the Committee has set out the following options in its call for submissions:

— *Option 1:* a moratorium on the appointment of new peers;

— *Option 2:* the introduction of a retirement age for new peers;

— *Option 3:* the introduction of a fixed term for new peers;

— *Option 4:* the introduction of principles for determining the relative numerical strengths of the different parties.

I suggest that Options 1 and 2 would not be effective:

— *Recommendation 4. A moratorium on appointments should not be introduced.* In order to bring numbers down to sensible levels, the moratorium would need to be applied for an extended number of years. According to the Parliament website, 21 peers died during 2012. There are currently 763 peers (excluding those disqualified or on leave of absence). To bring the membership down to 500 (which many would say is still too many) by moratorium alone would thus take in the order of twelve or thirteen years. The chamber would be starved of fresh blood for far too long. Furthermore, the problem of ever-rising numbers would only return once the moratorium was lifted.

— *Recommendation 5. A retirement age should not be introduced.* While this could (depending on the age chosen) have a substantial effect on numbers, it would not permit any precise control over party balance. Party leaders would be given an incentive to appoint young members who could exert influence for many years. 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.

By contrast, the combination of Options 3 and 4 would be effective:

— *Recommendation 6. A fixed term should be introduced.* A fixed term would allow the size of the chamber to be set and principles of partisan balance to be implemented. Multiple reports—including the Wakeham report in 2000, the *Breaking the Deadlock* proposals produced by Kenneth Clarke, Robin Cook Paul Tyler, Tony Wright, and Sir George Young in 2005, the 2007 White Paper, the 2008 White Paper, and the 2011 White Paper and Draft Bill—have proposed a term of three parliaments (extended in the case of a very short parliament). It would be sensible to build upon this established consensus.

— *Recommendation 7. Appointments should be made at the beginning of each parliament in proportion to the votes won by the parties at the most recent general election.* Another principle underlying all recent reform proposals and apparently accepted on all sides is that no party should have a majority in the House of Lords. The best way of ensuring that—as, again, has been accepted in all the mainstream parties—is by applying the principle of proportionality. Even if a party won a majority of the vote at one general election (something that has not happened since before the Second World War), proportional allocation over three elections would almost certainly deny it a majority in the second chamber. The viable alternatives to this allocation mechanism can all be discarded:

  — allocation according to seats (rather than votes) won at the last general election would often give one party a majority (at least among partisan members): the Conservatives, for example, would have had a majority among partisan members throughout the period from 1974 to 2001; Labour would have had a majority since 2001;

  — allocation according to votes cast at the last European Parliament election might be favoured by advocates of proportional electoral systems; but many more votes cast in European Parliament elections than in Westminster elections are protest votes; linkage to the European Parliament could be expected to weaken the second chamber's legitimacy; and

  — allocation according to votes cast in local council elections would create many complexities given the patchwork of different forms of local government across the country and the fact that even major parties do not contest all council seats.

Some details of this proposal do need to be considered carefully:

  — Crossbenchers appointed by the Appointments Commission would presumably still make up around 20% of the chamber, so proportional allocation among parties would be applied to the remaining 80%.

  — Attention would need to be given to whether thresholds ought to be applied for inclusion in the proportional allocation. One option would be to introduce a threshold (of, perhaps 3 or 4%) across the whole country. This would exclude minor parties, but would also exclude parties that are important only in Scotland, Wales, or Northern Ireland, which is unacceptable. A second option would be to apply regional thresholds, though this might lead to a perception of regional representation that some would find objectionable. A third option would be to include in the allocation only parties that have won at least one seat in the House of Commons. This would be closest to British tradition, though it would introduce an element of randomness to the application of the proportionality principle.

Introducing a system such as the one proposed here would create something akin to a closed-list electoral system (but without the election). Questions might therefore be asked about whether procedures for determining who is appointed ought to be opened up. I suggest, however, that allowing a gradual evolution of practice would be preferable to any immediate change:

— *Recommendation 8. The role of the Appointments Commission in vetting the appointment of partisan peers should not be changed.* One option would be to give a stronger role to an independent commission, such as the Appointments Commission, in deciding who should fill partisan as well as crossbench positions. This would, however, violate the independence of the parties.

— *Recommendation 9. Parties' selection of their own representatives should not be subject to additional regulation.* It may be that, over time, calls would emerge within parties for transparent procedures for nominating members of the House of Lords. But change should best occur by evolution, so any such change should be allowed to happen from the bottom up, not forced from the top down.

26 March 2013

Written evidence submitted by Damien Welfare and Daniel Zeichner, the Campaign for a Democratic Upper House

1. The Campaign for a Democratic Upper House (CDUH) is a grouping of Parliamentarians and members of the Labour Party who support a second chamber which is wholly or largely elected. The group was formed in 2000, and has campaigned since for that objective within the Labour Party. We have also taken part in wider discussion of the issue. We made submissions in response to consultation under the last Government, and we gave written and oral evidence to the Joint Committee of the Draft House of Lords Reform Bill that reported last year. Our proposals for maintaining the primacy of the House of Commons were reflected in the recommendation by the Committee that there should be what it called a "Concordat" between the two Houses,

in the form of parallel, identical resolutions as a Parliamentary mechanism to cement those aspects of the relationship that are dependent on convention.[2]

2. We are grateful for the opportunity to submit evidence to the Select Committee on its inquiry into what smaller-scale changes to the membership and structure of the House of Lords would be likely to command a consensus.

3. Our starting point is that the present House of Commons has voted by a majority of 342 for a largely elected second chamber, in approving the Second Reading of the House of Lords Reform Bill on 10 July 2012. It did so after a detailed report by the Joint Committee in the light of the appropriate composition, role and powers of the second chamber. The previous House of Commons also voted in March 2007 for a House that was either wholly elected, or 80% elected, by majorities of 123 and 38 respectively. We conclude that any measure that raises issues relating to reform, or that would affect a future democratic reform, should be examined in that context.

4. Against this background, the measures proposed in the inquiry do not amount to mere "housekeeping" in their effects, since they raise these wider issues to a greater or lesser extent. Apart from the proposal to exclude those convicted of serious offences, the measures would each, in different ways, amount to significant—or in some cases decisive—steps towards the creation on a permanent basis of an appointed House; without the opportunity for Parliament or the electorate properly to debate the issues involved.

5. Paragraphs 6–13 below comment on issues raised by the overall size of the present House, and the last question raised by the Select Committee; as to the scope for establishing a consensus on the principles that should determine the relative numerical party groups (and for codifying them). Paragraphs 14–29 comment on the remaining questions raised by the Select Committee.

The Overall Size of the Present House

6. The overall size of the House of Lords (761 peers eligible to vote at 28 February 2013) has not grown markedly since 2007 (738 eligible to vote), despite the number of creations since the last General Election; and it is still smaller than its size before the removal of the hereditary peers in 1999 (1067 eligible to vote).[3] The increase in recent years has been in attendance, rather than in absolute numbers. (Average daily attendance rose in 2010–12 to 475, from 388 in 2009–10).[4] The result has been that the chamber is crowded at Question Time; but this is not necessarily the case at other less favoured times of the day. There is increased pressure for places on Select Committees, which the leadership of the House appears to recognise.[5] The fundamental problem, however, is that the majority of those life peers who are active wish to remain part-time members, but to have the opportunity to take part to the extent that they wish. Of the members eligible to vote, a smaller proportion turn up daily (see figures above), and it is evident that a far smaller number attend for the whole of each sitting day (no numbers are measured).

7. It is widely acknowledged that the number of those entitled to attend the present House is too large. The House is almost twice the size of the next largest second chamber (the French Senate). The Reform Bill withdrawn by the Government in August 2012 originally proposed a House of 300, which was amended to 450 in the light of a recommendation of the Joint Committee. If all parties were to accept a reduction in the size of the present House to 450 members (say 360 political appointees and 110 crossbenchers, Independents and Bishops), on an agreed basis as to the allocation of numbers, and with a process to reduce to those numbers proportionately in relation to each other by an agreed date, then measures to reduce the size of the House could claim a degree of coherence. There is no evidence, however, that there would be any consensus in favour of such a development, as to a principle of representation on which to base it, or that individual peers within the political parties would be willing to accept the degree of reduction that would be necessary to achieve this result. As an example of how many peers would need to be removed if the House were to adopt now a political membership of 360, and apportion the seats according to the voting shares of each party at the last General Election, the Conservatives would have to reduce their numbers from 213 to 130 (36%); Labour from 222 to104 (29%); and, Liberal Democrat from 89 to 83 (23%).[6]

8. The underlying problem is that there is no consensus on what balance the House should represent between the parties; and this arises in part because there is no consensus amongst those who wish to see an appointed House on a permanent basis as to what or whom it would represent. The idea that the present House is *defined* by expertise, as opposed to *including* expertise, is unsustainable, when 71% of the membership represent a political party, of whom a significant number are former MPs. Whatever experience of public life may be claimed by former MPs, it is not different from the expertise they had when they were members of the House of Commons: it does not distinguish one House from the other, but tends rather to make them more similar.

[2] Draft House of Lords Reform Bill Committee, HL Paper 284–1; HC 1313–1; Session 2010–12, Report, Volume 1, Conclusions, paragraphs 15 and 16.

[3] Lord Hill of Oareford, 28 February 2013, col 1178

[4] *House of Lords Statistics*, House of Commons Library Note, 4 July 2012

[5] Lord Hill, 28 February 2013, col 1182

[6] Membership figures taken from Parliament website, 24 March 2013. The remaining 12% of the votes in 2010 were taken by minor parties. If a quota were adopted before a party achieved representation in the second chamber (as proposed by the Wakeham Commission, paragraph 11.40), but assuming also some provision for regional parties, these figures would be slightly increased.

While a minority of members are appointed for their expertise in a specialist field, that expertise will rapidly become out of date unless they remain involved with it; whereas the House includes very significant numbers of members who are retired from their principal occupation (and about half of the members are aged 70 or over).[7]

9. If the balance between the parties is to be based on the proportion of their party's vote at the previous General Election, the size of the House would become unsustainable over time, as the Constitution Unit has argued cogently for many years. There are also a number of issues with using this formula as the basis of the allocation of seats in an appointed House, although the point is rarely debated:

(a) electors have voted for the House of Commons. There is no reason to read across from those votes to the representation of another House, especially given the variety of reasons for which voters may have made their choice for the lower House. These may include respect for (or dislike of) their local MP; tactical voting; or, local issues. As matters stand, no person who voted in 2010 was told that this would be a further basis on which their vote for the House of Commons would be used. On future occasions, there would be no opportunity for a voter who wished to see different representation in the two House to express that preference;

(b) the future impact on the outcome of elections to the Commons of counting the votes for the second chamber as well has not been examined, and would be ultimately unquantifiable. How does the fact that a voter is voting for the second chamber as well as the first affect the legitimacy of his decision for the House of Commons, on which the choice of the Government of the day depends; especially in a closely contested outcome?

(c) equally, if proportionality is the basis, there would be a distinct risk that the result in terms of appointments to the second chamber, which would be proportional, would be seen as more fairly reflecting the national opinion than the result for the House of Commons, with consequent risks for the perceived legitimacy of the outcome for that House;

(d) What in any event is the rationale for a House of Lords that reflects the political colours of the House of Commons of the day? How would such a result assist Parliamentary accountability or keep government on its toes? The Wakeham Royal Commission, for example, proposed this model for appointed members, but provided no rationale for it;

(e) How would any rationale be affected on those occasions where the vote for the winning party at a General Election is lower than that for its opponents (eg in 1951 and February 1974)? The opposition in the House of Lords would presumably be made the larger party;

(f) If the rationale were that the government of the day should have some advantage in the second chamber in order to help to secure its business, that is a matter of existing convention which is separate (and could be accommodated in a settlement as part of a democratic reform). It would be unlikely in any event to be greatly assisted by an outcome in which the governing party in the Commons would generally be the largest party in the Lords, but not have a majority.

10. If the balance derived from share of the vote should be applied only to *new* creations, as has also been suggested, there is no rationale discernible other than as a means to keep the numbers of peers down by comparison with applying it to the membership as a whole; while nodding very slightly to parties that feel entitled to more peers. The inherited position (eg at present, of Labour as the largest party in the HL) would remain until it was gradually eroded away with no rationale to support that (or any other) ongoing position. The proposal essentially accepts the existing position as to balance as a political fact which cannot be addressed in a principled way because of the existing large size of the House.

11. It appears that the supporters of an appointed House may have exaggerated the urgency of the problem of size, to try to hasten the adoption of rules which they hope will make an appointed House appear more acceptable in the long term. The real problem with the second chamber is over its legitimacy and ability to fulfil its functions, and (in this context) of the rationale over its future composition; rather than over its size as a self-contained issue.

12. It is often said that constitutional change requires consensus; and it is undoubtedly preferable where it can be achieved. But it is not generally the case that major constitutional change has come about other than as a result of a clash of forces or interests, or for party political reasons. There was little consensus behind the removal of the King by Parliament in 1649; or the Glorious Revolution of 1688; or the extension of the franchise in 1835; or its extension to many working men in 1867; or the removal of the Lords' main veto powers in favour of delay in 1911; or the introduction of votes for women in 1918 and 1928; or, the reduction of the Lords' delaying powers in 1949. The assertion of the Commons of its financial privilege, which has become accepted as a core convention, was made as a statement of a continuing challenge by the lower house to the power of the Lords from the late 17th century.

13. If the House of Lords (Cessation of Membership) Bill (the "Steel Bill") were passed tomorrow, the consequences would be that voluntary retirement would fail to affect the numbers significantly (on the evidence of the enhanced leave of absence scheme, which has been taken up by two peers only), unless the parties organised a proportionate reduction of their numbers of the kind described above. In addition:

[7] HC Library Note (above), June 2012

(a) even if they were prepared to do so, there would need to be an agreed rationale for membership;

(b) any rationale would call into question the appropriate composition of the House; and

(c) the passing of the Bill itself would amount to cementing or determining an appointed composition, because of the consequences in terms of establishing of appointment as a firmer basis of representation.

Remaining Questions by the Select Committee

Desirability, practicality and effectiveness of mechanisms to reduce the size of the Lords

(a) *No longer replacing the hereditary peers*

14. No longer replacing the hereditary peers would produce a wholly appointed House without a decision or national debate that this was the appropriate form for the second chamber. This is a fundamental point which goes far beyond mere "housekeeping" and should not be pursued merely for the reason that the numbers of life peers have become over-inflated. It would remove the rationale for the Cranborne/Weatherill amendment in 1999, which saw 92 hereditary peers remain as a form of guarantee of further reform.

15. It would also alter the composition of the House without any consideration of its appropriate powers; an approach that opponents of reform generally criticise. It would require legislation, and thereby raise the issue of wider reform, although depending on the scope of the Bill, it might be impossible for Parliament properly to debate the wider options.

16. It would have a disproportionate effect on Conservative numbers, requiring an increase in the number of appointments from that party. It would also increase the average age of the House.

(b) *Removal of persistent non-attendees*

17. Removal of persistent non-attenders would reduce the formal size of the House, but have no impact on its working size. It would thus have the appearance of change, while doing nothing to address the main problems identified by proponents of so-called "housekeeping" measures.

18. It would end the concept of life appointments to the second chamber without wider consideration of the appropriate composition of that chamber. It would require legislation to amend the 1999 Act, but this would raise the question of wider reform while being unlikely to offer the opportunity properly to debate it within the scope of the Bill.

19. It could also have the paradoxical effect of increasing attendance. (Clause 2 of the Steel Bill operates only at the end of a session, and excludes a member who does not attend once during that session). The measure would need to exclude short sessions, and provide for reminders and warnings. Depending on the facts, the removal of an individual's right to sit in Parliament on grounds of a condition of attendance that was not present on their appointment could also be subject to legal challenge.

(c) *Moratorium on new peers*

20. A complete moratorium would disproportionately affect the party balance, and also prevent new Ministerial appointments. 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. Yet if like-for-like replacements were allowed, there would be no reduction in size. Over time, moreover, as the existing membership became older, the overall effectiveness or vigour of the House could be expected to decrease. Over time, a moratorium would come to be based on no rationale of representation, relevant either to the previous Parliament or the current one. It could be acceptable only as a step to a further reform, of which it formed an integral and agreed part.

(d) *Fixed-term appointments for new peers*

21. This proposal too 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.

22. It would create a House with two types of appointed peers. It would raise immediate questions of the correct length of term, and whether this should be related to the electoral cycle of the House of Commons, and whether re-appointment should be permitted, which in turn raise questions as to the desirable degree of legitimacy of the House. Legislation would again be required, to amend the 1999 Act, and this would in the same way as the other measures above, raise the issue of wider reform, but on too narrow a basis to offer workable alternatives or the scope for proper debate.

(e) *Retirement age*

23. A retirement age would necessarily be arbitrary in its effects, removing some members with a considerable contribution still to make. It is also counter-intuitive, since an appointed House is by its nature at

least older than average, and likely to be mainly elderly. The proposal would break the rationale for the alleged independence of the House, that its members are there for life. It would also make the House more uniform in age and outlook.

24. It would probably require some further creations to deal with the effects of disproportionate retirements on one or more of the political parties. In so doing, it would confirm the present balance of the House (or another balance, if agreed). This in turn would either be based on a rationale of representation that would amount to a step towards an appointed House, without a decision to that effect, or would merely replicate the existing balance without a rationale. The necessary legislation would again raise the issue of wider reform without according a basis for proper debate on it.

Effectiveness of the current voluntary retirement scheme

25. It will be evident from the fact that only two members have taken advantage of the current scheme, based on leave of absence, that it is ineffective.

Desirability and scope of expelling peers convicted of serious offence

26. The measure begs the question of the proper basis of the composition of the House, at least in a formal sense, since it is inherent in the nature of a life appointment that it cannot be cancelled. On the other hand, the purpose of excluding members who have been convicted of serious offences is understood. The measure is the least problematic of those suggested, in the context of the wider issue of reform. The problem is not a significant one in terms of the size of the House.

Desirability, composition and remit of a Statutory Appointments Commission

27. The creation of a statutory Appointments Commission, which would require legislation, would raise the whole question of the appropriate reform of the composition of the House, and create a permanent mechanism through which the membership of a wholly appointed House would be maintained. There is no need to go beyond the present Commission, which recommends crossbenchers and screens the probity of political appointments, unless the intention is to institute a more permanent reform. 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.

Scope for consensus about principles to determine relative strengths of the parties, and for their codification

28. In the light of the individual difficulties in terms of party balance, and the wider implications for reform, raised by a number of the suggested proposals, as outlined above, it may be apparent that there would appear likely to be little scope for consensus on those grounds. The major issue raised by the Constitution Unit, in relation to the uncontrollable growth of the House if a basis of appointment in relation to votes were adopted, appears insuperable. The more limited proposal for appointments of new peers in proportionate to votes at the last General Election appears to offer no governing rationale, and would have only a limited effect on the existing balance over time.

29. Any consensus, if it could be achieved, that was not expressly linked to a wider reform would pre-judge that question, when that issue is live and unresolved, in a way that would be unhelpful to the process of coming to an outcome on this issue that can command a broad consensus in the future.

Conclusion

30. While the House of Lords has approved the Steel Bill (ie on retirements, and the exclusion of non-attendees and those convicted of serious offences), as the government has indicated, even the first two of those issues raise significant questions of the wider scope of reform, and there appears to be no consensus for them outside the Lords. The more substantial issues of term appointments, or the creation of a statutory appointments commission would raise those issues even more directly. We note that the version of Lord Steel's bill passed by the Lords did not include a statutory Appointments Commission, unlike his original Bill. We are sceptical that the representatives of the political parties in the Lords would be willing to countenance a significant reduction of peers down to a level that would equate to the size of other second chambers; while it would be unacceptable for the issues of principle raised, as to whether an appointed House was appropriate, to be approached via an apparently limited change with much wider but hidden implications. On this basis, it would appear unlikely to us that the measures above would command a consensus (apart from the exclusion of serious offenders); at least if they could be expected to have much practical effect.

31. Even if they did, the consequences in terms of making significant constitutional changes without undertaking wider debate, and whose long-term implications would run counter to the expressed view of the House of Commons, should in our view rule them out.

26 March 2013

Written evidence submitted by Unlock Democracy

About Unlock Democracy

Unlock Democracy is the UK's leading campaign for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility. Unlock Democracy runs the Elect the Lords campaign to campaign for an elected second chamber. For more information about Unlock Democracy please see www.unlockdemocracy.org.uk

Introduction

1. Unlock Democracy campaigns for a fully elected second chamber. We believe that members of the UK Parliament should be accountable to the people of the UK and that the most pressing reform of the House of Lords is the need to introduce democratic legitimacy. It is now over 100 years since the Parliament Act 1911 was passed as a temporary measure until an elected second chamber could be introduced. However we recognise that the government has chosen not to seek to progress the House of Lords Reform Bill so democratic reform of the second chamber is not possible within this parliament.

2. Unlock Democracy understands the Committee's desire to find into what smaller-scale changes to the membership and structure of the House of Lords would be likely to command a consensus. Many of the ideas being explored by the committee seem sensible straightforward at first glance. However in reality what appear to be small scale changes would in practice fundamentally change the nature of membership of the House of Lords and alter the composition of the House without any consideration of its appropriate powers; an approach that opponents of reform in both Houses criticised when the House of Lords reform Bill was debated.

3. Many of these proposals have been debated extensively before, such as in the work of the Leader's Group which lead to the introduction of the voluntary retirement scheme, or in various versions of the Steel Bill. However this does not mean that they command a consensus. Indeed it should be noted that a number of the proposals in the original Steel Bill have now been amended or dropped entirely precisely because they were unable to command a consensus.

4. We recognise that there are many peers who are dissatisfied with the size of the current chamber and the impact this has on work in the second chamber. The House of Lords is one of the largest second chambers in the world. With 764 eligible members as of March 2013[8] it is twice as large as the French Senate, the next largest chamber and seven times larger than the Canadian Senate. All proposals for fundamental reform of the House of Lords have recognised this and recommended a substantially smaller second chamber. Most recently the government's House of Lords Reform Bill proposed a chamber of 300 members although this was increased to 450 members after consideration by Joint Committee.

5. We are sympathetic to their desire to resolve this. However we do not believe this can be done through small scale changes as once you start to unpick the elements of the current settlement, it opens up issues which can only be addressed by the introduction of an elected second chamber.

6. In our view, the only way to meaningfully reduce the size of the chamber in an effective way that is fair to all parties is to limit its size in statute. Such a measure is likely to be as vociferously opposed by the House of Lords as democratic reform was and most of the arguments employed against democratic reform would also apply.

7. There are also issues not currently being considered by this inquiry that Unlock Democracy believes it is essential that should be addressed as a matter of urgency, in particular the issue of members of the House of Lords working as paid lobbyists.

8. Unlike in the House of Commons, there are no rules to prevent peers working as paid lobbyists to influence the UK government. One of the most controversial cases was Lord Blencathra who had been working as a paid lobbyist for the Cayman Islands.[9] This work included lobbying the Chancellor to reduce the burden of air passenger transport taxes on the Caymans Islands and facilitating an all-expenses-paid trip to the Caymans for three senior MPs with an interest in the islands. Nothing that Lord Blencathra did broke any of the existing rules—he declared the Directorship in the register of members interests and never directly raised the Cayman Islands in debate or in the course of his parliamentary work. However the fact remains that whilst being a voting member of the UK legislature, he was also being paid by a foreign government to lobby the UK government. This is simply not acceptable. Nor is Lord Blencathra the only peer who is also a paid lobbyist; this is not restricted to one person or even one party. There are a number of peers who work for multi client lobbying agencies and as well as some who work as in house lobbyists. Research conducted by the Guardian found that nearly one in every five staff passholders in the House of Lords is involved in lobbying.[10]

[8] http://www.parliament.uk/mps-lords-and-offices/lords/composition-of-the-lords/ page accessed 2 March 2013

[9] http://www.independent.co.uk/news/uk/politics/revealed-exconservative-minister-lord-blencathra-paid-to-lobby-for-island-tax-haven-7648252.html]

[10] http://www.guardian.co.uk/politics/2011/nov/08/house-of-lords-passholders-lobbying

9. Peers acting as paid lobbyists damages the reputation of the House of Lords and of Parliament as a whole. The committee has already considered the case for a statutory register of lobbyists and we recognise that this falls beyond the scope of the current inquiry. However if there are to be changes to the House of Lords, then we would strongly argue that peers' lobbying activities should be more strictly regulated, and that working for or being a director of a multi-client lobbying or public affairs agency be banned outright.

10. Members of the House of Commons are also able to take on additional employment and although this can be problematic it does not raise the same issues as with peers. The demands on an MP's time are much greater and they receive a salary in recompense. The daily attendance allowance is not intended to function as a salary for members of the second chamber. The daily attendance allowance is intended to be compensation for lost earnings due to serving in the House of Lords. In a number of cases, this is palpably not the case, and in fact serves as an additional tax free income for those peers fortunate enough to have a full time job in close proximity to Parliament. In our view, members of the House of Lords who opt to claim the attendance allowance must sign a statement confirming that they are not earning an income from any other source on that day.

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

11. The delay in completing reform of the second chamber has created the interesting constitutional position whereby there are some elections for membership of the House of Lords but the only people able to stand and vote in these elections are hereditary peers. Unlock Democracy regrets that it is still possible to claim a seat in the UK legislature on the basis of birth and would like to see this practice end. Such a move would require primary legislation.

12. However the Wetherill agreement allows for the presence of 92 hereditary peers until the second stage of reform. Despite the House of Commons voting in favour of creating an elected second chamber in both 2007 and in 2011, we have not yet reached that second stage of reform.

13. Removing the hereditary peers would significantly shift the political balance within the House of Lords, with 36 currently taking the Conservative whip, five sitting as Liberal Democrats and four sitting as Labour. Since 1997, appointments to the House of Lords have been conducted to broadly reflect the share of the vote at the previous general election, and this was made explicit in the 2010 coalition agreement.[11] This will mean that their removal will either require yet more appointments to be made to ensure balance and thereby fail to resolve the fundamental issue of the size of the second chamber, or require a commensurate number of Labour life peers to be removed to retain balance. We do not believe that such a move is likely to be supported by the second chamber itself.

Measures to remove persistent non-attendees

14. Although superficially appealing, proposals to remove persistent non-attendees from the House of Lords raise fundamental questions about the nature of membership of the second chamber and its links with the honour of being given a peerage. In particular it would mean that membership of the House of Lords was no longer an appointment for life which would require legislative change. This would not be a small scale reform and would be unlikely to command a consensus.

15. Currently there is no requirement or even assumption at present that someone accepting a peerage is expected to attend a certain number of sitting days. Some members choose to attend only when subjects where they have direct experience or expertise are being discussed; others have careers which they do not wish to give up. A threshold would exclude these people from membership of the House of Lords and would be perceived as a move towards a model of full time membership. This has been opposed by a number of peers when this has been explored in the past, and indeed was one of the fundamental objections to the government's proposals in 2012.

16. Removing non-attendees would not solve the current problems around the size of the House of Lords. The issue is not so much the number of those eligible to attend as the numbers who are choosing to do so. Average daily attendance in the House of Lords was 475 in the 2010–12 session, up from 388 in 2009–10. This compares to an increase in membership from 706 at the end of 2009–10 to 782 at the end of 2010–12.[12] So while measures to remove non-attendees would formally reduce the size of the House of Lords, in practice it would make no difference to the issues that are currently concerning peers about the size of their chamber.

17. There are also practical considerations about how to introduce a threshold such as how to create a system that would not discriminate against those suffering from ill health or a temporary change in circumstances, what level any threshold should be set at, as well as how to adequately reflect the different types of work that go on in the House. It is worth noting that the Canadian Senate has a system whereby if a member has not attended at all for two consecutive sessions in the Senate, they can be stripped of their salary, staffing provision

[11] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf p27
[12] http://www.parliament.uk/briefing-papers/SN03900.pdf

and other benefits. To date this has only be done once when it was found that a senator was living in Mexico and only attending at the beginning of the session to be able to claim his salary.

A moratorium on new peers

18. Unlock Democracy sympathises with those who would like a moratorium on the appointment of new peers but fail to see how this can be made to work with respect to party balance in the second chamber. In particular it would mean the government abandoning its stated aim of appointing new peers to reflect the vote shared received by political parties in the 2010 general election. Currently the only mechanism for adjusting party balance within the House of Lords is to appoint new peers. A moratorium would prevent parties from replacing peers who died and also prevent the government from appointing people who are not currently members of either house of parliament. There may well be good reasons for limiting such appointments, however it should be a deliberate choice rather than the by product of an attempt to manage the size of the House of Lords.

Fixed-term appointments for new peers

19. As with proposals to remove non-attendees introducing fixed term appointments for new peers would fundamentally change the nature of membership of the House of Lords and would require legislative change. It would also create a further category of peer, increasing the hybridity of the House which peers have frequently opposed when debating the introduction of elected members to the second chamber.

20. On a practical level there are a number of questions that would need to be resolved, such as what the appropriate length of term would be, whether there would be term limits or peers could be reappointed, whether there would be restrictions on such peers seeking election to the House of Commons. Peers appointed for fixed terms are also far more likely to be loyal to the leader who appointed them than peers who have been there a long while. They would appear to have all the perceived disadvantages of elected members but without any of the advantages in terms of democratic legitimacy.

A retirement age for peers

The effectiveness of the current voluntary retirement scheme for peers introduced following the recommendations of the Leader's Group on Members Leaving the House

21. Procedurally, until 2011 the only option available to peers to "retire" was to take a leave of absence. This is an unsatisfactory system for a number of reasons. The fundamental problem is that if a member takes leave of absence there is no certainty whether or not they will return. Many members do return from leave of absence, sometimes even when they have not expected to do so. Most famously Lord Phillips of Sudbury announced his retirement from the Lords in 2006, only to return in 2009. The uncertainties of this system make it difficult to plan and do not solve problems relating to the size of the chamber because any of the members on a leave of absence could return at any time.

22. The voluntary retirement scheme for peers was introduced in 2011. To date it has only been used by two peers Lord Habgood and Lord Hutchinson of Lullington.[13] This scheme is clearly not effective either from the point of view of peers who have expressed a desire to leave the House or in terms of better managing the size of the House.[14]

23. For a retirement scheme to be an effective way of managing the size of the chamber, the evidence suggests it would have to be a compulsory scheme, such as that in the Canadian Senate where members retire at 75. Nearly one third of members of the House of Lords are over 75 so this would be an effective method of reducing the size of the chamber.

24. However as peers are appointed for life, introducing a compulsory retirement system would be a fundamental change to the nature of membership of the House of Lords and would require legislation. It is unlikely that a compulsory system would be supported by peers. Certainly when compulsory retirement has been discussed in the past it has been argued that as there is no age limit in the House of Commons it would be inappropriate to introduce one in the Lords.[15]

The desirability and scope of a mechanism to expel peers who have been convicted of a serious offence

25. 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.

26. It is also worth noting that while MPs who are accountable to the public through elections are forced to resign their seat if they are convicted of a crime and sentenced to a custodial sentence more than one year, the

[13] Information supplied by the House of Lords information office

[14] see this question from Lord Ashcroft http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/130318w0001.htm#13031812001848

[15] http://www.telegraph.co.uk/news/uknews/1403675/Lords-will-block-compulsory-retirement-age-for-peers.html

appointed members of our legislature, who have no accountability mechanism, are able to retain their seats. This is unlikely to satisfy the public. Unlock Democracy believes that system the currently applies to the House of Commons should be extended to include members of the House of Lords.

The desirability, composition and remit of a Statutory Appointments Commission

27. Unlock Democracy does not believe that it is necessary to go beyond the present remit of the Appointments Commission, which recommends crossbenchers and examines the probity of political appointments. If an appointed element were to remain in a predominantly elected second chamber, then we believe that these appointments should be made by a Statutory Appointments Commission. Political patronage should not be the basis of membership of the legislature.

28. However we do not believe this is desirable before further reforms to create an elected second chamber. If, in the context of a fully appointed second chamber, a new Statutory Appointments Commission were also to take on responsibility for party political appointments we would be very wary of creating a very powerful but unaccountable body that would reinforce the opaque nature of appointments to the House of Lords.

29. The creation of a Statutory Appointments Commission would establish a permanent mechanism through which the membership of a wholly appointed House would be maintained. This would be against the expressed will of the House of Commons in its votes in 2011 and 2007.

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

30. 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, as has been clearly shown by the Constitution Unit.[16]

31. Even if an agreement on term limits could be made, it is not immediately clear how to determine the relative sizes of the different party groups. The coalition agreement proposes that it should be on the basis of the votes cast at the last general election. However, the current single member plurality system used to elect the House of Commons leads many people to vote tactically. Basing the composition of the House of Lords on this vote will significantly under-represent small parties and independents.

32. Codifying any principle based on the vote at the general election would fundamentally change the nature of the franchise. Voters would effectively be voting for two chambers. The voters of smaller parties would have an incentive to vote for the first party of their choice regardless of their chances at getting elected for a Commons seat, with a view to gaining representation in the second chamber. As such, many members of the House of Lords would be able to claim a direct mandate from the voting public. It is not clear to us why this would be regarded as preferable to direct election, especially since it would mean that members of the second chamber would continue to be unaccountable and appointed by party leaders.

CONCLUSION

33. Many of the proposals to reduce the size of the House of Lords without democratic reform, while superficially attractive, would either fundamentally change the political composition of the second chamber in an arbitrary manner or would be subject to the same criticisms directed at democratic reform itself, namely that it would lead to a "politicisation" of the second chamber.

34. The removal of hereditary peers, introduction of a retirement age and a moratorium on new peers would all put the Conservative Party at a significant disadvantage while putting Labour at an advantage. *Unlock Democracy asserts that only the electorate is competent to make fundamental decisions regarding the political composition of a parliamentary chamber.*

35. The other proposals will have negligible impact. Experience has shown that a voluntary retirement scheme would be ineffectual. The removal of persistent non-attendees would certainly have the effect of reducing the number of individuals permitted to sit in the House of Lords, but would do absolutely nothing to resolve the fundamental problem of too many members sitting in the chamber at any one time. The removal of any peer serving a custodial sentence of more than 12 months would remove a handful of peers, while leaving many others who have been convicted of serious charges free to remain in the chamber, without the political impetus which forces most MPs in a similar situation to resign their seats. Placing a statutory appointments commission would simply put appointment of the House of Lords further into the hands of a political establishment and away from the electorate.

36. Unlock Democracy believes that there are more urgent reforms which should be tackled, specifically the allowance system and the freedom of peers to work for multi-client lobbying agencies. In our view, these issues should command far greater parliamentary attention than piecemeal measures such as the Steel Bill.

27 March 2013

[16] http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/152.pdf

Written evidence submitted by Martin Wright

ENSURING EXPERTISE AND EXPERIENCE IN AN ELECTED UPPER HOUSE OF PARLIAMENT

The Royal Commission on the Reform of the House of Lords, chaired by Lord Wakeham, proposed that the upper house should be distinctively different from the House of Commons. It should have a wider range of expertise and personal distinction outside politics with particular skills and knowledge. It should include political experience but not just that of professional politicians; it should foster the exercise of independent judgement, not sterile partisan confrontation. It should also, the Royal Commission proposed, be broadly representative of British society, on the basis of the nations and regions, gender, ethnic, cultural, religious and other aspects.

As to its function, there should be no significant changes: it should be one of the main checks and balances in government, identifying points of concern and requiring the government to reconsider or justify its policy intentions.

The present House of Lords includes a large party-political element; it does also include a range of skills and knowledge, but this is incomplete and achieved largely by chance. How can it achieve this comprehensively, and by design? The Wakeham Commission recommended an independent Appointments Commission, to appoint members "broadly representative of British society on a range of stated dimensions", with at least 20% not affiliated to a major political party; this would be supplemented by regional members elected by proportional representation.

In Parliamentary debates Jack Straw, who as Lord Chancellor and Minister of Justice was responsible for constitutional affairs, has said that his preference would be for a house 50% elected, 50% appointed, or failing that 80/20. This was evidently because, while accepting the need for democratic legitimacy, he recognised that a balance of expertise cannot be guaranteed by elections based on party affiliations and geographical boundaries. Gaps would be filled through appointments. The House of Lords has carried this to its logical conclusion by opting for a wholly appointed House. A majority of the House of Commons has however voted in favour of a 100% elected house; this would mean elections primarily on a party-political basis, and the representation of expertise and of particular aspects of society such as gender, ethnicity and disability would be left to chance. The problem of legitimacy has also been raised: If both houses were elected on a similar basis, there could be disputes about which would have the stronger claim to represent the will of the people.

One proposal put to the Wakeham Commission was to avoid this dilemma by replacing geographical constituencies with representation of vocational or expertise groups, which we will refer to as "constituencies of expertise" (CoEs). Wakeham was sympathetic to the aims behind such proposals, but saw objections to the suggested ways of achieving them. We believe that a system can be designed that overcomes these difficulties.

Proposals included the *ex officio* appointment of specified post holders in a range of organizations such as learned societies; but Wakeham saw that it would be hard to find agreement about the choice of organizations, and such posts are often only held for one year. Alternatively there might be electoral colleges; but enforcing rigorous election procedures on independent organizations was felt to be difficult and intrusive. Both these methods would disenfranchise those who did not belong to any of the chosen organizations.

The problem lies in the fact that the appointment or election of senators (to use a convenient term) would be delegated to unelected groups. The pivotal point is not the election of senators, but the *selection process*. In present-day constituencies, selection of candidates is by constituency committees, plus self-selection of candidates who can find enough sponsors and a deposit. Voters then elect an MP, usually from the candidates presented to them by the parties. We therefore propose replacing geographical constituencies with a comparable system of *constituencies of expertise* in which persons with knowledge of the field would nominate candidates, who would then be voted for as in a geographical election. There would also be scope for independent candidates, but we suggest that the filter to discourage frivolous candidates should not be a cash deposit (which manifestly does not work, and is a burden for small, serious parties) but a required number of sponsors.

It should be remembered that the senate will (as now) be primarily a revising chamber. Its members will therefore not *represent* actors, brewers, consumers, dentists and so on, but will ensure that legislation from the other House facilitates or regulates their activities as effectively as possible in the public interest. If necessary it should, as Wakeham put it, have the power to make the Commons think again; this would be necessary, for example, if legislation from the Commons proved on examination to be impractical or unethical.

Constituencies of Expertise

The constituencies would be determined by an organization comparable to the Boundaries Commission. Their boundaries would be drawn in such a way that everyone, from artists to zoologists, could relate to at least one constituency. The total number of constituencies would be a matter of judgement, and could be adjusted in the light of experience; it would also depend on the number of seats in the upper house (or senate). Some figures will be suggested here, but only as a basis for discussion. Suppose it is decided to have 400 members in the senate. For each voter to have to choose in which of 400 constituencies to vote would be somewhat bewildering; it is therefore suggested that they should be grouped into about 40 multi-member constituencies, each with about 10 members. They would cover not only the traditional activities of government: trade and industry, foreign policy, housing and so on, but expertise not usually reflected in

government departments such as mathematics, physics, and (as Wakeham suggests) philosophical, moral and spiritual perspectives.

Voters could choose in which constituency to exercise their vote (just as they can choose which football team to support, not necessarily on geographical grounds).

Wakeham's requirements for political, and regional and national, representation, could be met in two ways. One is that each of these would be a CoE, alongside the others. The other is that beside the CoEs; there could be geographical constituencies, probably based on those for the European Parliament. These would provide for an element of political, and party-political, representation in the senate, but it would not predominate.

If it is accepted that this would be desirable in principle, how would it work in practice?

Selection of Candidates

Each CoE would have a commission (comparable to the Nominating Bodies in Ireland) formed of individuals of "personal distinction" (another phrase from Wakeham) for the selection of candidates, which would be responsible for proposing suitable names from all sub-fields within the constituency: thus in the engineering constituency there could be candidates from structural engineering, mechanical engineering, and so on.

How would these commissions be formed? It is suggested that this country's wealth of voluntary and non-governmental organizations would provide an ideal basis. Each convener would advertise, inviting any properly constituted body which had been in existence for (say) five years to send a delegate to a meeting at which the commission, representing all the sub-fields in that CoE, would be elected. Small organizations with related interests could join forces for this purpose, for example relatives of patients with rare diseases.

The outcome would be, for each CoE, a booklet listing the sub-fields and their candidates, each with a statement of (say) 150 words outlining their expertise, positions held, and outside interests. Any independent candidates would also be included. The number of candidates could obviously exceed the number of seats allocated to each CoE; the choice would be made by the voters.

Voting Procedure

In the run-up to an election, voters could obtain copies of the candidates' lists in the CoEs of most interest to them, or consult them in public libraries and post offices. In the preferred sub-field of their CoE, they would choose between the candidates on the basis of their expertise and qualifications, and possibly their outside interests, recreations and so on. At the polling booth they would ask for the voting slip for their chosen CoE, and put a cross against their preferred candidate; their name would also be marked on the electoral register in the usual way to prevent multiple voting.

Objections

What objections could be raised to this? Wakeham was concerned that disadvantaged people who do not belong to a recognised vocational or occupational group would be disenfranchised. This scheme is not based on occupations, however: anyone might be interested in the arts, or sport, or other fields, or they could choose to vote in their geographical CoE.

Another concern was that although a candidate in one field might be very well qualified to speak about that, he or she would have no more expertise on other matters than the next person. One answer is that this applies just as much to Members of Parliament, and is not considered to disqualify them; a related point is that an expert in one field generally has experience of related ones, and in any case has outside interests: a physicist may be interested in health, sport, music or anything else.

It is likely that many more people would choose to vote in some CoEs than in others; those concerned with health, for example, might attract more voters than those concerned with social disadvantage. Some well-heeled CoEs might be able to secure more publicity, although expenditure could be regulated. This would not, however, be serious, because as mentioned above the senators will not be there to *represent* voters. Similarly, the fact that the system would require some effort on the part of voters, and might therefore result in a low turn-out, would not be a problem for the same reason: the object is to elect those with the greatest expertise, and this would be assisted if voters were predominantly people with some knowledge of the field.

There might also be concern that legislation from the House of Commons on a specialist subject, such as nutrition or horse-racing, might be held up by a small number of senators with expert knowledge. In some ways, however, this would be an improvement on the present position, in which party whips pressure members to vote on party lines with no knowledge of the subject at all. The basis for legislation will in any case often not be technical but economic or ethical, so that other kinds of expertise would be relevant. It might be appropriate to set a quorum, without which the senate could not delay legislation; those who had concerns about a Bill or Statutory Instrument would then have to persuade colleagues to inform themselves about the subject and take part in the debate and the vote. Often it will be desirable to involve experts from different fields, for example language education and exports, health and sport, crime and social welfare, foreign policy and ethics.

Drawing the Boundaries

It is not necessary at this stage to lay down the exact CoEs, but an outline is suggested below, as a basis for discussion. To emphasise the fact that the senate will examine legislation on its merits, and not according to political preconceptions, the fields would be listed on a subject basis rather than start from traditional government departments. Thus they might for example include the following; there are obviously many gaps which can be filled in due course. Many topics such as Research, Ethics, Budgeting, could be placed under more than one heading. This is inevitable; the important thing is that all subjects should have a heading under which they can be included.

Constituencies of Expertise: Preliminary Draft

THE NATION, constitution, national heritage

INTERNATIONAL RELATIONS
Continents and countries, Europe, Commonwealth, rest of world
Defence, peacekeeping, trade and aid

SOCIETY, government (local, national), administration
Voluntary action
Social structure, families
Equality of opportunity: ethnicity, gender, disability
Immigration
Religions

NATIONS AND REGIONS OF U.K.

POLITICAL SCIENCE, POLITICS

LAW: human rights; civil law, dispute resolution; criminal law, law enforcement

SOCIAL WELFARE, SOCIAL PROBLEMS: social security, pensions, consumer protection
Animal welfare

EDUCATION AND RESEARCH

THE ECONOMY: economics and investment, budgeting and taxation

INDUSTRIES AND COMMERCE
Employers, management, co-operatives
Trade unions, working conditions

HEALTH AND MEDICINE
Physical and mental health, treatment, National Health Service
Health improvement, prevention of illness

THE SCIENCES: Astronomy, biology, chemistry, mathematics, physics, etc.

TECHNOLOGY, ENGINEERING

PHILOSOPHY, ETHICS

CULTURE AND THE ARTS

RECREATION AND SPORT

28 March 2013

Written evidence submitted by Mr Simon Cramp

1. Thank you for the chance to respond to this particular inquiry.

2. I am a person who has a learning disability and dyslexia. I have worked in the public and voluntary not for profit sector and worked with members of the house of lords on helping to get the right deal for people with a learning disability.

3. I think it important for the House of Lords not to lose its special status in my heart in that, sorry to say, the debates are better informed by the richness of the debate of the bills that come as part of the Government programme or individual Members of the House wheather it be crossbenchers or a political appointments by the Prime Minister.

4. In terms of your areas I will be very brief.

On this group:

> 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; and

a retirement age for peers.

6. My answer is this I agree re the first bullet point you should not be there because you happen to be in the right family and gain the title of lord or baroness or earl just because your family was born with the title.

7. Yes to the second but with one caveat that if there is a short term illness saying you may be able to return to the house because you have had a heart attack and the doctors don't see a reason not to. I am planning to get back to what I love doing—public speaking—because the doctors can't see a reason why not as surgery was successful and the prognosis was good.

8. Well yes but maybe there should be an election every five years one third of the house and that the only political peers is a handful enough to cover the posts re that are required for government minister shadow ministers and opposition as we will not have a coalition government for more than possibly two parliaments as I think the british public will get bored with coalition policies as it only the second time it has happened, I believe, in modern times.

9. On fixed terms appointments—this should apply only to ministers and shadow ministers appointed by the party leaders on fixed terms under the fixed terms parliament act 2011.

10. And Prime Minister is not allowed to appoint a non-peer to the post to replace him ie the recent CBI director general Lord Digby Jones mid way though the 2005–10 parliament on the base of "I want the best talent for the job".

11. Could be seen by some as a smoke screen to not allow that person to speak freely as a person because that person is associated to a political party by default.

12. But also as long as a peer can prove he or she can contribute there should not be a retirement age.

13. Question 3—the desirability and scope of a mechanism to expel peers who have been convicted of a serious offence.

14. No contest. Expenses scandals and any criminal activity should carry (besides the penalty issued by the courts) a life time ban.

15. Question 4—the desirability, composition and remit of a Statutory Appointments Commission.

16. Give people with hidden disabilities and those that have learned from their mistakes a chance to be able to contribute as there are not enough lords, baronesses and earls with disabilities.

17. Question 5—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. I have answered this question.

28 March 2013

Written evidence submitted by Imran Asim Hayat

As in previous evidence provided to the joint committee on draft House of Lords reform, I still believe that there should be equal faith representation in the House of Lords (it became quite clear that the joint committee and the government still favoured Church of England bishops and faith over a secular chamber).

As this committee's intention is to move forward in small steps based on common consensus, I believe it would be futile to encourage a reformed secular chamber (which was my first choice and those of many witnesses).

I do believe that a majority consensus can be built around the idea of equal faith representation by setting up a statutory appointments commission with clear defining powers and remit that would decide and appoint those it seems fit to represent different faith communities based on the recommendations of national representative bodies of each faith (the appointments commission would have the final say).

The new statutory appointments commission with its remit enshrined by law, would be the only body appointing all future peers (expect Church of England bishops) including party peers. Political parties and the Prime Minister can still make recommendations to the commission but the commission would have the final say. In order for there to be a majority consensus, Church of England bishops would be exempt and be appointed ex officio (I say this with regret but respect the fact that some reform is better than no reform).

I do believe that any peers, including bishops and other faith leaders should be expelled from the House of Lords if they are convicted of any crime not just only serious ones. The reason being that only those of exemplary character should be permitted to retain their seats in the Lords.

Any peer who has not been convicted but nevertheless has made racist, bigoted, sexist and anti-Semitic remarks should be banned and expelled from the House as such disgraceful individuals would only bring the House into further disrepute.

In order to remove any negative perception of parliament in the public's mind, strict disciplinary procedures would prevent embarrassing episodes of peers getting up to no good.

Measures to remove persistent non- attendees would not be a straight forward matter as there would be some who know how to play the system very well. One method to reduce the occurrence of non-attendees would be to set up a time table during each parliamentary session in which in each time period there would be a list of peers required to attend parliament. Failure to do so would lead to suspension or expulsion. Those not in the list at that particular time of the year would be free to attend Parliament especially if there was a debate involving their area of expertise. At the end of that time period, the names of peers would be removed from the list and a new list created and henceforth the cycle would continue. I believe that a majority consensus would have to be agreed on how long each time period should be.

Conclusion

I would like to conclude that the committee should focus more on making the House more effective and efficient rather than finding ways of reducing it in size as that can only be achieved with greater reforms such as a fixed senate. Removal of hereditary peers or ending by elections would only make a tiny difference though welcomed. The greatest focus should be fairness (equal faith representation and Humanist representation) and accountability of peers.

26 March 2013

Written evidence submitted by Dr Meg Russell, Reader in British and Comparative Politics, and Constitution Unit Deputy Director, School of Public Policy, University College London

Preliminary Comments

1. The committee has invited evidence on the next steps on Lords reform, following the failure of the coalition's bill—which sought to move from the current appointed/hereditary chamber to a largely elected one. For the past 15 years, much of my research at the Constitution Unit (UCL) has focused on the Lords and its reform. My first book, *Reforming the House of Lords: Lessons from Overseas* was published by Oxford University Press in 2000. My third book (the second having been on other matters) will be likewise published by OUP in summer 2013, entitled *The Contemporary House of Lords: Westminster Bicameralism Revived*. It is based on substantial research about how the chamber has functioned since 1999, and also informed by reform debates during that period. I have served as a special adviser to the Leader of the House (Robin Cook) 2001–03, who had responsibility in the Commons for Lords reform, and as a consultant to the Royal Commission on the Reform of the House of Lords, and to the House of Lords Appointments Commission.

2. As someone who has closely followed this debate for 15 years, and been involved in a "hands-on" way at times, the failure of the coalition's bill came as no surprise. Not only recent events, but also longer history, demonstrate that "big bang" Lords reform (ie a major reform which will be accepted as a lasting settlement) is extremely difficult. Indeed, despite numerous schemes, no such reform has ever succeeded. Two useful recent books—by Chris Ballinger, and Peter Dorey and Alexandra Kelso—chart the repeated failures of Lords reform throughout the 100 years post-1911.[1] But on the positive side, what Ballinger refers to as "a century of non-reform" was punctuated by various important smaller-scale changes. These most obviously include the Parliament Acts 1911 and 1949, the Life Peerages Act 1958, Peerage Act 1963, House of Lords Act 1999 and Constitutional Reform Act 2005, but also various procedural and administrative reforms, and changes to convention—including regarding prime ministerial appointments. Collectively, these reforms have added up to a transformation of the Lords.

3. The lesson of history is therefore that incremental reform matters, and that it has a far greater chance of success than more ambitious proposals. Each successive reform over the last century has dealt with what contemporaries saw at the time as the most problematic and anomalous aspect of the chamber's composition or powers. Each had been discussed for decades before finally being put into effect. And each was considered at the time to be a temporary stopgap, until "real" reform could be achieved. Yet looking back on the century, real reform did occur through an aggregation of these small steps, each individually having been considered in its time temporary and inadequate.

4. The most important recent reform was the 1999 House of Lords Act, removing the great majority of hereditary peers. As my work has charted—and many members with long service in parliament will attest—this reform was significant.[2] It created a chamber that was far more party balanced, and in which members felt more legitimate and confident to contribute to the policy process. Accompanying changes, particularly to how Crossbench peers are chosen via the House of Lords Appointments Commission, were also very important, and reinforced this. But Labour's billing of the 1999 Act as "stage one" of a two-stage process served to mask its importance, and helped fuel disappointment about the lack of "stage two". As I suggest in my forthcoming book, "Labour's reform might more appropriately have been presented as the next incremental step in a gradual process, which began more than a century earlier. In retrospect, this is how it looks".[3]

5. The prospects for "big bang" reform remain poor. The Conservative Party is clearly split on the issue. A similar split in the Labour Party was equally clear when that party was in office. Indeed, this same split existed

throughout the 20th century: between those who favoured democratising the chamber's membership and those who feared that a more "legitimate" chamber would become too strong, and threaten government stability. The most fundamental disagreement is therefore about the appropriate powers for the second chamber, rather than its membership, as became clear in debates on the coalition's bill. These differences of opinion exist cross-party. The necessary complexity of any bill introducing major membership reform—which recent events suggest would probably have to deal with powers as well—makes agreement among parliamentarians unlikely. As during the last century, smaller, more piecemeal measures therefore seem more practicable. As in the past, focusing on the most obviously anomalous aspects and dealing with those one by one will maximise the chances of agreement.

6. The remainder of this paper considers such measures, using the structure of questions presented by the committee. I should emphasise that I consider the last of these questions to be far the most urgent and important. My key recommendations are therefore at the end.

Mechanisms for Controlling the Size of the Lords

7. As the committee will know, there is a serious problem with the size of the Lords. Attention was drawn to this by a report that I co-ordinated for the Constitution Unit (and to which your chair was a signatory) in 2011.[4] The chamber's size has gradually crept upwards from 666 just after reform in 1999, to well over 800. This question is therefore important. But it is crucially linked to the question of a proportionality formula—discussed in paragraph 20 onwards, below.

8. The committee raises a number of options for managing/reducing the size of the chamber, the first of which is "no longer replacing hereditary peers in the House of Lords when they die". This reform is desirable, but can only be a small part of the solution. All serious proposals for Lords reform since 1999—large or small—have included removing the hereditary element. The primary reason for making this change is not about size, but about the indefensibility of a hereditary route into a 21st-century legislature, and the resultant reputational damage done to the Lords for so long as this remains. Few any longer defend the presence of the 92 hereditary peers on principle (though many of them as individuals do good work), and indeed very few ever defended the by-elections. These were agreed initially only on the basis that they were unlikely ever to be used, because the "second stage" of reform was supposedly pending. Each time a by-election occurs it risks exposing the chamber to ridicule. Perhaps for this reason, a survey I conducted of peers as long ago as 2007 found that 71% favoured ending the hereditary element. By now I imagine this proportion is even higher. The most straightforward approach would be to end the by-elections. It would also perhaps be sensible to give the remaining hereditaries life peerages, so that it can no longer be claimed that any members sit due to pure accident of birth. This change would require legislation, but very few would oppose it. It would, however, have little impact on the size of the House.

9. The second proposal that the committee mentions is "measures to remove persistent non-attendees". This is of marginal importance. If the desired objective is to reduce the overcrowding in the chamber (of which many members complain), or indeed to reduce costs, it would have little effect. Since the 2011 Leader's Group report the arrangements for leave of absence have been tightened up, and (at end March 2013) 38 members are on leave of absence. It is arguably a problem that these members could return at any time, and that the "eligible" membership of the chamber (764) masks a significantly larger total potential membership (813, including those temporarily disqualified). But compared to other matters discussed here, this is far from the most pressing problem.

10. The third proposal mentioned is "a moratorium on new peers". This was called for in the Constitution Unit's *House Full* report, referred to in paragraph 7, and therefore has my support as a holding position. This recommendation has never been formally taken up, but notably since the report was published in April 2011 (to much media attention), there have been only two political appointments to the Lords, plus six Crossbench appointments. Rumours have been persistent that the Prime Minister will appoint more peers, but for at least two years he seems to have been constrained by the outcry that he knows will occur if and when such appointments are made. As a temporary stopgap, this unofficial moratorium thus appears to have worked, and numbers in the chamber have gradually dropped (though still not to their pre-2010 election levels). But a moratorium cannot last forever, and some more sustainable arrangements must be found. That is why the changes discussed later in this paper are so important. Until these changes are made, however, a moratorium remains appropriate.

11. The committee also suggests fixed term appointments as a possible solution. This proposal has some attractions, but would need careful design if it were not to have unintended effects. All proposals for longer-term Lords reform (whether for elected or appointed members) have envisaged that these members would serve fixed rather than life terms. Life membership of a legislature is extremely unusual internationally.[5] It is far more normal for legislators to have time-limited terms (albeit often with the possibility of renewal). Proposals for the Lords have generally been for long terms of office, on a nonrenewable basis. This arrangement would help protect members' relative independence, including from the party whip. But it could prove difficult to agree what kind of fixed term would be appropriate for the Lords. A 15 year period has been most commonly proposed (for example by the Royal Commission, and the coalition's recent bill). Some have argued that this is too long (particularly for elected members), but it could also be seen as too short. Members of the Lords frequently give more than 15 years of active service, as indeed do many MPs. A 15 year limit would therefore

perversely reduce legislative expertise, and institutional memory. It could also become problematic for those appointed at a relatively younger age. Within an appointment system, the ability for members to serve a second term (perhaps for 10 years, and in exceptional circumstances), might thus be desirable. But who has the power to reappoint then becomes crucial. If such a power lay with party leaders, it would compromise members' independence. Any reappointment should therefore lie with the House of Lords Appointments Commission, based on strict criteria.

12. An additional, but crucial, point if members become routinely able to depart the Lords (either because of fixed terms or permanent voluntary retirement) is that they should not be able immediately to stand for the Commons. This problem would not occur unless legislation was passed, as life peers are ineligible for election. But it is important to remember, in order to prevent the Lords becoming a "training ground" for the Commons (as occurs in some bicameral systems elsewhere). Most proposals, from the Royal Commission onwards, have included a "cooling off" period of five to 10 years.

13. The final possibility mentioned by the committee is the introduction of a retirement age. This would also have some advantages, while raising new questions, the most obvious of which is at what age retirement should be set. The Canadian Senate (previously appointed for life) now uses a retirement age of 75. Members of the UK senior judiciary retire at 70 or 75. But members of the Lords—many of whom have retired from other professions—are often active in their late 70s and beyond. Introducing a retirement age of 80 today would result in departure of around 130 current members of the Lords, and a retirement age of 75 would result in departure of around 230. Notwithstanding the fact that some older members make valuable contributions, the former of these (at least) may be desirable. As with fixed term appointments, a mechanism might be put in place to allow a five-year extension in exceptional circumstances, managed by the House of Lords Appointments Commission. It should again be noted, however, that a relatively high retirement age would disproportionately remove from membership those who are less active. The effect on overcrowding would therefore be ore minimal than the overall figures suggest.

The Current Retirement Scheme

14. The committee asks whether the current retirement scheme, introduced following the recommendations of the Leader's Group, has been effective. The straightforward answer to this question is clearly no: only two members have taken up this option to date, and even they formally retain the right to reverse their decision should they wish. For retirement to become truly permanent (ie irreversible) legislation would be needed. But the bigger problem is the lack of an agreed proportionality formula. Any member taking voluntary retirement at present simply weakens their party/group, with no guarantee that they will be replaced. Until a proportionality formula (see below) is established, any such system is likely to fail.

Expulsion of Members

15. The committee raises the question of expulsion of peers who have been convicted of serious criminal offences. This is one matter on which there is widespread consensus. Legislative provisions to allow this were included in the previous government's Constitutional Reform and Governance Bill, the coalition's bill, and also repeatedly in bills promoted by Lord (David) Steel of Aikwood. However all of these bills have failed, in whole or in part, and the change has not been made. It is a desirable reform, but the number of relevant cases is very small. Though it might be easy to resolve, it is far less important than getting to grips with the size of the chamber, prime ministerial patronage, and therefore a proportionality formula.

Status of the House of Lords Appointments Commission

16. The committee asks about the "desirability, composition and remit of a statutory Appointments Commission". I would argue that the remit of the House of Lords Appointments Commission is very important, and worth reconsidering, while its status in statute or otherwise remains secondary. The Commission has done a good job, and its current composition seems correct.

17. The Appointments Commission currently has responsibility for selecting Crossbench members of the Lords, and vetting political appointees for propriety. As indicated above, the first of these contributions has been important. The Commission applies transparent criteria of merit to the selection of Crossbench peers, and also encourages active membership. Over the 13 years of its existence, the Commission has helped to transform the Crossbenches 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. But what the Commission can achieve while controlling only around 20% of appointments is clearly limited. With respect to party political appointments the checking for propriety is a minimalist position. I have argued for a number of years, as has the House of Commons Public Administration Committee, that the Commission's remit with respect to party peers should be slightly extended.[6] If political parties were required to provide long lists of potential members to the Commission, from which it could select members, this would better enable the Commission to maintain a demographic and professional balance across the chamber as a whole. Alternatively, the Commission could invite parties to nominate candidates meeting specific demographic/professional criteria. In either case, there would need to be agreement about the appropriate criteria to apply, and these should be written into the Commission's terms of reference in a transparent way.

18. But in terms of maintaining balance in the chamber, by far the most important form of balance relates to that between the political parties (and independents), as dealt with in the next section.

19. As the House of Lords Appointments Commission is selecting members to serve in parliament, it is somewhat anomalous that it has no statutory basis. Changing this does seem desirable. However, the Commission to date has functioned well, and there is no reason to believe that it will not continue to do so. The existing non-statutory Commission could readily be given additional powers by the Prime Minister, on the same basis as those powers that it has been given to date. Getting these powers right is thus of far more fundamental importance than whether the Commission is made statutory or not.[7]

A Proportionality Formula for Appointments

20. The committee finally asks about the "scope for establishing a consensus about the principles which should determine the relative numerical strength of the different party groups in the House of Lords, and for codifying such principles". This is the most crucial of your questions. Leaving aside the issue of election, 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 (eg 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.

21. At present there is no clear understanding about the appropriate balance between appointments from the different parties, nor about the numbers that should be appointed. One positive aspect of the arrangements is the clear convention that the Prime Minister should create appointees from beyond their own party. However, prime ministers have consistently (and perhaps understandably) appointed disproportionately more peers from their party than others. For example Callaghan appointed 29 Labour peers, five Conservatives and one Liberal; Thatcher appointed 98 Conservatives, 56 Labour and 10 from the third parties; Major respectively appointed 75, 40 and 17.[8] During 1997–2007 Blair then created 163 Labour peers to 62 Conservatives and 53 Liberal Democrats. His appointments were certainly numerous, but their pro-Labour bias was arguably needed to rebalance the chamber, given the Conservatives' previous advantage. It was not until 2006 that Labour became the largest party. But this illustrates the problem: disproportionate Labour appointments were used to counterbalance the previous disproportionate Conservative appointments, and the chamber got ever larger.

22. It is perhaps worth noting that this is not a new problem. Prior to 1999 the old hereditary chamber had gradually swollen in size, for similar reasons. In the early 18th century it had around 200 members. By the start of the 19th it had grown to 350. By the start of the 20th century it had reached 600, and just prior to the 1,999 reform total eligible membership exceeded 1,200. If appointments remain unregulated, we could quickly reach that position again.

23. As the *House Full* report (see note 4) made clear, the commitment in the coalition agreement to bring party balance in the Lords into line with 2010 general election vote shares was completely unsustainable. It would have required the chamber's membership to grow to around 1100. Although the coalition has not retracted that commitment, it would make no sense to return to it now, more than halfway through the parliament, when we are closer to the 2015 general election than the election of 2010. In general, any attempt to align the chamber's membership with general election votes can clearly only operate as an upward ratchet (unless perhaps some members were forced to depart the chamber at the same time).

24. If rebalancing the chamber to reflect the general election result is unsustainable, the question is what a more sustainable formula would be. The obvious answer is that *new appointments* should be required to reflect general election votes, rather than this formula being applied to the chamber overall. Such a formula has been recommended by the Royal Commission, and most other bodies (including the Public Administration Committee, and the government) proposing a long-term Lords membership that includes some appointed party peers.[9] It 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 (say on a one-in-one-out principle, following deaths or retirements).

25. In addition, there would need to be agreement about the proportion of appointments that should go to independent Crossbenchers. 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.

26. There are, however, two further difficult questions that have to be addressed for such a formula to work. These relate to the size of the chamber/number of appointments, and to the baseline membership from which any such new formula should begin.

27. As the growing size of the chamber is a key concern, it seems necessary to reach agreement not only on the share of appointments between the parties, but also on their overall number. 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. The UK is the only country internationally where the size of the second chamber exceeds that of the first. At a minimum, therefore, the size of the Lords should not exceed the Commons. Going further, a limit of 600, or 550 (as proposed by the Royal Commission) might be appropriate.

28. To get to that point would clearly require the present chamber to shrink. One means of achieving this would be introduction of retirement provisions, as discussed above. A retirement age of 80, if implemented now, would bring the chamber close to the size of the Commons. Further voluntary retirements could help.

29. But there is an additional need for agreement about the starting point from which new appointments begin. As mentioned above, members will not agree to retire if they feel that this would disadvantage their party/group. Retirement of those over 80 would not be party neutral, as relatively fewer Labour and Liberal Democrat peers are this old, compared to Conservatives and Crossbenchers. 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. Here the present position is proprietous, because Labour retains only a small numerical advantage over the Conservatives (222 to 213). 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.

Bringing these Proposals Together

30. In summary, this evidence has suggested that the most urgent and important steps are to achieve agreement about the following:

- The maximum size of the chamber, which might be 550–650.
- A retirement mechanism to initially achieve that target, which might combine a retirement age with further voluntary retirements.
- A fair share of seats in the present chamber, which might be based on equality between the two largest parties.
- A proportionality formula for future appointments up to the agreed size cap, which would most sensibly reflect most recent general election vote shares.

These proposals could ultimately be set down in legislation, but in the short term this is not essential. As the Prime Minister controls appointments, he can unilaterally announce a change in approach at any time. An agreement between the party leaders (and Crossbenchers), publicly announced, would lack legal force but would in effect be politically binding. As part of such a package the House of Lords Appointments Commission should be given control over inviting nominations from the parties when vacancies arise, according to the formula agreed.[10] Until these changes are made, a moratorium on appointments seems appropriate.

31. There are other changes which are desirable, and can in practice only be achieved through legislation:

- Ending the hereditary by-elections.
- Expelling members convicted of serious criminal offences.
- Allowing members to permanently and irrevocably retire from the chamber.

Each of these is relatively straightforward, and uncontroversial, and legislative provisions already exist. But they are secondary to the proposals in the previous paragraph. Indeed until those changes are made, any voluntary retirement scheme is likely to fail. At a future date, once the new system had settled down, it might eventually prove uncontroversial to put the Appointments Commission, proportionality formula, size cap, and any retirement age, on a statutory basis, had no further reform occurred.

3 April 2013

Notes and References

[1] Ballinger, C (2012). The House of Lords 1911–2011: A Century of Non-Reform. Oxford: Hart; Dorey, P, & Kelso, A (2011). House of Lords Reform since 1911: Must the Lords Go? Basingstoke: Palgrave.

[2] Russell, M (2010). A Stronger Second Chamber? Assessing the Impact of House of Lords Reform in 1999, and the Lessons for Bicameralism. Political Studies, 58(5), 866–885.

[3] Russell, M (forthcoming 2013). The Contemporary House of Lords: Westminster Bicameralism Revived. Oxford: Oxford University Press, Chapter 10.

[4] Russell, M, Adonis, A, Allen, G, Boothroyd, B, Butler, R, Dean, B, Dholakia, N, D'Souza, F, Forsyth, M, Hazell, R, Jay, M, Mackay, J, Norton, P, Shell, D, Steel, D, Stevenson, D, Williams, S, Woolf, H and Wright, T (2011), *House Full: Time to Get a Grip on Lords Appointments,* (London: Constitution Unit).

[5] The Canadian Senate switched from a system of life membership to retirement at age 75 in 1965. Small numbers of life members sit in some chambers: for example, each Italian President can appoint up to five life members of the Senate, and former presidents themselves become life senators as of right.

[6] Public Administration Select Committee. (2007). Propriety and Peerages (Second Report of Session 2007–08) (No. HC 153). London: House of Commons.

[7] This has been recognised by the Public Administration Committee (see note 6).

[8] Figures are taken from Brocklehurst, A (2008). Peerage Creations, 1958–2008 (LLN 2008–19). London: House of Lords Library. Crossbenchers and others are excluded.

[9] Royal Commission on the Reform of the House of Lords. (2000). A House for the Future. London: The Stationery Office; Public Administration Select Committee. (2002). The Second Chamber: Continuing the Reform (Fifth Report of Session 2001–02). London: House of Commons; Cabinet Office. (2007). The House of Lords: Reform. London: The Stationery Office.

[10] The Commission might at the same time also be given greater control over demographic/diversity of party appointees, though this change could also be freestanding.

Written evidence submitted by Michael P Clancy, Director, Law Reform, Law Society of Scotland

I am sorry that I have missed the deadline for submitting comments to the inquiry but as the Committee is still taking oral evidence, I would like to put forward these thoughts on behalf of the Society's Constitutional Law Sub-Committee.

General Comments

The Society believes that the House of Lords is a valuable revising chamber and plays an essential role in Parliamentary scrutiny of primary legislation. With regard to secondary legislation, the Society believes that an enhanced role for the House of Lords could include operating as a clearing house for orders in council, regulations and other forms of delegated legislation.

Composition

The issue of composition of the House of Lords is essentially a political matter.

However, it is possible to agree with a broad range of characteristics which members of any reform chamber could exhibit as follows:

- A measure of democratic legitimacy but not to the extent that the chamber could challenge the pre-eminance of the House of Commons;
- A greater degree of independence of the executive and of political parties than the House of Commons;
- A non-partisan approach;
- A recognised expertise in a range of areas;
- Breadth of experience involving at least a proportion of people who are not professional politicians who have a long-term perspective and who represent the nations and regions of the UK. Members of the House of Lords should also have access to knowledge and experience of the EU, legal knowledge, be representative of a range of faith communites and be more representative of society as a whole than the present House of Lords.

Term of Appointments

In response to the House of Lords Reform Bill (2012) the Society stated that the term for ordinary elected and appointed members should be 10 years.

Expulsion

Peers who have been convicted of a serious offence should be subject to expulsion.

Statutory Appointments Commission

A Statutory Appointments Commission would be a desirable development which would put the Commission beyond the influence of politics. Members of the Commission should be chosen in accordance with the Nolan Principles for Public Appointments.

Removal for Non-attendance

There should be measures to remove persistent non-attendees and a retirement age for new peers of 80 years of age.

I hope that the Committee finds these comments helpful.

13 June 2013

Written evidence submitted by Dr Chris Ballinger, Academic Dean & Official Fellow, Exeter College, Oxford

1. This submission comments on the specific questions posed by the Committee in its terms of reference, and draws upon my research into the history of House of Lords reform. My wider analysis of the complexities of House of Lords reform has been published as *The House of Lords 1911–2011: a century of non-reform* (Hart, 2012).

2. Changes to the membership of the House which are to be both significant and binding require legislation. Since 1921, successive Governments have taken "ownership" of reform of both composition and powers. Numerous Private Members' Bills on Lords reform, from both Houses and over several centuries, have been doomed to fail.

3. Many of the issues with which the Committee is concerning itself require, or would be made significantly easier by, *the severing of the link between appointment to the peerage and the receipt of a Writ of Summons to sit in Parliament*, and therefore not just the severing of the honours system and membership of Parliament, but also the ending of the Prime Minister's right to determine the composition and the size of the House (including ending the theoretical question of swamping the Lords). That would require legislation, and would likely be controversial.

Which Changes are "Likely to Command a Consensus"?

4. *No significant and transformative changes are "likely to command a consensus"*. House of Lords reform has never been a matter of all-party agreement. If an agreement on the problems to be addressed can be attained quickly, then it should be sought; but, to be successful in implementing proposals, reformers must know their own mind, be determined to see through their proposals and overcome opposition, find Parliamentary time without too many impediments, and produce proposals which are discrete and simple. Seeking consensus on proposals to give effect to Lords reform, even if there is widespread agreement on broad principles, is a fast-track to inertia.

Mechanisms for Reducing the Size of the House of Lords

5. There seems to be a measure of agreement that the House of Lords, as presently constituted, is too large. Currently, the Lords has 755 members eligible to sit and vote (plus 11 who are disqualified and 42 who have leave of absence), which is about the same size as the House in 1958, before Life Peers were introduced. However, we need clarity about the nature of the problem. The issues include: lack of space and pressure on the House's facilities; non-attendance; effective participation by those who do attend; comparative size with other legislatures. These different problems call for differing solutions. The last of these problems—comparative size—is caused by the current expectation that *membership is, for most Members, a part-time occupation*: unless Parliament wishes to create a full-time upper House, the size question is one of attendance, not membership.

6. No longer replacing Hereditary Peers. Though this would, as explained below, be a desirable tidying-up of the 1997 Government's agenda, it would not substantially reduce the size of the House. The current hereditary membership of the House is relatively young, and peers tend to live even longer than the national average. This would reduce the House by 92 members, but not imminently: the youngest elected Hereditary Peer is currently 42 years of age. Ending the by-elections would require legislation, and would likely arouse substantial opposition.

7. Removing non-attenders. 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. *Systems of leave of absence have never been effective*. In devising a new scheme, care should be given to define the minimum contribution, so as not to disadvantage those who whose contribution to the House is enhanced by keeping up professional commitments. Though it was strongly argued by Lord Exeter in the 1950s (when non-attenders outnumbered attenders by 4:1) that the removal of non-attenders could be enforced by a change in Standing Orders, a much safer route would be to impose a scheme by legislation. However, such a scheme is unlikely to cut membership substantially, even if well-drafted; and it would address only the question of the size of membership, not the numbers attending.

8. Moratorium on appointments. This would reduce the size of the House only slowly, and by attrition, and would inevitably reverse as soon as the moratorium ended. It would, though, have the effect of depriving the House of new members (including new ministerial members) for some years. A key problem is that *a moratorium would not be enforceable without legislation*: the right of the Prime Minister to recommend peers cannot be extinguished by edict. If legislation was considered, it might take the form of imposing a cap on the

maximum number of writs of summons for Life Peers at the present number (as was done with regard to Bishops in 1847).

9. Removing the Bishops. This would reduce the size of the House by just over 3%, and though it would make a clear statement about membership, it is likely to be controversial and difficult in the short term.

10. Radically decreasing the size of the House. Several 20th century schemes for radically reducing the size of the House involved qualifications for peers to receive a writ of summons, or a limit on the number of life creations, or both. However, it usually proved too difficult to define a qualification, beyond broad categories such as being a Privy Councillor. Such a limitation would not bring expertise into the present-day House. If the House sought to introduce qualifications for sitting, over and above the possession of a life peerage, it should think in terms of competencies, not labels (ie that someone thinks critically and with a scientific mind, rather than that someone holds, or held, a particular chair at a university); but a hard-and-fast definition of relevant competencies would be difficult to achieve. Such choice would be better left to discussions within party groups.

11. 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.

Ending the Hereditary Peer by-elections

12. The hereditary qualification for membership of the House of Lords should be discontinued. The manifesto commitment on which the Labour Government came to power in 1997 clear and unambiguous: to remove the right of hereditary peers to sit and vote in the Lords "As an initial, self-contained reform, *not dependent on further reform in the future*".[17] By conceding that 92 hereditary peers could remain (qua their hereditary peerages), the Government breached its own manifesto commitment. It is not clear that this was—or should have been—necessary to secure the bill; but the Government of the day thought it wise. The acceptance of the by-elections, and of placing these on the face on the bill, was even more inexplicable—and a much more severe breach of the Government's manifesto commitment. *It is time to complete the passage of the 1997 proposals* by ending not just the by-elections, but also the right to a seat in Parliament by virtue of a hereditary peerage.

Retirement

13. 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. Though members of the House of Lords are not, of course, employees, any retirement provision which was not justified on proportionate and legitimate grounds would be difficult to explain to the public.

14. Peers have—at least in the modern era—been appointed to Parliament for their lifetime.[18] Nonetheless, it is worth remembering that a retirement age is not unknown to Parliament: currently, 26 Members of the House of Lords (the Bishops) are compulsorily retired from the service of the House at age 70, though some are kept on beyond retirement by being appointed Life Peers. Judges, likewise, retire at 70;[19] though when Life Peerages were introduced in 1958, judges, too, were appointed for life.[20] To introduce a retirement age would mean to deprive those holders of a life peerage, who had attained the retiring age, the right to be in receipt of a Writ of Summons: to do so would require clear and unambiguous wording, contained in Statute.

15. Rather than legislating for a retirement age, legislating for fixed-term appointments might be a more desirable solution. Fixed terms are widely used in public life; indeed, the next Chair of the House of Lords Appointments Commission will be appointed on a 5-year non-renewable term. Fixed terms allow Members to contribute greatly to the work of the House and then take their skills elsewhere, whilst being replaced by those whose energy and experience is fresher. Members appointed to fixed terms of, say, three Parliaments would ensure both continuity and turn-over. If agreed, the scheme could enable the re-appointment for one further period if the appointing authority is satisfied that a re-appointment was more justifiable than bringing in a new member. Proposals should include a prohibition from standing for the House of Commons for a set period

[17] Labour Party, *New Labour Because Britain Deserves Better* (1997). Emphasis added.

[18] NB: originally, membership of the House of Lords was neither hereditary, nor even for life (it depended on the needs and desires of the monarch). More recently, for 11 years from 1876 judicial members were appointed to the Lords for their term of office only.

[19] The retirement age of members of the judiciary was standardised at 70 by the Judicial Pensions and Retirement Act 1993, although certain categories of judicial office-holder can sit up to the age of 75 if the Minister approves.

[20] The Judicial Pensions Act 1959 set a retirement age of 75 for judges.

beyond the term of office in the Lords. Current life memberships of the House could be converted into fixed terms.

Expulsion of Offenders

16. The disqualification from sitting in Parliament of a person convicted of a criminal offence should not differ by House of Parliament. Nor should lower standards apply in Parliament than elsewhere on other matters.

Relative Party Composition

17. There seems to be some measure of agreement that no party should seek a permanent majority in the upper House. One way of achieving that is to relate party composition to the votes achieved in the previous three or four House of Commons elections, with a proportion of members appointed after each election. Cross-bench places could be retained, if desired. If membership continues to be for life, a continual re-balancing, especially where an outgoing government has created peers in its dissolution honours list, would increase rather than stem the size of the House. Therefore an agreement on party composition should be brought into effect only alongside a number-cap, or time-limited appointments, or a severing of the link between the peerage and the House (or all three), to avoid a spiralling of the number of members as election results change over time.

Statutory Appointments Commission

18. Putting the Appointments Commission on a statutory basis has featured in all Government-sponsored reform proposals since 1997. 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.

Other Issues

19. Powers. The Committee has not asked about powers; but the power of the House of Lords is likely to change if there are significant alterations to its composition, as it did after 1958 and after 1999. It is time, perhaps, to accept that all the underpinning assumptions that justified the Salisbury–Addison doctrine have fallen away. Of more specific measures, replacing the veto over secondary legislation with a power of delay might improve the effectiveness of the House.

20. The name for members of a reformed upper House is, perhaps, less fundamental than the nature and number of that membership itself. However, if a radical reduction is numbers is achieved without a "big bang" reform, then some way needs to be found to enable the public to know which peers are in Parliament, and which are not.

21. My own preference is to consider using the term Lord of Parliament, and to permit Members to use the suffix "LP". Lords of Parliament (as opposed to Lords who are not "of Parliament") is already used as a term under the Standing Orders of the House. LP is consistent with the existing usage of the suffix MP, and being part-way between MP (legislator, accountable to the people) and JP (volunteer acting in the interests of justice, appointed on merit)—marginally closer to the former than the latter—seems about right. This would not, of course, prevent Members using their own titles or referring to each other as "My Lord", if they wished!

24 June 2013

Written evidence submitted by David Beamish, Clerk of the Parliaments

Introduction

1. I am pleased to have been invited to give evidence to the Committee, as several of the questions being considered in this inquiry are ones in relation to which I have been consulted by members of the House of Lords over the past few months.

2. When the House of Lords resumed after the summer recess in October 2012, several members raised with me the question what action the House might take in relation to its membership, in the light of the fact that the House of Lords Reform Bill had been dropped and Government legislation to reform the membership could no longer be expected until after 2015. The members' principal concern was to limit the size of the House. Accordingly, I attended several meetings with interested members and prepared a paper for general circulation which described some options and noted some implications. The rest of this memorandum is an updated version of that paper.

Scope of this Memorandum

3. The primary focus of the memorandum is on measures which would not require legislation and therefore might be taken by the House itself. But certain of the changes which some members would welcome would

require legislation, in some cases not dissimilar to provisions of the Constitutional Reform and Governance Bill (session 2009–10) which were removed before its enactment in the "wash-up" at the end of that session. Accordingly the relevant provisions of that Bill are set out, for ease of reference, in Appendix C to this memorandum. The provisions of the House of Lords (Cessation of Membership) Bill [HL], introduced by Lord Steel of Aikwood, sent to the Commons on 24 July 2012, and given a First Reading there on 4 December, and of the House of Lords Reform Bill [HL] introduced by Baroness Hayman on 15 May 2013, are noted below where relevant. The Committee may be aware that Dan Byles MP, who came 5th in this session's ballot for private members' bills announced earlier this month his intention "to bring forward a simple House of Lords Reform Bill which, if it becomes law, will remove Peers who are convicted of a serious criminal offence from the House of Lords and introduce a retirement mechanism to help limit the size of the Upper House".[21] His House of Lords Reform (No. 2) Bill was introduced on 19 June, and is due to have its Second Reading debate on 18 October, but at the time of writing had not been published.

4. The "size of the House" may be interpreted in two ways: it can refer simply to the number of members eligible to participate in proceedings, or it can refer to those members who do in practice attend sittings. Measures to remove from membership those members who play no significant part will reduce the size of the House in the first sense but will have no impact on crowding in the Chamber, pressure on facilities or costs. This memorandum discusses both measures to lower the membership total and measures to reduce attendances, with an emphasis on the latter.

5. Two possible types of measure are discussed: those which would *prevent* the participation of some members, and those which would *discourage* their participation. In general, there is little that the House can do, except by way of legislation, to exclude members (other than as a penal sanction), and so measures to discourage participation are likely to prove more fruitful in the short term.

6. This memorandum is concerned only with "lords temporal", and not with the 26 archbishops and bishops in the House.

7. None of the proposals canvassed in this paper is intended to be an alternative to reform of the composition of the House of Lords. The paper takes as its starting point the fact that major reform is unlikely to happen for some years, and therefore both supporters and opponents of such reform may in the meantime wish to make changes that will improve the operation of the present House.

Background

8. The issue of the powers of the House in relation to the attendance of its members has been addressed several times in the past, and three reports are particularly relevant:

- Report by the Select Committee on the Powers of the House in relation to the Attendance of its Members ("the 1956 report").
- Committee for Privileges, 1st Report (2008–09), on The Powers of the House of Lords in respect of its Members ("the 2009 report").[22]
- Report of the Leader's Group on Members Leaving the House ("the 2011 report").[23]

9. The first of these was the report which led to the introduction of the leave of absence scheme. It was prompted by concern over the potential impact of "backwoodsmen" who normally did not attend but might do so to vote down progressive legislation. The Committee concluded that the House had no power to exclude members (whether temporarily or permanently) and so the leave of absence scheme depended on a moral obligation on members on leave of absence to stay away or end their leave of absence (which until 2011 required one month's notice; the period has now been increased to three months).

10. The second report (the 2009 report) focused on the power of the House to suspend members guilty of serious misconduct. It led to the suspension of two members (and subsequently another five) for breaches of the Code of Conduct. It differed from the 1956 report in concluding that the House did have a power to suspend a member for misconduct within the span of a Parliament (that limitation being because an order of the House could not override a new writ of summons issued at the start of a new Parliament).

11. The third report (the 2011 report), produced by a Leader's Group chaired by Lord Hunt of Wirral, addressed the powers of the House with regard to attendance and "retirement". It concluded that the House could not introduce a formal retirement scheme, but it did lead to the introduction of an informal retirement scheme in 2011. Three members have taken up that scheme, and are no longer included in membership lists produced by the House Administration; two of those had not attended for some years prior to retiring; the third, Lord Bramall, was active in the House until his retirement at the end of the 2012–12 session. Possible ways of extending that scheme are discussed below in paragraphs 21 to 28.

12. The 2011 report also recommended strengthening the leave of absence scheme, by having the Clerk of the Parliaments write at the start of each session to members who had attended rarely in the previous session

[21] http://www.danbyles.co.uk/conservatives/news/dan-byles-mp-will-use-private-members-bill-introduce-modest-and-simple-house-lords-reform-bill.

[22] http://www.publications.parliament.uk/pa/ld200809/ldselect/ldprivi/87/8702.htm

[23] http://www.publications.parliament.uk/pa/ld201011/ldselect/ldleader/83/8302.htm

inviting them to apply for leave of absence. Members who did not reply within three months would be granted leave of absence. That recommendation was approved by the House and took effect at the start of the 2012–13 session in May 2012. It led to 16 peers agreeing to take leave of absence and a further four being granted leave of absence after failing to reply within three months. As a result, the number of peers on leave of absence is now 42, much higher than in recent years. Possible further strengthening of the leave of absence scheme is discussed in paragraphs 38 to 40 below.

Exclusion of Members

13. It has been suggested to me that the power to suspend members, exercised seven times since the 2009 report, could be used to exclude members who fail to attend. Historically, there are many precedents for the House seeking to punish members for failure to attend, but (perhaps unsurprisingly) there has never been any suggestion that compulsory exclusion was a suitable punishment. For reasons set out in Appendix A, it is clear that the reasoning of the 2009 report does not support suspension as a sanction for non-attendance; such a measure would require legislation. Clause 2 of the House of Lords (Cessation of Membership) Bill [HL] of 2012–13 and of the House of Lords Reform Bill [HL] provides one model (permanently excluding a peer who does not attend during a session, subject to certain exceptions).

Exclusion of Members with Criminal Convictions

14. Several members have suggested that the House might take action in relation to members who have served prison sentences above a threshold. They include the Leader of the House, Lord Hill of Oareford, who, in a debate on the size of the House on 28 February 2013, said:

> "I have strong sympathy with those who are uncomfortable about Members convicted of a serious prisonable offence returning to the House. Pending primary legislation to exclude Members on those grounds, I would certainly support steps to explore measures that we ourselves might take to discourage Members in that category from taking part in the work of our House."[24]

15. In 2011 two members who were sentenced to imprisonment were then suspended for periods equivalent to their prison sentences, but those suspensions were within the current Parliament: as noted in paragraphs 10 and 11 above, permanent exclusion, or exclusion beyond the end of a Parliament, would not be possible. Moreover, both the offences concerned related to obtaining money from the House; the House has not, at least in recent times, sought to take action of its own in relation to members convicted of offences unrelated to their membership.

16. Any permanent exclusion of members sentenced to imprisonment would require legislation. In the 2009–10 session, the Constitutional Reform and Governance Bill, as it reached the House of Lords, contained provisions to that effect. The text of the relevant provisions is set out in Appendix C. The following points may be noted:

(1) The provisions were not retrospective—they applied to convictions after the coming into force of the relevant provisions of the Act.[25]

(2) The threshold was a sentence of imprisonment "indefinitely or for more than one year", passed by a United Kingdom or overseas court.

(3) The Bill also contained provisions allowing the House to expel (or suspend) a member where "the House is in disrepute because of conduct of the person"—that might have permitted expulsion in a case of imprisonment for a shorter period than that mentioned in point (2) above, but not in relation to conduct before the Act came into force.

(4) It has been pointed out to me that point (3) above would provide a possible means of excluding members who had been sentenced to imprisonment in the past, if the House were to conclude that their subsequent participation in the proceedings of the House had brought the House into disrepute.

(5) A similar provision in relation to members sentenced to imprisonment (but without any equivalent of point (3) above) was contained in clause 3 of Lord Steel of Aikwood's House of Lords (Cessation of Membership) Bill [HL] in 2012–13 and is in clause 3 of Baroness Hayman's House of Lords Reform Bill [HL]. As indicated in paragraph 3 above, Mr Byles's House of Lords Reform (No. 2) Bill is expected to include provisions to "remove Peers who are convicted of a serious criminal offence from the House of Lords".

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[24] HL Deb, 28 February 2013, column 1182.

[25] On 28 March 2004 the Sunday Times carried a report (page 3) implying that the then Government had been considering, but had abandoned, retrospective legislation excluding peers sentenced to imprisonment: "The irrepressible Lord Archer of Weston-super-Mare has survived again. He will be able to keep his seat in the House of Lords indefinitely despite having a criminal conviction. Ministers have decided to shelve their plans to strip peers who have served jail terms of their titles. Lord Falconer, the constitutional affairs secretary, confirmed yesterday that the move had been abandoned along with other reforms to the upper house."

Changing the Terms of Newly Created Life Peerages

17. It has also been suggested to me that future creations of life peerages should limit the period for which the peerage entitles the new life peer to sit in the House of Lords, by reference to length of service, an age limit, or some combination. The historical precedents make clear that this would need legislation: the introduction of life peerages (first for judges in 1876 and then for others in 1958) was the subject of legislation.

18. Although a compulsory scheme would require legislation, it would nevertheless be possible to introduce a non-statutory scheme. While the impact would not be directly felt for a while, it could help to give momentum to other measures.

19. Essentially, 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[26]), or whichever came first (or second!).

20. 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.

Steps Short of Exclusion of Members

Voluntary Retirement

21. The 2011 report, by the Leader's Group on Members Leaving the House, led to the adoption, in 2011, of a "voluntary retirement" scheme. This scheme allows members to write to the Clerk of the Parliaments indicating their wish permanently to retire from the service of the House. To date only three members have taken advantage of the scheme, and two of those had been non-attenders for some years. There are at present 132 members of the House (excluding those already on leave of absence) aged 80 or over, and 236 aged 75 or over.

22. The fundamental weakness of the "voluntary retirement" scheme is the lack of an incentive. Members are entitled to claim £300 in respect of any day on which they attend the House; there are also other benefits attaching to membership, such as the provision of IT equipment, access to facilities and papers, and so on. In the absence of any offsetting incentives, retirement is unlikely to be an attractive option for many members.

23. The 2011 report suggested that the possibility of a "modest pension, or payment on retirement" (which it described as a "resettlement payment") should be investigated. The Leader's Group argued that this financial provision would be compatible with "an overall saving to the taxpayer".[27] In the long term, that is undoubtedly the case, 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. The following paragraphs discuss some of the practicalities, but I should note that since I first examined this matter the Leader of the House, Lord Hill of Oareford, has indicated in the Chamber that the Government and other parties do not support the idea: "I should make clear, as I have done before, that the Government do not support making taxpayers' money available to Members of the House to encourage them to retire. That would be wrong, and it would be seen to be wrong. I am glad to hear that my view on this is shared by all groups and all parties."[28]

Payments to Retiring Members

24. Possible elements of a non-statutory scheme for making resettlement payments on retirement might be as follows:

(1) The amount payable to a retiring member would be related to the number of attendances by that member in (say) a period of a year prior to the start of the scheme.

(2) The payment might be £300 per attendance, ie a year's worth of allowances. If a higher amount were thought desirable to attract more participants, it would be desirable to make further regular (perhaps annual) payments subsequently, for an agreed period, rather than one large payment.

(3) The scheme might (but need not) be confined to members who had reached a certain age (75 or 80) or served at least 15 years in the House.

(4) An initial scheme could be capped by time and/or cost: members could be given until a certain date to decide whether to retire, and/or the scheme could be closed when the take-up reached a limit, expressed either as a number of members or as a budget for the retirement payments.

[26] Bearing in mind that in 1984 Harold Macmillan was made a peer at the age of 90, and in 2010 an 84-year-old was made a life peer, it may be that a higher age would be more acceptable initially!

[27] 2011 report, page 14.

[28] HL Deb, 28 February 2013, column 1181. In the same debate the Convenor of the Crossbench Peers, Lord Laming, said (speaking in a personal capacity): "Any form of financial inducement to make such a [retirement] scheme more popular would, in my view, especially in the current circumstances, be inappropriate." (column 1171).

(5) For members taking a party whip, the impact of retirement on their party's voting strength might be a concern. Informal arrangements might be made for those members who so wished to apply through their party whip, so that the whips could satisfy themselves that the distribution of retirements among the parties was acceptable before putting forward their members' applications.

25. There would be quite a few practicalities to be ironed out,[29] and as a first step a working group of members might be appointed to make detailed recommendations on the operation of a scheme.

26. While the House would have no power to prevent retiring members from changing their minds and attending sittings and voting in divisions, and they would continue to receive a writ of summons in each new Parliament, it would be straightforward to provide that members who had received a payment could not claim allowances or expenses, or other benefits such as IT support and the ability to book meeting rooms, thereafter. (On the other hand they could be offered the same "club rights" as the hereditary peers who left the House in 1999, and that might be helpful in encouraging members to participate in the scheme.)

27. Alternatively, the risk of retiring members changing their minds could be averted by means of a statutory scheme along the lines contained in clause 1 of Lord Steel of Aikwood's House of Lords (Cessation of Membership) Bill [HL], clause 1 of Baroness Hayman's House of Lords Reform Bill, and clause 56 of the Constitutional Reform and Governance Bill of session 2009–10 (see Appendix C). A scheme for making a transitional payment could sit alongside such a scheme.

Financial Impact of Payments to Retiring Members

28. Paragraphs 44 to 47 of the 2011 report discussed the financial impact of making compensation payments to retiring members, and proposed that any such payments "should come from within the existing budget for the House and should incur no additional public expenditure". The Finance Director has provided an indication of the cost of, and likely savings from, a scheme offered to members who have served for 15 years and are above a threshold age (75 or 80), on the assumptions that the payment in each case would be the amount of attendance allowance claimed in the 2011–12 financial year and that take-up would be 50% of those eligible. The analysis is in Appendix D. It is clear that such a scheme could pay for itself quickly (whatever the level of take-up).

Withholding Financial Support from Certain Members

29. As an alternative to making payments to retiring members, the House could give members a financial inducement to absent themselves by withholding some financial (or other) support from those who have (say) reached a certain age, or served for a certain number of years, or attended fewer than a certain proportion of sittings, or some combination.

30. The simplest such arrangement would be to withhold the right to claim allowances and/or travel expenses from members over a certain age, or who had served for more than a certain period.[30] That approach would have the disadvantage—which I know for many members of the House of Lords will be a fatal one—that it affects those who live far from London, or are of limited means, far more than others. It would be a pity to make the House effectively open to older members only if they are well-off or live in south-east England.

31. On the other hand, gradual withdrawal of financial support would provide a way of showing that the House is serious about introducing retirement and, if arrangements were introduced for new members to agree to retire (paragraphs 18 to 20 above), would reduce the disparity between new and existing members. One suggestion which has been put to me is for an arrangement whereby in 2015 (from the start of the new Parliament) members over 85 with 15 years' service would cease to be eligible for financial support, with the age limit reducing to 80 in 2020 and finally to 75 in 2025.

32. Another possibility would be to confine payments to regular attenders. When reimbursement of railway fares—the first scheme for reimbursement of Lords' expenses—was introduced in 1947, it was subject to an assiduity test: claimants had to have attended one-third of sittings (or, for those living in Scotland, one-third of sittings at which Scottish business was taken). A similar arrangement might increase attendance by some members at around the chosen threshold but would certainly discourage rare attenders.

33. Another possibility, almost the opposite of the arrangement described in the previous paragraph, would be to have a variable allowance somewhat like mileage allowances which are *lower* above a certain threshold. Members attending more than a certain percentage of sittings might receive a lower allowance for sittings above that threshold; or there could be several steps and tapering allowances. The simplest version, within the present framework, might be to say that members attending more than (say) 75% of sittings can claim only

[29] One technical point is worth mentioning here: as Accounting Officer, I would need to be satisfied that payments were within the ambit of the House of Lords vote. But it is perhaps more important that HM Treasury approval would in practice be needed (even though any scheme could be expected to be financed by the House from its existing budget); the likely savings to public funds should make any reasonable scheme attractive to HM Treasury.

[30] I should point out that some members have served for two distinct terms: archbishops and bishops given life peerages, and hereditary peers who left the House in 1999 and were subsequently made life peers. There are currently three of the former (plus one who has retired and one on leave of absence) and six of the latter (excluding two on leave of absence). A decision would be needed as to how to reckon their length of service.

the reduced daily allowance (£150) for sittings above that threshold. This would be very different from other measures discussed in this note, affecting only members attending frequently. But it might have a more significant impact on crowding in the Chamber, and perhaps the number of interventions made, by encouraging members to attend sittings more selectively.

34. Another possible incentive to retirement would be to review the rules governing access to facilities for retired members. At present retired members enjoy the same rights as those on leave of absence, with the exception that they are not entitled to receive parliamentary papers.[31] These rights include the right to sit on the steps of the throne, to use the Library, dining room and other facilities, and to apply for tickets for themselves or their spouses to a range of events.[32] If the House wishes to encourage more members to take voluntary retirement, one option, which could be adopted in parallel with the changes to the leave of absence scheme outlined above, might be to give more privileges to retired members than to those on leave of absence—making retirement the more attractive option. A danger, however, would be that it might encourage some rarely attending members to take up neither option!

35. It would also be possible simply to promote the existing "voluntary retirement" scheme more actively than has been the case hitherto. However, the low take-up, and recent adverse comment in the press,[33] make it difficult to promote the scheme effectively at present—indeed, there is risk that the scheme as a whole may fall into disrepute. On the other hand, if a small number of high-profile members of the House could be persuaded either to retire or, depending on circumstances, to state their intention to retire at a certain point in the future (either when they reach a specific age, for instance 75, or upon completion of a defined period of service), then the scheme might be revitalised, becoming a credible alternative to the leave of absence scheme.

36. Such an arrangement might be facilitated by marking the service of retiring members.[34] One approach (which would also avoid a trickle of retirements) would be for all retirements to take effect at the end of a Parliament, when those concerned could be thanked in the Chamber and perhaps at a social function as well. The knowledge that other members were to retire at the same time might make the scheme more acceptable to those considering retirement.

37. One problem with any voluntary retirement scheme is that the political parties may not wish to weaken their position in the House. It might therefore be important to ensure that all three parties reduced their numbers by a similar proportion. That could be achieved by agreement among the party leaders and whips on a target number of retirements. If the idea in the previous paragraph that retirements should take effect at the end of a Parliament were adopted, then it would be straightforward to compare notes and ensure that all parties had met the agreed target.

A Strengthened Leave of Absence Scheme

38. An alternative approach might be for the House to strengthen the terms of SO 22, making more forceful use of the leave of absence scheme to reduce numbers. The House could set a minimum level of attendance required of its members (whether expressed as a fixed number, or as a percentage of sitting days over the course of a session or calendar year). Such a rule would have to allow for exceptions, where members had a valid and time-limited reason (such as temporary ill health) 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. That might be invidious but would certainly be workable, and is precedented: until the 1970s the Leave of Absence Committee had discretion not to grant leave of absence in all cases—the difference being that that Committee considered only non-attenders and not infrequent attenders.

39. The question then arises—what could the House do to those who failed to comply? For the reasons given in paragraph 13 above and Appendix A, 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.

40. Appendix B contains a possible redraft of SO 22.

Lord Steel of Aikwood's Motion

41. On 28 February 2013 the House of Lords debated a motion moved by Lord Steel of Aikwood "That, notwithstanding the normal practice of the House, this House resolves that no introductions of new Peers shall

[31] Procedure Committee, 5th Report, 2010–12.

[32] *Companion*, p. 21.

[33] See *The Daily Express, Ageing peers demand redundancy pay-offs for "voluntary retirement"*, 14 October 2012, http://www.express.co.uk/posts/view/351892/Ageing-peers-demand-redundancy-pay-offs-for-voluntary-retirement-.

[34] The voluntary retirement scheme in the 2011 report envisaged that retirement would be marked informally outside the Chamber. As the first two members who retired had not attended for some years, that did not happen. The retirement of Lord Bramall at the end of the 2012–13 session was marked by a small informal party held by the Lord Speaker.

take place until the recommendation in paragraph 67 of the First Report of the Leader's Group on Members Leaving the House, chaired by Lord Hunt of Wirral (HL Paper 83, Session 2010–12), has been followed."[35]

42. That recommendation was as follows: "Whilst we cannot recommend that there should be a moratorium on new appointments to the House—since, while the purpose of the House is to provide expertise, we must ensure that that expertise is refreshed and kept up to date—we do urge that restraint should be exercised by all concerned in the recommendation of new appointments to the House, until such time as debate over the size of membership is conclusively determined."

43. Lord Hunt of Kings Heath (Deputy Leader of the House of Lords) moved an amendment as follows:

> "to leave out from 'that' in line 1 to the end and insert "this House affirms the recommendation in paragraph 67 of the First Report of the Leader's Group on Members Leaving the House, chaired by Lord Hunt of Wirral (HL Paper 83, Session 2010–12), that "restraint should be exercised by all concerned in the recommendation of new appointments to the House"; and calls on Her Majesty's Government to support proposals, in line with legislation passed by this House, to:
>
> (a) allow members of the House to retire permanently from the House;
>
> (b) provide for the exclusion from the House of any member who does not attend the House during a Session save where that member has leave of absence in respect of the Session in accordance with Standing Orders of the House, or where a Session is less than six months long; and
>
> (c) provide that a member who is convicted of a serious offence and sentenced to a term of imprisonment of more than one year shall not attend the sittings of the House."

44. Lord Hunt of Kings Heath, and the Leader of the House (Lord Hill of Oareford) questioned (rightly in my view) the propriety of the House seeking to prevent newly created peers from taking their seats. On a division, Lord Hunt of Kings Heath's amendment was carried by 217 to 45,[36] and the amended motion was then agreed to without a division. So it is apparent that there is widespread support for restraint in relation to new peerage creations and for legislation in relation to retirement, and the exclusion of non-attenders and members sentenced to imprisonment for more than a year.

26 June 2013

APPENDIX A

SUSPENSION IN RESPECT OF NON-ATTENDANCE

In the course of preparing the 2009 report, the Committee for Privileges considered memoranda by the then Attorney General and Lord Mackay of Clashfern. The former argued that the House did not have the legal power to suspend its members; the latter that it did. But notwithstanding this divergence of opinion, they agreed, as did the Committee itself, that, in the words of Lord Mackay of Clashfern, "in the absence of such disqualifying provisions, in statute or in common law, the right of a peer to a writ of summons is unchallenged".[37]

But while it is clear that the House has no power to remove the "fundamental constitutional right" conferred by the letters patent, it is now accepted that it has significant power to modify the way in which the "duty" embodied in the writ of summons is performed. The 2009 report, agreed by the House in May 2009, established that the writ is subject to certain "implied conditions", embodied in rules agreed over time by the House (in Standing Orders, the Code of Conduct, the rules on financial support, and so on). Thus Lord Mackay concluded that suspension for a defined period, no longer than the remainder of the current Parliament, may be imposed "if a Member of the House were to be guilty of a clear and flagrant breach of the rules of the House, gravely transgressing the conditions implied in the writ of summons". The question, therefore, is whether such a power could be used in respect of non-attendance.

The wording of Standing Order 22 is descriptive, not prescriptive: "Lords are to attend the sittings of the House or, if they cannot do so, obtain leave of absence". The Standing Order does not specify a required level of attendance, nor does it spell out any disciplinary consequences following failure to attend. The reason is clear from the 1956 report, which led to the adoption of the Standing Order in more or less its present form. The House had for many years exercised a power to excuse Members from attendance, notwithstanding the "peremptory" wording of the writ; the Standing Order was intended to "regularise the existing state of affairs" rather than establishing a new rule. It then went a stage further, by indicating that Members who cannot attend sittings of the House *should* apply for leave of absence:

> "The imposition of certain conditions and formalities upon such regularisation seems to the Committee to be no more than the legitimate and proper use of that power which, as all agree, the House has to organise and regulate its own proceedings."[38]

[35] HL Deb, 28 February 2013, columns 1165–85
[36] Lord Steel of Aikwood himself accepted the amendment and voted in support of it.
[37] 2009 report, p. 10.
[38] 1956 report, p. xii.

But while confirming the existence of a duty upon Members who were unable to attend to apply for leave of absence, the Committee was very careful not to turn the duty into a mandatory requirement, thereby trespassing on the royal prerogative. Thus the Standing Order states in terms that it "shall not be understood as requiring a Lord who is unable to attend regularly to apply for leave of absence if he proposes to attend as often as he reasonably can."

The 1956 Committee further considered whether non-attendance could be deemed to constitute contempt, and concluded that, as a general rule, it could not, though the Committee did find that a contempt could occur where a specific order of the House had been breached: "There are numerous cases which can be taken to establish that failure to obey an order of the House commanding attendance has been regarded as contempt ... but the Committee have been unable to discover any instance in which Peers have been punished for failure to attend unless they have previously been specially summoned by order of the House."[39] The Committee concluded: "Since 1841, no attempt has been made by the House to enforce the attendance of Peers, but there can be no doubt that such a power does still exist, and could be used by the House if it so wished."[40]

However, this is a power to *enforce* attendance in specific circumstances, not to exclude those guilty of non-attendance. The 1956 Committee drew a clear distinction between an order to attend on a specific occasion, disobedience to which might be punishable as a contempt, and the general requirement to attend, which derives from the writ of summons rather than from any order of the House. Thus the Committee stated that if a sanction were to be imposed upon a Member simply for failure to apply for leave of absence, the effect would be "partially or completely to exclude him from the exercise of his rights." The Committee therefore concluded: "the Committee cannot advise the House that it would be within its powers to attach penalties involving exclusion from the House to any new Standing Order on the subject of leave of absence."[41]

Notwithstanding the changes agreed in 2009, I believe the conclusion of the 1956 Committee remains valid, for the following reasons:

— Lord Mackay of Clashfern, in the opinion annexed to the 2009 report, argued that the power to suspend, in his view, could only be used against those who had "been found guilty of clear and flagrant misconduct." It is not clear that failure to attend regularly can in itself be construed as "clear and flagrant misconduct".

— Lord Mackay sought to distinguish his findings in respect of misconduct from those of the 1956 Committee, noting that the 1956 Committee explicitly excluded cases of misconduct from its analysis. The 1956 Committee in fact acknowledged that "It may well be the case that the House, in law and by the custom of Parliament, has further powers"; Counsel to the Crown, in evidence to the Committee, went so far as to suggest that "If a peer has been guilty of misconduct ... it would be open to the House, as part of his sentence, to deprive him of the right of sitting and voting". Thus the existence of a power to suspend in respect of misconduct does not necessarily imply the existence of a similar power in respect of non-attendance.

— As has been noted above, the House has historically punished Members for non-attendance solely in order "to enforce attendance". But this was a power exercised by a House that was too small, rather than one that was too large. It would seem perverse to suspend members for non-attendance, in effect punishing an offence of non-attendance with *enforced* non-attendance.

— Punishing a member for non-attendance *per se* (as opposed to punishing them for disobeying a direct order of the House) would be *ultra vires*. The duty to attend is a duty imposed upon members by the Sovereign, by means of the writ of summons, not by the House.

I consider therefore that the House does not possess the power to suspend Members who, under current arrangements, fail to attend regularly, and that primary legislation would be required to confer such a power upon the House.

APPENDIX B

A DRAFT STANDING ORDER 22 FOR A STRENGTHENED LEAVE OF ABSENCE SCHEME

A draft of an amended SO 22, strengthening the leave of absence scheme, follows. The text in square brackets is indicative, and would be subject to further discussion. The current text is also given for comparison.

Proposed Re-draft of Standing Order 22

22—(1) Lords are to attend the sittings of the House, and any Lord who is unable to attend the House regularly should obtain leave of absence, which the House may grant at pleasure. A Lord may apply for leave of absence at any time during a Parliament for the remainder of that Parliament.

[39] 1956 report, p. ix. The Committee noted that in 1820, during proceedings on Queen Caroline's Degradation Bill, the House ordered that Peers be fined up to £100 for each day's absence.

[40] 1956 report, p. viii.

[41] 1956 report, p. xiii.

(2) At the start of each new session of Parliament, the Clerk of the Parliaments shall write to all Lords temporal who in the preceding session did not attend at least [25]% of those sittings of the House which they were eligible to attend, inviting them to give reasons for this non-attendance.

(3) No more than [one month] following the start of each new session, the [Leave of Absence Sub-Committee of the Procedure Committee] shall meet and consider any reasons submitted pursuant to paragraph (2). All Lords who in the preceding session did not attend at least [25]% of those sittings of the House which they were eligible to attend shall, unless the [Sub-Committee] otherwise direct, be deemed to have applied for leave of absence for the remainder of the Parliament, with immediate effect.

(4) Upon the dissolution of Parliament the Clerk of the Parliaments shall in writing ask every Lord who was on leave of absence at the end of that Parliament whether he wishes to apply for leave of absence for the new Parliament. Any Lord who has not by the date of the opening of the new Parliament given notice of his wish to attend the House regularly in the new Parliament, shall be deemed to have applied for leave of absence for the remainder of that Parliament, with effect from that date.

(5) A Lord who has been granted leave of absence should not attend the sittings of the House until the period for which the leave was granted has expired or been ended, unless it be to take the Oath of Allegiance.

(6) If a Lord, having been granted leave of absence, wishes to attend during the period for which the leave was granted, he should give notice to the House accordingly at least three months before the day on which he wishes to attend; and at the end of the period specified in the notice, or sooner if the House so direct, the leave shall end.

(7) For the purposes of this standing order Lords are deemed to be eligible to attend all sitting days including and following the date of their introduction, with the exception of those days on which they are on leave of absence, suspended, or disqualified from attending the House.

Current Text of Standing Order 22 (as amended on 30 June 2011)

22—(1) Lords are to attend the sittings of the House or, if they cannot do so, obtain leave of absence, which the House may grant at pleasure; but this Standing Order shall not be understood as requiring a Lord who is unable to attend regularly to apply for leave of absence if he proposes to attend as often as he reasonably can.

(2) A Lord may apply for leave of absence at any time during a Parliament for the remainder of that Parliament.

(3) On the issue of writs for the calling of a new Parliament the Clerk of the Parliaments shall in writing ask every Lord who was on leave of absence at the end of the preceding Parliament whether he wishes to apply for leave of absence for the new Parliament.

(4) At the start of each session of Parliament the Clerk of the Parliaments may in writing ask any Lord Temporal not on leave of absence, suspended or otherwise disqualified from attending the House, who in the previous session attended the House very infrequently, whether he wishes to apply for leave of absence for the remainder of the Parliament.

(5) Any Lord who fails to reply to a letter sent by the Clerk of the Parliaments pursuant to paragraph (3) or (4) above within three months from the date the letter was sent shall be granted leave of absence for the remainder of the Parliament.

(6) A Lord who has been granted leave of absence should not attend the sittings of the House until the period for which the leave was granted has expired or the leave has sooner ended, unless it be to take the Oath of Allegiance.

(7) If a Lord, having been granted leave of absence, wishes to attend during the period for which the leave was granted, he should give notice to the House accordingly at least three months before the day on which he wishes to attend; and at the end of the period specified in the notice, or sooner if the House so direct, the leave shall end.

(8) In applying the provisions of this Standing Order the Clerk of the Parliaments may seek the advice of the Leave of Absence Sub-Committee of the Procedure Committee.

APPENDIX C

PROVISIONS RELATING TO MEMBERSHIP OF THE HOUSE CONTAINED IN THE CONSTITUTIONAL REFORM AND GOVERNANCE BILL, SESSION 2009–10, AS IT REACHED THE HOUSE OF LORDS, BUT WHICH WERE REMOVED BEFORE ITS ENACTMENT

PART 5: THE HOUSE OF LORDS

53: *Ending of by-elections for hereditary peers*

(1) For section 2(4) of the House of Lords Act 1999 (c. 34) substitute—

> "(4) The limit in subsection (2) is reduced by one whenever a person who counts towards that limit dies."

(2) Subsection (1) has no effect in relation to a death occurring before this section comes into force.

54: *Removal of members of the House of Lords etc*

(1) This section applies to a person ("P") who is an excepted hereditary peer or a life peer if any of the following events ("relevant events") occurs—

(a) a condition set out in Part 1 of Schedule 8 is met in relation to P,

(b) an expulsion resolution is passed in relation to P under section 55, or

(c) P resigns from the House of Lords under section 56.

(The conditions set out in Part 1 of Schedule 8 cover serious criminal offences and bankruptcy restrictions orders etc.)

(2) P shall not be a member of the House of Lords at any time after the relevant event occurs and, accordingly—

(a) P shall not be entitled to receive writs of summons to attend the House, and

(b) any writ of summons previously issued to P has no further effect.

(3) Part 2 of Schedule 8 supplements subsection (2).

(4) Part 3 of Schedule 8 provides for the effect of subsection (2) to be reversed in certain circumstances.

(5) In this Part—

> "excepted hereditary peer" means a person excepted from section 1 of the House of Lords Act 1999 (c. 34) by virtue of section 2 of that Act;
>
> "life peer" means a person who is entitled to receive writs of summons to attend the House of Lords by virtue of a peerage under the Life Peerages Act 1958 (c. 21) or the Appellate Jurisdiction Act 1876 (c. 59);
>
> "peerage" includes the dignity conferred by virtue of appointment as a Lord of Appeal in Ordinary.

(6) In determining whether a person is entitled to receive writs of summons for the purposes of the definition of "life peer", ignore—

(a) section 2 of the Forfeiture Act 1870 (c. 23);

(b) sections 426A and 427 of the Insolvency Act 1986 (c. 45);

(c) regulation 4 of the European Parliament (House of Lords Disqualification) Regulations 2008 (S.I. 2008/1647);

(d) any suspension resolution passed in relation to the person under section 55.

55: *Expulsion and suspension of members of the House of Lords*

(1) Standing Orders of the House of Lords may make provision under which the House may pass, in relation to a person who is an excepted hereditary peer or a life peer, an expulsion resolution or a suspension resolution.

(2) An expulsion resolution is a resolution which states that, in the House's opinion—

(a) the House is in disrepute because of conduct of the person,

(b) that conduct warrants the loss of the person's entitlement to receive writs of summons to attend the House, and

(c) accordingly, the person should lose that entitlement.

(3) A suspension resolution is a resolution which states that, in the House's opinion—

(a) the House is in disrepute because of conduct of the person,

(b) that conduct warrants the suspension of the person's entitlement to receive writs of summons to attend the House, and

(c) accordingly, the person's entitlement should be suspended for the period specified in the resolution.

(4) A person in relation to whom a suspension resolution is passed shall not be a member of the House of Lords during the period of suspension specified in the resolution and, accordingly—

(a) during that period the person shall not be entitled to receive writs of summons to attend the House, and

(b) any writ of summons previously issued to the person has no effect in relation to that period.

(5) An expulsion resolution or a suspension resolution must specify—

(a) the date or dates on which, or

(b) the period or periods during which,

in the House's opinion, the conduct occurred.

(6) A date specified under subsection (5) must not be earlier than the start date and a period specified under subsection (5) must not start before the start date.

(7) "The start date" means the date specified as such by Standing Orders which must not be earlier than the date on which this section comes into force.

(8) An expulsion resolution or a suspension resolution may contain other provision in addition to that mentioned in the subsections above.

56: *Resignation from House of Lords*

(1) A person who is an excepted hereditary peer or a life peer may at any time resign from the House of Lords.

(2) A peer resigns by giving notice of the peer's resignation to the Clerk of the Parliaments.

(3) The notice must be in writing signed by the resigning peer and by two persons as witnesses.

(4) On receipt of the notice, the Clerk of the Parliaments must—

(a) sign a certificate of receipt, and

(b) send a copy of it to the resigning peer and to the Lord Chancellor.

(5) The resignation takes effect on signature of the certificate.

57: *Disclaimer of peerage*

(1) A person ("the former member") to whom section 54 has applied may at any time disclaim the peerage by virtue of which the former member was entitled to receive writs of summons to attend the House of Lords (unless the effect of section 54(2) has been reversed under Part 3 of Schedule 8).

(2) The former member disclaims the peerage by giving notice of the disclaimer to the Lord Chancellor.

(3) The notice must be in writing signed by the former member and by two persons as witnesses.

(4) On receipt of the notice, the Lord Chancellor must—

(a) sign a certificate of receipt, and

(b) send a copy of it to the former member.

(5) The disclaimer takes effect on signature of the certificate.

(6) If the former member was an excepted hereditary peer, section 3(1), (3) and (4) of the Peerage Act 1963 (c. 48) applies in relation to the disclaimer as if the former member disclaimed the peerage under that Act by way of an instrument of disclaimer delivered on the day on which the disclaimer takes effect in accordance with subsection (5) above.

(7) If the former member was a life peer, the disclaimer—

(a) divests the former member (and any spouse or children) of all right to or interest in the peerage and all titles, rights, offices, privileges and precedence attaching to it, and

(b) relieves the former member of all obligations and disabilities arising from it.

(8) The Lord Chancellor must—

(a) keep a register containing the particulars of any disclaimer of a peerage under this section, and

(b) make arrangements under which the public may inspect the register.

58: *Supplementary provision*

(1) The proceedings of the House of Lords are not to be called into question because of the participation of a person who should not be participating.

(2) Nothing in this Part affects—

(a) a person's membership of the House of Lords by virtue of being an archbishop or bishop, and

(b) accordingly, the person's entitlement to receive writs of summons to attend the House by virtue of being an archbishop or bishop.

Schedule 8: *Conditions for removal of members of the House of Lords etc*

Part 1: Conditions for removal

Condition 1: serious criminal offence

1 (1) Condition 1 is met if a person—

(a) is convicted of an offence committed after section 54 comes into force,

(b) is sentenced or ordered to be imprisoned or detained for that offence indefinitely or for more than one year, and

(c) is imprisoned or detained in pursuance of that sentence or order or would have been were the person not unlawfully at large.

(2) This condition is met when the person is first imprisoned or detained after conviction in pursuance of the sentence or order or would have been were the person not unlawfully at large.

(3) The cases covered by this condition include cases in which—

(a) a person is convicted of an offence committed outside the United Kingdom;

(b) anything mentioned in sub-paragraph (1)(a) to (c) occurs outside the United Kingdom.

(4) An act punishable under the law of a country or territory outside the United Kingdom constitutes an offence for the purposes of this Schedule (however it is described in that law).

Condition 2: bankruptcy restrictions orders etc

2 Condition 2 is met if and when—

(a) a bankruptcy restrictions order or undertaking (but not an interim order) under any of the following comes into force in relation to a person—

(i) Schedule 4A to the Insolvency Act 1986 (c. 45);

(ii) section 56A or 56G of the Bankruptcy (Scotland) Act 1985 (c. 66);

(iii) Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or

(b) a debt relief restrictions order or undertaking (but not an interim order) under Schedule 4ZB to the 1986 Act comes into force in relation to a person.

Part 2: Supplementary provision for section 54(2)

Supplementary provision relating to excepted hereditary peers

3 (1) This paragraph applies if P is an excepted hereditary peer.

(2) P is no longer excepted from section 1 of the House of Lords Act 1999 (c. 34).

(3) If P counted towards the limit under section 2(2) of the 1999 Act, that limit is reduced by one.

Supplementary provision relating to life peers

4 (1) This paragraph applies if P is a life peer.

(2) P ceases to be disqualified by virtue of P's peerage for—

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

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

Representation of the People Act 1985 (c. 50)

5 In relation to P, any reference in section 1(3) or (4)(b) of the Representation of the People Act 1985 to a register of parliamentary electors is to be read as including—

(a) any register of local government electors in Great Britain, and

(b) any register of local electors in Northern Ireland,

which was required to be published on any date before the relevant event occurs.

New peerages

6 (1) Sub-paragraph (2) applies if, after the relevant event occurs, a peerage under the Life Peerages Act 1958 (c. 21) is conferred on P.

(2) Section 54(2) does not stop P being entitled to receive writs of summons to attend the House of Lords by virtue of that peerage.

(3) Sub-paragraph (4) applies if, after the relevant event occurs, P becomes the person who is to hold the office of Earl Marshal or perform the office of Lord Great Chamberlain.

(4) Section 54(2) does not stop P being entitled to receive writs of summons to attend the House of Lords by virtue of the peerage that led to P becoming the person who is to hold or perform the office in question.

Part 3: Reversal of effect of section 54(2)

Claims for reversal

7 (1) If the relevant event is the meeting of condition 1, P may make a claim for the effect of section 54(2) to be reversed if—

(a) the conviction is overturned or quashed, or

(b) as a result of a determination that P should not have been sentenced or ordered to be imprisoned or detained for the offence indefinitely or for more than one year, the sentence or order is changed so that the requirements of paragraph 1(1)(b) are no longer met.

(2) If the relevant event is the meeting of condition 2, P may make a claim for the effect of section 54(2) to be reversed if (as the case may be)—

(a) the bankruptcy restrictions order or undertaking is annulled under—

(i) paragraph 9(3)(a) or 10 of Schedule 4A to the Insolvency Act 1986 (c. 45),

(ii) section 56E(3)(a), 56G(5)(a) or 56J of the Bankruptcy (Scotland) Act 1985 (c. 66), or

(iii) paragraph 9(3)(a) or 10 of Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),

(b) the bankruptcy restrictions order or the debt relief restrictions order is annulled on an appeal against the making of the order,

(c) the debt relief restrictions order or undertaking is annulled by a direction under paragraph 10 of Schedule 4ZB to the 1986 Act, or

(d) the debt relief restrictions undertaking is annulled under paragraph 9(3)(a) of Schedule 4ZB to the 1986 Act.

(3) The claim is made by notice to the Lord Chancellor who must give notice of receipt to P.

(4) The Lord Chancellor must then—

(a) decide if the claim is justified,

(b) sign a certificate of the Lord Chancellor's decision, and

(c) send a copy of the certificate to P and the Clerk of the Parliaments.

(5) If the Lord Chancellor decides that the claim is justified, the effect of section 54(2) (including Part 2 of this Schedule as relevant) is reversed from the day after the day on which the certificate is signed.

(6) P may not make a claim under this paragraph if P has disclaimed under section 57 the peerage by virtue of which P was entitled to receive writs of summons to attend the House of Lords.

8 In paragraph 4 of Schedule 7 to the Constitutional Reform Act 2005 (c. 4) after the entry relating to the Tribunals, Courts and Enforcement Act 2007 insert—

"Constitutional Reform and Governance Act 2010

Paragraph 7 of Schedule 8".

Convictions outside the United Kingdom

9 (1) This paragraph applies if—

(a) the relevant event is the meeting of condition 1, and

(b) it is met by virtue of a sentence or order given or made outside the United Kingdom.

(2) The effect of section 54(2) (including Part 2 of this Schedule as relevant) is reversed if the House of Lords resolves that, for the purposes of this paragraph, P is to be treated as not having been the subject of the sentence or order.

(3) The reversal has effect from the day after the day on which the resolution is passed.

(4) A resolution may not be passed if P has disclaimed under section 57 the peerage by virtue of which P was entitled to receive writs of summons to attend the House of Lords.

APPENDIX D

NOTE BY THE HOUSE OF LORDS FINANCE DIRECTOR ON LIKELY SAVINGS FROM A POSSIBLE RETIREMENT SCHEME

I have been asked to estimate the likely savings of a putative retirement scheme for temporal peers, assuming a 50% take-up at each age. The scheme is assumed to be as follows:

— Any peer who has reached the age of 75/80 or served 15 years in the House by 30 April 2013 may apply for a retirement grant.

— This grant will be the same amount as the peer claimed in the 2011–12 financial year for the daily allowance claimed for attendance at the House.

Financial data are in the Annex. They could be derived from public sources, though not without difficulty. I have made the following assumptions:

1. Grants are paid in Year 0 and recipients retire at the end of that year. In reality, retirements might start mid-year, and might take place over a period.
2. The 50% take-up is evenly distributed in terms of claims in 2011–12. One might assume that take-up would be higher among rare attenders; one might equally assume it would be higher among those with more to gain; I have made neither assumption.
3. But for the scheme, claims by the members concerned would have continued at the same level as in 2011–12. In reality one would expect them to decrease overall, particularly for older members.
4. The only savings to be counted are daily allowances and travel expenses related to attendance. In reality there would be other savings and non-financial benefits.
5. Members who retire are not replaced.

Based on these data and assumptions, the likely costs and savings of such a scheme are estimated as follows:

£m	*Year 0*	*Year 1*
75+ scheme—take-up 202		
Cost	4.7	
Saving		5.2
80+ scheme—take-up 175		
Cost	3.9	
Saving		4.4

Following Finance Department consideration, I would add the following observations:

— There is a conceptual difficulty in framing a retirement scheme for people who are not employees.

— The offer of a retirement grant could be open-ended or time-limited. There could be an incentive to apply sooner rather than later.

— 58 members who will be aged 75+ on the relevant date, plus 34 who though younger will have served for 15+ years, claimed no daily allowance in 2011–12. These members are included in these calculations; but they would have no incentive to take part in the scheme, unless there were a minimum grant.

— The impact of the scheme across the parties/groups would be unpredictable.

— The tax aspect of the scheme would need further investigation.

— If the grants were to be paid out of the House of Lords Vote, the ambit might need to be amended.

Andrew Makower

28 November 2012

Annex to Appendix D

On 30 April 2013	*Members*	*Daily Allowance 2011–12 £*	*Attendance travel expenses 2011–12 £*
Age 75+	272	6,315,750	588,991
Age <75 but served 15+ yrs	132	3,157,050	386,895
TOTAL	**404**	**9,472,800**	**975,886**
50% of total	**202**	**4,736,400**	**487,943**
Age 80+	162	3,280,800	250,232
Age <75 but served 15+ yrs	132	3,157,050	386,895
Age 75–79 but served 15+ yrs	56	1,462,500	173,942
TOTAL	**350**	**7,900,350**	**811,069**
50% of total	**175**	**3,950,175**	**405,535**

Supplementary written evidence submitted by David Beamish, Clerk of the Parliaments

INTRODUCTION

Further to my oral evidence on 4 July 2013, I give below (1) some statistics on House of Lords membership changes over the last few years (as referred to in my oral evidence), and (2) some statistics relevant to the question of the impact of the size of the House.

HOUSE OF LORDS MEMBERSHIP TRENDS

The following data may be of interest to the Committee:

New life peers created since 17 November 1999: 386 (including seven returning hereditary peers given life peerages).

Deaths of life peers since 17 November 1999: 240.

Deaths of excepted hereditary peers since 17 November 1999: 21.

Average age of life peers in November 1999: 68.

Average age of excepted hereditary peers in November 1999: 58.

Average age of life peers today: 71.

Average age of excepted hereditary peers today: 68.

Peers aged 65 or over: 586.

Peers aged 70 or over: 433.

Peers aged 75 or over: 267.

Peers aged 80 or over: 160.

Peers aged 90 or over: 21.

EFFECT OF INCREASED ATTENDANCE ON PROCEEDINGS IN THE CHAMBER

When I was asked about the practical impact of the size of the House, I focused on the impact on the House of Lords Administration. The Committee may also be interested in the impact on proceedings in the Chamber, as illustrated by the following statistics recently prepared at the request of the House of Lords House Committee. Particularly striking is the increase in the number of debates with a backbench time limit of 3 minutes or less.

MEMBERSHIP

	Session 2007–08	*Session 2012–13*
Membership of the House[42]	733	763
Average daily attendance	413	484
Average number voting in divisions	234	363
Average size of larger division lobby	143	209

[42] As at the end of the Session in question. Excludes those on leave of absence, disqualified, retired, etc.

[43] These figures are based on all debates where the Government Whips' Office was able to specify a speaking limit. A few debates for which the speaking limit was not available have been excluded from the calculations.

TIME LIMITS IN DEBATES[44]

Questions for Short Debate	*Session 2007–08*	*Session 2012–13*
Total number of QSDs	70	104
Average time limit for backbench speeches (mins:secs)	8:08[45]	5:52[46]
Number of QSDs with a backbench time limit of 3 minutes or less	3	19
Balloted debates		
Total number of balloted debates	13	14
Average time limit for backbench speeches (mins:secs)	11:16	9:22

QUESTIONS FOR WRITTEN ANSWER

	Session 2007–08	*Session 2012–13*
Total number of QWAs tabled	5,814	6,706
Average number of QWAs tabled per sitting day	35.45	48.95
Average number of QWAs tabled per Member per sitting day	0.048	0.064

8 July 2013

[44] These figures are based on all debates where the Government Whips' Office was able to specify a speaking limit. A few debates for which the speaking limit was not available have been excluded from the calculations.

[45] For 1 hour QSDs, the average was 8:02; for 1½ hour QSDs, the average was 8:52.

[46] For 1 hour QSDs, the average was 5:27; for 1½ hour QSDs, the average was 6:29.

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