

HOUSE OF LORDS
HOUSE OF COMMONS

SESSION 2002–03
1st REPORT

JOINT COMMITTEE ON
HOUSE OF LORDS REFORM

HOUSE OF LORDS REFORM:
FIRST REPORT

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JOINT COMMITTEE ON HOUSE OF LORDS REFORM

The Joint Committee was first appointed in July 2002:

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

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

and to consider and report on—

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

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

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

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

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

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

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

The twelve Lords members, appointed on 4 July 2002, are:

Lord Archer of Sandwell
Viscount Bledisloe
Lord Brooke of Alverthorpe
Lord Carter
Lord Forsyth of Drumlean
Baroness Gibson of Market Rasen
Lord Goodhart
Lord Howe of Aberavon
Lord Oakeshott of Seagrove Bay
Baroness O’Cathain
The Earl of Selborne
Lord Weatherill

The twelve Commons members, appointed on 19 June 2002, are:

Janet Anderson
Mr James Arbuthnot
Mr Chris Bryant
Mr Kenneth Clarke
Dr Jack Cunningham
Mr William Hague
Mr Stephen McCabe
Joyce Quin
Mr Terry Rooney
Mr Clive Soley
Mr Paul Stinchcombe
Mr Paul Tyler

At its first meeting, on 9 July 2002, the Committee elected Dr Jack Cunningham as its Chairman.

The Committee was reappointed with the same membership at the start of Session 2002–03.

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FIRST REPORT

9 DECEMBER 2002

The Joint Committee on House of Lords Reform has agreed to the following Report:

HOUSE OF LORDS REFORM: FIRST REPORT

SUMMARY

Background

In this report we set out, for consideration by both Houses, an inclusive range of seven options for the composition of a reformed House of Lords. We do so against a background of broad agreement on the role, functions and powers of a reformed second chamber. The aim of maintaining the effectiveness and increasing the legitimacy of the second chamber has become common ground.

Our terms of reference called upon us to consider a wide range of documents and evidence, and so we have not felt it necessary to call for further evidence. In this report we have sought to inform the debates and votes in both Houses by clarifying what we believe should be the future role, powers and nature of the second chamber and identifying the implications of our conclusions for its composition.

Place of the second chamber in Parliament

We envisage a continuation of the present role of the House of Lords, and of the existing conventions governing its relations with the House of Commons. These conventions, which are of a self-restraining nature, impact profoundly on the relations between the Houses and need to be understood as a vital part of any future constitutional settlement. When the views of the Houses on composition are made known, we will return to the detailed matter of how these important conventions should be maintained in a new constitutional settlement between the Houses.

Powers of the second chamber

We do not recommend, at this stage, that any new or additional powers be given to the House.

However, we recognise that more consideration needs to be given to the best way of ensuring that the reformed House can act effectively in respect of secondary legislation. When the Houses' views on the matter of composition are known, we shall consider whether any change is needed in the powers of the House in this area.

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

The nature of a reformed second chamber

We consider five qualities desirable in the makeup of a reformed second chamber:

- legitimacy
- representativeness
- no domination by any one party
- independence
- expertise

The existing House of Lords meets several of these criteria, namely lack of domination by one party, independence and expertise. If these existing qualities, bolstered by a greater representativeness, can be transferred to the reformed House, we believe that a new legitimacy, which we have already highlighted in considering the House's role, will naturally develop.

Composition of a reformed second chamber

We propose that the reformed House should comprise about six hundred members. This represents little change from the present House without the 92 hereditary peers, but we recognise that transitional arrangements may necessitate an increase in size before equilibrium is reached.

A tenure for all members of some twelve years is about right. While members should be able to resign their seats earlier, members who do so should not thereby be able to stand for election to the House of Commons at least for a certain period, perhaps three years.

There should be a new Appointments Commission established. But that should not exclude the possibility of nomination by the Prime Minister of the day, nor proposals by party leaders and members of the public. Such nominations would be scrutinised by the new Appointments Commission. Only the Prime Minister would have the right to have nominations confirmed.

Transitional arrangements may, depending on the composition chosen, need to be spread over a substantial period. At this stage we have concluded only that we are not attracted by the idea of compulsory retirement for existing life peers.

The membership of the law lords and the bishops and other religious representatives will need to be considered in the light of the composition chosen. The judicial function of the House of Lords is worthy of independent inquiry and expert attention.

We consider it essential that some detailed work should be done on costing options.

The options

We recommend that there should be votes on seven options, set out in paragraphs 63 to 74:

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

The next stage

We hope that there will first be debates on this report in both Houses, with the opportunity to vote on the options coming later, after members have had time to study both debates.

We are convinced that it is essential that both Houses follow the same procedure in voting on options. We recommend that a series of motions, each setting out one of the seven options we have identified, be moved successively in each House notwithstanding the normal practice in regard to questions. Members would be free to vote in favour of as many of the options as they considered acceptable.

After both Houses have expressed views, we shall resume our deliberations and seek to develop, in our second report, a single set of proposals for reform.

PART 1: INTRODUCTION

The opportunity

1. Over the past century attempts at reform of the House of Lords have failed principally because of a lack of agreement on what was needed to replace the existing House. Each attempt generated wide debate both in and outside Government and parliamentary circles; opinion ranged from complete abolition of the second House to preservation of the status quo which, until 1999, included a dominant hereditary element. That position was changed by the House of Lords Act 1999 and the announcement by Government of its intention to remove the hereditary element entirely at the next stage of reform.¹

2. There is now much greater agreement about the role, functions and powers of a reformed second chamber.² Whilst there remain differences about how the reformed House should be composed, the aim of maintaining the effectiveness and enhancing the legitimacy of the second chamber has become common ground. A re-balancing of parliamentary institutions, which reform implies, is something that can only evolve over time. Nevertheless we believe that there is now an historic opportunity to enact a reform which will enable the second chamber to continue to play an important and complementary role to the Commons, with its future at last secure.

3. By identifying this wide area of agreement in our report and describing the conditions in which we consider a reformed House can realistically operate, our aim is to help the Houses consider the range of options on composition which are set out in our terms of reference. Once both Houses have had the opportunity to debate and vote on the options which we set out here, we shall, as we said in our Special Report, need to consider such differences as may exist between the expressed views of the two Houses and the means by which, and extent to which, they might be brought closer to each other, if not actually reconciled.³ We shall then develop a full set of proposals to take the reform forward. In this report we will also identify issues which we will need to consider in more detail at that later stage, when it will be essential to develop workable proposals that command the widest possible support within and outside Westminster.

Background

4. The Committee met for the first time on 9 July 2002, three working days after the House of Lords agreed, on 4 July, to a Resolution concurring with the Commons in the setting up of a Joint Committee.

5. At our first meeting, we elected the Rt Hon. Jack Cunningham MP as our Chairman and began to consider how to fulfil our remit. The deliberation was continued at a second meeting in the following week when we considered a Special Report, agreed to on 16 July.

6. In that Special Report of 16 July, we outlined our method of proceeding, which was to consider carefully what amounted to a library of material, including a Government

¹ Government White Paper *Modernising Parliament: Reforming the House of Lords* (Cm 4183, January 1999).

² The Commons Select Committee on Public Administration says "There is no proposal for any major change to the role and functions of the House of Lords. This is one of the fundamentals on which there is broad agreement, and it is one of the firm foundations on which reform must build." (*The Second Chamber: Continuing the Reform*, 5th Report, Session 2001–02, HC 494–I, paragraph 69).

³ Special Report (HL Paper 151/HC1109, Session 2001–02).

White Paper and supporting documents, a Royal Commission Report, a Select Committee Report, the evidence appended to these papers and debates in both Houses. The evidence referred to us contains a very wide range of views from members of both Houses and includes opinions from outside experts as well as from the general public. We have therefore not felt it necessary to call for further evidence. Analysing it and applying our collective parliamentary experience to it has enabled us to fulfil our first task of setting in context, and presenting to both Houses, an inclusive range of options on the interrelated matters of role and composition.⁴ The Committee was reappointed in the current session on 28 November 2002.

7. We have carried out our examination in a series of deliberative meetings and have been assisted in our task by our two Clerks, Malcolm Jack, Clerk of the Journals in the House of Commons and David Beamish, Clerk of the Journals in the House of Lords, both with long experience of Parliament.

Structure of Report

8. We concluded at an early stage in our deliberations that we needed to consider the roles, functions and powers of a second chamber whilst we were considering the options on composition. Accordingly our conclusions and recommendations are set out as follows:

- Part 2 – roles, conventions, functions and powers of a second chamber
- Part 3 – the kind of members needed: the issues of legitimacy, representativeness, party balance, independence and expertise
- Part 4 – considerations affecting composition, including tenure and transitional arrangements
- Part 5 – the options on composition.

The historical background to our work is described in Appendix 1.

PART 2: ROLES, CONVENTIONS, FUNCTIONS AND POWERS⁵

Role in relation to the Commons

9. It is generally recognised that reform of the House of Lords would have a significant effect on its role in relation to the House of Commons. That is a key constitutional issue, which needs to be considered in the context of existing conventions, which we consider, on the whole, to work well. But there are other roles for the new House, including the way in which it can better represent society as a whole, as well as the nations and regions of our country.

10. One of the principal arguments for having second chambers – and we find little support in the evidence we have examined for unicameralism in the United Kingdom – is that such chambers provide an opportunity for second thoughts. The revising role of the

⁴ In this Report we draw in particular on the Royal Commission Report *A House for the Future* (Cm 4534, January 2000), the Government White Paper *The House of Lords: Completing the Reform* (Cm 5291, November 2001), and the Report of the House of Commons Public Administration Committee *The Second Chamber: Continuing the Reform* (5th Report, Session 2001–02, HC 494–I, February 2002).

⁵ We use the term *role* to signify the relationship of the Chamber to something outside itself, whether that is the other House, the public or the nations and regions of the United Kingdom. We use the term *function* to indicate the way the House achieves its purposes and fulfils its roles. *Powers* are the source (statutory or conventional) from which the House derives the authority to act.

existing House of Lords has been progressively strengthened by the arrival of Life Peers since 1958 (bringing specialist knowledge in many fields including the public service, science and medicine, academic life, the voluntary sector, business and industry, etc.) and by the increase in the numbers and importance of the Crossbenchers, who do not take any party whip, and add an invaluable independent approach to scrutiny. Under both Conservative and Labour governments, the House of Lords has played a significant role in amending legislation, sometimes in considerable detail, throughout the period from 1970 to the present. The value of the Lords revising and advisory role is widely acknowledged, for example by the Commons Select Committee on Public Administration, which noted that the House is regarded as “very effective in carrying out a range of scrutiny and legislative work”.⁶ That role does not challenge the convention that, in the last resort, the House of Commons has the final word.

The Existing Conventions

11. Whilst this role of revision is identified in all the papers referred to us, insufficient attention has been paid to the conventions that actually govern how the Lords conducts its business and behaves towards the Commons. **We consider that these existing conventions, which are of a self-restraining nature, impact profoundly on the relations between the Houses and need to be understood as a vital part of any future constitutional settlement.**

12. The two most significant conventions are that the House of Commons shall finally have its way and that the Government is entitled to have its business considered without undue delay. The first of these understandings is embodied, in relation to manifesto bills, in the Salisbury Convention, formulated by the then Viscount Cranborne (when he was Leader of the Conservative Opposition from 1945–51)⁷ whereby the Opposition (of whichever party is in Government) refrains from voting against the second reading of any Government Bill which had been part of that party’s election manifesto. The second convention, that the Government should have its business, also implies, as the Royal Commission noted, that such business should be considered within a reasonable time.⁸ Other more pragmatic practices (including, for example, the end of session procedures known as “ping pong”) relate to the point at which the Lords will give way in a struggle over amendments. Taken together, these conventions govern the day-to-day relations between the Houses during a parliamentary session, contributing in a significant way to the overall effectiveness of Parliament as a place where business is transacted efficiently. The House of Lords could depart from any of these conventions at any time and without legislation, and might well be more inclined to do so if it had been largely (and recently) elected. But the continuing operation of the existing conventions in any new constitutional arrangement will be vital in avoiding deadlock between the Houses – which could all too easily become an obstacle to continuing good governance. **We therefore strongly support the continuation of the existing conventions. When the views of the Houses on composition are made known, we will return to the detailed matter of how these important conventions should be maintained in a new constitutional settlement between the Houses.**

⁶ Commons Public Administration Committee Report, paragraph 60.

⁷ He succeeded as 5th Marquess of Salisbury in 1947.

⁸ Royal Commission Report, paragraph 4.20.

Other Roles

Constitutional long stop

13. The Royal Commission Report stated that one of the most important roles of a reformed second chamber would be to act as a “constitutional long stop”. In other words it should ensure that changes of a constitutional nature are not made without full and open debate and without awareness of the consequences. One existing constitutional check is the Lords’ veto over the dismissal of office holders, including, for example, High Court judges, the Comptroller and Auditor General and the Information Commissioner. It is an important way of ensuring, as the Royal Commission noted, their independence from the Executive.⁹

14. Another constitutional check is contained in the provision of the Parliament Act 1911 which limits the life of Parliament to five years. The Lords can thereby prevent a Government, with its control of the Commons, from legislating to extend its own existence.¹⁰

15. The Royal Commission supported the retention of existing powers in this general area of what might be called constitutional guardianship, but resisted any further extension of the Lords’ constitutional role – such as an absolute veto on all “constitutional” bills or the extension of the suspensory veto for two years in the case of such bills, whether they were to be defined by a Speaker’s certificate or by the Lords itself.¹¹ Nor did it support recourse to a referendum when there was a clash between the Houses over a constitutional bill. The Commons’ Select Committee, for its part, suggested that the matter of how to deal with constitutional bills might be further considered by the House of Lords Constitution Committee, which was set up following the Royal Commission’s recommendation.¹² **We intend to return to the matter of the constitutional role of the Lords in the later stages of our work but we underline its importance here.**

Role in relation to the public: a new legitimacy

16. The lack of representativeness of the hereditary House gradually diminished its authority in the twentieth century. This perhaps had a greater long-term impact than the formal curtailment of the powers of the House by the Parliament Act 1911. Whilst the House subsequently developed its role as a revising chamber after 1945, the continuation of the hereditary element, perceived as inherently unrepresentative, and the massive imbalance of the political parties in the House, called into question its authority. The problem of the House’s legitimacy was considered by the Royal Commission. Its view was that insofar as the House became more representative of society as a whole, it would gain legitimacy and with it, confidence.¹³ Its recommendations included ensuring that people with particular expertise, for example in human rights or with special spiritual knowledge, as well as representatives of professional and vocational groups (many of whom would not want to stand for election), were among the membership of a reformed House. The composition of the House should take into account gender balance and social

⁹ Royal Commission Report, paragraphs 5.4 and 5.5. The Royal Commission’s proposals are taken up by the Commons Public Administration Committee Report in paragraphs 72 to 75.

¹⁰ See paragraph 27 below for a summary of the main provisions of the Parliament Acts.

¹¹ Royal Commission Report, paragraphs 5.6 to 5.12.

¹² Commons Public Administration Committee Report, paragraphs 74 and 75.

¹³ Royal Commission Report, paragraphs 10.10–10.13.

characteristics such as the pattern of ethnic groups and different faiths: together these various changes would enhance the legitimacy of the Lords.¹⁴ It will be important to ensure that the reformed House is as inclusively representative as possible. **We concur with the conclusions of the Royal Commission that increased representativeness will enhance the legitimacy of the House of Lords. We will consider methods to achieve that end when we deal with getting the right membership of the House later in this report but it is also a matter that will need further careful attention in future.**

Role in relation to the regions and nations: representing the United Kingdom

17. A body of opinion envisages the reformed House serving as a Parliamentary focus for the regions and nations of the United Kingdom, rather in the way that upper Houses operate in some of the Commonwealth parliaments or the Senates in the USA or in France. The relationship of a newly reformed House to the devolved bodies is clearly relevant to the perception of that role. The Joint Committee has received a joint representation from the presiding officers of the Scottish Parliament, the National Assembly of Wales and the Northern Ireland Assembly, who are all members of the House of Lords, suggesting that in a reformed House their successors should be *ex officio* members. The presiding officers say that their membership has not only enabled them to keep abreast of affairs in Parliament, but has also given them a chance to represent the views of Wales, Scotland and Northern Ireland in Parliament.¹⁵

18. In its report the Commons Public Administration Select Committee dealt with the wider aspects of the relations a reformed House might have with the devolved bodies. It considered the proposal (supported by the Leader of the House of Commons in his evidence to that Committee) that indirect election by the devolved assemblies might be one route of entry to the second chamber, bringing the United Kingdom more in line with the model of second chambers of Europe.¹⁶ The Royal Commission, for its part, did not recommend membership of the devolved assemblies as qualifying for membership of the reformed House. Instead it talked of a new “category of people within Parliament” who would provide a “voice in Parliament” for the regions and nations.¹⁷ **We are convinced that a reformed House should contain an appropriate number of members from all parts of the country and later in this report we will consider how this might be achieved. It is difficult to see at the moment structures which are parallel to those to be found in fully federal countries like the USA and Germany upon which to base this representation, although we note in the recent Queen’s Speech the Government’s intention to hold referendums on the issue of regional governance in England.**

Functions

Legislative functions

19. One important fact to make clear in discussing the legislative function of the Lords is that much legislation actually begins in the Lords. Although its role as a revising chamber is well known and supported in the documents referred to us, it needs to be understood that a considerable part of the Government’s programme, normally about one-

¹⁴ Royal Commission Report, paragraph 11.39.

¹⁵ The Presiding Officers’ memorandum is printed in Appendix 3 to this Report.

¹⁶ Commons Public Administration Committee Report, paragraph 76.

¹⁷ Royal Commission Report, paragraphs 6.20–6.21.

third, is introduced in the Lords. Its role as a revising chamber, giving a chance for second thoughts, is, of course important, as we have already said. The Anti-terrorism, Crime and Security Bill considered in November and December 2001 provides a good recent example. Despite its accelerated passage, the House spent 53 hours examining the bill and made substantial and important amendments, which were accepted by Government and Commons alike.¹⁸

20. The Government has announced that it proposes no change in the legislative powers of the Lords.¹⁹ We do not consider it likely that any Government will be able or wish to change the practice of introducing legislation in the second House but the balance of business between the Houses is something that may need closer parliamentary supervision in future. If both Houses are to act more efficiently as legislative chambers, there will need to be greater co-ordination between them over workloads as the Commons Modernisation Committee has recently pointed out.²⁰ **We consider that a co-ordination of the legislative loads between the Houses is a practical but important part of any new constitutional settlement.**

Pre-legislative scrutiny

21. The Government is also committed to extending the role of both Houses in the process of pre-legislative scrutiny. It has reasserted its view of the importance of that scrutiny in the recent Queen's Speech, announcing that legislation in draft will be published in three different areas – housing, nuclear liabilities and corruption. Joint Committees have considered the draft Financial Services and Markets Bill, the draft Local Government (Organisations and Standards) Bill and most recently the draft Communications Bill. The Royal Commission supported this practice, recommending that “pre-legislative scrutiny of draft bills should become an established feature of Parliamentary business”.²¹ The Lords Group on Working Practices has recommended that “virtually all major government bills should, as a matter of course, be subject in draft to pre-legislative scrutiny”.²² The Select Committee on the Modernisation of the House of Commons attaches “the highest importance” to pre-legislative scrutiny.²³ **Recognising the practical realities of parliamentary programmes, we nevertheless consider that pre-legislative scrutiny is an important aspect of making the legislature function more effectively and we welcome the proposals announced in the recent Queen's Speech.**

Secondary legislation

22. There is a greater diversity of views about the treatment of secondary legislation. The Royal Commission first recommended a change in the status quo (whereby the Lords, like the Commons, can reject statutory instruments).²⁴ It proposed that if the second chamber votes to annul an instrument, the annulment would not take effect for

¹⁸ House of Lords Annual Report 2001–02 (HL Paper 153), paragraph 8.

¹⁹ Government White Paper *Modernising Parliament: Reforming the House of Lords* (Cm 4183, January 1999), page 3.

²⁰ Select Committee on Modernisation of the House of Commons, Second Report 2001–02 (HC 1168–I), paragraph 41.

²¹ Royal Commission Report, paragraph 4.34.

²² Report by the Group appointed to consider how the working practices of the House can be improved, and to make recommendations (HL Paper 111, Session 2001–02), paragraph 7.

²³ Select Committee on Modernisation of the House of Commons, Second Report 2001–02 (HC 1168–I), paragraph 28. The Report goes on to say (paragraph 29) that in most cases the relevant Departmental Select Committee will be the right forum for pre-legislative scrutiny.

²⁴ Royal Commission Report, paragraphs 7.37 to 7.39.

three months and could in the meantime be overridden by the Commons. The Government, in its White Paper, accepted the Royal Commission's recommendation, arguing that the change would increase the influence of the Lords by enabling it to call the Commons to recast the instrument.²⁵ Most members who spoke in debate in the House of Commons were against the Government proposals²⁶ and the Commons Select Committee on Public Administration pointed out that Lord Wakeham has himself expressed second thoughts.²⁷ The Commons Select Committee itself was unconvinced of the Government proposal and recommended continuance of the existing veto.²⁸

23. Affirmative instruments present a more straightforward case since the Lords have almost always refrained from voting on such instruments. It may be that a reformed House might feel reinvigorated enough to act differently, as has happened on one occasion in the recent past.²⁹ The present veto is a less drastic weapon than it might appear, because it is open to the Government to lay another instrument.³⁰ **When the Houses' views on the matter of composition are known, we shall consider whether any change is needed in the powers of the Lords in this area.**

Scrutiny of policy

24. The scrutiny function of the House of Lords is an important and distinctive part of the parliamentary process of making Government accountable. It is carried out by the whole House as well as by Select Committees. Crossbench members add an element to the scrutiny process which is less noticeable in the Commons, something mentioned in the debates in both Houses.³¹ Whilst the House has developed certain Select Committees with notable success (Science and Technology, European Union, and Delegated Powers and Regulatory Reform Committees are usually cited), several members in the debate in the House of Lords expressed the view that the committee system needed improvement in order to maintain its success. **We assert the importance of the scrutiny function of the House. At a later stage in our work, we will return to consider how that scrutiny might be made even more effective.**

Judicial function

25. The existing House acts through its Appellate and Appeals Committees (composed of the Lords of Appeal in Ordinary and other judicially qualified Lords) as the highest court of appeal. There is a current discussion about whether this function should be separated and a United Kingdom Supreme Court established. This is a complex matter which has divided opinion even within the judiciary. **Although we may return to it later in our deliberations, we consider the judicial function of the House of Lords to be a matter worthy of independent inquiry and expert attention.**³² **Even if a separation takes place it does not need to entail the ending of membership of the House by the law lords.**

²⁵ Government White Paper *Completing the Reform*, paragraphs 31–33.

²⁶ House of Commons Official Report, 10 January 2002.

²⁷ Commons Public Administration Committee Report, paragraph 77.

²⁸ *Ibid.*, paragraph 80.

²⁹ Greater London Authority (Election Expenses) Order 2000 (22 February 2000). On the same day the House agreed for the first time to a prayer to annul a negative instrument (Greater London Authority Elections Rules 2000).

³⁰ This happened in relation to the Southern Rhodesia (United Nations Sanctions) Order in 1968.

³¹ House of Lords Official Report 9 and 10 January 2002 and House of Commons Official Report 10 January 2002.

³² We do not, therefore, consider that there is sufficient evidence to concur with the Commons Public Administration Committee Report (paragraphs 150 to 153) that the law lords should leave the second Chamber.

Powers

Parliament Acts

26. Until the twentieth century there was little formal definition of the powers of either House. By various resolutions and under the terms of the Bill of Rights (1689) both Houses had articulated privileges reserved to them, the Commons in particular asserting its control in financial matters more frequently during the seventeenth century.³³ It was with the passing of the Parliament Act 1911 that the Lords legislative power was first restricted by statute.

27. The most important provisions of the Parliament Act 1911 were to –

- (i) restrict the Lords' power to reject "money bills" to a month;
- (ii) allow a public bill introduced in the Commons to pass into law, though not agreed by the Lords, if passed in the Commons in three successive sessions, with not less than two years elapsing between the second reading in the House of Commons in the first session and the passing of the bill in the House of Commons in the Third Session; and
- (iii) alter the provision of the Septennial Act 1715, setting five-year Parliaments.

By the provisions of the Parliament Act 1949, the period of time that needed to elapse (under (ii)) was reduced to one year.

28. Although the Parliament Acts have curtailed the power of the Lords, they have done so in quite narrow circumstances – that of a dispute between the Houses over a particular bill. By virtue of the provision of the 1911 Act of a two-year period between a second reading in the Commons and Royal Assent without Lords concurrence, the practical reality is that a Government could only effectively use it in the first two sessions of a five-year Parliament. The narrowing of the necessary time between stages by the 1949 Act does not seem to have made it a much more attractive tool for Government. Between 1949 and 1997 the Parliament Act was invoked only once (the War Crimes Act 1991) and twice between 1997 and 2002 (the European Parliamentary Elections Act 1999 and the Sexual Offences (Amendment) Act 2000). Two of the three Acts (War Crimes and Sexual Offences) were the subject of a free vote in both Houses. But even though the Parliament Act procedure has only seldom been used, its existence is powerful as a factor in the relations between the Houses and as a constraint on the exercise of the legal powers of the Lords.

29. Despite the terms of the Parliament Acts, the House of Lords, for practical purposes, has retained considerable legislative power. But it has exercised its power responsibly, if at times critically. Because it has kept within the constraints of the conventions we have already described, the Lords has managed to avoid usurping the role of the Commons or causing undue delay or deadlock. We have already concluded, from the actual experience of the relationship between the Houses, that similar arrangements will need to be in place in any new constitutional settlement if the system is to work as well as it has done in the past. The current provision for carry-over of bills from one session to the next has clear implications for the handling of the legislative programme. We do not imagine that a government would wish controversial legislation to be treated

³³ Erskine May, 22nd Edition, 1997, page.797.

in this way.³⁴ **Subject to satisfactory assurances that carry-over arrangements could not be used to erode the powers of the House of Lords,³⁵ we do not consider at this stage that the provisions of the Parliament Acts need to be altered.³⁶ Together with our conclusions about maintaining the existing conventions, we therefore recommend (subject to what we say about secondary legislation in paragraph 23 above) that no new or additional powers are given to the House of Lords at this stage.**

PART 3: WHAT SORT OF MEMBERSHIP?

30. Having identified the appropriate roles, functions and powers of the second chamber, we turn to the question what sort of membership is desirable to undertake these roles and perform those functions. We consider five qualities desirable in the makeup of a reformed House, namely (not in any order of importance):

- legitimacy
- representativeness
- no domination by any one party
- independence
- expertise

Legitimacy

31. We have referred above (in paragraph 2) to a general desire to increase the legitimacy of the second chamber and (in paragraph 16) to the lack of legitimacy which has in the past beset the House of Lords and to the view of the Royal Commission that greater representativeness would confer a new legitimacy on the House. The Royal Commission Report talked of the new “confidence” that a reformed House would have.³⁷ The Commons Public Administration Committee Report also considers the question of legitimacy.³⁸ Some maintain that only a democratically elected second chamber can be truly legitimate, others that there are other routes to legitimacy, including in particular the other qualities which we discuss below.

Representativeness

32. Before the introduction of life peerages the House of Lords could be said to have been unrepresentative of almost any group other than landowners. It is now a much more representative body, though the manner in which its members are appointed has continued to sustain some doubts about its legitimacy.

³⁴ The House of Commons has recently agreed to a Resolution governing the carry-over of public bills (*Votes and Proceedings*, 29 October 2002, pages 1195–6).

³⁵ In answer to a question on 19 November 2002 the Leader of the House of Lords, Lord Williams of Mostyn, made clear that the House would have to agree to carry-over in each case where a bill had reached the Lords (Official Report, columns 254–7).

³⁶ The matter of whether the Lords should be given a veto over future proposals which would change their powers is identified by the Commons Public Administration Committee Report (paragraphs 72 to 74) and is something that we may need to return to at a later stage in our work.

³⁷ Royal Commission Report, paragraphs 10.8 and 10.9.

³⁸ Commons Public Administration Committee Report, paragraph 68.

33. Nevertheless, of the desirable qualities we have listed, the present House is weakest in respect of representativeness. It is overwhelmingly male (84 per cent).³⁹ It includes few young members (the average age is almost 68). It has a disproportionate number of members from the south-east and too few from the English regions. And, although more representative of ethnic minorities than the House of Commons (over 20 members⁴⁰), it still falls short of properly representing the UK's ethnic diversity. **We consider that all these elements of representation must be improved and that better balances can be achieved either by a new appointment system or, with appropriate checks in place, by various methods of election.**

No domination by any one party

34. The Royal Commission considered that it was crucial that no one political party should be able to dominate the second chamber: "If it were to be controlled by the party of Government it might become nothing more than a rubber stamp. If the main Opposition party were to gain control, it could be used to produce legislative deadlock ..."⁴¹ This view was endorsed by the Government in its White Paper⁴² and accepted by the Commons Public Administration Committee.⁴³ We note that this is a characteristic of the present House: no party has more than one-third of the members of the House (and this would continue to be the case with the departure of the 92 excepted hereditary peers).⁴⁴ **We therefore conclude that any arrangements for the reformed House must take account of the importance of maintaining the principle that no one political party should be able to be dominant in it.**

Independence

35. We have identified independence as an important characteristic of the present House of Lords in keeping the executive to account.⁴⁵ That independence arises from the fact that the House contains a substantial number of Crossbench members who do not take a party whip. But equally important is an independence that arises from membership of a House where the party whips do not influence party-affiliated members in the same way as they do in the Commons. The fact that members of the present House do not face election or some form of reselection is an important element in underpinning that independence. **It is our view that any new system of getting members into the House needs to ensure that independence, whether arising from non-party affiliation or from less attention to the requests of the Whips, is not jeopardised or diminished.**⁴⁶

³⁹ This figure would be reduced to 82 per cent (the same as the present percentage in the Commons) with the loss of the 92 hereditary peers, of whom all but 4 are male. All the 25 bishops and all the 28 law lords are male.

⁴⁰ This represents about 3 per cent of the membership of the House. The equivalent figure for the United Kingdom population is about 7 per cent (*Social Trends* No. 32, Table 1.4).

⁴¹ Royal Commission Report, paragraph 10.25.

⁴² Government White Paper *Completing the Reform*, paragraph 35.

⁴³ Commons Public Administration Committee Report, paragraph 80.

⁴⁴ An analysis of the membership of the House at the start of the new session in November 2002 is given in Appendix 2.

⁴⁵ See above, paragraph 24.

⁴⁶ The importance of the independent element is recognised throughout the Report of the Royal Commission, but see especially paragraphs 10.14 to 10.18.

The independent members

36. Of the 681 members of the House of Lords on 9 December,⁴⁷ 210 (31 per cent) were not members of one of the three main political parties. They comprised 24 bishops, 9 members with no affiliation and 177 Crossbenchers. The term “Crossbencher”⁴⁸ is used to describe those members who belong to a group which represents the interests of members who do not take a party whip, and which meets weekly under a Convenor to discuss matters of common interest, but not matters of political controversy (which are for individual members). Since 1999 the Convenor has received public funds to enable him to employ assistance.⁴⁹

37. Among the Crossbenchers are 12 serving Lords of Appeal in Ordinary, several members of minor political parties and several members with definite political affiliations who sit on the Crossbenches because of the office or position which they hold or have held, or for other reasons. By custom, law lords, former Speakers and former public servants normally join the Crossbenchers. Many others such as industrialists and scientists choose to do so, including some but not all politicians from minority parties with no party organisation in the Lords. The fifteen non-party political life peers so far nominated by the Independent Appointments Commission have all joined the Crossbenchers.

38. The impact of the Crossbenchers on voting in the House of Lords is less frequent than their numbers might suggest, because as unwhipped members they usually vote only when they have heard the arguments. On the other hand it is this very ability to listen to argument and vote accordingly that makes the contribution of the Crossbenchers particularly valuable in specialised areas such as medical ethics, or areas of special sensitivity or importance such as anti-terrorism measures. In the last session, 2001–02, 3355 votes out of a total of 39,007 cast in 172 divisions (8.6 per cent) were cast by Crossbenchers.⁵⁰ The role of Crossbenchers is often particularly significant in relation to participation in debates and committees and the quality they bring to these deliberations.

Independence among party members

39. It is much more common in the Lords than in the Commons for party members to speak and vote against their party’s line. This is particularly true of supporters of the governing party. This may result from the fact that, on the whole, the Opposition parties choose the issues on which they decide to challenge the Government; it is hardly surprising that they should thus choose issues on which their supporters are united and Government supporters are not. The fact that members almost all have seats for life and that the whips have few sanctions available other than withdrawal of the whip contributes to independence among members of the House who are party members. Furthermore, in an unpaid part-time House it is easy for members unsympathetic to their party’s line to absent themselves when they do not wish to go to the extent of voting against the party line.

⁴⁷ This figure excludes 12 members who are on leave of absence and three (the Archbishop of Canterbury, the Bishop of Sheffield and the Duke of Norfolk) who have not yet received a writ of summons.

⁴⁸ The term derives from the cross benches where peers who are not members of a political party traditionally sit. But for reasons of space many Crossbenchers sit on nearby benches.

⁴⁹ House of Lords Official Report, 29 July 1999, columns 1677–86. The Group has its own website <http://www.crossbenchpeers.org.uk>

⁵⁰ A further 142 votes were cast by bishops and 216 votes by peers with no affiliation.

Implications for a reformed House of Lords

40. The presence of a substantial number of independent members, and the fact that almost all the members of the House have seats for life,⁵¹ crucially ensure a valuable degree of independence which is so important to the effectiveness of the present House. Such independence would be significantly reduced in a substantially elected House. **We consider this independence an important element in any reconstituted House.**⁵²

Expertise

41. It has often been said that in the House of Lords an expert may be found on any subject. The nominations made by successive prime ministers have brought into the House, as well as a very significant proportion of politicians, a wide range of people who have achieved distinction in many fields. It can be argued that, because membership is for life, there is a risk that some older members' expertise may sometimes be out of date. On the other hand the part-time nature of the present House enables members with contemporary knowledge and skills in a wide range of disciplines to participate in the work of the House. There is no doubt that the quality of debates can be very high as a result of the range of expertise to be found in the House. While many of those concerned are Crossbenchers, there are also others with specialist knowledge who take a party whip. It is unlikely that many of them would wish to fight an election to gain membership of the House, nor to accept a commitment to more or less full-time membership.

42. We consider the expertise which is evident in the existing House to be something of considerable importance which we would wish to see preserved in the new House.⁵³

Conclusion

43. **The existing House of Lords meets several of the criteria which we have been considering, namely lack of domination by one party, independence and expertise. If these existing qualities, bolstered by a greater representativeness, can be transferred to the reformed House, we believe that a new legitimacy, which we have already highlighted in considering the House's role, will naturally develop.**⁵⁴

PART 4: WHAT SORT OF COMPOSITION?

44. Composition needs to be understood against a number of interrelated factors which encourage the qualities of membership we have been discussing.

Number of members

45. We envisage that in order to retain the benefits of a House whose members are not necessarily full-time, salaried party politicians, the reformed House will have to remain at about the same size as the present House.

46. In the second stage of our inquiry we shall give further consideration to the exact eventual size of the House – something which will in any case depend on the number of spaces, if any, required for *ex officio* members such as law lords and bishops. **At this**

⁵¹ The bishops are the exception: on retirement they cease to be members.

⁵² The Commons Public Administration Committee Report (paragraph 49) suggests an independent quota of 20 per cent of the reformed House.

⁵³ The Royal Commission Report identifies among other types of expertise that of Members with experience of constitutional matters and human rights issues (paragraphs 10.19 and 10.20).

⁵⁴ See paragraph 16 above.

stage we propose simply that the House should comprise about six hundred members. This represents little change from the present House without the 92 hereditary peers, but we recognise that transitional arrangements may necessitate an increase in size before equilibrium is reached.

Tenure

47. The present system of life membership encourages a high degree of independence, because members do not need to think at all about reappointment or re-election. A short tenure, by contrast, would limit the independence of all those members other than those with no wish for reappointment or re-election. That is not to say that all the arguments are in the direction of a very long tenure. At the end of a very long term, elected members might be seen to have lost the representativeness and legitimacy which they had at the time of their election. Members appointed on account of their particular background or expertise might have lost touch as a result of their service in the House.

48. A balance has to be struck, and our view is that a tenure for all members of some twelve years is about right. While members should be able to resign their seats earlier, we consider that members who do so should not thereby be able to stand for election to the House of Commons at least for a certain period, perhaps three years.

Appointment and election

49. Some of the options we set out below involve a mixed House of appointed and elected members, on the basis that neither arrangement on its own would produce the right blend of members. Some commentators have feared difficulties with a “mixed” House on account of certain members appearing to have greater “legitimacy” than others, but the House has for a considerable time been a mixture of appointed and hereditary peers. However, we do recognise that a significant element of elected, full-time members is likely to demand support and facilities which have not been sought in the past by members of the existing House.

50. One difficulty which may have been underestimated in the course of recent debate is that of gaining the interest of the electorate at a time of disappointing turnouts at all elections. Recent experience of, for example, elections to the European Parliament makes it doubtful whether there would be a substantial turnout, even for an election of the whole House. Consideration should be given to having full postal ballots and/or combining the elections with other elections – for example the elections to devolved institutions. Moreover, while it is one thing to ask the electorate to decide the entire membership of a second chamber, it is another to ask it to decide on only a proportion of the membership. Especially if the proportion is a small one, there is likely to be a feeling that the election does not matter much, and there must be a risk of very small turnouts and high votes for fringe candidates, both of which could imperil the reputation, legitimacy and effectiveness of the reformed second chamber.

An appointments commission

51. Getting the right balance in the matter of appointments is a difficult but vitally important matter. The Royal Commission opposed the use of political patronage: “Precluding any scope for political patronage is a basic element of our scheme for the composition of the second chamber. The abolition of such patronage is essential if the

chamber is to have the legitimacy and confidence required.”⁵⁵ But we do not take the view that all power should be removed from the Prime Minister and party leaders. There are cases – such as the appointment of a new member to serve as a Minister – where the exercise of prime ministerial nomination is perfectly justified. Equally it is important to ensure that appointments are made on an independent and widely respected basis.

52. The present arrangements do not, in our view, achieve the balance which we consider necessary and legitimate. There should be a new Appointments Commission established on a statutory basis, as the Royal Commission originally proposed.⁵⁶ However, that should not exclude the possibility of nomination by the Prime Minister of the day, nor proposals by party leaders and members of the public. All these nominations would be scrutinised by the new Appointments Commission. Only the Prime Minister would have the right to have nominations confirmed.

Methods of election

53. Most opinion concludes that, if the second chamber is to be different from the first – and we believe that it should – then the method of election needs to be different, and elections should be held on different dates from general elections. The context should not be the election of a government, and, in any case, without fixed-term Parliaments there would be practical difficulties. For example, the electoral systems recommended by the Commons Public Administration Committee (open regional lists or Single Transferable Vote) both have the advantages that they provide for much larger constituencies than for MPs, minimising the risk of overlap. “First-past-the-post”, especially if applied to a smaller percentage of a smaller sized House, would both rule out minor parties and independents, and give an undue preponderance to the largest party.

Transitional arrangements

54. Since the nature of the reformed second chamber which we envisage is similar to the present House of Lords, it is desirable that there should be a smooth transition. It is generally accepted that the 92 hereditary peers should cease to be members, but it is equally generally accepted that transitional arrangements are needed to avoid an immediate exodus of the remaining members. The Royal Commission proposed that existing life peers should be able to continue in membership of the reformed House for life.⁵⁷ The Government, in *Completing the Reform*, accepted this recommendation, but noted (in the *Supporting Documents* which accompanied the White Paper) that this would lead to significant difficulties in the process of transition to a reformed House.⁵⁸

55. We are conscious that retaining life membership for all existing life peers would mean that for some years a substantial (though decreasing) proportion of the House comprised an increasingly elderly group of survivors from the present House of Lords. On the other hand it would be difficult to devise a fair and workable means of removing existing members, who have been led to believe that their membership will be allowed to continue, and many of whom have planned their lives around a long-term commitment to membership. In the second stage of our inquiry we shall consider possible means of encouraging voluntary retirement and smoothing the transition. **At this stage we have**

⁵⁵ Royal Commission Report, paragraph 13.3.

⁵⁶ Royal Commission Report, paragraphs 13.11 to 13.13 and Recommendation 83.

⁵⁷ Excluding those created after the publication of its Report, who should become members for up to 15 years.

⁵⁸ Government White Paper *Completing the Reform*, paragraph 94. *Supporting documents*, pages 69–73.

concluded only that we are not attracted by the idea of compulsory retirement for existing life peers.

Other matters

Law lords and bishops

56. There are a number of issues which will need to be resolved regardless of decisions taken on the numbers of appointed and elected members in a reformed House of Lords. Prominent among these are the future membership of the law lords and of the Church of England bishops (and perhaps other religious representatives). We have already said that the question of a separation of the judicial role from the Lords is a complex matter worthy of an inquiry of its own.⁵⁹ Since decisions on these issues could complicate the process of choosing between different options, we have chosen to defer these matters until the second stage of our inquiry. This has the practical advantage of sparing us from answering a range of hypothetical questions, as the handling of the question of *ex officio* membership would vary with the numbers of appointed and elected members (and would not even arise if all the members were to be elected).

Financial consequences

57. The level of financial support for members of a reformed House is another important question which can appropriately be left until the broad outline of its composition is settled. We believe that elected members (inevitably with some representative role) would understandably expect better facilities and support than those which currently exist. It was only in 2001, following the acquisition of office space in Millbank House, that it became possible for all peers wishing to do so to have a desk. In most cases those desks are tightly packed with several in each room. Unless the number of members were to fall substantially, this situation could be significantly improved only by the acquisition or construction of additional office space in the vicinity of the Palace of Westminster.⁶⁰

58. There is provision for members to recover expenditure on secretarial help and research assistance, but the amount is linked to attendance and even for a member attending every sitting the annual limit would be under £10,000, far too little to permit the employment of a secretary or assistant. The level of research support offered by the Library is modest – a total of six research staff and three supporting staff at present. In both respects reform is likely to lead to pressure for change.

59. We note that there is little sign in the reform proposals produced by the Royal Commission, the Government or the Public Administration Committee that any work has been undertaken on the costing of those proposals. The present House costs under £60 million annually⁶¹ (some £85,000 per member as against some £380,000 per member of the House of Commons). A reformed House could cost substantially more, mainly because of the need for better support and facilities for members. **We consider it essential that some detailed work should be done on costing options.**

⁵⁹ See paragraph 25 above. These matters are dealt with rather too sweepingly in the Commons Public Administration Committee Report, paragraphs 150 to 159.

⁶⁰ Up to 45 further offices will become available for occupation in October 2004 as a result of the purchase in 2001 of Fielden House in Little College Street (House of Lords Annual Report 2001–02 (HL Paper 153), paragraph 55).

⁶¹ Expenditure in the financial year 2001–02 totalled £56,318,000, including the cost of purchasing Fielden House. Of this, £32,060,000 was in relation to peers' expenses and administration and £24,528,000 in relation to works services (House of Lords Annual Report 2001–02, Appendix E).

The name of the House and its link with the peerage

60. Finally, the name of the reformed House, and its link (if any) with the concept of a peerage, are issues to which we will return at the next stage.

PART 5: THE OPTIONS

61. In our terms of reference we were required to report on the options for composition from a fully nominated to a fully elected House and on intermediate options. We were also required to consider the implications of these options in terms of the role and authority of the reformed House in Parliament as a whole, taking into account the experience and expertise of the existing House. In this part of the Report we focus more closely on the options and their implications, though the observations and conclusions we have come to throughout this Report must be taken into account when considering that narrower focus.

62. We identify seven options. We have marshalled these options so that the two complete models – appointed and elected – are first considered and then decreasing proportions of each in turn until the exact balance is reached in Option 7. The proportion of elected members of a mixed House could be phased in over a period of twelve years rather than fixed at a particular time. This would ease transitional arrangements and ensure that a House with experienced members continued over a number of years. The options are:

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

Option 1 – A fully appointed House

63. A fully appointed House would most closely resemble the existing House of Lords, with the remaining hereditary element removed. Although the legitimacy of such a House would be challenged, this could be mitigated if a new independent and respected Appointments Commission was set up by statute. We have said that we consider that there is a place for political appointments to the House but, to ensure the integrity of the process, all such appointments should be scrutinised by the Appointments Commission.

64. An appointed House could more easily be made representative both of sections of society (ethnic groups, sexes, etc.) and of the regions. It would be the responsibility of the new statutory body, the Appointments Commission, to ensure that such representativeness was achieved. It is essential that a revamped Appointments Commission should itself be seen to be independent and to gain widespread support for its difficult but important work.

65. A fully appointed House could also provide a method for the inclusion of independent members and experts. It could continue to provide part-time members who could bring contemporary professional experience to bear on the duties of scrutiny and

the passing of legislation. The matter of the length of tenure and any conditions attaching to renewal and eligibility for entering the Commons would need detailed investigation.

66. A fully appointed House suggests a larger House, particularly during the transitional period, than a fully elected House.

Option 2 – A fully elected House

67. The principal argument in favour of a fully elected House is that it would have greater legitimacy and accountability. That view rests upon the premise that legitimacy and accountability are conferred by election. On the other hand the existing House, in exercising independence and in applying expertise, has contributed significantly to the process of parliamentary scrutiny. That may also be considered a basis of legitimacy, important but different from legitimacy conferred by election. Legitimacy based entirely on election may well result in a House which is more assertive. While a reformed second chamber could not unilaterally increase its formal powers, it is a matter for consideration just how far it might feel disposed, by more vigorous use of its existing powers, to challenge the House of Commons and the Government. Such developments could represent a significant constitutional change. A further advantage of a fully elected House is that it provides representation from across the United Kingdom.

68. An elected House is also likely to have few if any independent members, although, as we have said, independence is a quality that can be found among members from party backgrounds as well as from those not affiliated to any party. Nevertheless the domination of the House by elected party politicians would irrevocably change the nature of the House and the attitude and relationship of the House to the Commons and to the Government. In a fully elected House there could be no question of continuing membership for the law lords or Church of England bishops (or other religious representatives). A fully elected House suggests a smaller House since members might be expected to be largely full-time.

69. Even so, the cost is likely to be greater because elected members will expect to be salaried and will expect facilities on a par with those in the House of Commons. The transitional arrangements – i.e. getting from the present House to a fully elected House – will also be more complex and will need to include detailed provisions with respect to existing members. The matters of the length of tenure and any conditions attaching to renewal and eligibility for entering the Commons would need to be spelt out. Some consideration also needs to be given to the method of election. One concern which we have expressed in our Report is to build upon the representative quality of the existing House in terms of ethnicity, gender distribution and regional representation. A first-past-the-post system would seem to us to be likely to lead to replication of the Commons, particularly if elections were held at the same time. It would not be possible to ensure that there was sufficient balance between parties in the second chamber. We are aware of the difficulties of various methods of indirect election in a country like ours where there is no federal structure on which to base it. Nevertheless some form of indirect election might possibly be a better way of achieving the aims of representativeness and regional balance in a second chamber. It will in any case be necessary for further detailed work to be done on the methods and timing of such elections once the opinion of the Houses on composition is known. We do, however, recognise that turnout at any proposed election is likely to be higher if it coincides with another election.

Option 3 – 80 per cent appointed/20 per cent elected⁶²

70. We do not share the view that a House of mixed composition is necessarily undesirable. Indeed, in certain senses the House of Lords has always been a mixed House (comprising hereditary peers by succession, hereditary peers of first creation, *ex officio* members, and in recent times life peers). However, although this model would ensure the entry to the House of a sufficient number of independents, we can foresee difficulties in holding a direct election for only twenty per cent of the second House. Turnout in all elections has fallen to a worryingly low level. We cannot see an election for a small proportion of the new House raising any enthusiasm or contributing to a sense of the importance of the reformed House in the eyes of the electorate.

Option 4 – 80 per cent elected/20 per cent appointed⁶³

71. We have said that there may be virtue in a mixed House. Nevertheless, if the appointed element is pitched as low as 20 per cent, difficulties will arise. The current working House consists of 300 or so members but it is a frequently changing 300, depending on the business being considered. The independent element and the element of expertise need to have a sufficiently wide base to provide opinion on a vast range of subjects as they arise in the course of the House's business. With a smaller appointed element in an elected House of reduced size, that provision is unlikely to be sufficient or satisfactory. The law lords and the bishops (or other religious representatives) could not easily be retained. Moreover, a House of largely elected members is bound to change the culture of the second House, making it less attractive for those who wish to remain unaffiliated to party. It will also make it difficult for part-time members with valuable specialist knowledge to participate.

Option 5 – 60 per cent appointed/40 per cent elected

72. This balance of composition would provide a more reasonable basis of independent members and experts who do not wish to stand for election. It would, on the other hand, provide a significant elected element, to go some way to meet the demands of legitimacy. The replacement of a large number of existing members would imply a long transitional period and a large interim House. The proportion of elected members could be established over a period of twelve years rather than at one particular time, easing transitional arrangements.

Option 6 – 60 per cent elected/40 per cent appointed⁶⁴

73. This model retains the advantages of a mixed House. Nevertheless, it is a matter of judgement as to whether a 40 per cent appointed House is sufficient to provide the necessary diversity of expertise. Two important considerations affecting this judgement are the size of the new House and the nature of the transitional arrangements i.e. what happens to the existing members. This option would imply that the House would be substantially larger than 600 for a lengthy transitional period.

⁶² The Government White Paper *Completing the Reform* (paragraphs 43–47) proposed a second chamber composed on this basis.

⁶³ In their responses to the Government White Paper *Completing the Reform*, the Conservative Party proposed a second chamber composed on this basis, and the Liberal Democrats favoured one with a maximum of 20 per cent appointed members.

⁶⁴ The Commons Public Administration Committee Report (paragraph 96) proposed a second chamber composed on this basis.

Option 7 – 50 per cent elected/50 per cent appointed

74. The above arguments broadly apply to this option as well. However, the exact half-way House may have some appeal on grounds of mathematical neatness. It would provide an apparently sufficient balance of electoral legitimacy on the one hand and of independence and expertise from appointment on the other.

Independent members and the appointment process

75. If any option other than 2 or 4 above is chosen, it will be necessary to specify the quota of independent members within the appointed element so as to ensure that they form about 20 per cent of the House. The appointed element should be nominated by a new independent statutory Appointments Commission whose principal function would be to ensure a quality of representativeness and regional balance in the reformed House.

How shall the Houses decide?

76. Finally, we have considered the matter of how the Houses should proceed in deciding on the options. **We hope that there will first be “take-note” debates on this report in both Houses, with the opportunity to vote on the options coming later, after members have had time to study both debates. We are convinced that it is essential that both Houses follow the same procedure in voting on options.** If they do not, the task which we identified in our Special Report, of establishing how the respective views of each House might be brought closer together if they differ, will be made a great deal more difficult.

77. Having considered various possible methods of approaching the voting, including the possibility of a ballot, we conclude that the best way of getting an accurate measure of views in both Houses would be to have a series of motions put on the different options one after the other, notwithstanding the normal practice of the Houses in dealing with substantially similar questions and questions disagreed to. This follows the precedent used in the case of the Motions on Hunting with Dogs in both Houses in March 2002.⁶⁵ **Accordingly we recommend that a series of motions, each setting out one of the seven options we have identified, be moved successively in each House notwithstanding the normal practice in regard to questions.** Members would be free to vote in favour of as many of the options as they considered acceptable, after a separate debate on the issues raised in this Report.

78. We suggest that the form of the motions should be on the following lines:

House of Lords Reform—[Name of mover] to move, That this House approves Option 1 (fully appointed) in the Report from the Joint Committee on House of Lords Reform.

House of Lords Reform—[Name of mover] to move, That this House approves Option 2 (fully elected) in the Report from the Joint Committee on House of Lords Reform.

House of Lords Reform—[Name of mover] to move, That this House approves Option 3 (80 per cent appointed/20 per cent elected) in the Report from the Joint Committee on House of Lords Reform.

⁶⁵ Votes and Proceedings of the House of Commons, 18 March 2002 page 670. House of Lords Official Report, 19 March 2002, columns 1239–40.

House of Lords Reform—[Name of mover] to move, That this House approves Option 4 (80 per cent elected/20 per cent appointed) in the Report from the Joint Committee on House of Lords Reform.

House of Lords Reform—[Name of mover] to move, That this House approves Option 5 (60 per cent appointed/40 per cent elected) in the Report from the Joint Committee on House of Lords Reform.

House of Lords Reform—[Name of mover] to move, That this House approves Option 6 (60 per cent elected/40 per cent appointed) in the Report from the Joint Committee on House of Lords Reform.

House of Lords Reform—[Name of mover] to move, That this House approves Option 7 (50 per cent appointed/50 per cent elected) in the Report from the Joint Committee on House of Lords Reform.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

- (i) The existing conventions, which are of a self-restraining nature, impact profoundly on the relations between the Houses and need to be understood as a vital part of any future constitutional settlement. (paragraph 11)
- (ii) We strongly support the continuation of the existing conventions. When the views of the Houses on composition are made known, we will return to the detailed matter of how these important conventions should be maintained in a new constitutional settlement between the Houses. (paragraph 12)
- (iii) We intend to return to the matter of the constitutional role of the Lords in the later stages of our work but we underline its importance here. (paragraph 15)
- (iv) We concur with the conclusions of the Royal Commission that increased representativeness will confer a new legitimacy on the House of Lords. We will consider methods to achieve that end when we deal with getting the right membership of the House later in this report but it is also a matter that will need further careful attention in future. (paragraph 16)
- (v) We are convinced that a reformed House should contain an appropriate number of members from all parts of the country and later in this report we will consider how this might be achieved. It is difficult to see at the moment structures which are parallel to those to be found in fully federal countries like the USA and Germany upon which to base this representation, although we note in the recent Queen's Speech the Government's intention to hold referendums on the issue of regional governance in England. (paragraph 18)
- (vi) We consider that a co-ordination of the legislative loads between the Houses is a practical but important part of any new constitutional settlement. (paragraph 20)
- (vii) Recognising the practical realities of parliamentary programmes, we nevertheless consider that pre-legislative scrutiny is an important aspect of making the legislature function more effectively and we welcome the proposals announced in the recent Queen's Speech. (paragraph 21)
- (viii) When the Houses' views on the matter of composition are known, we shall consider whether any change is needed in the powers of the Lords in relation to secondary legislation. (paragraph 23)
- (ix) We assert the importance of the scrutiny function of the House. At a later stage in our work, we will return to consider how that scrutiny can be made more effective. (paragraph 24)
- (x) Although we may return to it later in our deliberations, we consider the judicial function of the House of Lords to be a matter worthy of independent inquiry and expert attention. Even if a separation takes place it does not need to entail the ending of membership of the House by the law lords. (paragraph 25)
- (xi) Subject to satisfactory assurances that carry-over arrangements could not be used to erode the powers of the House of Lords, we do not consider at this stage that the provisions of the Parliament Acts need to be altered. Together with our conclusions about maintaining the existing conventions, we therefore recommend (subject to what we say about secondary legislation in recommendation viii above) that no new or additional powers are given to the House of Lords at this stage. (paragraph 29)

- (xii) We consider that the lack of representativeness of the House must be improved and that better balances can be achieved either by a new appointment system or, with appropriate checks in place, by various methods of election. (paragraph 33)
- (xiii) Any arrangements for the reformed House must take account of the importance of maintaining the principle that no one political party should be able to be dominant in it. (paragraph 34)
- (xiv) It is our view that any new system of getting members into the House needs to ensure that independence, whether arising from non-party affiliation or from less attention to the requests of the Whips, is not jeopardised or diminished. (paragraph 35)
- (xv) We consider this independence an important element in any reconstituted House. (paragraph 40)
- (xvi) We consider the expertise which is evident in the existing House to be something of considerable importance which we would wish to see preserved in the new House. (paragraph 42)
- (xvii) The existing House of Lords meets several of the criteria which we have been considering, namely lack of domination by one party, independence and expertise. If these existing qualities, bolstered by a greater representativeness, can be transferred to the reformed House, we believe that a new legitimacy, which we have already highlighted in considering the House's role, will naturally develop. (paragraph 43)
- (xviii) At this stage we propose simply that the House should comprise about six hundred members. This represents little change from the present House without the 92 hereditary peers, but we recognise that transitional arrangements may necessitate an increase in size before equilibrium is reached. (paragraph 46)
- (xix) A balance has to be struck, and our view is that a tenure for all members of some twelve years is about right. While members should be able to resign their seats earlier, we consider that members who do so should not thereby be able to stand for election to the House of Commons at least for a certain period, perhaps three years. (paragraph 48)
- (xx) The present arrangements do not, in our view, achieve the balance which we consider necessary and legitimate. There should be a new Appointments Commission established on a statutory basis, as the Royal Commission originally proposed. However, that should not exclude the possibility of nomination by the Prime Minister of the day, nor proposals by party leaders and members of the public. All these nominations would be scrutinised by the new Appointments Commission. Only the Prime Minister would have the right to have nominations confirmed. (paragraph 52)
- (xxi) At this stage we have concluded only that we are not attracted by the idea of compulsory retirement for existing life peers. (paragraph 55)
- (xxii) We consider it essential that some detailed work should be done on costing the options before the Houses. (paragraph 59)
- (xxiii) We hope that there will first be "take-note" debates on this report in both Houses, with the opportunity to vote on the options coming later, after members have had

time to study both debates. We are convinced that it is essential that both Houses follow the same procedure in voting on options. (paragraph 76)

- (xxiv) Accordingly we recommend that a series of motions, each setting out one of the seven options we have identified, be moved successively in each House notwithstanding the normal practice in regard to questions. (paragraph 77)

APPENDIX 1: Historical Background

Balances in the Constitution

1. The idea of “balance” in institutional relationships has had a long history in British constitutional theory. Mediaeval monarchs summoned the *Estates of the Realm* – the Lords Spiritual and the Lords Temporal and the Commons House – to come together in Parliament to discuss the affairs of the Kingdom. Whilst the power of the Crown remained absolute and the two Houses jostled for influence, the notion of a “Gothic” balance between Kings, Lords and Commons was regarded as a beneficial feature of constitutional arrangements.¹ Even during the upheavals of the seventeenth century, when both monarchy and the House of Lords were briefly abolished, it was deemed, by political apologists, to be important to recreate a balance, whether that was within a republican framework (in the case of James Harrington) or a strengthened monarchy (in the case of Sir Robert Filmer).²

2. Over the centuries the privileges of both Houses, those rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, added to the notion that members of each House had similar, if separate, functions to perform. Freedom from arrest and freedom of speech were established so that individual members of both Houses could perform their parliamentary duties effectively. The growth of parliamentary privilege therefore added to the notion of a shared purpose (to debate public affairs freely) between the two Houses.

3. A significant shift towards the Commons in one area of Parliamentary control occurred during the seventeenth century. For a century or more the Commons had begun to regard it as exceptional that bills granting aids and supplies should be altered by the Lords. In 1671, the Commons asserted its sole right to set the level of taxes voted to the Crown.³ The challenge made to this financial privilege, henceforth claimed exclusively by the Commons, was to become the catalyst for the first major restriction on the power of the House of Lords more than two hundred years later in the early twentieth century.

4. Nevertheless, the most important change in the constitutional balance was brought to definition in the settlement known as the Glorious Revolution (1689) which affected the relationship of the two Houses to the Crown. Under its terms, Parliament as a whole gained power at the expense of the Crown. The ancient privileges of the Houses were now enshrined in the Bill of Rights. Although the Crown retained considerable power, it was now no longer unfettered nor could it act without Parliament’s approval. Henceforth the balance was to be understood as the Crown-in-Parliament although important royal prerogatives, such as the calling and dissolution of Parliament and the approval of administrations, remained important methods of monarchical influence.

5. The new balance achieved by the constitutional settlement of 1689 led to a period of relative stability in the constitutional relations between the Crown and the two Houses, which remained broadly co-equal except in financial matters where the Commons maintained its priority.⁴ Members of the government, including Prime Ministers, could be

¹ See J. G. A. Pocock, *The Thought of James Harrington*, Cambridge, 1977, *passim*.

² See M. Jack, *Corruption and Progress: The Eighteenth-Century Debate* New York, 1989.

³ Erskine May, *Parliamentary Practice* 22nd Edition, 1997, page 797.

⁴ The Commons control of taxation increased its influence over policy significantly in times of war as highlighted in the latest work of the History of Parliament Trust. See *The House of Commons 1690–1715* (ed. E. Cruickshanks, S. Handley & D.W. Hayton), 5 vols, Cambridge, 2002.

drawn from either House.⁵ However, as result of the development of party mandates after the Reform Act (1832) and the extension of suffrage, the House of Commons came increasingly to regard itself as the more legitimate source of executive power. The Lords, for its part, challenged that view (especially in the form of what became the Salisbury doctrine) nor did it forbear from wholesale amendment of Commons Bills, except those that dealt with money.⁶ At the same time, the House of Lords was becoming more and more the House of one party particularly after 1886 when the Liberal Unionists joined the Conservatives; the issues of Home Rule and Free Trade, but particularly the former (a Home Rule Bill but was rejected by the Lords in 1893), affected the behaviour of the Opposition in the House of Lords. Over a long and difficult period, attempts were made by members of both Houses and eminent political theorists to grapple with the increasing constitutional deadlock that was developing between the Houses.⁷

Parliament Act 1911

6. These political and constitutional tensions made the traditional constitutional balance between the two Houses more and more fragile. It was finally destroyed by the outright opposition of the Lords to the radical programme of the Liberal Government, elected in 1906. In particular the Lords attacked the Liberal Government's budget of 1909.⁸ Asquith, who had succeeded Campbell Bannerman as Prime Minister made considerable efforts to avert what was regarded as the extreme measure of creating a large number of peers so that the will of the majority in the Commons could be imposed on the House of Lords. Eventually the Government was driven to introducing the Parliament Bill, which got through the House of Lords with a majority of 17 (131:114) after a two day debate on Commons Amendments.

7. The Parliament Act's most important provisions were to—

- (i) restrict the Lords' power to reject "money bills" to a month;
- (ii) allow a public bill introduced in the Commons to pass into law, though not agreed by the Lords, if passed in the Commons in three successive sessions, with not less than two years elapsing between the second reading in the House of Commons in the first session and the passing of the bill in the House of Commons in the third session; and
- (iii) alter the provision of the Septennial Act 1715, setting five-year Parliaments.

Although the Parliament Act 1911 curtailed the power of the Lords, it did so in quite narrow circumstances – that of a dispute between the Houses over a particular bill. By virtue of its provision of a two-year period between a second reading in the Commons and Royal Assent, it also meant that a Government would only effectively use it in the first two sessions of a five-year Parliament. It is important to understand that even when the provision was reduced to a year in the Parliament Act, 1949, the Lords retained considerable legislative power. Moreover, in the day-to-day workings of the two Houses,

⁵ H. Morrison, *Parliament and Government*, Oxford, 1954, page 171.

⁶ W. Ivor Jennings, *Cabinet Government*, Cambridge, 1947, pages 32ff.

⁷ Politicians who returned to the subject again and again included Lord Rosebery and the Marquess of Salisbury, whilst it was also debated by distinguished political theorists including Walter Bagehot and John Stuart Mill, see P. Norton, *The Constitution in Flux*, Oxford, 1982, page 117. Also see E. A. Smith *The House of Lords in British Politics and Society 1815–1911*, New York, 1992.

⁸ For a detailed account of the parliamentary debates during the whole crisis, see R. Jenkins, *Mr Balfour's Poodle, Peers v People*, London 1954. For detailed background see C. Jones and D. L. Jones (eds) *Peers, Politics and Power 1603–1911* London, 1986.

conventions (restraining the behaviour of the Lords in cases of contest) are as significant as the terms of the Parliament Acts.⁹

Further Attempts at Reform: 1917–1918

8. The preamble of the Parliament Act 1911 contains the well-known words:

“and whereas it is intended to substitute for the House of Lords as it at present exists a second chamber constituted on a popular instead of hereditary basis, but such substitution cannot immediately be brought into operation....”

They suggest, on the face of it, that further reform was envisaged at that time.

9. That further reform was not embarked upon until 1917 when a conference of twenty members from both Houses was appointed under the chairmanship of Lord Bryce, with the following terms of reference:

“To inquire and report – (i) As to the nature and limitations of the legislative powers to be exercised by a reformed Second Chamber. (ii) As to the best mode of adjusting differences between the two Houses of Parliament. (iii) As to the changes which are desirable in order that the Second Chamber may in future be so constituted as to exercise fairly the functions appropriate to a Second Chamber.”

Eventually the Bryce Report proposed a House of Lords, seventy-five per cent of which was to be elected indirectly by members of the House of Commons on a regional basis and twenty-five per cent which would be appointed by a Joint Standing Committee of both Houses, retaining a proportion of hereditary peers and bishops. The Bryce proposals laid some stress on the Lords as a revising chamber which could reconsider in details bills passed by the Commons (particularly those introducing new principles or legislation affecting the Constitution) or deal with non-controversial legislation.¹⁰ That notion of the Lords, as a revising chamber, was only taken up seriously much later in the century.¹¹ In the event, substantial agreement on the hereditary element could not be reached; the question of composition proved intractable. The Conference did not agree unanimously to its Report and the scheme was abandoned.

Conference of 1948 and Parliament Act 1949

10. Although various schemes for reform of the House of Lords were proposed in the interim period (both in party circles and in Government), it was not until 1948 that the next serious attempt was made. A conference was called to consider the Lords' powers afresh, but there was no agreement. Instead, a Bill was introduced under the Parliament Act 1911, the validity of which procedure has subsequently been challenged on the grounds of *vires*.

The Act reduced from three years to two years the number of sessions in which a disputed bill must be passed by the House of Commons and from two years to one year the period of delay from second reading in the House of Commons.

⁹ Three Acts passed into law without the agreement of the Lords under the terms of the 1911 Act as originally passed, namely the Government of Ireland Act 1914, the Welsh Church Act 1914 and the Parliament Act 1949. Since 1949 three further Acts have been passed in this way, namely the War Crimes Act 1991, the European Parliamentary Elections Act 1999 and the Sexual Offences (Amendment) Act 2000.

¹⁰ For a discussion of the Bryce proposals see K. Mackenzie, *The English Parliament*, London 1965, pages 187–8.

¹¹ These matters are fully discussed by R. Walters in ‘The House of Lords in the Twentieth Century’ (to be published).

Although the Conference of 1948 reached no agreement on powers for a reformed House, particularly in respect of its power of delay, an agreed statement, published as a White Paper, sets out certain significant conclusions:

- (a) The second chamber should be complementary to and not a rival to the lower House, and, with this end in view, the reform of the House of Lords should be based on a modification of its existing constitution as opposed to the establishment of a second chamber of a completely new type based on some system of election.
- (b) The revised constitution of the House of Lords should be such as to secure as far as practicable that a permanent majority is not assured for any one political party.
- (c) The present right to attend and vote based solely on heredity should not by itself constitute a qualification for admission to a reformed second chamber.
- (d) Members of the second chamber should be styled “Lords of Parliament” and would be appointed on grounds of personal distinction or public service. They might be drawn either from hereditary peers, or from commoners who would be created life peers.
- (e) Women should be capable of being appointed Lords of Parliament in like manner as men.
- (f) Provision should be made for the inclusion in the second chamber of certain descendants of the Sovereign, certain lords spiritual and the law lords.
- (g) In order that persons without private means should not be excluded some remuneration should be payable to members of the second chamber.
- (h) Peers who were not Lords of Parliament should be entitled to stand for election to the House of Commons, and also to vote at elections in the same manner as other citizens.
- (i) Some provision should be made for the disqualification of a member of the second chamber who neglects, or becomes no longer able or fitted, to perform his duties as such.

Life Peerages Act 1958 and Peerage Act 1963

11. The two changes which occurred in 1958 and 1963 fulfilled some of the principles advanced in 1948. The more significant was the Life Peerages Act 1958 which introduced life peers into the Lords. Under the Peerage Act 1963, peers by succession were able to renounce their peerages. By that time, peers were enabled (by Resolution of both Houses) to recover, within limits, expenses incurred for the purposes of attendance at sittings of the House of Lords. The Peerage Act also admitted peeresses by succession and dealt with anomalies relating to Scottish and Irish peers.

Crossman Reform 1968

12. In the Queen’s Speech of 1968, the Labour Government announced legislation that would reform the composition and powers of the House of Lords.¹² All-party talks were held. The Government made the following propositions, which once again echo conclusions reached in the 1948 White Paper:

¹² For an account of the Lords in this period see J. Morgan *The House of Lords and the Labour Government*, Oxford, 1975. Also see D. Shell, *The House of Lords*, Oxford, 1988 (2nd edition, Hemel Hempstead, 1992).

- (a) in the framework of a modern parliamentary system the second chamber has an essential role to play, complementary to but not rivalling that of the Commons;
- (b) the present composition and powers of the House of Lords prevent it from performing that role as effectively as it should;
- (c) the reform should therefore be directed towards promoting the more efficient working of Parliament as a whole; and
- (d) once the reform has been completed, the work of the two Houses should become more closely co-ordinated and integrated, and the functions of the House of Lords should be reviewed.

The Government added that it believed any reform should achieve the following objectives:

- (a) the hereditary basis of membership should be eliminated;
- (b) no one party should possess a permanent majority;
- (c) in normal circumstances the government of the day should be able to secure a reasonable working majority;
- (d) the powers of the House of Lords to delay public legislation should be restricted; and
- (e) the Lords' absolute power to withhold consent to subordinate legislation against the will of the Commons should be abolished.

13. After all-party talks were suspended, Richard Crossman, Leader of the House of Commons, introduced the Parliament (No. 2) Bill which removed the right of future hereditary peers to sit in the House of Lords, allowing those who were already there to stay as non-voting peers. Only life peers would be entitled to vote. It proposed a reduction of bishops from twenty-six to sixteen. The Bill would become law, after the elapse of a certain period, even if amended or disagreed to by the House of Lords. In the event the Bill never reached the House of Lords – after eight days in Committee of the Whole House and faced with opposition from defenders of the status quo (led by Enoch Powell) and abolitionists (led by Michael Foot), the Bill was abandoned.

House of Lords Act 1999

14. The present Government acted upon the Labour manifesto commitment to reform the House of Lords and particularly to remove the hereditary peers from its membership. This was achieved by the House of Lords Act 1999 which extinguished the right of hereditary peers to sit in the Lords, save for 92, 75 of whom would be elected from their party or group, 15 elected by the whole House (to serve as Deputy Speakers and Chairmen) and 2 *ex officio* members (the Earl Marshal and the Lord Great Chamberlain). At the same time the Government announced its intention to complete the reform, the next stage of which would be undertaken on the basis of recommendations from a Royal Commission, chaired by Lord Wakeham.¹³

¹³ There is considerable current literature on reform including I. Richard & D. Welfare, *Unfinished Business: Reforming The House of Lords*, London (1999); A. Mitchell, *Farewell My Lords*, London, 1999, and M. Russell, *Reforming the House of Lords*, Oxford, 2000.

**APPENDIX 2: Analysis of the composition of the House of Lords at
9 December 2002**

By Party Strength

Party	Life Peers	Hereditary: Elected by Party	Hereditary: Elected Office Holders	Hereditary: *Royal Office Holders	Bishops	Total
Conservative	167	41†	9			217
Labour	184	2	2			188
Liberal Democrat	61	3	2			66
Crossbench	145	29†	2	1		177
Archbishops and Bishops					24	24
Other‡	9					9
TOTAL	566	75	15	1	24	681

N.B. Excludes 12 Lords who are on leave of absence and 3 who are not in receipt of a writ of summons.

By Type

Archbishops and bishops		24
Life Peers under the Appellate Jurisdiction Act 1876		28
Life Peers under the Life Peerages Act 1958	(109 women)	550
Peers under the House of Lords Act 1999	(4 women)	91
TOTAL		693

* These are: the Duke of Norfolk (Earl Marshal – not currently in receipt of a writ) and the Marquess of Cholmondeley (Lord Great Chamberlain – Crossbench).

† Lord Brabazon of Tara was elected as a Conservative but, as the Chairman of Committees, he now sits on the Crossbenches.

‡ These are: Lord Archer of Weston-super-Mare, *Non-affiliated*; Lord Beaumont of Whitley, *Green Party*; Lord Carey of Clifton, *Non-affiliated*; Lord Fitt, *Independent Socialist*; Lord Grenfell, *Non-affiliated*; Lord McAlpine of West Green, *Independent Conservative*; Lord Stoddart of Swindon, *Independent Labour*; Lord Wilson of Dinton, *Non-affiliated*; Baroness Young of Old Scone, *Non-affiliated*.

Source: House of Lords Information Office

APPENDIX 3: Memorandum from the Presiding Officers of the Devolved Assemblies

We refer to the Committee's inquiry into House of Lords Reform, and should be grateful if you would take the terms of this memorandum into account in your considerations.

It is a happy coincidence that the three current presiding officers of the devolved assemblies are members of the House of Lords. During the three years in the role so far, we have each found a number of benefits from this situation. Not only has such membership provided us with regular opportunities to meet together informally and share advice and support, but it has also facilitated the establishment of a closer network of officials of the three institutions. Very significantly, it has also allowed us to keep up-to-date with the thinking and actions of the UK Parliament. One of the key advantages of this has been to put us in the position of being able to contribute to the thinking on matters that are before the House of specific interest to Wales, Scotland and Northern Ireland.

The presiding officers of Scotland and Northern Ireland are not intending to stand at the next elections and, given the very limited number of peers in both institutions, it seems unlikely that the presiding officers next time will be members of the House of Lords. Given the obvious advantages we have so far found, we would ask the Committee to consider if there is merit in ensuring that future presiding officers of the devolved institutions are members of the upper chamber.

We would be grateful if you would give this matter your consideration.

Lord Steel of Aikwood
Presiding Officer, the Scottish Parliament

Lord Alderdice
Speaker, the Northern Ireland Assembly

Lord Elis-Thomas
Presiding Officer, the National Assembly for Wales

17 July 2002

PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT**SESSION 2001–02**DIE MARTIS, 9^o JULII 2002

Present:

Lord Archer of Sandwell	Mr James Arbuthnot
Viscount Bledisloe	Mr Chris Bryant
Lord Brooke of Alverthorpe	Mr Kenneth Clarke
Lord Carter	Dr Jack Cunningham
Lord Forsyth of Drumlean	Mr William Hague
Baroness Gibson of Market Rasen	Mr Stephen McCabe
Lord Goodhart	Joyce Quin
Lord Howe of Aberavon	Mr Terry Rooney
Lord Oakeshott of Seagrove Bay	Mr Clive Soley
Baroness O’Cathain	Mr Paul Stinchcombe
The Earl of Selborne	Mr Paul Tyler
Lord Weatherill	

The Orders of Reference are read.

It is moved that the Rt Hon. Jack Cunningham do take the Chair (the Earl of Selborne).

The same is agreed to.

The Joint Committee deliberate.

Ordered, That the Joint Committee be adjourned to Tuesday 16 July at half-past Ten o’clock.

DIE MARTIS, 16^o JULII 2002

Present:

Lord Archer of Sandwell	Janet Anderson
Viscount Bledisloe	Mr James Arbuthnot
Lord Brooke of Alverthorpe	Mr Chris Bryant
Lord Carter	Mr Kenneth Clarke
Lord Forsyth of Drumlean	Mr William Hague
Baroness Gibson of Market Rasen	Joyce Quin
Lord Goodhart	Mr Terry Rooney
Lord Howe of Aberavon	Mr Clive Soley
Lord Oakeshott of Seagrove Bay	Mr Paul Stinchcombe
The Earl of Selborne	Mr Paul Tyler
Lord Weatherill	

Dr Jack Cunningham, in the Chair.

The Order of Adjournment is read.

The Proceedings of Tuesday 9 July are read.

A draft Special Report is proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 7 read and agreed to.

Resolved, That the Report be the Special Report of the Joint Committee to each House.

Ordered, That the Chairman do make the Report to the House of Commons and that the Lord Howe of Aberavon make the Report to the House of Lords.

Ordered, That such Reports be laid upon the Table of each House.

Ordered, That the Joint Committee be adjourned till Tuesday 17 September at half-past Ten o'clock.

DIE MARTIS, 17^o SEPTEMBRIS 2002

Present:

Lord Archer of Sandwell	Janet Anderson
Viscount Bledisloe	Mr James Arbuthnot
Lord Brooke of Alverthorpe	Mr Chris Bryant
Lord Carter	Mr Kenneth Clarke
Lord Forsyth of Drumlean	Mr William Hague
Baroness Gibson of Market Rasen	Mr Stephen McCabe
Lord Goodhart	Joyce Quin
Lord Howe of Aberavon	Mr Clive Soley
Lord Oakeshott of Seagrove Bay	Mr Paul Stinchcombe
Baroness O'Cathain	
The Earl of Selborne	

In the absence of the Chairman it is moved that Lord Howe of Aberavon do take the Chair (Kenneth Clarke).

The Order of Adjournment is read.

The Proceedings of 16 July are read.

The Joint Committee deliberate.

Ordered, That the Joint Committee be adjourned to Tuesday 8 October at half-past Ten o'clock.

DIE MARTIS, 8^o OCTOBRIS 2002

Present:

Lord Archer of Sandwell	Mr James Arbuthnot
Lord Brooke of Alverthorpe	Mr William Hague
Lord Carter	Joyce Quin
Lord Forsyth of Drumlean	Mr Clive Soley
Baroness Gibson of Market Rasen	Mr Paul Stinchcombe
Lord Goodhart	Mr Paul Tyler
Lord Howe of Aberavon	
Lord Oakeshott of Seagrove Bay	
Baroness O'Cathain	
The Earl of Selborne	
Lord Weatherill	

Dr Jack Cunningham, in the Chair.

The Order of Adjournment is read.

The proceedings of 17 September are read.

The Joint Committee deliberate.

Ordered, That the Joint Committee be adjourned till Tuesday 15 October at half-past Ten o'clock.

DIE MARTIS, 15^o OCTOBRIS 2002

Present:

Lord Archer of Sandwell	Mr James Arbuthnot
Viscount Bledisloe	Mr Chris Bryant
Lord Brooke of Alverthorpe	Mr Kenneth Clarke
Lord Carter	Mr William Hague
Lord Forsyth of Drumlean	Joyce Quin
Baroness Gibson of Market Rasen	Mr Terry Rooney
Lord Goodhart	Mr Clive Soley
Lord Howe of Aberavon	Mr Paul Tyler
Lord Oakeshott of Seagrove Bay	
Baroness O'Cathain	
The Earl of Selborne	
Lord Weatherill	

Dr Jack Cunningham, in the Chair.

The Order of Adjournment is read.

The proceedings of 8 October are read.

The Joint Committee deliberate.

Ordered, That the Joint Committee be adjourned till Tuesday 29 October at Ten o'clock.

DIE MARTIS, 29^o OCTOBRIS 2002

Present:

Lord Archer of Sandwell	Janet Anderson
Viscount Bledisloe	Mr James Arbuthnot
Lord Brooke of Alverthorpe	Mr Chris Bryant
Lord Carter	Mr Kenneth Clarke
Lord Forsyth of Drumlean	Mr William Hague
Baroness Gibson of Market Rasen	Mr Stephen McCabe
Lord Goodhart	Joyce Quin
Lord Howe of Aberavon	Mr Terry Rooney
Lord Oakeshott of Seagrove Bay	Mr Clive Soley
Baroness O'Cathain	Mr Paul Tyler
The Earl of Selborne	
Lord Weatherill	

Dr Jack Cunningham, in the Chair.

The Order of Adjournment is read.

The proceedings of 15 October are read.

The Joint Committee deliberate.

Ordered, That the Joint Committee be adjourned *sine die*.

SESSION 2002–03DIE MARTIS, 3^o DECEMBRIS 2002

Present:

Viscount Bledisloe	Janet Anderson
Lord Brooke of Alverthorpe	Mr James Arbuthnot
Lord Carter	Mr Chris Bryant
Lord Forsyth of Drumlean	Dr Jack Cunningham
Baroness Gibson of Market Rasen	Mr Stephen McCabe
Lord Howe of Aberavon	Joyce Quin
Lord Oakeshott of Seagrove Bay	Mr Terry Rooney
Baroness O’Cathain	Mr Clive Soley
The Earl of Selborne	Mr Paul Tyler
Lord Weatherill	

The Orders of Reference are read.

It is moved that the Rt Hon. Jack Cunningham do take the Chair (Lord Howe of Aberavon).

The same is agreed to.

The Joint Committee deliberate.

Ordered, That the Joint Committee be adjourned to Monday 9 December at Four o’clock.

DIE LUNAE, 9^o DECEMBRIS 2002

Present:

Lord Archer of Sandwell	Mr Chris Bryant
Viscount Bledisloe	Mr Kenneth Clarke
Lord Brooke of Alverthorpe	Mr William Hague
Lord Carter	Mr Stephen McCabe
Lord Forsyth of Drumlean	Joyce Quin
Baroness Gibson of Market Rasen	Mr Terry Rooney
Lord Goodhart	Mr Clive Soley
Lord Howe of Aberavon	Mr Paul Stinchcombe
Lord Oakeshott of Seagrove Bay	Mr Paul Tyler
Baroness O’Cathain	
The Earl of Selborne	
Lord Weatherill	

Dr Jack Cunningham, in the Chair.

The Order of Adjournment is read.

The Proceedings of Tuesday 3 December are read.

A draft Report is proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 47 were read and agreed to with amendments.

Paragraph 48 was read.

It was moved by Joyce Quin to leave out “A balance has to be struck, and our view is that a tenure for all members of some twelve years is about right.” and insert “A balance has

to be struck, and our view is that a tenure for all members (elected and appointed) of 8 years, renewable once, is appropriate.”

Which being objected to, the question was put thereupon, and the Committee divided:

<i>Contents</i>	<i>7</i>	<i>Not-Contents</i>	<i>14</i>
Mr Chris Bryant		Lord Archer of Sandwell	
Mr Kenneth Clarke		Viscount Bledisloe	
Lord Goodhart		Lord Brooke of Alverthorpe	
Lord Oakeshott of Seagrove Bay		Lord Carter	
Joyce Quin		Lord Forsyth of Drumlean	
Mr Clive Soley		Baroness Gibson of Market Rasen	
Mr Paul Tyler		Mr William Hague	
		Lord Howe of Aberavon	
		Mr Stephen McCabe	
		Baroness O’Cathain	
		Mr Terry Rooney	
		The Earl of Selborne	
		Mr Paul Stinchcombe	
		Lord Weatherill	

The amendment was disagreed to.

Paragraph 48 was agreed to.

Paragraphs 49 to 68 were read and agreed to with amendments.

Paragraph 69 was read.

It was moved by Mr Paul Tyler to leave out “A first-past-the-post system would seem to us to be likely to lead to replication of the Commons, particularly if elections were held at the same time. It would not be possible to ensure that there was sufficient balance between parties in the second chamber. We are aware of the difficulties of various methods of indirect election in a country like ours where there is no federal structure on which to base it. Nevertheless some form of indirect election might possibly be a better way of achieving the aims of representativeness and regional balance in a second chamber.”

Which being objected to, the question was put thereupon, and the Committee divided:

<i>Contents</i>	<i>8</i>	<i>Not-Contents</i>	<i>10</i>
Mr Chris Bryant		Lord Archer of Sandwell	
Mr Kenneth Clarke		Lord Brooke of Alverthorpe	
Lord Forsyth of Drumlean		Lord Carter	
Lord Goodhart		Lord Howe of Aberavon	
Mr William Hague		Mr Stephen McCabe	
Lord Oakeshott of Seagrove Bay		Baroness O’Cathain	
Joyce Quin		Mr Terry Rooney	
Mr Paul Tyler		The Earl of Selborne	
		Mr Clive Soley	
		Mr Paul Stinchcombe	

The amendment was disagreed to.

Paragraph 69 was agreed to.

The remaining paragraphs were read and agreed to with amendments.

The summary, summary of conclusions and recommendations, and appendices were agreed to.

Resolved, That the Report as amended be the First Report of the Joint Committee to each House.

Ordered, That the Chairman do make the Report to the House of Commons and that the Lord Howe of Aberavon do make the Report to the House of Lords.

Ordered, That such Reports be laid upon the Table of each House.

Ordered, That the Joint Committee be adjourned to a date and time to be fixed by the Chairman.
