



House of Lords
House of Commons
Joint Committee on
Conventions

Conventions of the UK Parliament

Report of Session 2005–06

Volume I



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First Report of Session 2005-06

Volume I

Report, together with formal minutes

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The Joint Committee on Conventions

The Joint Committee was appointed with the following terms of reference:

That, accepting the primacy of the House of Commons, it is expedient that a Joint Committee of the Lords and Commons be appointed to consider the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation, in particular:

(A) the Salisbury-Addison convention that the Lords does not vote against measures included in the governing party's Manifesto;

(B) conventions on secondary legislation;

(C) the convention that Government business in the Lords should be considered in reasonable time;

(D) conventions governing the exchange of amendments to legislation between the two Houses;

That the committee have leave to report from time to time;

That the committee have power to appoint specialist advisers;

That the committee have power to adjourn from place to place within the United Kingdom;

That the committee do report by 21 July 2006.

The House of Commons appointed its members of the Committee on 17 May 2006. The House of Lords appointed its members on 22 May 2006. The Committee held its first meeting on Tuesday 23 May 2006 and appointed Lord Cunningham of Felling as the Chairman.

The Lords and Commons agreed on 20 June and 4 July respectively to extend the Committee's life from 21 July to the end of this session of Parliament.

Membership

HOUSE OF LORDS	HOUSE OF COMMONS
Viscount Bledisloe	Mr Russell Brown
Lord Carter	Mr Wayne David
Lord Cunningham of Felling	Mr George Howarth
Lord Elton	Simon Hughes
Lord Fraser of Carmyllie	Sarah McCarthy-Fry
Lord Higgins	Andrew Miller
Lord McNally	Sir Malcolm Rifkind
Baroness Symons of Vernham Dean	Mr John Spellar
Lord Tomlinson	Ms Gisela Stuart
Lord Tyler	Mr Andrew Tyrie
Lord Wright of Richmond	Sir Nicholas Winterton

Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at http://www.parliament.uk/parliamentary_committees/joint_committee_on_conventions.cfm

Staff

The staff of the Committee were: Andrew Makower (Lords Clerk), Ms Jacqy Sharpe (Commons Clerk), Miss Frances Allingham (Committee Assistant), Mrs Dawn Brown (Senior Office Clerk) and Mrs Jenny Gouge (Committee Secretary).

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Summary

This Committee was set up in May 2006 to consider “the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation”. We were asked to consider four matters in particular –

- The Salisbury-Addison Convention
- Secondary legislation
- The convention that the Lords consider government business “in reasonable time”
- Exchange of amendments between the Houses (“ping-pong”).

We have also considered Commons financial privilege.

We were asked to accept the primacy of the Commons, and we do. But we detect a good deal of shading around what it means in the context of legislation, and what role it leaves for the House of Lords. No-one challenges the right of the Lords to consider Bills, including acting as “first House”, and to consider Statutory Instruments where the parent Act so provides. It is common ground that the Lords is a revising chamber, where government measures can be scrutinised and amendments proposed. But there is a range of views on what should be the proper role of the Lords in the legislative process.

The background to this inquiry is the continuing debate on reform of the House of Lords. Our conclusions, however, apply only to present circumstances. If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again. What could or should be done about this is outside our remit.

We are persuaded that the Salisbury-Addison Convention has changed since 1945, and particularly since 1999. This Convention now differs from the original Salisbury-Addison Convention in two important respects. It applies to a manifesto Bill introduced in the House of Lords as well as one introduced in the House of Commons. And it is now recognised by the whole House – not just the Labour and Conservative frontbenches who originally formulated it. In our view the Salisbury-Addison Convention has evolved sufficiently to require a new name which should also help to clarify its changed nature. We recommend that, in future, the Convention be described as the Government Bill Convention

In addition the evidence points to the emergence in recent years of a practice that the House of Lords will usually give a Second Reading to any government Bill, whether based on the manifesto or not. We offer no definition of situations in which an attempt to defeat a Bill at Second Reading might be appropriate, save that they would include free votes.

There undoubtedly is a convention that the Lords consider government business in reasonable time. But there is no conventional definition of “reasonable”, and we do not recommend that one be invented. It would be possible for a new symbol to appear on the Lords order paper, to indicate a Bill which has spent more than a certain period in the

House; we suggest 80 sitting days, or roughly half an average Session. There is scope for better planning of the parliamentary year as a whole, possibly involving greater use of pre-legislative scrutiny and carry-over. If the Government can even out the workload in both Houses throughout the Session, this should reduce time problems on individual Bills.

“Ping-pong” is not a convention, but a framework for political negotiation. It would be facilitated if the existing convention, that reasonable notice be given of consideration of amendments from the other House, were more rigorously observed.

The House of Lords should not regularly reject statutory instruments, but in exceptional circumstances it may be appropriate for it to do so. We list situations in which it is consistent with the Lords’ role as a revising chamber for them to threaten to defeat an Order. If none of these, nor any other special circumstance, applies, then opposition parties should not use their numbers in the House of Lords to defeat an SI simply because they disagree with it.

As for the practicality of codification, we have found the word “codification” unhelpful. However we offer certain formulations for one or both Houses to adopt by resolution. Both the debates on such resolutions, and the resolutions themselves, would improve the shared understanding which the Government seek.

All recommendations for the formulation or codification of conventions are subject to the current understanding that conventions as such are flexible and unenforceable, particularly in the self-regulating environment of the House of Lords. Nothing in these recommendations would alter the present right of the House of Lords, in exceptional circumstances, to vote against the Second Reading or passing of any Bill, or to vote down any Statutory Instrument where the parent Act so provides.

Resolutions of this character would be of no value without the support of the frontbenches of the three main parties. In the Lords, the views of the Convenor of the Crossbench peers would also be important. Ideally, such resolutions would be carried unanimously, or with an overwhelming majority, in both Houses.

The formulations are as follows:

In the House of Lords:

A manifesto Bill is accorded a Second Reading;

A manifesto Bill is not subject to 'wrecking amendments' which change the Government's manifesto intention as proposed in the Bill; and

A manifesto Bill is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose.

The House of Lords considers government business in reasonable time.

Neither House of Parliament regularly rejects statutory instruments, but in exceptional circumstances it may be appropriate for either House to do so.

We do not recommend legislation, or any other form of codification which would turn conventions into rules, remove flexibility, exclude exceptions and inhibit evolution in

response to political circumstances. And, however the conventions may be formulated, the spirit in which they are operated will continue to matter at least as much as any form of words.

Finally, the courts have no role in adjudicating on possible breaches of parliamentary convention.

1 Background

Our remit

1. Following debates in the House of Lords on 25 April¹ and the House of Commons on 10 May 2006² the two Houses of Parliament agreed that:

“accepting the primacy of the House of Commons, it is expedient that a Joint Committee of the Lords and Commons be appointed to consider the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation, in particular:

(A) the Salisbury-Addison convention that the Lords does not vote against measures included in the governing party’s Manifesto;

(B) conventions on secondary legislation;

(C) the convention that Government business in the Lords should be considered in reasonable time;

(D) conventions governing the exchange of amendments to legislation between the two Houses”.

1. We were originally ordered to report by 21 July 2006. At our request, this deadline was extended to the end of the current Session of Parliament.

Why does this matter?

2. At its core, the work of this Joint Committee examines the relationship between the primacy of the House of Commons, and the role and conduct of the House of Lords, as defined by the unenforceable conventions which govern its proceedings. This reality is one of the principal consequences of an unwritten constitution.

3. Our remit is hard for most people outside Westminster to understand, but it is very important. This is a free country, and the Westminster Parliament is one of the things which make it so. Parliament is a complex mechanism, but at its heart is a simple balance: the balance between enabling the Government to do things, and holding them to account – asking questions, proposing alternatives, forcing them to reveal information and justify their actions. This report is about the most important aspects of how this crucial balance works.

4. Our remit refers to the relationship between the two Houses of Parliament. When a House of Parliament takes a position or exercises a power, it seldom does so because all the Members feel the

1 HL Hansard, 25 April 2006, Vol 681, cols 74-95.

2 HC Hansard, 10 May 2006, Vol 446, cols 436-474. Deferred division, 17 May.

same way; more often it is by negotiated agreement or by majority vote.³ In our parliamentary democracy the majority in the House of Commons is closely associated with the Government: it sustains it, and most Ministers are drawn from it. In the Lords, at present, the House's actions may at any time be dictated by a combination of opposition parties and Crossbenchers. Therefore, though "the relationship between the two Houses of Parliament" may sound rather abstract, in practical terms it usually means the relationships between Parliament and government, and between government and other members.

5. People's attitudes towards government are generally sophisticated.⁴ People vote a government in because they want it to do things. Yet they do not like to see government get an easy ride. They like there to be "checks and balances", and the main ones are a free press, the courts, and Parliament (including the devolved assemblies). The issue at the heart of our inquiry is how far the Government – any government – is entitled to get its way in the Westminster Parliament on the basis of its majority in the Commons. This is, or ought to be, of concern to us all.

6. This report inevitably uses parliamentary expressions and technical terms. Some of these are explained in a glossary in Appendix 7. Since in this field it is important to understand not just what was said but who said it, this Appendix also identifies certain key personalities.

Origins of this inquiry

7. The Labour Manifesto for the General Election 2005 said,

"Parliamentary reform

Labour has already taken steps to make the House of Commons more representative, through all-women shortlists. Labour will also continue to support reforms that improve parliamentary accountability and scrutiny led by the successful Modernisation Committee.

In our first term, we ended the absurdity of a House of Lords dominated by hereditary peers. Labour believes that a reformed Upper Chamber must be effective, legitimate and more representative without challenging the primacy of the House of Commons.

Following a review conducted by a committee of both Houses, we will seek agreement on codifying the key conventions of the Lords, and developing alternative forms of scrutiny that complement rather than replicate those of the Commons⁵; the review should also explore how the upper chamber might offer a better route for public engagement in scrutiny and policy-

3 The Acting Clerk of the Australian House of Representatives put it thus, and his words apply here too: "There is something to be said for care in ascribing views, positions or motives to Houses of a Parliament as such - they are in essence collections of individuals. In respect of any given legislative proposal there would no doubt have been some diversity of views between members and between senators as to the proper use of the law-making powers available to the respective Houses. Consensus among the members of a House as to these matters in any particular case, or more generally, should not be assumed ... Unsurprisingly, disputes between the Houses in respect of legislation have in fact typically reflected unresolved disagreement at a party-political level." Ev 154.

4 See the evidence of Dr Meg Russell, Senior Research Fellow, Constitution Unit, University College London, at Q 326 for academic research on this.

5 This commitment is not in our terms of reference, although similar proposals were made by the Hunt group (the Labour Peers Working Group on House of Lords Reform). Lords Carter and Tomlinson, members of the Committee, were members of that group.

making. We will legislate to place reasonable limits on the time bills spend in the second chamber – no longer than 60 sitting days for most bills.

As part of the process of modernisation, we will remove the remaining hereditary peers and allow a free vote on the composition of the House.”

8. This refers to the primacy of the Commons, a joint committee, codifying key conventions, and reasonable time – all elements of our inquiry.

9. However the issue of the conventions had arisen before that in the debate on Lords reform. The Royal Commission on the Reform of the House of Lords⁶, more commonly referred to by the name of its Chairman, Lord Wakeham, noted their importance in the context of reform of composition in Chapter 4 - *Making the law*⁷, and made recommendations in each of the areas specified: for no change to the Salisbury-Addison and reasonable time conventions; for change in the areas of exchange of amendments between the Houses ('ping-pong') and delegated legislation. (For details see below.)

10. In their response, *Completing the reform*⁸, the Government accepted the Wakeham Commission's analysis. They proposed to maintain, without legislation, “conventions on the pre-eminent authority of the Commons over legislation and other measures required to implement a Government's election Manifesto”, and “the need for the Lords to continue to observe restraint in the way it exercises its still extensive powers.”⁹

11. In 2002, in the light of responses to *Completing the Reform*, the Government invited the two Houses to set up a Joint Committee on House of Lords Reform.¹⁰ In its First Report¹¹, the Joint Committee said, “...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

12. After noting the Salisbury-Addison, reasonable time and exchange of amendments conventions, it went on, “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

6 Royal Commission on Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000.

7 *Op cit*, para 4.5.

8 *The House of Lords - Completing the Reform*, Cm 5291, November 2001.

9 *Op cit*, paras 27-28.

10 The following members of this Committee were also members of that Committee: Viscount Bledisloe, Lord Carter, Lord Cunningham of Felling (Chairman, as Dr Jack Cunningham MP), Lord Tyler (as Paul Tyler MP).

11 First Report of the Joint Committee on House of Lords Reform, Session 2002-03, HL Paper 17, HC 171.

12 *Op cit*, para 11.

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.**¹³

13. The Joint Committee repeated this point in its Second Report¹⁴, after the inconclusive votes on composition of the House of Lords in both Houses in January 2003.¹⁵ It said, “the manner of maintaining these conventions requires careful attention and could form one part of the continuing programme of reform.”¹⁶

14. The concept of codification emerged in a report on Lords reform, produced by a group of Labour peers led by Lord Hunt of Kings Heath in July 2004 (“the Hunt report”).¹⁷ It recommended “**that the Labour Party, alongside any proposals on composition, should commit itself in its election manifesto to reform of the powers, conventions and procedures of the House of Lords through the enactment of a new Parliament Act and codification of the key conventions of the House.**” It went on to assert that, since 1999, the House had “on a number of occasions, tested the boundaries of some of these conventions.”¹⁸

15. Finally, in February 2005, before the Election, a cross-party group of MPs,¹⁹ supported in both Houses by members of all three major parties, produced *Breaking the Deadlock*, an attempt to define a way forward on Lords reform which would achieve consensus in Parliament. They analysed the failure to reach consensus on stage two reform after stage one in 1999, and concluded, “the root of disagreement is really about the second chamber’s power”.²⁰ They noted the concern that electing the Lords would compromise the primacy of the Commons, and concluded that such apprehensions were misplaced: Commons primacy rested “crucially” not on election, but on the confidence convention: that the Government must command the confidence of the Commons, but not necessarily that of the Lords. The group noted that concern for Commons primacy was often used as a “proxy” for an anxiety that the Government should be able to get its business without the burden of proper checks and balances. *Breaking the Deadlock* was clear that the Lords should be not a rival to the Commons, but that the two chambers were partners in a joint endeavour to hold the Executive to account. Properly scrutinised government, the group argued, was not anathema to strong government.²¹

13 *Op cit*, para 12.

14 Second Report from the Joint Committee on House of Lords Reform, Session 2002-03, HL Paper 97, HC 668.

15 Lords 21 and 22 January, Commons 21 January.

16 *Op cit*, para 15.

17 Report to the Lords Labour Group by the Working Group on House of Lords Reform. Lords Carter and Tomlinson, members of this Committee, were members of that group.

18 *Op cit*, Section 3, Summary.

19 Including Paul Tyler, now Lord Tyler, a member of this Committee.

20 *Op cit*, p 8.

21 *Op cit*, p 10.

16. *Breaking the Deadlock* defined the role of the Lords, now and in its vision of the future, as “review, scrutiny and deliberation”. It called for no change to the Lords’ powers, but for procedural change to improve their relationship with the Commons. It recommended that the Lords “should seek to complement, rather than duplicate, the work of the House of Commons”²² – another phrase which found its way into the Labour manifesto.

Assumptions and exclusions

17. In a Special Report published on 25 May 2006²³, we declared the following assumptions and exclusions:

“5. This inquiry is set in the context of a debate about House of Lords reform. Our remit, as we see it, is to seek consensus on the conventions applicable now, and to consider the practicality of codifying them. We have not been charged to consider the composition of a future Second Chamber.

6. We assume that the House of Lords will retain its present open procedures (“self-regulation”), and that codification will not involve giving new powers to the Lord Speaker.

7. We assume that codification will not involve increased oversight of Parliament by the courts.²⁴

8. We do not offer a definition of “convention”. We believe we will know one when we see it.

9. We are charged to consider the practicality of codification, not the desirability of codification, so far as this can be distinguished.

10. We have not been charged with considering modification of existing conventions.

11. Our remit excludes conventions wholly internal to each House, and conventions which do not affect legislation.

12. We take the financial privilege of the House of Commons as a given. We will not consider

a) The special status of Supply Bills, including the rule against tacking

b) The special status of Money Bills

c) The “privilege amendment” convention, which permits Bills with financial implications to start in the Lords.

13. We will not consider the following categories of legislation:

a) Supply Bills and Money Bills

22 *Op cit*, pp 14-15.

23 First Special Report, Session 2005-06, HL Paper 189, HC 1151.

24 See below, Chapter 8 *Codification*.

- b) Consolidation and Tax Law Rewrite Bills
- c) All forms of private legislation
- d) Draft bills and pre-legislative scrutiny
- e) Private Members' Bills.”

18. We have also assumed the continued existence of the Parliament Acts. Though rarely used, these have defined the fundamentals of the relationship between the two Houses ever since 1911, expressly limiting the powers of the Lords compared with the Commons, and acting as a long-stop to save a Bill and to vindicate the primacy of the Commons when there is deep disagreement between the two Houses. Their authority has recently been confirmed by the Law Lords in the context of the Hunting Act 2004²⁵; and the Government have not proposed to amend them, save so as to make them apply to Bills started in the Lords.²⁶ Sir Roger Sands, who gave evidence to us as Clerk of the House of Commons, observed that the preamble to the 1911 Act indicated that it was intended as a temporary measure pending reconstitution of the Lords “on a popular instead of a hereditary basis”; but that this would not expose the Acts to legal challenge if the Lords were elected but the Acts left intact.²⁷ In terms of our remit, the Parliament Acts already provide a limited but crucial codification of the “conventions on the relationship between the two Houses”, and we assume that they are here to stay.

19. A further assumption has emerged, concerning the composition of the House of Lords. One of the aims of the House of Lords Act 1999 was to end the situation whereby one party had an *in-built* majority in the House of Lords. This has been achieved. But moreover, since the passage of that Act, no party has had an *overall* majority in the Lords, even on a temporary basis. This was the expectation of the Wakeham report²⁸, and it is current government policy.²⁹ It is widely assumed that it is to remain the case for the foreseeable future.³⁰ Dr Meg Russell, Senior Research Fellow at the Constitution Unit, University College London, went so far as to call it a “new convention”.³¹ It is not clear how it could be guaranteed if the second chamber had a significant elected element; but that question is outside our remit. It is also worth noting that the House of Lords, unlike the Commons,

25 Jackson and others v. Attorney-General [2005] UKHL 56.

26 Q 32. The Wakeham Commission discussed this, and saw difficulties with it – *Op cit*, para 4.18.

27 Ev 99 and Q 276. The full preamble reads:

“Whereas it is expedient that provision should be made for regulating the relations between the two Houses of Parliament:

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 be immediately brought into operation:

And whereas provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this Act appears for restricting the existing powers of the House of Lords:”

28 *Op cit*, paras 3.13, 13.28.

29 Eg *The House of Lords - Completing the Reform*, Cm 5291, Nov 2001, Principles on p 4; *Constitutional Reform: Next steps for the House of Lords*, DCA CP 14/03, September 2003, para 41.

30 Eg Lord Grocott Q 14; Lord Falconer of Thoroton Q 15; Dr Russell Q 304; Professor Bogdanor Ev 166.

31 Ev 175.

has a sizeable number of independent (Crossbench) members, whose number is currently more or less equal to the membership of the Official Opposition in the House.³²

Conduct of the inquiry

20. Appendix 1 lists the members of this Committee and relevant interests. We have met 11 times. We have received oral and written evidence from the witnesses listed in Appendix 2, to all of whom we are grateful for their help. All the evidence is printed with this report. Written evidence is referred to by page number ("Ev"), oral evidence by question number ("Q"). We appointed no specialist advisers, relying instead on the advice of the staff of the two Houses, to whom we are grateful, and on our own experience.

21. The Westminster Parliament is very willing to learn from others. We have received helpful accounts from Australia, India and Canada of how their two Houses work together on legislation. However, caution must be used when comparing isolated points from very different systems and contexts.³³

32 On 3 July 2006 the party balance was as follows: Labour 213, Conservative 210, Crossbench 196, Liberal Democrat 79, Bishops and others 43, total 741.

33 Q 300. Compare the Wakeham Report, para 1.4.

2 Primacy of the Commons, role of the Lords, and Lords reform

Background

Primacy of the Commons

22. Our remit requires us to accept “the primacy of the House of Commons”. It is worth considering what this means in the context of legislation, and of the conventions operating between the two Houses.

23. *Constitutional and Administrative Law* by O. Hood Phillips and Jackson declares it to be a constitutional convention that “In cases of conflict the Lords should ultimately yield to the Commons.”³⁴ It goes on to observe that this convention was backed until 1911 by the possibility of packing the Lords with government supporters, and has been underpinned since then by the Parliament Acts.

24. The Wakeham report reviewed the role and powers of the Lords in relation to primary legislation in detail in Chapters 3 and 4. It was of course recommending for a future second chamber, not merely describing the *status quo*. But it concluded that “the current balance is about right and should not be radically disturbed”³⁵; so its prescription serves also as a description.

25. The Wakeham report considered that the second chamber’s key role was to check and balance the Commons. This was more important than its role as a revising chamber. “It is right that the House of Commons should be the principal political forum and have the final say in respect of all major public policy issues, including those expressed in the form of proposed legislation. Equally, it is right that the second chamber should have sufficient power, and the associated authority, to require the Government and the House of Commons to reconsider proposed legislation and take account of any cogent objections to it.”³⁶

26. Commenting on the Salisbury-Addison convention, the Wakeham report said that the second chamber should “think very carefully before”, or “be cautious about”, “challenging the clearly expressed views of the House of Commons on any issue of public policy”.³⁷

27. In a debate in the Lords on the Hunt report on 26 January 2005, Lord Wakeham himself put it thus: “There are two fundamental principles in the way in which we conduct our business. First, a government who command a majority in the Commons are entitled to get their business. And an

34 O Hood Phillips and Jackson on *Constitutional and Administrative Law* (8th ed., Sweet & Maxwell 2001) para 7-018.

35 *Op cit*, para 4.7.

36 *Op cit*, para 4.7.

37 *Op cit*, para 4.21 and Recommendation 7.

Opposition who accept that principle are entitled to their rights, and their rights, frankly, are to be very difficult from time to time.”³⁸

28. These various formulations are all expressions of the primacy of the Commons, and all variants of two well-worn parliamentary maxims: (a) the Government is entitled to get its business and (b) the Lords are entitled to ask the Commons to think again. But when is the Government entitled to get its business – “ultimately”/“in the end”, or “in reasonable time”? Is it entitled to get all of its business, or only some core, and is that core definable? And how many times can the Lords reasonably ask the Commons to think again? These questions are not separate from the other elements of our remit; they underlie them all.

Role of the Lords

29. The answer to these questions depends on the view taken of the role of the House of Lords in legislation. The formal position gives the Lords equal status with the Commons as a House of Parliament in initiating and passing Bills, subject to Commons financial privilege and the Parliament Acts; and equal status with the Commons in approving delegated legislation in most cases, depending on the provisions of the enabling Act. In reality, this formal position has come to be moderated by conventions reflecting the primacy of the Commons. What the true position is, is the subject of this inquiry.

Lords reform

30. It is arguable that the position changed in 1999, with the expulsion of most of the hereditary peers from the Lords under the House of Lords Act and the emergence of a House where no party has an overall majority. Baroness Jay of Paddington, as Leader of the House, expressed the view at the time that the part-reformed House would have more legitimacy and authority *vis-à-vis* the Commons³⁹, and this “Jay doctrine” has often been cited since by peers inciting the Lords to defeat the Government. Also it is argued, for example by the Hunt report as quoted above, that the House of Lords has in practice been more assertive since 1999.⁴⁰

31. The Government have always said that the 1999 reform was only “stage one”, and that further reform is to follow. To begin with, it was generally assumed that “stage two”, like stage one, would concern the House’s composition, and that its powers and role would remain broadly the same. However, as quoted above, the Joint Committee on Lords Reform observed that further reform to composition might put the conventions governing use of the House’s powers under strain⁴¹; and the Hunt report went so far as to call for stage two to be accompanied by a new Parliament Act.⁴²

38 HL Hansard, 26 January 2005, Vol 668, col 1335.

39 The House “will be able to speak with more authority...A decision by the House not to support a proposal from the Government will carry more weight because it will have to include supporters from a range of political and independent opinions. So the Executive will be better held to account.” Quoted in HL Hansard, 7 December 1999, Vol 607, col 1262.

40 *Op cit*, p 2.

41 Second Report of the Joint Committee on House of Lords Reform, Session 2002-03, HL Paper 97, HC 668, para 15.

42 *Op cit*, Section 7.

Evidence

Parties and groups

32. The Government consider that Commons primacy rests on two things, “the election of its members as the representatives of the people”, and “power to grant or withhold supply” (i.e. taxation).⁴³ So long as the Government has the confidence of the Commons, it has “the right ... to carry through the programme set out in its election manifesto.”⁴⁴ This mandate does not depend on the size of the Commons majority: “A government is a government is a government.”⁴⁵ And it is not restricted to the letter of the manifesto: “issues which were not envisaged at the time of the election should nonetheless be treated as part of the government’s mandate if they are within the spirit of the manifesto or necessary for the protection of the country and plainly enjoy the confidence of the Commons.”⁴⁶

33. The Lords “fulfils a different function” from the Commons, and “defers” to the Commons “when there is a difference of opinion”.⁴⁷ The Lords is “a revising chamber not a vetoing chamber”.⁴⁸ Its role is “to scrutinise and revise legislation but not to operate in such a way that the democratic authority of the Commons was sabotaged.”⁴⁹ The Lords does not have an ultimate right to say “No”.⁵⁰ Lord Grocott, the Government Chief Whip in the House of Lords, said it was “close to being a convention” that the Lords do not reject any Bill at Second Reading⁵¹; and as an example of the Lords going too far, Jack Straw, the Leader of the House of Commons, cited the Criminal Justice (Mode of Trial) (No. 2) Bill, a government Bill but not a manifesto Bill, which the Lords rejected at Second Reading on 28 September 2000.⁵²

34. The Parliament Acts and the rules governing Supply are necessary to define the relationship between the two Houses, but they are not sufficient.⁵³ The rest of the job is done by conventions. For conventions to work requires “shared understanding” of what they mean. “A contested convention is not a convention at all.”⁵⁴

43 Ev 2, para 9.

44 Ev 2, para 10; Q 19.

45 Q 7.

46 Ev 27, para 1.

47 Ev 2, para 12.

48 Q 19.

49 Q 3.

50 Q 10.

51 Q 19.

52 Q 15.

53 Q 15.

54 Ev 3, para 19.

35. The Government consider that the behaviour of the Lords has become more assertive since 1999.⁵⁵ One measure of this is the increased number of Government defeats in normal-length Sessions:⁵⁶

1998-99	31
1999-2000	36
2002-03	88
2003-04	64

36. In the Government's view, shared understanding of the conventions is necessary "[a]s we move forward to the next stage of reform".⁵⁷ The Government's attempt at stage two in 2003-04 failed because of "lack of agreement about the interconnection between the relevant powers of each House and the composition of the Lords".⁵⁸ Failure to reach agreement on powers will make it difficult to agree on composition, and even if this were resolved it would make for "constant battle" between the Houses thereafter.⁵⁹ An elected or part-elected Lords might even "appear to challenge the essential primacy of the Commons".⁶⁰ As one predictor of this, Lord Grocott pointed to the following figures for Government defeats in the Lords per Parliament⁶¹, noting that they were higher when the Government was in a minority in the Lords⁶²:

1975-79	Labour Government, no majority	240 defeats
1979-83	Conservative Government, majority	46 defeats
1983-87	Conservative Government, majority	62 defeats
1987-92	Conservative Government, majority	72 defeats
1992-97	Conservative Government, majority	62 defeats
1997-2001	Labour government, no majority	108 defeats
2001-05	Labour government, no majority	245 defeats

55 Ev 3, para 15, and Q 3.

56 Q 11. The figures are from the House of Lords Information Office. This Office defines a Government defeat as a division in which the Tellers on the losing side were Government Whips. Divisions where the votes cast were equal are included; divisions which were forfeited for lack of Tellers, or aborted because there was no quorum, are not included.

57 Ev 3, para 20.

58 Q 1.

59 QQ 5, 12, 15, 20-21.

60 Ev 3, para 14; QQ 34-35, 38.

61 Figures again from House of Lords Information Office.

62 Q 14.

37. Lord Grocott also drew attention to the extent of 'ping-pong' (the exchange of amendments between the Houses).⁶³ This is of course linked to the number of government defeats, and likewise rises when the Government is in a minority in the Lords.

38. The Opposition wish to see both Houses of Parliament strengthened *vis-à-vis* the Government.⁶⁴ They see no need to codify conventions, either to solve a present problem or as a precursor to further Lords reform. The primacy of the Commons is guaranteed by the Parliament Acts and is respected by the Lords. Unlike the Government, they consider that the Lords have the right to say "No", with the Parliament Acts as a constitutional long-stop.⁶⁵ However, like the Government, they would not expect use of the Parliament Acts to be the norm: Lord Strathclyde, the Leader of the Opposition in the House of Lords, said, "we are concerned about this, and at some stage would like to be in government again and we would like the relationship between the two Houses to develop in such a way that ultimately the elected House gets its way without resorting to the Parliament Act or can reach a sensible compromise."⁶⁶

39. The Opposition agree with the Government that "a government is a government". However they consider themselves entitled to have regard to the size and nature of the Government's majority in the Commons on particular measures, e.g. the Bill to create NHS foundation trusts in England and Wales, for which the government majority in the Commons depended at one point on the votes of Scottish MPs.⁶⁷

40. The Opposition accept that the House of Lords has been more assertive since 1999. But they give other reasons besides the expulsion of hereditary peers, in particular programming of Bills in the Commons, and the switch in emphasis, when new peers are created, from a peerage as an honour to a peerage as a job.⁶⁸ They also drew attention to the focus in recent years on civil liberties issues – jury trial, detention of terrorist suspects, identity cards etc.⁶⁹ In fact Lord Strathclyde told us that he did not subscribe to the "Jay doctrine": "although there had been a change in the balance between the parties, I did not feel there had been a fundamental change in the composition of the House. I did not accept the argument that some may have done that it was a more legitimate House than the old House; and I therefore felt, after some thought and a look at extending the boundaries of the powers of a relationship between the two Houses, that the conventions should stick and they have done so."⁷⁰

63 Q 26, citing Ev 97; also Ev 30, para 16.

64 Ev 35.

65 Q 76.

66 Q 108.

67 Q 57. This was the Health and Social Care (Community Health and Standards) Bill of 2003.

68 Q 53.

69 Ev 35, para 2.3. The same point was made by the Liberal Democrats, Ev 59, para 4.4 and Q 157, and the Convenor of the Crossbench Peers, Q 125. The Wakeham Report also identified a tendency for the Lords to take up human rights issues; but it called it a "tradition", and traced it back to the 1980s – para 5.24. Of the four Bills since 1999 which have gone to three or more rounds of 'ping-pong', three involved human rights: Criminal Justice in 2003, Prevention of Terrorism in 2005 and Identity Cards in 2006, see Ev 97.

70 Q 55.

41. Lord Strathclyde told us how, in response to the Jay doctrine, he deliberately tried to “push out the boundaries” in 2000 with regard to delegated legislation⁷¹ (see below), and then resiled from this position in the light of experience.⁷² He does not consider that the Lords’ new assertiveness is in conflict with the principle that “in the end the House of Commons should get its way”.⁷³

42. The Opposition would expect an elected House to be still more assertive. Changing the composition of the House would change the conventions, and also the spirit in which they are operated. If the Commons agree to create an elected second chamber, they “must be presumed to have made an informed judgment” in doing so, and to assent to a changed relationship between the Houses.⁷⁴

43. Unlike Lord Strathclyde, the Liberal Democrats see “a considerably changed set of constitutional and political circumstances” since 1999.⁷⁵ They agree with the Conservatives, however, that the problem is not the balance between the two Houses, but between Parliament and government. They raise the spectre of an “elective dictatorship”, where a Commons majority gives the Government “the unalloyed ability to prosecute its business without the burden of proper checks and balances”, and the Lords are reduced to “an impotent debating society”.⁷⁶ They accept the “clear primacy” of the Commons⁷⁷, but they do not accept that “a government is a government”. They look behind the number of seats at Westminster, at turnout and the share of the vote. How far the Lords can resist a government proposal also depends, they say, on public opinion⁷⁸, on the solidity of support for the Government on its own backbenches⁷⁹, and on how long ago was the General Election. And the Lords have a special responsibility in relation to constitutional and civil rights issues.⁸⁰

44. On the other hand, the Liberal Democrats believe that the Lords should not reject any government Bill at Second or Third Reading, regardless of whether it is a manifesto Bill. “To do so would run contrary to its role as a revising chamber”. They see this as a third guarantee of Commons primacy, alongside the Parliament Acts and the rules of Supply.⁸¹ The Lords are free to amend Bills, and to insist on amendments rejected by the Commons. By “insist”, however, the Liberal Democrats did not appear to mean “insist to the point where the bill dies”; in the end, in the absence of compromise, the Lords must give way to the Commons.⁸²

71 Q 60.

72 Q 61.

73 Q 56.

74 Q 63.

75 Ev 56; Q 167.

76 Ev 56.

77 Q 149.

78 Q 189.

79 Q 150. Lord Norton of Louth made the same point at Q 326.

80 QQ 154, 157, 170, 189.

81 Ev 66, para 22.2.1; Q 168.

82 QQ 154-156, 184, 189.

45. Lord Williamson of Horton, the Convenor of the Crossbench Peers, said that, in 'ping-pong', Crossbenchers in the Lords tend to accept the right of the Commons to get their way sooner than the opposition parties.⁸³

Clerks

46. Discussing the Salisbury-Addison Convention, the Clerk of the Parliaments addressed the possibility that the House of Lords might acquire elected members and claim a mandate. He said, “the number of elected members and the mode of election may be crucial for the survival of the convention. For example the preservation of an appointed element in the Lords and a system of staggered elections for the remainder so that only a minority of membership is elected at any General Election is one way of protecting the convention. There may be others. All in all it is likely to be difficult to ensure that any definition of the convention now would survive a significant change in the composition of the Lords.”⁸⁴

2. The Clerk of the House of Commons agreed. He saw the primacy of the Commons as being “founded” on three things: the rules of Supply, the Parliament Acts, and, “underpinning both those, the superior authority properly accorded to a chamber whose Members are elected by and represent the will of the nation’s people over a chamber whose Members are not so elected.”⁸⁵

47. In his view, therefore, the introduction of elected Lords would be bound to make a difference. It would call into question the conventions, even if codified in the form of resolutions;⁸⁶ indeed it might even require reconsideration of the Parliament Acts.⁸⁷

“... if the House of Lords were to become a largely or wholly elected body I can conceive in that circumstance a new statutory statement of the functions of the House of Lords might be necessary.”⁸⁸

“... to embark on a major reconstruction of the composition of the Second House without at the same time attempting to pin down what you are reconstructing it to do would be a dangerous course.”⁸⁹

83 QQ 131, 143. This is borne out by the voting record for 10-11 March 2005, the all-night sitting on the Prevention of Terrorism Bill. The Conservative vote on the Bill peaked at 121 on division 1, and never fell below 91. The Liberal Democrat vote was even steadier, remaining between 56 and 48 throughout. But the number of Crossbenchers voting against the Government fell from an average of 39 in the first round (divisions 1-4) to an average of 21 (divisions 12-13). Source: House of Lords Journal, Vol. 238, and divisions analysis website, <http://holintranet/HoLDivisionsAnalysis> on the parliamentary intranet.

84 Ev 84, para 34, also Q 221.

85 Ev 100, para 5.

86 Q 279.

87 Q 276.

88 Q 266.

89 Q 270.

Academic witnesses

48. According to Professor Anthony Bradley, Professor Emeritus of Constitutional Law, University of Edinburgh, Commons primacy is not absolute.⁹⁰ Tension between the Houses, or between government and Parliament, is to be expected and is healthy. The alternative would amount to a unicameral/one-party system. “I do not agree that because a government is a government it therefore can claim to carry through in a single session all the legislation it wishes to carry through in its programme”. He sees the Lords not just as a revising chamber, but also as “a delaying chamber, ... to impose the time for public opinion, for the media, for Parliament to think again and for ministers ... or civil servants to be persuaded to think again”.⁹¹

49. There is a basic tension between “think again” (or “checks and balances”) and “get its business”. Professor Vernon Bogdanor, Professor of Government, Oxford University, called this “a fundamental divergence of view on the problem of modern democracy”.⁹² Professor Bradley (quoting Lord Carter, a member of this Committee) called it the “crucial point” and “the real problem”, and called for a “common political understanding” of the role of the Lords.⁹³

50. Lord Norton of Louth, Professor of Government, Hull University, saw a link between the Lords’ revising role and its current composition, as – to an extent – a House of experts, complementing the professional politicians in the Commons.⁹⁴

51. Both Professor Bradley and Professor Bogdanor consider that the Lords can get away with more when they act in tune with public opinion.⁹⁵ Dr Meg Russell, Senior Research Fellow, the Constitution Unit, University College London, has researched public attitudes to the role of the Lords since 1999, and in particular to the question of when the Lords can justifiably block a government Bill.⁹⁶ She summarised her findings as follows: “They were actually fairly supportive of the Lords’ rights to block Bills in general, but the thing that mattered to them was whether the Bill had public support or not. If it was an unpopular Bill around two-thirds of the public felt that it was justified for the Lords to vote against it, whether or not it was in the manifesto – the manifesto seems to make very little difference.”⁹⁷

52. The public were not split by party on this; public approval of the Lords blocking a Bill was as strong among government supporters as their opponents. Another factor which increased public approval was disquiet among government backbench MPs.

90 Q 302. Professor Bradley was an adviser to the Wakeham Commission.

91 Q 302.

92 Ev 167, para 13.

93 QQ 302, 303.

94 Q 332. Compare Wakeham Report para 4.40.

95 Ev 118, para G; Ev 167, para 15.

96 QQ 322, 326. *Views from Peers, MPs and the Public on the Legitimacy and Powers of the House of Lords*, paper to a seminar 12 December 2005 by Dr Meg Russell, Constitution Unit, University College London. Available at <http://www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords.html>. Public survey conducted by MORI in May 2005, 3 weeks after the General Election. 1,007 valid respondents; results adjusted to be representative of population as a whole.

97 Q 322.

53. In the view of our academic witnesses, further Lords reform would be bound to alter the relationship between the Houses.⁹⁸ Professor Bradley added, “there might be no real force in seeking to change the composition unless one was prepared for circumstances in which the behaviour of the Upper House would be different”.⁹⁹

54. Dr Russell drew our attention to certain important parliamentary conventions which are not controversial and which, though not directly to do with legislation, are connected with the primacy of the House of Commons. The principal one is the confidence convention, but she noted also the convention that the Prime Minister and most other senior Ministers are drawn from the Commons.¹⁰⁰

Overseas

55. The Canadian Senate is the nearest overseas equivalent to today’s House of Lords, because its members are appointed and serve to the age of 75.¹⁰¹ The Clerk of the Senate described it as a revising chamber and (quoting Sir John A. MacDonald¹⁰²) as “the chamber of sober second thought”, acting as a complement to the Canadian House of Commons.¹⁰³ It has never “directly and consistently” challenged the primacy of the Commons, and therefore Canada has no equivalent of the Parliament Acts. The Senate has extensive powers, but it uses them with restraint. It does not block mandated bills; and “In the last fifty years or so, a convention has emerged such that the Senate will normally acquiesce to the express view of the Commons when there is a dispute on a bill”. However, when the dispute concerns the Constitution, the Charter of Rights, or linguistic, minority or regional rights, or the issue is highly controversial, or the Government has no clear mandate, the Senate has been prepared to insist on amendments, delay or defeat Bills, and even (in 1988) precipitate an election.¹⁰⁴

56. The Clerk of the Senate observed, “If the Senate were to be reformed and, among other possibilities, elected, it is far from certain that the restraint that currently guides the Senate’s deliberations would hold.”¹⁰⁵ The Government’s evidence to us made much of the fact that overseas experience, admittedly from countries with written constitutions,¹⁰⁶ shows that a second chamber can be elected and yet remain constitutionally subordinate. If the constitution defines a limited role for the second chamber, and provided the basis of election is not identical to that of the primary chamber, “that is the basis on which you get elected and people just have to just accept that.”¹⁰⁷

98 QQ 310, 313, Ev 167, para 11; Ev 136, para 5.

99 Q 310.

100 Q 304, Ev 174.

101 Formerly for life. A government proposal for 8-year terms is currently under consideration.

102 Canada’s first Prime Minister.

103 Ev 157.

104 Ev 160.

105 Ev 161.

106 Australia, Spain, Germany, Ireland, France, Ev 2, para 13. See also QQ 299, 310. The counter-example is the US Senate, Q 20.

107 Q 12.

Conclusions

57. **We were instructed to accept the primacy of the House of Commons. None of our witnesses has questioned it, and neither do we.** It is crucially underpinned by the Parliament Acts, which we have taken as given for the purposes of this inquiry (see para 19 above). But we detect a good deal of shading around what it means in the context of legislation, and what role it leaves for the House of Lords. No-one challenges the right of the Lords to consider Bills, including acting as “first House”, and to consider Statutory Instruments where the parent Act so provides. It is common ground that the Lords is a revising chamber, where government measures can be scrutinised and amendments proposed. But there is a range of views on what should be the proper role of the Lords in the legislative process.

58. The argument is complicated by the presence of extreme positions, which nobody holds but which each side perceives in some of the other side’s rhetoric. The Government do not wish to emasculate the House of Lords¹⁰⁸, and neither opposition party envisages using the Lords to force the Government to have regular recourse to the Parliament Acts.¹⁰⁹ But fear of these exaggerated caricature positions drives each side to state its own position in more extreme terms than is really warranted.

59. Nonetheless there remains a distance between the Government and opposition visions of the role of the House of Lords. At the risk of over-simplifying, the opposition parties are broadly happy with the Lords’ behaviour since 1999; the evidence we have received suggests that the public at large feel the same. The Government do not.

60. It is generally accepted that any reform of the Lords’ composition which introduced an elected element would invite the House of Lords to be at least as assertive as in recent years, and probably more so. The Opposition accept this and say they would welcome it. The Government would not. They hope to fix the role of the Lords, by a process of codification, so as to prevent this outcome.

61. We have interpreted our remit as being to define the present reality, and to consider the practicality of codifying it. We do so in the chapters which follow. **Our conclusions apply only to present circumstances. If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again. What could or should be done about this is outside our remit.**

108 See for example Ev 3, para 16 and Mr Straw at Q 9.

109 See Lord Strathclyde at Q 108 and Lord Wallace of Saltaire and David Heath MP at Q 149.

3 The Salisbury-Addison convention

Background

The history of the Convention

62. The Salisbury Convention has its origins in the doctrine of the mandate developed by the third Marquess of Salisbury in the late 1880s as part of his efforts to perpetuate the influence of the House of Lords in an age of widening suffrage.¹¹⁰ "Salisbury, a Conservative who sat in the Lords from 1868 until his death in 1903, developed a doctrine of the mandate over this period which argued that the will of the people and the views expressed by the House of Commons did not necessarily coincide, and that in consequence, the House of Lords had an obligation to reject, and hence refer back to the electorate, particularly contentious Bills, usually involving a revision of the constitutional settlement, which had been passed by the Commons."¹¹¹

63. "Since 1945, the Salisbury doctrine has been taken to apply to Bills passed by the Commons which the party forming the Government has foreshadowed in its General Election manifesto, being particularly associated with an understanding between Viscount Addison, the Leader of the House of Lords, and Viscount Cranborne (the fifth Marquess of Salisbury from 1947), Leader of the Opposition in the Lords, during the Labour Government of 1945-51; and thus is sometimes called the Salisbury/Addison doctrine."¹¹²

64. Following the General Election in July 1945, the Labour Party had an overall majority of 156 in the House of Commons. In the House of Lords, however, there was an overwhelming Conservative majority. During the Lords debate on the first King's Speech Viscount Cranborne explained the approach of the Conservative Opposition to this situation: "Whatever our personal views, we should frankly recognise that these proposals were put before the country at the recent General Election and the people of this country, with full knowledge of these proposals, returned the Labour Party to power. The Government may, therefore, I think, fairly claim that they have a mandate to introduce these proposals. I believe it would be constitutionally wrong, when the country has so recently expressed its view, for this House to oppose proposals which have been definitely put before the electorate."¹¹³ The Opposition continued to reserve "full liberty of action", however, where measures were introduced which had not been in the Labour party manifesto at the preceding election.¹¹⁴

65. The Salisbury-Addison Convention thus began, and continued, as a compact between the Labour and Conservative parties to deal with the relationship between a Labour Government and a House of Lords with an overwhelmingly large and hereditary Conservative Opposition. Peers in the Upper

¹¹⁰ A full description of the origins and development of the Salisbury-Addison Convention is given in House of Lords Library Notes, *The Salisbury Doctrine*, LLN 2006/006, June 2006. The document is available at <http://www.parliament.uk/documents/upload/HLLSalisburyDoctrine.pdf>.

¹¹¹ House of Lords Library Notes, *The Salisbury Doctrine*, June 2006, p 1.

¹¹² *Ibid.*

¹¹³ HL Hansard, 16 August 1945, Vol 137, col 47.

¹¹⁴ HL Hansard, 4 November 1964, Vol 261, col 66.

House who were not members of the Conservative Opposition or the Government were not party to the Convention.

66. The debate on the Salisbury-Addison Convention developed considerably in the 1990s. In 1993 the Crossbench peer, Lord Simon of Glaisdale, initiated a debate on the Convention and other practices which qualify the parliamentary role of the House of Lords. During that debate Lord Richard, the Leader of the Opposition in the Lords, queried "whether the Salisbury doctrine, pure and simple, can any longer be wholly sufficient to cover the position [of the House of Lords] in this day and age.... There still seems to be a consensus in the House on the desirability of what, I suppose, I can call the general practice of self-restraint when it comes to legislative matters. But it is important to acknowledge that as the House has become busier, questions will increasingly be raised, and have been raised, about the viability of its former role.... The function of the House, though, has changed, as I see it, from being primarily a revising Chamber. One of the main functions the House now has in relation to the other place, is that it is effectively the only place in which the legislature can curb the power of the executive."¹¹⁵

67. Lord Hesketh, the Government Chief Whip, said he was "an unashamed supporter of the doctrine" which he described as meaning "in practice that the House does not seek to vote down a manifesto Bill at second or third reading."¹¹⁶ In answer to the suggestion that the Convention should not be applicable in the case of framework Bills he said that he believed it would be difficult to distinguish categories of Bills to which the doctrine should not apply.¹¹⁷

68. Viscount Cranborne, the Lord Privy Seal and Leader of the House of Lords, subsequently addressed the constitutional position of the House of Lords including the Salisbury-Addison Convention in a lecture to the think-tank Politeia in 1996. He commented "It is a doctrine that has become accepted in constitutional circles: so much so that it has come to be known as the Salisbury Convention: that is, it has been raised in the language of politics into a constitutional convention. That means it is definitely part of our constitution. I certainly regard it as such, and so does our party."¹¹⁸ Viscount Cranborne acknowledged, however, that were the Lords to be reformed, the House might choose to renounce the doctrine. Viscount Cranborne also referred to the convention that the committee stage of constitutional measures should be taken on the floor of the House of Commons which he saw as an important constitutional safeguard. He asked whether the Labour Party was planning "while insisting on the preservation of the Salisbury Convention in the House of Lords, to overturn this crucial convention ... in the House of Commons?"¹¹⁹

The Convention post-1999

69. In 1999, shortly after the enactment of the House of Lords Act, the Leader of the Opposition in the House of Lords, Lord Strathclyde, gave a lecture to Politeia on *Redefining the Boundaries between*

115 H L Hansard, 19 May 1993, Vol 545, col 1804.

116 *Ibid*, cols 1808-9.

117 *Ibid*, col 1809.

118 Politeia Lecture, 4 December 1996.

119 *Ibid*.

the Two Houses. He argued that most of the conditions that gave rise to the Salisbury doctrine had gone. "Some might therefore conclude that the doctrine itself, as originally conceived, has outlived its usefulness. I would be less dogmatic. Certainly it needs to be re-examined in the new conditions that arise."¹²⁰ Lord Strathclyde then ventured some guesses about the Convention's new boundary. "The Salisbury-Addison agreement in essence held that the House of Lords would not vote against manifesto items at Second Reading, nor would it introduce wrecking amendments to such programme Bills. The House of Lords is not suddenly going to change all that. It will always accept the primacy of the elected House. It will always accept that the Queen's Government must be carried on. But, equally, it should always insist on its right to scrutinise, amend and improve legislation."¹²¹

70. On 15 December 1999 Baroness Jay of Paddington, Lord Privy Seal and Leader of the House of Lords, said in reply to a starred (oral) question "...the Salisbury/Addison convention has nothing to do with the strength of the parties in either House of Parliament and everything to do with the relationship between the two Houses.....it must remain the case that it would be constitutionally wrong, when the country has expressed its view, for this House to oppose proposals that have been definitely put before the electorate."¹²²

71. The Wakeham report in January 2000 described the Salisbury-Addison Convention as "an understanding that a 'manifesto' Bill, foreshadowed in the governing party's most recent election manifesto and passed by the House of Commons, should not be opposed by the second chamber on Second or Third Reading."¹²³ The report further noted that the Convention has sometimes been extended to cover 'wrecking amendments' which 'destroy or alter beyond recognition' such a Bill.¹²⁴

72. The Wakeham report acknowledged that some people had argued that once the situation had been reached in which no one party could command a working majority in the second chamber there would be no need to maintain the Convention. It considered, however, that "there is a deeper philosophical underpinning of the Salisbury Convention which remains valid. This arises from the status of the House of Commons as the United Kingdom's pre-eminent political forum and from the fact that the general elections are the most significant expression of the political will of the electorate."¹²⁵

73. The Wakeham report recognised that "there are substantial theoretical and practical obstacles to putting any formal weight on manifesto commitments. Only a tiny minority of the electorate ever reads party manifestos; and as it is most unlikely that any voter will agree with every sentence of any manifesto, it is rarely possible to interpret a general election result as evidence of clear public support for any specific policy. ...Thinking on any given issue inevitably develops or changes over time and legislation introduced in the third or fourth session of a Parliament may differ significantly from the relevant manifesto commitment. To deny such legislation constitutional protection, while providing

120 Politeia Lecture, 30 November 1999, pp 8-9.

121 *Ibid.*

122 HL Hansard, 15 December 1999, Vol 608, col 214.

123 *Op cit*, para 4.21.

124 *Ibid.*

125 *Ibid.*

additional safeguards for other proposed legislation simply because it happened to be truer to the original commitment, would be unreasonable."¹²⁶

74. The report concluded that the principles underlying the Convention remain valid and should be maintained. "A version of the 'mandate' doctrine should continue to be observed: where the electorate has chosen a party to form a Government, the elements of that party's general election manifesto should be respected by the second chamber." Of particular interest in the context of our inquiry, the report continued, "It is not possible to reduce this to a simple formula, particularly one based on manifesto commitments. The second chamber should pragmatically work out a new convention reflecting these principles."¹²⁷

75. In 2001 Lord Simon of Glaisdale initiated another debate to call attention to the Parliament Acts and the Salisbury-Addison Convention. He noted that there was always something unreal about the Convention's reference to a manifesto "because a manifesto does not contain just a list of proposals which are committed for approval to the electorate....However, the great thing about the Salisbury convention is that it works. Generally, that is enough in this country....The last comment to make about it is that it is a constitutional convention and not constitutional law. In other words, it is binding only politically and morally but not legally, and only so long as it is convenient."¹²⁸

76. Viscount Cranborne noted that the temporary agreement between his grandfather and Viscount Addison, had been transmogrified into a convention. "The convention says that the House will not vote at Second Reading against a manifesto Bill or pass a wrecking amendment during the remaining stages." He acknowledged that although he was sceptical about the doctrine of the manifesto he found it "difficult to see that it would be wise for this House, reformed or not, to oppose a specific commitment which formed part of the election platform of a new Government."¹²⁹

77. Lord Strathclyde considered that, given the new composition of the House, the Convention deserved to be reviewed, although he did not believe that even the new House had the right to challenge the Commons on Second Reading or by tabling wrecking amendments to core manifesto items. But he shared the concerns expressed by those Lords who had spoken about the status of manifestos. "Election promises can be vague and easily manipulated by governments, who reserve the right to jettison manifesto promises if things change. If governments can have the right, why cannot Parliaments too have a say on circumstances as they change? While the case for giving manifesto promises a relatively easy ride in the first few Sessions of a Government's life is largely unassailable, subject only to Parliament's overriding duty to safeguard the constitution, it does not mean that that should automatically extend to the whole five years."¹³⁰

126 *Op cit*, para 4.23.

127 *Op cit*, Recommendation 7.

128 HL Hansard, 24 January 2001, Vol 621, col 266.

129 *Ibid*, col 272.

130 *Ibid*, col 294.

78. The Attorney General, Lord Williams of Mostyn, argued that "The basis of the Salisbury convention, therefore, does not change by virtue of any alteration in the composition of this House."¹³¹ He did not believe that it had fallen into disuse.¹³²

79. The Hunt report, which recommended that key conventions, in particular the Salisbury-Addison Convention, should be codified, was debated in the House of Lords in January 2005. Lord Wakeham said that he thought that codifying the key conventions was not, on balance, the right thing to do.¹³³ Lord Williamson of Horton, the Convener of Crossbench Peers, commented "I would myself find no difficulty in embedding the Salisbury/Addison convention by including it in an agreement of all major groups to be approved by resolution."¹³⁴

80. Lord McNally, the Leader of the Liberal Democrats in the Lords,¹³⁵ thought that by calling for streamlining, better focus and codification of conventions the Labour peers' paper showed a disregard for the realities of parliamentary life.¹³⁶ In a subsequent debate on the report of the House of Lords Select Committee on the Constitution, *Parliament and the Legislative Process*,¹³⁷ he argued that "to resurrect a 60 year-old convention that was offered by a Conservative-dominated hereditary House to a Labour government with 48 per cent of the vote, and then to say that that should still apply to a Labour Party that is now the largest party in this House, but is a government with 36 per cent of the vote, is stretching the limits of the convention."¹³⁸

81. In the same debate Lord Carter argued that "Without such an agreement and understanding [on the relative powers of the two Houses] the House of Lords will have the considerable power of a House where the government of the day is always in the minority without the responsibility or accountability of an elected House where the majority party forms the Government."¹³⁹ The Government endorsed that point in their written evidence to us.¹⁴⁰

Evidence

The terms of the Convention

82. In our First Special Report we sought views on whether the Wakeham report's description of the Convention (quoted above) was accurate and sufficiently comprehensive.¹⁴¹

131 *Ibid*, col 296.

132 *Ibid*, col 298.

133 HL Hansard, 26 January 2005, Vol 668, col 1335.

134 *Ibid*, col 1338.

135 A member of this Committee.

136 *Ibid*, col 1371.

137 HL Paper 173, Session 2003-04.

138 HL Hansard, 6 June 2005, Vol 672, col 759.

139 *Ibid*, col 736.

140 Ev 5, para 33.

141 HL Paper 189, HC 1151, Session 2005-06, p 5.

83. The Government believe that the key point is the relationship between the two Houses and the primacy of the Commons, and that the Salisbury-Addison Convention gives effect to the requirements of that relationship. They therefore consider that the Convention should continue to mean, in relation to the behaviour of the Lords:

"- A manifesto Bill is accorded a Second Reading;

- A manifesto Bill is not subject to 'wrecking amendments' which remove large parts of the Bill or change completely the effect of the Bill; and

- A manifesto Bill is accorded a Third Reading so that the House of Commons has the opportunity to consider any amendments the Lords wish to propose."¹⁴²

84. In oral evidence Jack Straw, the Leader of the House of Commons, argued that governments "must be assured that Salisbury-Addison will operate in respect of manifesto commitments because it is absolutely fundamental to the contract that is entered into between electors and parties.....In addition to that, governments must be allowed to get their essential legislation which may not be in a manifesto through, without having to resort to the blunderbuss of the Parliament Acts."¹⁴³ He added that the Government believe the Convention "applies to Bills whether or not they are introduced in the House of Commons; it must apply to Bills introduced at either end [i.e. in either House], so therefore it is wider than the Parliament Acts."¹⁴⁴

85. The Opposition too accept that the Convention has worked well, in conjunction with the Parliament Acts, to underpin the primacy of the Commons.¹⁴⁵ They believe "the Lords should not normally vote at Second Reading against a Manifesto Bill, or pass a wrecking amendment to such a Bill."¹⁴⁶ However, the Opposition do not consider the Convention should be applied to any unilateral proposal to alter substantially the nature of the House of Lords.¹⁴⁷ By contrast, in the debate on the House of Lords Bill in 1999, Lord Strathclyde, although he could "find nothing in the Bill to commend", said, "For obvious reasons, we will not support the Second Reading in the Division Lobbies but neither will we support moves not to give the Bill a Second Reading."¹⁴⁸

86. The Liberal Democrats accept that "the Royal Commission's description elucidates well a common perception of the convention" but argue that it "fails to recognise the rationale for its existence, the basis on which it was agreed and by whom it was agreed." They emphasise that the agreement did not involve either the Liberals or the unaligned peers.¹⁴⁹

142 Ev 6.

143 Q 2.

144 Q 4.

145 Ev 37, para 4.2.

146 Ev 57, para 1.1.

147 *Ibid.*

148 HL Hansard, 29 March 1999, Vol 599, col 21.

149 Ev 57, para 1.7.

87. Lord Grocott acknowledged that the Salisbury Convention "was an agreement between the Government and the official opposition, it was not an agreement between the House of Commons and the House of Lords or the Government and the House of Lords. Therefore it is obviously open to criticism on the grounds that people in the Upper House who are not members of the official opposition or the government...are not party to the Convention. For the Convention to work it must apply to the whole House of Lords."¹⁵⁰

88. The Clerk of the Parliaments considered the Salisbury-Addison Convention to be the key convention from which the others flowed. "Its essential feature is that the Lords will not reject a manifesto bill outright but will send it back to the Commons, assuming it started there, in time for differences of opinion to be resolved by exchanges between the Houses..."¹⁵¹

Is the Salisbury-Addison Convention still valid?

89. Although there was general agreement that the description of the Salisbury-Addison Convention, as set out in the Wakeham report, is accurate, there was less agreement about whether the Convention, as described, still applies.

90. The Clerk of the Parliaments suggested that the Convention had grown from being a convention between party leaders into a convention between the two Houses.¹⁵²

91. Lord Wallace of Saltaire, the Deputy Leader of the Liberal Democrats in the House of Lords, emphasised that, in the Liberal Democrats' view, "the Salisbury-Addison Convention was a historical negotiation between the Labour Party in the Commons and the Conservative Party in the Lords" and therefore not relevant to current circumstances.¹⁵³

92. Donald Shell, Senior Lecturer in Politics, Bristol University, regards the definition of the Salisbury-Addison Convention as accurate and adequate but would not describe it as a true convention of the constitution. "It was an understanding between party leaders in the House of Lords formulated to meet a particular situation, and an understanding which has endured so long as those circumstances have prevailed."¹⁵⁴

93. Professor Rodney Brazier, Professor of Constitutional Law, University of Manchester, refers to a "well-known view that the Salisbury-Addison convention ceased to exist when most of the hereditary peers were excluded from membership of the House of Lords in 1999. This view is accepted in Conservative, Liberal Democrat, and other circles, although I understand that it is not the view of the Government."¹⁵⁵ He too was persuaded that the Salisbury-Addison Convention ended impliedly in

150 Q 3.

151 Q 207.

152 Q 215.

153 Q 158.

154 Ev 142, para 1.

155 Ev 136, para 6.

1999. The reason for the Salisbury-Addison Convention had disappeared, and the Convention went along with it.¹⁵⁶

94. Lord Norton of Louth suggested that there was in practice a “wider definition” of the Convention, whereby the House of Lords hardly ever votes against Second Reading of a Government Bill. “[T]he exception would prove the rule”. Codifying the narrower version, based on the manifesto, might not be in the interests of the Government.¹⁵⁷ Dr Russell agreed; she thought that “parties are signing up to something broader, which is that really no Bill, except in perhaps the most exceptional circumstances should be thrown out on its second or third reading...therefore I am not really sure what the problem is”.¹⁵⁸ Professor Bradley also argued that things have moved on since 1945.¹⁵⁹ The Convention needed “to be taken in today’s terms and not linked to the circumstances of the past”; and the House of Lords had a “duty” to give any major government Bill a Second Reading, whether manifesto-based or not.¹⁶⁰

95. In light of this argument that it is almost a convention that the House of Lords does not reject any government Bill at Second Reading, whether manifesto-based or not, we looked at the number of attempts to defeat government Bills at Second Reading in the Lords since 1970, whether successful or not. They are listed in Appendix 3. At face value there were 13 attempts to defeat a government Bill at Second Reading in the last 25 years, five of them successful. But the list must be compared with the much longer list of government Bills, many of them controversial, to which the Lords have given an unopposed Second Reading over this period. It is evidently uncommon for a government Bill to be assailed at Second Reading in the Lords, and very uncommon for such an attack to succeed. The opposition parties have voted against Second Reading only in highly exceptional circumstances.

96. The Clerk of the Parliaments told us, “It is not a convention that we [the Lords] do not vote against second readings. It is a convention that we do not vote against second readings without giving notice”.¹⁶¹ This convention is recorded in the House of Lords *Companion to the Standing Orders*, in the footnote to paragraph 6.35. That paragraph sets out the orderly ways of rejecting a Bill on Second Reading in that House, with no suggestion that it is improper to do so, provided notice is given.

Conclusions

The convention has evolved

97. We are persuaded by the strength of the argument that **the Salisbury-Addison Convention has changed since 1945, and particularly since 1999**. Indeed, this was tacitly admitted by the Government which said, in written evidence, “For a convention to work properly, however, there

¹⁵⁶ Ev 137, para 11.

¹⁵⁷ Q 319.

¹⁵⁸ Q 322.

¹⁵⁹ Q 302.

¹⁶⁰ Q 323.

¹⁶¹ Q 216.

must be a shared understanding of what it means. A contested convention is not a convention at all."¹⁶² The continued validity of the original Salisbury-Addison Convention is clearly contested by the Liberal Democrats.

98. The Convention now differs from the original Salisbury-Addison Convention in two important respects. It applies to a manifesto Bill introduced in the House of Lords as well as one introduced in the House of Commons.¹⁶³ It is now recognised by the whole House, unlike the original Salisbury-Addison Convention which existed only between two parties.

99. The Convention which has evolved is that:

In the House of Lords:

A manifesto Bill is accorded a Second Reading;

A manifesto Bill is not subject to 'wrecking amendments' which change the Government's manifesto intention as proposed in the Bill; and

A manifesto Bill is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose.

100. In addition the evidence points to the emergence in recent years of a practice that the House of Lords will usually give a Second Reading to any government Bill, whether based on the manifesto or not. We offer no definition of situations in which an attempt to reject a Bill at Second Reading might be appropriate, save that they would include free votes. But to reject Bills at Second Reading on a regular basis would be inconsistent with the Lords' role as the revising chamber. In practice the Lords have the means to express their views on the principles of a Bill without rejecting it at Second Reading, by tabling a non-fatal motion or amendment at Second Reading.

The practicality of codification: definition of a manifesto Bill

101. Each section of the Convention which has evolved over recent years refers to a manifesto Bill. One of the main problems to be addressed in deciding whether it would be practical to codify the Convention is how to define a manifesto Bill.

102. When agreeing the original Convention in 1945, Viscount Cranborne said that he believed "it would be constitutionally wrong, when the country has so recently expressed its view, for this House [of Lords] to oppose proposals which have been **definitely** put before the electorate"¹⁶⁴(emphasis added). Over 50 years later Baroness Jay of Paddington, the Leader of the House of Lords, restated that position: "it must remain the case that it would be constitutionally wrong, when the country has expressed its view, for this House to oppose proposals that have been **definitely** been put before the

¹⁶² Ev 3, para 19.

¹⁶³ Q 4 (Government); Q 78 (Opposition) .

¹⁶⁴ HL Hansard, 16 August 1945, Vol 137, col 47.

electorate."¹⁶⁵ (emphasis added). How then can the question of whether a proposal has been **definitely** put to the electorate be decided?

103. The Leader of the House of Commons argued that the final decision on what a manifesto is "has to be a matter for the Commons as the body having primacy, it cannot lie in the role of the Lords for the Lords as an important but necessarily subordinate chamber to say, "Well, it may have said X but we think Y, or, to pick up your phrase on the 1945 manifesto, "There is a difference between really important election commitments and those which are unimportant."¹⁶⁶ Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs and Lord Chancellor, considered that the Convention "would not be convincing if it depended on a very fine reading of each individual manifesto....it needs to be a general sensible reading both of what is in the manifesto and broadly what the government stands for in determining what is covered by it."¹⁶⁷

104. The Opposition agree with the Wakeham report that "It is not possible to reduce this to a simple formula, particularly one based on Manifesto commitments.' The Convention was pragmatic in origin – and should continue to be addressed in pragmatic fashion from case to case."¹⁶⁸

105. The Liberal Democrats consider, however, that "manifestos are not – and, in our view, can never be – detailed *enough* to constitute a reliable, still less a justiciable basis on which to draft legislation."¹⁶⁹ Manifestos are now much more complex and less precise than they were in 1945.¹⁷⁰ This position has to be seen in the context of the Liberal Democrats' view that the Lords should not reject any government Bill at Second or Third Reading.¹⁷¹

106. Lord Williamson of Horton, the Convenor of Crossbench Peers, thought it was reasonable "to consider what are the core elements on which a party goes to the electorate to have a mandate and you have to be careful, because every word in a manifesto may not necessarily be part of a core programme, that that does not tie too much the relations between the two Houses."¹⁷²

107. We agree that legislation often cannot easily be identified as a direct transportation from a manifesto. As several of our witnesses pointed out, the manifesto on which the Labour Party won the 1945 election contained 8 pages: that on which it won the 2005 election was 112 pages long¹⁷³ and it would be unrealistic to expect that many, if any, voters agreed with every line of the manifesto.¹⁷⁴

108. Another potential difficulty relates to how the Convention would apply in the case of a minority government. The view of the Leader of the House of Commons "is that if any coalition or

165 HL Hansard, 15 December 1999, Vol 608, col 214.

166 Q 18.

167 Q 3.

168 Ev 37, para 4.2.

169 Ev 58, para 2.3.

170 Q 148.

171 Ev 66, para 22.2. See also para 43 above.

172 Q 120.

173 See, e.g., QQ 1–2.

174 Royal Commission on the Reform of the House of Lords, para 4.23.

arrangement as in 1977 gains the support of the democratically elected House and endorsed by a motion of confidence then the programme for which they gain that endorsement should be respected by this House [of Lords].¹⁷⁵

109. In the Liberal Democrats' view the "circumstances would be entirely different because the question of how the minority government managed to get its manifesto through would involve negotiation within the Commons."¹⁷⁶

110. Lord Strathclyde believed "If a government has a majority in the House of Commons, a government has a majority in the House of Commons and so the same conventions should apply. Equally where a government is trying to push through some very unpopular measure with a very, very small majority, with a substantial government rebellion, I think it is a clear signal for the House of Lords to take extra special care in examining that measure."¹⁷⁷

111. There is also the question of whether the Convention applies to matters included in regional manifestos.¹⁷⁸ The Leader of the House of Commons confirmed that the specific issue on which he was questioned was in the UK manifesto but added "even if it had not been a reference in the Welsh manifesto would have been sufficient."¹⁷⁹

112. There are other obvious difficulties in deciding whether a Bill is a manifesto Bill. But those difficulties are not new. They have existed since the original Salisbury-Addison Convention was articulated in 1945 but have not prevented the Convention from operating effectively in the various political circumstances which have prevailed since then. The Government noted that the House of Lords had voted down a government Bill only three times since 1992. "Once was on the second introduction of the European Parliamentary Elections Bill in 1998, when the Bill had been reintroduced with a view to passing it under the Parliament Acts and killing the Bill on Second Reading was necessary for it to receive Royal Assent in time to allow the necessary secondary legislation to be made. A second occasion was on the Sexual Offences Amendment Bill in 1999, which was a Bill to which a free vote had been applied. Only the third, the Mode of Trial (No 2) Bill in 2000 which was voted down on Second Reading after its predecessor Bill (which had started in the Lords) had been subject to wrecking amendments in Committee, was a Government flagship policy Bill, but was not a Manifesto Bill."¹⁸⁰

113. **We do not recommend any attempt to define a manifesto Bill.** Nor do we consider that the difficulties in identifying a manifesto Bill are so substantial that they would prevent Parliament from articulating a convention concerning the House of Lords' practice in relation to manifesto Bills. Given the view of all our witnesses that the House of Lords has not breached the original Salisbury-Addison Convention, we think that there is little likelihood that it will breach the current convention

175 Q 7.

176 Q 159.

177 Q 57.

178 Q 10.

179 Q 11.

180 Ev 6, para 36. See also Clerk of the Parliament's evidence, Q 216.

in future. We also expect that it will be as possible to deal pragmatically with any problems which may arise in the future as it has been in the past.

Codification

114. In order to ensure that the convention now reflects an agreement between both Houses, and to give all parties and non-aligned Members in both Houses the opportunity to express their views, each House should have a chance to debate it. However, although both Houses have an interest in the convention, it concerns primarily the behaviour of the House of Lords. **We therefore propose that the Lords be given the opportunity to debate and agree a resolution setting out the terms of the convention, and that the resolution be then communicated by message to the Commons. The Commons could then hold a debate on a motion to take note of the message.**

A new name

115. In our view the Salisbury-Addison Convention has evolved sufficiently to require a new name which should also help to clarify its changed nature. **We recommend that in future the Convention be described as the Government Bill Convention.**

4 Reasonable time

Background

Time

116. In nearly all conflicts between the two Houses, time is an essential element. The Government usually want to get their business through by particular dates. Some are self-imposed, like the end of the parliamentary Session, or the deadline for fulfilling a Public Service Agreement; some are imposed by outside events, e.g. a court judgment or EU implementation timetable.

117. The opposition in the Lords can sometimes use these deadlines (if known) to their advantage, by putting pressure on the Government as the deadline approaches. The pressure of a deadline can also operate the other way.

118. Government business in the Commons is deliverable, given a sufficient majority; it is largely predictable, controlled and delivered to time. In the Lords, it is none of those things. The different approaches to business management in the two Houses give rise to tensions. In addition, Ministers always want to start more Bills, and more difficult Bills, in the Commons than in the Lords, for various reasons. As a result, the legislative timetable in the Lords is liable to congestion, and increasingly busy towards the end of the Session.

119. There is more scope than before to spread the burden of legislation more evenly between the Houses and over the parliamentary year, for example through carry-over and greater use of Grand Committee in the Lords. But these initiatives have not made much of an impact on the log-jams which arise, particularly at the end of every Session.

The reasonable time convention

120. The convention “that Government business in the Lords should be considered in reasonable time” is set out in the Wakeham report, in the context of the Parliament Acts and linked with discussion of the Salisbury-Addison convention. “[T]he reformed second chamber should maintain the House of Lords convention that all Government business is considered within a reasonable time. Traditionally, the convention applies to all business, but it is particularly important that there should be no question of Government business being deliberately overlooked.”¹⁸¹

121. The Wakeham report recommended that a reformed House should maintain this convention,¹⁸² but said nothing about codifying it.

122. The reasonable time convention was also acknowledged by the recent Joint Committee on House of Lords Reform, again in tandem with the Salisbury-Addison Convention: “The two most significant conventions are that the House of Commons shall finally have its way and that the

¹⁸¹ *Op cit*, para 4.20.

¹⁸² *Op cit*, Recommendation 6.

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 ... 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.”¹⁸³

123. Like the Wakeham report, the Joint Committee recommended continuing this convention; but it deferred the question how.

The Hunt report and the 60-day limit

124. By the time of the Hunt report in 2004, more water had flowed under this bridge.

125. On 26 March 2002, the Lords voted to delay the committee stage of the Animal Health Bill until after a consultation and two inquiries. Committee stage began on 25 July, a 4-month delay to a Bill which the Government had wanted to enact by the summer.¹⁸⁴

126. Then on 18 September 2003, in the Hunt report’s words, “The Opposition threatened to disrupt the Government’s legislative proposals to remove the remaining hereditary peers. As Lord Strathclyde, Leader of the Conservative Opposition put it: **‘If this Bill is ever presented to this House, the noble and learned Lord and his colleagues can be assured that he can expect a major fight on his hands, and it will not be confined to this Bill.’**”¹⁸⁵

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

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

“The Working Group proposes a time limit for the Second Chamber to consider a bill. The Lords must have enough time to consider a bill properly. Equally, it is wrong that a bill or legislative programme can potentially be in jeopardy because some peers within the rules of the House can threaten to spend endless time debating a particular bill. Debates and decisions in the Lords should be firmly centred on the principles and detailed scrutiny of the legislation under consideration, rather than be part of some wider political strategy.

¹⁸³ First Report of the Joint Committee on House of Lords Reform, Session 2003-03, HL Paper 17, HC 171, para 12.

¹⁸⁴ This is said to be “a procedure which had not been used since the end of the 19th century” (Hunt report, p 5). A dilatory amendment was moved and carried against going into committee on the Agricultural Labourers Holidays (Scotland) Bill on 12 August 1887. The Bill was not proceeded with. A similar dilatory amendment was moved by Lord Richard on 30 November 1992, on the British Coal and British Rail (Transfer Proposals) Bill, a manifesto Bill. Lord Wakeham as Leader of the House warned the House against breach of convention (HL Hansard, Vol 540, col 1185); he appears to have meant the Salisbury-Addison Convention, not the reasonable time convention. Lord Richard’s amendment was defeated by 165 to 106.

¹⁸⁵ *Op cit*, p 5.

The question of a time limit is not new. Indeed, the 1968 White Paper on House of Lords Reform which received all-party support in the Lords, suggested that the Lords should have a period of 60 parliamentary days to consider a bill.

A reasonable time limit for the Lords to scrutinise a bill would not in any way undermine the principle of the Parliament Acts. A time limit would impose a discipline on all sides of the House, including the Government, to deal with legislation in an efficient manner. Large bills or bills to which the Government proposed to add a considerable number of amendments would trigger a longer period for consideration in the Lords. Further detailed work will be required on the actual time limit, though the 60 parliamentary days limit which received considerable support in 1968 would be a good starting point for discussion. The aim would be to set a reasonable time limit which reflects current experience with bills in the Lords. In the light of our later recommendations on changing the legislative procedure, some of the current intervals between different stages should be revisited to allow more flexibility.”¹⁸⁶

128. This is clearly the origin of the manifesto commitment to “legislate to place reasonable limits on the time bills spend in the second chamber – no longer than 60 sitting days for most bills.”

Evidence

Parties and groups

129. The Government were less dogmatic in evidence to this Committee than in the manifesto. They stand by the proposal of a 60-day limit. But they have “no immediate plans to legislate”¹⁸⁷; they seek the outcome indicated in the manifesto but are not wedded to a particular way of achieving it; the defined period could start at Second Reading rather than First Reading.¹⁸⁸ There could be exemptions or extensions, e.g. in the event of emergency legislation disrupting the parliamentary timetable.¹⁸⁹

130. The Government see the limit as a “framework”, “backstop” or “starting-point”, like the Parliament Acts.¹⁹⁰ They believe that it would not reduce the House’s effectiveness, any more than have target rising times and advisory speaking times.

131. One of the arguments against time-limiting Lords scrutiny is that Commons scrutiny sometimes seems inadequate. In oral evidence, Ministers tackled this head-on,¹⁹¹ arguing that Commons scrutiny has got better recently, not worse; that there is more pre-legislative scrutiny; and

¹⁸⁶ *Op cit*, p 7.

¹⁸⁷ Q 1.

¹⁸⁸ Ev 8, para 58.; Ev 29, para 9.

¹⁸⁹ Q 37. See also a Starred (Oral) Question on this subject in the Lords on 22 June 2006, HL Hansard, Vol 683, col 881-4.

¹⁹⁰ Ev 8, para 58; Q37.

¹⁹¹ QQ 22-25.

that, because of the Standing Committee system, most Bills receive more hours of scrutiny in the House of Commons than in the House of Lords, taking all stages into account.¹⁹²

132. The Government developed their original proposal considerably in supplementary evidence.¹⁹³ They accepted that a time limit would impose responsibility on themselves as well as others. They challenged the relevance of data from past Sessions, since those Sessions were not organised on the basis of a time limit. They put forward a new basis for calculating what might be reasonable: “It would surely be unreasonable for Bills to spend more than half of the parliamentary session in the second Chamber.”¹⁹⁴ Since an average Session lasts 165 sitting days, and allowing some days for ‘ping-pong’, this line of thought would suggest an outside limit of 80 sitting days. They explained how an outside limit would operate: it would work like the minimum intervals between Bill stages, i.e. with no sanction, but overridden only by agreement through the usual channels. They did not consider that other Lords procedures, such as the minimum intervals themselves, would need to change. However opposition frontbenchers might need “greater support”, since at present Lords business is planned around their availability and they are unpaid.¹⁹⁵ The Hunt report recommended that they be paid, though it did not link this to reasonable time.¹⁹⁶

133. The Opposition acknowledge the reasonable time convention, and consider that it is fully observed. In their view, when Bills run slow, it is normally to suit the Government.¹⁹⁷ A guillotine would obstruct the Lords’ work as a revising chamber, and would leave parts of Bills unscrutinised in either House.¹⁹⁸ If it were subject to negotiated exceptions, it would replicate the present system; if exceptions were up to the Government, it would be “a massive increase in executive power”.¹⁹⁹ If the limit were statutory, it would breach the convention that neither House interferes in the other’s internal workings. They oppose any codification in this area, and would vote against any Bill.²⁰⁰

134. Lord Strathclyde’s definition of “reasonable time” is the same as the Clerk of the Parliaments’: “that all bills are passed by the end of the session”.²⁰¹ He added, “in practice that is what happens”. He did not think the Lords breached the convention on either Animal Health or Constitutional Reform: the former was a skeleton Bill, the latter a non-manifesto Bill and “a magnificent example of Parliament doing its stuff”.²⁰² He was unrepentant about his general threat to the government

192 See also Ev 30, para 13, and supplementary memorandum.

193 Ev 29-30, paras 9-15.

194 Ev 29, para 9.

195 Ev 30, para 15.

196 *Op cit*, p 20.

197 Ev 37, para 4.5 and Q 88.

198 Q 98.

199 Q 96.

200 Ev 37.

201 Q 89.

202 QQ 91-93.

programme in 2003.²⁰³ It was put to him that the average time taken by Bills in the Lords has risen; he attributed this to longer Bills and increased use of Grand Committee.²⁰⁴

135. The Government invited alternative solutions to the problem. The Opposition pointed to the increased use of Grand Committee which is already taking place²⁰⁵; and they suggested better scrutiny of Bills in the Commons, which was being looked into by the House of Commons Modernisation Committee.²⁰⁶

136. Like the Official Opposition, the Liberal Democrats acknowledge the convention, and consider that it is fully observed.²⁰⁷ They regard what is reasonable as “a fluid concept”. The real issue, they say, is how many days’ scrutiny a Bill receives, not the time it spends in the House. The time needed for Lords scrutiny depends partly on the time taken for Commons scrutiny, and on the length of the Bill. They agree with the Conservatives that, when Bills run slow, it is normally to suit the Government.

137. The Liberal Democrats oppose a statutory time limit, in the absence of a fully written constitution. It would let the courts in, and undermine the Lords’ role as “the prime scrutiniser of legislation”. It could even lead to “inverse filibustering”, with the Government delaying consideration and waiting to be rescued by the time limit.²⁰⁸ Rushed law is usually bad law. They rise to the Government’s challenge to propose an alternative; their solution is a joint business committee.²⁰⁹

138. Lord Williamson of Horton reported that most Crossbench peers do not favour a time limit, and that if there were one, they would expect provision for exceptions.²¹⁰ He agreed with Lord Strathclyde that the Lords did not breach the convention when, on a Crossbencher’s motion, the Animal Health Bill was held up – though he said his answer was “more qualified”, and that it was “a matter of judgment”.²¹¹ But he had not voted for the Crossbencher’s motion to send the Constitutional Reform Bill to a Select Committee, because he thought it “risked to give rise to an unjustified delay”. Like Lord Strathclyde, he pointed to Grand Committee as a concession to the Government in this area.²¹²

203 QQ100-101.

204 Q 102.

205 Q 99.

206 The Select Committee on Modernisation of the House of Commons published its First Report, *The Legislative Process*, Session 2005-06, HC 1097, on 7 September 2006; Q 85.

207 QQ 177-183; Ev 62-64.

208 Ev 63-64.

209 QQ 181, 202.

210 Q 138.

211 Q 129.

212 Q 140.

Members

139. Lord Denham considers that the reasonable time convention has a corollary, that “reasonable time should be allowed by the Government for a particular Bill to be considered”.²¹³ As Government Chief Whip 1979-91, his practice was to decide how much time overall was available, and then let the Opposition say how they wished it to be divided among the Bills in play. He considers that the Government breached this aspect of the convention on the Hunting Bill in 2003.

Clerks

140. The Clerk of the Parliaments confirmed that the convention existed and was abided by. “There is no tradition of filibustering, and self-regulation encourages orderly progress on all bills. Timetables for Government bills are regularly agreed through the Usual Channels.”²¹⁴ The only filibuster he could recall was on the Industrial Relations Bill of 1971.²¹⁵ But there was no definition of reasonable time. In his view, the “chief factor” in saying what is reasonable is the expectation that the Lords will give the Commons a chance to consider the Bill (or Lords amendments) before the end of the Session.²¹⁶ The delay to the Constitutional Reform Bill in 2004 came “pretty close” to breaching the convention, but did not, since the House agreed at the same time to carry over the Bill into the next Session.²¹⁷ There was likewise no breach in respect of the Animal Health Bill, because the Bill was passed within the Session.²¹⁸

141. The Clerk of the Parliaments offered reasons why a Bill may take longer between stages than the minimum intervals: Government policy changes, drafting, or opposition convenience. And a long Bill may take longer, e.g. 13 days in Grand Committee on this Session’s Company Law Reform Bill.²¹⁹ He noted the possibility of proceedings being lengthened by recommitment.²²⁰ Also, Grand Committee may make committee stage longer because each working day is shorter than in Committee of the Whole House;²²¹ but on the other hand, “Grand Committees ... have made it possible for more bills to be considered in Committee and so have made an important and positive contribution to 'reasonable time'”.²²²

142. The Clerk of the Parliaments said, “it is not self-evident that 60 days and 'reasonable time' are synonymous”. In the present session, to 25 May, 13 Bills had already taken longer, “without any suggestion that this was unreasonable”.²²³ The figure of 60 days came from the 1968 White Paper;

213 Ev 144-145.

214 Ev 81, para 10, though he observed that formally the Lords give the Government no greater rights than other members (Q 225).

215 Q 230.

216 Ev 81, para 10; Q 225.

217 Q 229.

218 Q 228.

219 Ev 87, para 48. The Bill subsequently became the Companies Bill.

220 Ev 88, para 51.

221 Grand Committee sits for only 4 hours per day, compared with a theoretical maximum of between 5½ and 6½ in Committee of the Whole House (depending on the day of the week).

222 Ev 88, para 52.

223 Ev 81, para 13.

but there it was part of a proposal to amend the Parliament Act.²²⁴ In many cases 60 days was enough, but to make it a rule would be counter-productive. It would encourage game-playing with time. And it would not help the Government or the usual channels deal with the realities of managing the legislative programme, e.g. when six Home Office Bills all arrived at once.

143. The Clerk of the Parliaments queried how any codified time-limit would be enforced. He offered a list of situations which might need to be adjusted to take account of:

- a) The length and complexity of the Bill in question
- b) The scale of Government amendments proposed to the Bill during its passage
- c) Scrutiny of the Bill by any Select Committee, and the Government's response to that scrutiny
- d) Whether the Lords committed the Bill to Grand Committee or Committee of the Whole House
- e) The amount of time allocated in the Commons
- f) Unavailability of Opposition frontbench spokesmen and other key players.

144. He offered the following reasons why Bills appear to be taking longer, on average, to get through the Lords.²²⁵ The average length of a Bill has doubled in 10 years; more members speak on each amendment than was formerly the case; and, although Grand Committee helps get more Bills through at a time, each Bill can take more days.

145. The Clerk of the Parliaments concluded that there is no problem over reasonable time, and therefore offered no alternative solution.²²⁶

146. The Clerk of the House of Commons agreed with the Clerk of the Parliaments' analysis of the convention.²²⁷ He commented only on the proposition that Lords scrutiny may need more time if Commons scrutiny was inadequate. In his view it was not possible to measure objectively the adequacy of Commons scrutiny; the number of Clauses not debated, or agreed formally, told only part of the story. In any case, the Lords should respect the Commons' use of its own time.²²⁸

224 Q 232. The 1968 White Paper *House of Lords Reform*, Cmnd. 3799, proposed that "The House of Lords would have a period of 60 parliamentary days in which to consider a bill". (It defined parliamentary days as "Days not comprised in a period when both Houses are adjourned for more than four days" (p 21). 60 sitting days will normally be a longer period than 60 parliamentary days, because in the former case the clock stops on non-sitting Fridays and at weekends, in the latter only for recesses.) This was part of a scheme to revise the Parliament Acts so as to reduce the Lords' power of delay from 13 months to 6. The White Paper did not say that after 60 days the Lords must return the Bill to the Commons, but only that the new shorter period of delay would be counted from the end of the 60 days if the Lords had not passed the Bill by then and subsequently failed to pass it.

225 Q 226-227.

226 Q 233.

227 Ev 99, para 2.

228 Q 234.

Academic witnesses

147. Donald Shell considers that “reasonable time” is a usual channels understanding rather than a constitutional convention. He reckons that Animal Health and Constitutional Reform were “exceptional for good reason”. He warns that “imposing a specific time limit could easily become counterproductive”²²⁹ – presumably because opponents might be tempted to drag proceedings out to the limit.

148. Our other academic witnesses came out unanimously against transforming the reasonable time convention into a 60-day rule.²³⁰ The convention is observed as it stands. How long is reasonable varies, depending on the context, e.g. whether the Bill had pre-legislative scrutiny, whether it was fully scrutinised in the Commons, and the Government’s own priorities. Flexibility is helpful to government business managers as much as to anyone else.

149. On the other hand, these witnesses would not accept that incomplete scrutiny of Bills by the Commons was itself a breach of convention.²³¹ Government backbench MPs could not be expected to hold up their party’s programme with line-by-line scrutiny.

Past Sessions

150. Appendix 4 shows how long each government Bill took in the Lords for some past Sessions of typical length plus the first year of this Session. These tables show that the number of Bills per Session taking longer than 60 sitting days between First Reading and Third Reading (inclusive), and the average number of days per Bill, have risen over the last 25 years:

Session	Bills taking 61+ days	Average days per Bill
1980-81	0	36
1989-90	5	48
1995-96	7	49
1998-99	6	52
2002-03	10	57
2003-04	13	58
2005-06 to 25 May 06	13	63

151. At present it is not unusual for government Bills to take more than 60 sitting days to get through the Lords. More controversial Bills do not necessarily take longer: for instance, in this

229 Ev 143.

230 Q 327.

231 QQ 328-330.

Session, the Lords took 100 sitting days to pass the Commissioner for Older People (Wales) Bill, compared with just 56 for the Identity Cards Bill.

Overseas

152. The Government gave us examples from the continent of second chambers whose consideration of Bills is time-limited: Ireland – 90 days; Spain – two months; and Germany – six weeks plus three weeks.²³² In India, if the Rajya Sabha fail to pass a non-Money Bill after 6 months, a joint sitting of both Houses may be convened; but although Bills have occasionally taken longer than 6 months this provision has never been invoked.²³³ In Australia and Canada there is no limit on the time the Senate can spend on a Bill, though in Canada such a limit has been proposed.²³⁴

Conclusions

153. Everyone agrees that the Lords should consider Government business in reasonable time, and **in our view there is indeed such a convention.** And no-one except the Government sees a problem in this area. The Lords do not filibuster, with the possible exceptions of the Industrial Relations Bill in 1971 and the first Hunting Bill in 2003.²³⁵ Self-regulation makes the reasonable time convention work, with difficulties being resolved through the usual channels. When a Bill runs slow, it is usually to suit the Government; it can often suit the Government to keep a Bill back in order, for instance, to expedite others. We would however draw attention to the figures above, which show an inexorable rise in the time Bills spend in the Lords. This must be having an impact on the management of business in both Houses.

154. **There is no conventional definition of “reasonable”, and we do not recommend that one be invented.** The Government wants to define “reasonable” or set a time limit; but in our view there is no problem which would be solved by doing so. A target number of days could be counter-productive, by legitimising delay up to the target. It would reduce government business managers’ room for manoeuvre in managing the legislative programme. If there were a target, it is not obvious which days should count towards it – e.g. Grand Committee days, general debate days. If the target had the effect of guillotining proceedings in the Lords, then it might leave parts of a Bill unscrutinised in either House. It could also tempt the Government to avoid proceedings on a difficult Bill and wait to be “saved by the bell”. Both would be unacceptable. If on the other hand there were provision for negotiated exceptions, then the results of the new system would probably be little different from the outcomes achieved at present.

155. The Government compare their proposed limit with target rising times and advisory speaking times in the House of Lords. The comparison is misleading; these benefit the House as a whole, whereas the proposed limit would benefit only the Government. And the Government’s proposal for the set period to constitute a limit waivable only by agreement through the usual channels, like the

232 Ev 2, para 13.

233 Ev 153 (c).

234 Ev 141, 155 and 159-160.

235 The Government considered this a filibuster: see HL Hansard, 28 October 2003, Vol 654, cols 249-253. Others consider that Government business managers breached convention by providing inadequate time – e.g. Lord Denham Ev 144.

minimum intervals, does not stand up to inspection. If the deadline approached, and the Government declined to agree to a breach of the maximum time, but the Opposition declined to agree to breach the minimum intervals or otherwise vary normal procedure in order to speed things up, there would be deadlock, which would have to be resolved by negotiation exactly as at present.

156. It would however be possible for a new symbol to appear on the Lords order paper, to indicate a Bill which has spent more than a certain period in the House, in the same way as a breach of the minimum intervals between stages of Bills is marked §. If the Government consider that this would be helpful, they should approach the House of Lords Procedure Committee.

157. If there is to be a number of sitting days as an indicative measure, for this purpose, of when a Bill may have spent long enough in the Lords, then 80 days is more appropriate than 60. As shown above, the figure of 60 days derives from a misreading of the 1968 White Paper. 80 days amounts to just under half an average Session. If, in a bicameral Parliament, one House takes more than half the Session over a Bill, it is not unreasonable to ask why.

158. There is no consensus as to whether the Lords' treatment of the Animal Health and Constitutional Reform Bills was reasonable. In our view it was reasonable in the circumstances for the Lords to refer the Constitutional Reform Bill to a Select Committee; agreement to carry over the Bill into the following Session meant that it was not lost for lack of time; and the delay resulted in a better Bill with no adverse consequence, as was fully acknowledged by the Government at the time.²³⁶ On the other hand the delay to the Animal Health Bill might have had serious consequences in the summer of 2002, and might have resulted in the loss of the Bill, since carry-over was not an option.²³⁷

159. The Government have made it clear that they are not wedded to a time limit, and other approaches have been proposed:

- a) extended use of Grand Committee;
- b) different arrangements in the Commons;
- c) a joint business committee.

160. Extended use of Grand Committee has taken place since 2002. It is regarded by the Opposition and others as a significant concession to the Government in facilitating the progress of business, and in reducing the burden of whipping and late nights on government backbenchers.

161. It is often said in debate in the Lords that this or that provision of a Bill has been inadequately scrutinised in the Commons because of programming. We accept the Clerk of the House of

²³⁶ When the Bill was recommitment to a Committee of the Whole House on 13 July 2004, the Lord Chancellor said, "I am glad that we had the Select Committee. I opposed it at the time, fearful that the most recent precedent prior to this Select Committee would be followed and the Bill would be killed. That has not happened. As my noble friend Lord Carter said, it has allowed for something akin to pre-legislative scrutiny in the course of the Bill going through Parliament. It has allowed the pace of reform to be more deliberate, so that proper consideration has been given to the principles and the details. That is to the good." (HL Hansard, Vol 663, col 1184).

²³⁷ HL Hansard, 26 March 2002, Vol 633, Lord Whitty (Minister) "If the motion were agreed to, the Bill would not pass in this Session" (col 193). "Were there to be a further outbreak ... the lack of those powers [of access to premises] will inhibit the Government" (col 197).

Commons' advice, that it is not possible to measure objectively the adequacy of Commons scrutiny, and that the Lords should respect the Commons' use of their own time. We note also that, where Commons scrutiny appears inadequate, this may be due to the actions of other parties besides the Government. However, **when the Government criticise the Lords for making slow progress with a Commons Bill, they are on firmer ground when they can point to full scrutiny in the Commons.**

162. The reality is that some important Bills, for example on pensions, arrive in the Lords with long sections not having been debated at all, and that a large number of amendments are introduced in the Lords and then not debated in the Commons.

163. The Modernisation Committee of the House of Commons has made it clear in a number of reports²³⁸ that certain basic criteria must be met when programming. In particular, all parts of a Bill must be properly considered, and Bills need to be prepared properly so as not to require a mass of government amendments. In very many cases these criteria are not being met and the House of Lords has to take time to do the work.

164. The Modernisation Committee has recently recommended that the finishing date ("out-date") for a Commons Standing Committee stage should be set not in advance of Second Reading, as at present, but after and in the light of the Second Reading debate.²³⁹ This is a matter for the House of Commons, but it might have gone some way to reduce the perception that programming results in incomplete scrutiny. However, we note that the Government has recently rejected that Recommendation.²⁴⁰ The same report recommends that Commons Standing Committees should be able to take evidence, and makes several other recommendations intended to make scrutiny more effective.²⁴¹

165. The concept of a "business committee" is that the business of the House in question should be arranged not "through the usual channels", i.e. behind the closed doors of the Whips' Offices and largely between Government and Opposition, but by a formal committee, with a degree of openness and an enhanced role for minority parties. This is done in the Scottish Parliament, in some Commonwealth Parliaments, and in many continental parliaments and international assemblies. Following initiatives by the Commons Modernisation Committee under the chairmanship of Robin Cook as Leader of the House of Commons²⁴², the Government Whips in both Houses have taken a

238 Second Report, 1999-2000, *Programming of Legislation and Timing of Votes*, HC 589; First Report, 2002-03, *Programming of Bills*, HC 1222.

239 *Op cit*, para 49.

240 Explanatory memorandum on the Motions relating to Legislative Process, Office of the Leader of the House, 26 October 2006. The House of Commons is due to debate the Motions on 1 November 2006.

241 *Ibid*, para 58. The Government has accepted the proposal "relating to the use of committees with the power to take evidence before they begin line-by-line consideration of a bill", Explanatory memorandum, 26 October 2006.

242 Second Report of the Select Committee on Modernisation of the House of Commons, *Modernisation of the House of Commons: A Reform Programme*, Session 2001-02, HC 1168, para 44: "Our predecessors in the last Parliament recommended that "There should be discussions at the earliest possible stage of the Government's legislative proposals as a whole". The package which we have now proposed reinforces the case for such discussions. **We recommend that there should be collective consultations with other parties in the House on the broad shape of the legislative year, those Bills intended to be published in draft, those Bills intended to be carried over and which Bills are expected to be introduced in the Commons, including discussion on the likely dates of recesses and related matters such as Friday sittings and Opposition days.**"

small step in this direction since 2002, by giving the Chief Whips of the other main parties a limited overview of the legislative programme at the start of the Session.

166. The case for a business committee is outside our remit. But we consider that there is scope for better planning of the parliamentary year as a whole, possibly involving greater use of pre-legislative scrutiny and carry-over. If the Government can even out the workload in both Houses throughout the Session, this should reduce time problems on individual Bills. The Commons Modernisation Committee has recently made recommendations along these lines.²⁴³

243 *Op cit*, para 11: “**there are ways in which the flow of legislation can be managed effectively to ensure that, subject to the size of the Government's legislative programme and the constraints of the Parliamentary year, the best possible use is made of Parliamentary time in order to provide the most effective scrutiny of bills. They include:**

- a) **publishing bills in draft for pre-legislative scrutiny before they begin their formal Parliamentary stages;**
- b) **making appropriate use of carry-over to smooth the flow of bills throughout the Parliamentary year;**
- c) **using programming to ensure that adequate time is available for each stage of a bill; that time is not wasted, for example, by programming committee proceedings to finish several weeks before time can be found for remaining stages; and that the available time is allocated appropriately to different parts of the bill; and**
- d) **adopting a flexible approach to the time available to each bill, making more time available where it is needed, less where it is not.”**

5 Exchange of amendments between the Houses – 'ping-pong'

Background

167. The exchange of amendments to public legislation between the two Houses of Parliament, colloquially known as 'ping-pong', is based on the premise that both Houses must agree on every word of a Bill before it can receive Royal Assent and become an Act of Parliament.

168. Once a Bill has passed through both Houses a list of Amendments made in the second House is compiled and the Bill is returned to the first House seeking its agreement to the Amendments. If the first House does not agree to the Amendments made by the second House it returns the Bill to the second House indicating its disagreement, or setting out alternative propositions. Exchanges between the two Houses continue until agreement is reached or a stalemate occurs. The point at which stalemate is deemed to have been reached is referred to as "double insistence". This is described in the House of Lords *Companion* as "if one House insists on an amendment to which the other has disagreed, and the other insists on its disagreement, and neither has offered alternatives, the bill is lost."²⁴⁴ However, as *Erskine May* acknowledges, "...there is no binding rule of order which governs these proceedings in either House, and, if there is a desire to save a bill, some variation in proceedings may be devised in order to effect this object."²⁴⁵

Evidence

169. As the Clerk of the Parliaments pointed out, "Although this concept is simple, the procedures by which the Houses reach agreement (or not) can be extremely complex."²⁴⁶ The Clerk of the House of Commons noted that "Commons procedure in respect of 'ping-pong' is based on custom and practice, but practice has evolved in significant respects in the last decade or so... Although the underlying options – whether to agree, disagree, amend or propose amendments in lieu – appear straightforward, in practice the exchanges between the Houses can soon become exceedingly complex as the process of sending Amendments back and forth continues."²⁴⁷

170. The Clerk of the House of Commons suggested that two modern practices have added to the complexity. The first is that Lords Amendments are now routinely considered at the same sitting at which they are received from the House of Lords. The second "has been the consideration of Lords Amendments in 'packages',²⁴⁸ rather than individually, so that exchanges may contain subtle

²⁴⁴ *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, para 6.160.

²⁴⁵ *Erskine May*, 23rd edition, 2004, p 639.

²⁴⁶ Ev 89, para 54.

²⁴⁷ Ev 101, para 12.

²⁴⁸ Packaging refers to the practice in the final stages of a Bill's passage, where a number of related amendments may be grouped together for the purpose of both debate and decision.

variations in the packages of alternative suggestions (amendments in lieu) sent back to the House of Lords."²⁴⁹

Packaging

171. For at least 40 years it has been the practice in the Commons to group Amendments for the purposes of debate. "Packaging, which only applies at a relatively advanced stage of ping-pong, is simply a way of formalising that and wrapping up as one motion a group of Lords amendments, a motion to disagree, an amendment in lieu or whatever it is."²⁵⁰

172. Packaging was first used by the Commons in the 1990s and has since been adopted by the Lords. Following a procedural difficulty which arose in the House of Lords in May 2004 in relation to the Planning and Compulsory Purchase Bill the Clerks of both Houses and parliamentary counsel were asked to look at the practice of considering Amendments in the other House in groups or packages and the procedural consequences which could follow. An agreed statement of position was issued on 21 July 2004.²⁵¹ It acknowledged that "Packaging and grouping are useful ways of signalling perceived connections between amendments. But these are techniques for organising debate within each House; neither House can be expected either to discover, or to feel bound to follow, arrangements made by the other for the consideration of amendments."²⁵²

173. In the opinion of the Opposition packaging "enables a government to avoid the need for compromise by insisting, while offering an Amendment in lieu on an unrelated matter. We think this can operate in a highly unsatisfactory way and is a breach of the convention that respect is paid to the other House's amendments by each House."²⁵³

174. The Liberal Democrats "welcome the packaging of amendments on closely related issues, as a way to improve the efficiency of exchanges between the two Houses." They consider, however, "that packaging should be a matter for the House on a case-by-case basis and endorse the recommendation of the House of Lords Procedure Committee that **'Packages from the Commons should be considered by the House only if they are confined to single or closely related issues, not disparate issues joined together simply for reasons of convenience.'**"²⁵⁴

175. One of the main difficulties associated with 'ping-pong' is that it often occurs at the end of a Session. Lord Cope of Berkeley, Opposition Chief Whip in the House of Lords, explained that it therefore "has to occur very quickly if it is going to occur at all; and that piles on the pressure but it also means there is less thinking time."²⁵⁵ He thought that the double insistence rule was very subtle "because it means that each House has got to think about compromises each time it passes backwards and forwards if it is not going to lose the bill, and that means the Houses do move nearer

249 Ev 101, para 13,

250 Q 240.

251 HC Hansard, 21 July 2004, Vol 424, cols 36-38WS; HL Hansard, 21 July 2004, Vol 664, cols WS 19-21. See also Appendix 5.

252 *Ibid.*

253 Ev 37, para 4.6.

254 Ev 65. 1st Report of the House of Lords Procedure Committee, Session 2004-05, HL 48, p 4.

255 Q 107.

to one another gradually."²⁵⁶ In Lord Strathclyde's opinion, however, the Commons "have come up with a ploy to get round double insistence, which is by packaging amendments, making a very minor change to a part of the Bill which has no relevance to the bit we are disagreeing about and, therefore, drawing out the process."²⁵⁷

Minimum notice

176. Another difficulty relates to the period of minimum notice. As the Clerk of the House of Commons pointed out the new modes of proceeding "have gone a long way to undermine what would have been regarded, 15 years or so ago, as the conventions governing exchanges between the Houses. For example, it is still stated in *Erskine May*...that the procedure for considering Lords Amendments without notice is 'generally reserved for amendments which are not material'; but that convention is now honoured more in the breach than the observance."²⁵⁸ He described the underlying problem as being that "we have these procedures ...which have developed over a very long time, and are based, I suppose, on the rationale that the two Houses are genuinely trying to reach a compromise. The fact is that now the habit has grown up in recent years that we immediately get into something which is not an attempt to find a genuine compromise but it is political arm-wrestling, no more or less than that."²⁵⁹

177. The Clerk of the Parliaments agreed. The convention that business should be considered only with due notice "is not applied to ping-pong at the moment, and there lies some of the root of the trouble that we have with ping-pong."²⁶⁰ He added that "If the business managers knew that they had to leave longer for ping-pong, that would be an irritation but I think it would actually be to everybody's benefit in the long run."²⁶¹

178. A recent example of several episodes of 'ping-pong' occurred in relation to the Prevention of Terrorism Bill 2004 when there were five exchanges in the middle of the night with the solution only being achieved when the Leader of the Conservative Party saw the Home Secretary giving an interview on television. As the Clerk of the House of Commons asked, "That may be a success in some people's eyes, but is it a parliamentary success?"²⁶² He thought that there were two ways at looking at the way things have developed: they could be seen as "a procedure responding very flexibly to political demands and pressures" or as "a total distortion of the underlying rationale and conventions that govern what is going on when the Houses exchange reasons and amendments at that stage."²⁶³

²⁵⁶ *Ibid.*

²⁵⁷ Q 104.

²⁵⁸ Ev 101, para 14.

²⁵⁹ Q 247.

²⁶⁰ Q237.

²⁶¹ Q 239.

²⁶² Q 247.

²⁶³ Q 248.

179. The Government argue that "each House is entitled to expect the other to give due consideration to the amendments sent up to it. The Lords can therefore reasonably expect the Commons to provide time for consideration of Lords Amendments and subsequent proposals, and the Commons can expect the same. But, in both cases, this must be in the context of the right of each House to govern its own procedures."²⁶⁴

180. The Opposition recognised that 'ping-pong' often occurs at the end of a Session and therefore has to occur very quickly if it is to happen at all. But they agreed "that sometimes more time taken would reach a more desirable conclusion".²⁶⁵ Lord Strathclyde added that "during the ping-pong period, you need a certain amount of time to see whether or not a compromise is achievable."²⁶⁶

181. David Heath, the Liberal Democrat Shadow Leader in the House of Commons, thought that "the idea that an amendment can come from the House of Lords and within an hour or so be considered by the House of Commons, Opposition parties having no opportunity whatsoever to amend whatever the Government chooses to put down as an amendment in lieu at that stage, with almost no debate in the Commons... is not a process that would suggest respect between the two Houses from their points of view."²⁶⁷

182. The Liberal Democrats also note that "Officers of both Houses have most trouble facilitating the ping-pong process when the Government introduces amendments at short notice." They therefore recommend that "a *minimum* notice period of 24 hours for any government amendments should be considered."²⁶⁸

Convention or practice?

183. The Government point out that the exchange of Amendments between the two Houses is subject to rules and practices which have developed over time. "The practices are broadly symmetrical, with the two Houses operating in a similar way, and the arrangements in place – subject to the rules relating to financial privilege - give neither House any priority over the other. The rules and practices are set down, and are from time to time the subject of examination. They are not in this sense, subject to conventions of the same kind as those discussed earlier..., save that each House may be expected to have due respect for the other."²⁶⁹ The Government later reiterate that "these are not strictly matters of convention" and state that they "would not want the flexibility of the present arrangements, which broadly works to the advantage of all sides, to be lost."²⁷⁰

184. In oral evidence Lord Grocott said that "the issue of exchanges between the two Houses in a situation where there is no majority for any government in the Upper House, which is the situation which we all accept and will all live with, will inevitably become something which needs to be

²⁶⁴ Ev 9, para 63.

²⁶⁵ Q 107.

²⁶⁶ Q 108.

²⁶⁷ Q 191.

²⁶⁸ Ev 64, Introduction.

²⁶⁹ Ev 9, para 62.

²⁷⁰ Ev 9, para 65.

discussed. I am not looking for any suggestion of a convention or a rule but it is clearly an issue which needs to be addressed."²⁷¹ In supplementary evidence the Government state that "So long as there is real dialogue in place, the Government accepts that this is a legitimate operation of ping-pong. But the Government does not accept that it would be right for the Lords repeatedly to reject a Commons amendment without seeking to promote a compromise."²⁷²

185. The Opposition take a similar view: "Given that both Houses will almost invariably want to avoid loss of a Bill, the double-insistence rule forced each side to offer compromises to avoid it and to perpetuate conversation."²⁷³ They argue that both Houses should offer more than 'cosmetic changes' and allow more time for consideration of each other's proposals to enable a search for compromise.²⁷⁴

186. The Liberal Democrats too regard 'ping-pong' as "more an integral part of the legislative process than it is a convention governing that process."²⁷⁵ They describe three distinct situations in which 'ping-pong' procedures come into play: "(a) where controversial decisions are taken in the middle of a Session; (b) where amendments shuttle between the two Houses at the end of a Session and disagreement could mean the Bill is lost unless carry-over is invoked or where the provisions of the Parliament Acts apply; and (c) where amendments shuttle between the two Houses at the end of a Parliament and where a Bill will be lost in the 'wash-up' if agreement is not reached except where the provisions of the Parliament Act apply."²⁷⁶ They consider that codification is "entirely unnecessary, and would risk setting in stone procedures and protocols which should be, as they are now, flexible in order that exchanges between the Houses can take account of the prevailing political circumstances."²⁷⁷

187. In written evidence the Clerk of the House of Commons noted that "it is difficult to see how it would at the moment be practical to codify any conventions relating to 'ping-pong'. Current practice is not based on any codifiable principles; and any codification that was so based would be bound to remove some of the speed and flexibility which have characterised the proceedings of the House of Commons on Lords Amendments in recent years and which the House and Government of the day evidently value."²⁷⁸

Conclusion

188. We agree that the exchange of Amendments between the Houses is an integral part of the legislative process that is carried on within the context of the primacy of the House of Commons

²⁷¹ Q 26.

²⁷² Ev 30, para 16.

²⁷³ Ev 37, para 4.6.

²⁷⁴ Ev 3, para 4.6.

²⁷⁵ Ev 64.

²⁷⁶ Ev 64.

²⁷⁷ Ev 65, para 19.1.

²⁷⁸ Ev 101, para 16.

and the complementary revising role of the House of Lords. It is not a convention, but a framework for political negotiation.

189. We also acknowledge the value of the convention, with which all parties agreed, that neither House will in general be asked to consider Amendments without notice. **We believe that it would facilitate the exchange of Amendments between the two Houses if that convention was more rigorously observed, i.e. if reasonable notice was given of consideration of Amendments from the other House.** We recognise that this convention may have to be breached at the end of a Session when pressure of time makes rapid exchanges of messages between the Houses inevitable; but this should be the exception, not the rule.

6 Secondary legislation

Background

190. The Committee’s remit refers to “conventions on secondary legislation”, but does not say what conventions are intended. However the following paragraph from the Lords *Companion* provides a helpful starting point:

General powers of the House over delegated legislation

8.02 The Parliament Acts do not apply to delegated legislation. So delegated legislation rejected by the Lords cannot have effect even if the Commons have approved it. Neither House of Parliament has the power to amend delegated legislation.[405] *The House of Lords has only occasionally rejected delegated legislation.*[406] *The House has resolved "That this House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration".*[407] Delegated legislation may be debated in Grand Committee, but must return to the floor of the House if a formal decision is required. [*emphasis added*]

405 Except in the very small number of cases where the parent act specifically provides for such amendment, e.g. Census Act 1920.

406 The last two instances of the rejection of an affirmative instrument were 18 June 1968: Southern Rhodesia (United Nations Sanctions) Order 1968; and 22 February 2000: Greater London Authority (Election Expenses) Order 2000. A motion for an address praying against a negative instrument (Greater London Authority Elections Rules 2000) was agreed to on 22 February 2000.

407 LJ (1993-94) 683, HL Deb. 20 October 1994 cols 356-83.

191. The key sentences are those in italics. The only issue between the Houses on delegated legislation is whether the Lords can frustrate the will of the Commons by voting down an instrument which the Commons has, or would have, supported. It is often suggested, mostly from the Government side, that there is a convention that the Lords **do not** reject Statutory Instruments (SIs). In the *Companion*, this appears in the form of the statement that they **have only occasionally** done so. This is incontrovertibly true, but arguably a very weak codification.

192. Assertions that it would be constitutionally wrong for the House of Lords to reject delegated legislation can be found in Lords debates since the 1950s²⁷⁹, but the matter came to a head in 1968 over an Order to implement United Nations sanctions against Rhodesia.²⁸⁰ Lords reform was at a critical point, and an Election was in prospect. In debate, Earl Jellicoe, as Deputy Leader of the Opposition, asserted that the situation was “exceptional”, and that rejecting the Order would provide “a period for reflection”. Lord Wade (Liberal) asserted a constitutional convention against rejection. Lord Rowley (Labour) gave it a political slant: “a kind of convention has developed that ... the built-in Conservative majority in your Lordships’ House would not vote against an Order put forward by

279 The following account relies heavily on House of Lords Library Note 2000/001, *Divisions on Delegated Legislation in the House of Lords 1950-1999*.

280 HL Hansard, 17 June 1968, Vol 293, col 321.

a Labour Government”. The Marquess of Salisbury (former Conservative Leader) brought the mandate into it; the people’s views on the issue were unknown, and he believed they were against sanctions.

193. Lord Carrington, Leader of the Opposition, argued in favour of providing “a period of delay for reflection”. He asserted that, if the House defeated the motion to approve, the Order would nonetheless remain in force for long enough for the Government to re-lay it. If the Commons approved it again, the Lords should back down. The Leader of the House, Lord Shackleton, expressed doubts, but this is in fact what happened; the Order was defeated, but an essentially identical Order was made and four weeks later the Lords approved it. However Lord Carrington’s previous warning of constitutional crisis also came true; cross-party talks on Lords reform were broken off and the Government took unilateral action.²⁸¹

194. Between 1983 and 1991 the Lords never once divided on a motion fatal to an SI. Instead, there were votes on critical but non-fatal motions or amendments. On one such occasion in 1983, Lord McCarthy for the Opposition explained: “It is not our policy to invite the House to cancel, defy or reject regulations of this kind which are passed by the Lower House.²⁸² What we are asking the House to do is something that we understand is quite normal and customary practice – that is, to express a view”.²⁸³ As the *Companion* says, such motions if carried have “no practical effect”.²⁸⁴

195. By 1994 it was beginning to be asserted as a convention not merely that the Lords did not defeat SIs, but that they did not even divide against them. In response, Lord Simon of Glaisdale initiated a debate on the proposition “That this House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration”.²⁸⁵ The motion was carried without a vote, and is recorded in the *Companion*.

196. In opening this debate, Lord Simon offered three categories of SI on which in his view the Lords would be justified in voting: (a) an SI which “goes beyond nuts and bolts and trenches on policy” – the sort of Instrument which since 2003 might be flagged up by the Lords Select Committee on the Merits of SIs, (b) an SI which the Joint Committee on SIs finds to be an “unusual or unexpected use of the power”, (c) a Deregulation (now Regulatory Reform) Order.

197. Following this debate, the House began to divide again on potentially fatal motions or amendments. But the vote tended to be precipitated by the Liberal Democrats or a backbench or crossbench peer, who might expect to lose, not by the Opposition who would always run the risk of success. This suggests that there was indeed a convention, but at the political rather than constitutional level, and against winning a division rather than against dividing. In November 1997, soon after the change of Government, Baroness Hollis of Heigham, replying as Minister to a Liberal

281 The subsequent proceedings are outside the scope of this report.

282 On affirmative instruments, the motion to approve is usually taken first in the Commons, but there is no rule about this; it is up to the business managers. An interesting precedent was set in 1978, when an order came to the Lords ahead of the Commons. The Lords voted to adjourn debate on the motion to approve, pending debate in the Commons. The Wakeham report suggested that the Lords might do this more often (para 7.34).

283 HL Hansard, 5 December 1983, Vol 445, col 929.

284 Para 8.04.

285 HL Hansard, 20 October 1994, Vol 558, col 356.

Democrat prayer to annul, referred to “our consistent position in Opposition when we always abstained on such matters”.²⁸⁶ And Lord Strathclyde, addressing Politeia in November 1999 as Opposition Leader in the House of Lords, just after enactment of the House of Lords Act, referred to a convention “agreed between the front benches of the major parties 20 years and more ago – but, it is important to note, never accepted by the Liberal Democrats or the Cross-benchers. That is that the Opposition should not vote against the secondary legislation of the Government.”²⁸⁷

198. Lord Strathclyde added, “I declare this convention dead.” This was repeated in the House by the Deputy Leader of the Opposition, Lord Mackay of Ardbrecknish, in a debate on delegated legislation in December 1999. He cited the “Jay convention” that the part-reformed House had increased authority.²⁸⁸ In reply, the Minister (Lord Falconer of Thoroton) denied that anything had changed; the convention “that this House should not take on the elected Chamber” applied to SIs, and still applied, pending the publication of the Wakeham report.²⁸⁹

199. The Wakeham report devoted a whole chapter to delegated legislation. It said, “in practice there has (so far) been no serious challenge since 1968 to the convention that the House of Lords does not reject Statutory Instruments”.²⁹⁰

200. The Wakeham report saw SI scrutiny as a growth area for a reformed House of Lords. It recommended a ‘sifting’ mechanism should be established.²⁹¹ The Lords responded by setting up the Select Committee on the Merits of Statutory Instruments. But the report also recommended changing the Lords’ powers in this area, from an absolute veto to a suspensory veto. It did so with a view not to reinforcing a convention under threat, but rather to replacing a power too drastic to be used with “powers which it can actually exercise, and which would require the Government and the Commons to take some positive action”.²⁹² The Government accepted this recommendation in *Completing the Reform*.²⁹³

201. In apparent fulfilment of what Lords Strathclyde and Mackay had said, the Lords rejected an affirmative instrument and a negative instrument in 2000,²⁹⁴ the Conservatives and Liberal Democrats voting together to defeat the Government. The Instruments concerned elections to the new Greater London Authority (GLA).

202. The Commons Public Administration Committee came to this issue after these votes, in *The Second Chamber: Continuing the Reform*. In its view the votes showed that the absolute veto was

286 HL Hansard, 4 November 1997, Vol 582, col 1339.

287 A Politeia Lecture by the Rt Hon Lord Strathclyde: *Redefining the Boundaries Between the Two Houses*, 30 December 1999, pp 9-10.

288 HL Hansard, 7 December 1999, Vol 607, cols 1261-2.

289 HL Hansard, 7 December 1999, Vol 607, col 1265.

290 *Op cit*, para 7.11.

291 *Op cit*, Recommendations 37 and 38.

292 *Op cit*, para 7.35.

293 *Op cit*, para 32.

294 22 February 2000.

capable of being used, and should therefore stay.²⁹⁵ The Joint Committee on House of Lords Reform noted this difference of opinion, and deferred the issue pending decisions on composition.²⁹⁶ Following the failure to reach such decisions, the Hunt report included the votes in 2000 in its list of occasions when the Lords had challenged conventions, and adopted the Wakeham report's recommendation.²⁹⁷ On the other hand, *Breaking the Deadlock* recommended no change.²⁹⁸

203. In the Lords debate on the Hunt report on 26 January 2005, Lord Strathclyde used more moderate language on this subject than he had in 1999. He repeated that the convention against rejecting SIs was only a Labour-Conservative convention; but, far from declaring it dead, he said it had been “surprisingly robust over the decades”.²⁹⁹ In fact, between the votes on the GLA Orders in 2000 and the end of Session 2004-05, the Lords divided 9 times on motions potentially fatal to an SI. On three of these occasions the motion (in each case a prayer to annul) was moved from the Opposition frontbench.³⁰⁰ On all three occasions, the Liberal Democrats voted with the Government, so it may be that the Opposition knew they ran little risk of defeating the SI in question.

Evidence

Political parties and groups

204. The Government say that for the Lords to reject an SI is “incompatible with its role as a revising chamber”. They argue that “Statutory instruments are made by Ministers and it is for the Commons, as the source of Ministers’ authority, to withhold or grant their endorsement of Ministers’ actions.”³⁰¹ Lord Norton of Louth called this “an absolutely atrocious statement in the best Jim Hacker or Sir Humphrey style”.³⁰² In supplementary evidence, the Government argue further that, having delegated a power, both Houses should usually allow it to be exercised – “unless, perhaps, the instrument has not been properly made, or is *ultra vires*”. They point out that SIs are not covered by the Parliament Acts, and that there is no scope for ‘ping-pong’.³⁰³

205. In supplementary evidence, the Government also distinguish between the moving of a fatal motion and the passing of such a motion. It is the latter which they consider inappropriate.³⁰⁴

206. The Government endorse the Wakeham recommendation to reduce the Lords’ power in this area.³⁰⁵ Pending such a change in the law, they commend the use of non-fatal motions.³⁰⁶ Lord Grocott assured us that defeat on such a motion is taken “very seriously”.³⁰⁷

295 Fifth Report of the Public Administration Select Committee, Session 2001-02, HC 494, para 80.

296 First Report, Session 2002-03, HL Paper 17, HC 171, para 23.

297 *Op cit*, pp 5-6.

298 *Breaking the Deadlock*, p 16.

299 HL Hansard, 26 January 2005, Vol 668, col 1375.

300 8 Feb 2001, 20 March 2001, 27 Jan 2003.

301 Ev 8, para 54.

302 Q 339.

303 Ev 28, paras 4-5.

304 Ev 28, para 4.

207. We asked the Government how they had in fact responded to the seven such motions passed by the Lords since 1997. The answer³⁰⁸ may be summarised as follows:

- a) Licensing Act 2003 (Second Appointed Day) Order 2005 – No change, but the Minister wrote a letter to the mover of the motion.
- b) Higher Education (Northern Ireland) Order 2005 – No change, but the Government gave an undertaking to the Commons to consider the matter if the Northern Ireland Assembly was not reconstituted.
- c) Regulation of Investigatory Powers (Communications Data) Order 2003 (two motions) – The Lords’ concerns were addressed in a draft code of practice.
- d) Misuse of Drugs Act 1971 (Modification) (No. 2) Order 2003 – No change.
- e) Food Supplements (England) Regulations 2003 – No change.
- f) Beef Bones Regulations 1997 – No change.

208. The Government acknowledge that “Somewhat different considerations may apply” to super-affirmative orders.³⁰⁹ If the order amends primary legislation, “A case can ... be made for the Lords to be able in certain circumstances to say that the issue being raised is so significant that primary legislation is the only appropriate way of proceeding”.³¹⁰

209. The Opposition consider the position to be clear: the Lords have the right to reject, but its use “should be exceptional in the extreme”. They reject the Wakeham proposal. Instead, they would like to see less regulation, fewer skeleton Bills and more “on the face of the bill”. They say it is “near to a constitutional convention” that Governments accept recommendations of the Lords Delegated Powers Committee.³¹¹

210. In oral evidence, Lord Strathclyde said, “we do not (with one exception) defeat secondary legislation”.³¹² He candidly admitted that his statement in 1999 that the convention was “dead” was an attempt to “push out the boundaries”, and a reaction to the Lords reform situation at the time.³¹³

211. Lord Strathclyde said that before voting down the Greater London Authority Orders in February 2000, the Opposition had made sure that the Government would be able to restore the

305 Q 39.

306 Ev 7, para 45.

307 Q 40.

308 Ev 32-34.

309 Ev 7, para 47.

310 Ev 28, para 7.

311 Ev 37, paras 4.3-4.4.

312 Q 80.

313 Q 60.

situation and hold the GLA election; and even so, he hinted that it had been a mistake.³¹⁴ He now sees the power of rejection as a “long-stop”.³¹⁵

212. We asked the Opposition how they decide whether to oppose an SI. The answer was that it depends on the issue. Examples of situations where they might oppose were (a) when the SI makes an unexpected use of the enabling power and (b) when it appears to be unworkable.³¹⁶

213. The Liberal Democrats likewise argue against a convention that the Lords do not reject SIs. If this is generally true, they say it is not “a convention so much as a habit”. Lords are better placed than MPs to scrutinise SIs, and need “proper powers of scrutiny and, if necessary, rejection”, especially in the absence of power to amend. They oppose the Wakeham proposal. They are unwilling to define situations in which rejection is justified, for reasons of difficulty of definition. They agree with others that the power to reject underpins scrutiny, and that without it the Lords would be less willing to agree to delegated powers in the first place.³¹⁷

214. In oral evidence, Lord Wallace of Saltaire took a more moderate line. “I would understand the Convention as being that the Second Chamber should not regularly send back statutory instruments..., but that, under exceptional circumstances, it is appropriate for it to do so”. Mr Heath agreed: rejection should be used “extremely sparingly”.³¹⁸ However the Liberal Democrats did not join Lord Strathclyde in regretting the votes against the GLA Orders in 2000.³¹⁹

215. Lord Williamson of Horton considered that there is no convention against rejecting an SI, but the House is “very hesitant indeed” to do so.³²⁰ He observed that the Government often responds to criticism by the scrutiny committees without the need of a hostile motion in the House.³²¹

Lords Committee on the Merits of Statutory Instruments

216. The Lords SI Merits Committee considers that powers and conventions in this area are adequately codified in each SI’s parent Act and in the *Companion*, and that nothing further is called for. Parliamentary scrutiny of SIs is a growth area; the power to reject SIs gives Parliament “leverage”, and should if anything be exercised more, not less. It quoted the Chairman of the Government’s own Better Regulation Executive in support of this view³²²; it is also supported by the Bar Council.³²³

314 Q 60.

315 Q 62.

316 QQ 80-81.

317 Ev 60-62.

318 Q 172.

319 Q 176.

320 Q 134.

321 Q 135.

322 Ev 135-136.

323 Ev 168.

Clerks

217. The Clerk of the Parliaments says, “There is no generally accepted convention restricting the powers of the Lords on secondary legislation.”³²⁴ There was once a loose convention against voting down SIs, but no longer.³²⁵ The power to reject has been used with restraint; motions are often either couched in non-fatal terms³²⁶ or withdrawn after debate.³²⁷ But codifying this would not be much of an achievement.³²⁸

218. The Clerk of the Parliaments explains what happens if an SI is defeated. If it is affirmative, it may be re-laid, though it must be at least slightly different.³²⁹ If it is negative, it may be re-laid with a new title. If the Lords rejected it again (which has never happened), the Government could in the last resort embody it in a Bill. So he agrees with the Wakeham report that rejection of an SI “in practice ... would not trigger a constitutional crisis”.³³⁰

219. Finally, he notes that the Lords have increased scrutiny of delegation of powers and their exercise since setting up the Delegated Powers and Regulatory Reform Committee in 1992, and that the power to reject informs the decision whether to delegate. This was explicit when the Lords passed the Deregulation and Contracting Out Act 1994 and the Regulatory Reform Act 2001, and has been cited by the Government in debate on this Session’s Legislative and Regulatory Reform Bill. But it does not apply only to super-affirmative procedures; it applied also, for example, to the provision for juryless fraud trials in the Criminal Justice Act 2003.³³¹

220. The Clerk of the House of Commons agreed with the Clerk of the Parliaments in this area.³³² He saw nothing wrong in the Lords rejecting an SI, unless it were to embody a manifesto commitment.³³³

Academic witnesses

221. Dr Donald Shell argues against codifying a convention that the Lords do not reject SIs. He observes that:

- a) it is not possible, when creating a delegated power, to be sure how it will be used;

324 Ev 81, para 8.

325 Q 249.

326 Ev 85, para 42.

327 Ev 85, para 40.

328 Q 250.

329 Literally re-laying the same order, or moving the same motion, would breach the rule of both Houses against putting a decided question again in the same Session. The order re-laid in 1968 was cosmetically different; the same was to happen in 2000. Yet in a similar debate in 1972, the Minister indicated that she was receiving conflicting advice on what would be possible if the order was defeated – which it was not.

330 Ev 86, para 43.

331 Ev 86, para 45.

332 Ev 99, para 2.

333 Q 250.

- b) the Commons sometimes approve orders without debate;
- c) it might make the Lords less willing to agree to delegations, which would increase the volume of primary legislation.³³⁴

222. To the suggestion that rejection might be made to depend on the views of the scrutiny committees, he responds that the committees might not welcome this responsibility, and that different committees might not agree among themselves. Most SIs are now considered and reported on by the Joint Committee on Statutory Instruments and the Lords Committee on the Merits of Statutory Instruments; in many cases the Lords Delegated Powers and Regulatory Reform Committee will also have scrutinised the power under which the SI was made.

223. Lord Norton of Louth likewise argues against codifying a convention that the Lords do not reject SIs.³³⁵ He observes that:

- a) It is not agreed that there is any such convention;
- b) SIs do not normally involve “great issues of principle”, and any argument in Parliament is usually only about fitness for purpose;
- c) A rejected order can be re-laid;
- d) The power to reject supports the work of the SI Merits Committee;
- e) Power to reject orders under the Legislative and Regulatory Reform Bill will be even more important than power to reject mainstream SIs.

224. He agreed however that, if the Lords reject an SI, they should give a reason.³³⁶

225. Our other academic witnesses saw no cause for government concern in this area.³³⁷ Professor Bradley pointed out that government Bills routinely give the Lords power to reject SIs; if they did not wish the Lords to have this power, they should not put it in the Bill. Dr Russell described the occasional defeat of an SI as “a reasonable *quid pro quo*” for Parliament having no power to amend them.

Overseas

226. Overseas, the Australian situation is closest to our own. Both Houses have equal power over delegated legislation, and the Senate can and does disallow orders.³³⁸ In Canada, orders can be disallowed if the Standing Joint Committee for the Scrutiny of Regulations so recommends on legal or procedural grounds, and only if both Houses agree. This procedure has rarely been used. But Parliament is becoming more interested in overseeing delegated legislation, and there is a growing

334 Ev 143, paras 5-10.

335 Ev 116; Q 342.

336 Q 344.

337 QQ 342-343.

338 Ev 155.

range of procedures for parliamentary review, amendment and rejection of specific kinds of order.³³⁹ In India, Parliament can modify or annul any order, but this requires the agreement of both Houses.³⁴⁰

Conclusions

227. On the basis of the evidence, we conclude **that the House of Lords should not regularly reject Statutory Instruments, but that in exceptional circumstances it may be appropriate for it to do so.** This is consistent with past practice, and represents a convention recognised by the opposition parties.

228. The Government appear to consider that any defeat of an SI by the Lords is a breach of convention. We disagree. It is not incompatible with the role of a revising chamber to reject an SI, since (a) the Lords (rightly or wrongly) cannot exercise its revising role by amending the SI or in any other way, (b) the Government can bring the SI forward again immediately, with or without substantive amendment, as described by the Clerk of the Parliaments, and (c) the power to reject SIs gives purpose and leverage to scrutiny by the Joint Committee on SIs, and by the new Lords Committee on the Merits of SIs. The Government’s argument that “it is for the Commons, as the source of Ministers’ authority, to withhold or grant their endorsement of Ministers’ actions”³⁴¹ is an argument against having a second chamber at all, and we reject it.

229. For the Lords to defeat SIs frequently would be a breach of convention, and would create a serious problem. But this is not just a matter of frequency. **There are situations in which it is consistent both with the Lords’ role in Parliament as a revising chamber, and with Parliament’s role in relation to delegated legislation, for the Lords to threaten to defeat an SI. For example:**

- a) where special attention is drawn to the instrument by the Joint Committee on Statutory Instruments or the Lords Select Committee on the Merits of SIs
- b) **when the parent Act was a “skeleton Bill”, and the provisions of the SI are of the sort more normally found in primary legislation**
- c) **orders made under the Regulatory Reform Act 2001, remedial orders made under the Human Rights Act 1998, and any other orders which are explicitly of the nature of primary legislation, and are subject to special “super-affirmative” procedures for that reason**
- d) **the special case of Northern Ireland Orders in Council which are of the nature of primary legislation, made by the Secretary of State in the absence of a functioning Assembly**
- e) **orders to devolve primary legislative competence, such as those to be made under section 95 of the Government of Wales Act 2006 and**

339 Ev 158-159.

340 Ev 152.

341 Ev 8, para 54.

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

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

231. It would equally defeat the purpose of delegation if the Commons were regularly to reject Statutory Instruments. But of course they are not likely to do so.

232. In the absence of a power to amend SIs, the most constructive way for the Lords, as the revising chamber, to reject an SI is by motion (or amendment) incorporating a reason, making it clear both before and after the debate what the issue is.³⁴² But, when the Lords wish to voice concern about an SI, the Government would like them to do so by means of a non-fatal motion or amendment, rather than a fatal one. Non-fatal motions are quite commonly used, and are agreed to more frequently than fatal motions. The Government Chief Whip in the Lords told us that defeat on such a motion is taken seriously in Government.³⁴³ However the record does not altogether bear this out. We recommend that, if the Government lose a vote on a non-fatal motion about a Statutory Instrument, they should respond to the House in some way, at least by Written Statement. If this became the convention, the Lords might be more inclined to prefer non-fatal motions, as the Government would wish.

233. The problem with the present situation is that the Lords' power in relation to SIs is too drastic. The picture would be very different if Parliament had power to amend SIs. It generally does not, and we have not been asked to inquire into whether it should, though this is a question of concern to Members in both Houses. It should be noted that certain Acts already give Parliament power to amend specific classes of SI.³⁴⁴

234. There is no consensus around the Wakeham proposal for a suspensory veto for the second chamber. As a change in the law it is in any case outside our remit.

342 This can be done, in the case of an affirmative instrument, by reasoned amendment to the motion to approve, calling for specific adjustments. There are plenty of examples of such amendments being tabled in the Lords. In the case of a negative instrument, it would require a reason to be attached to a "prayer", e.g. "To move that an Humble Address be presented to Her Majesty praying that the Order be annulled on the grounds that..." or "and that a new Order be made providing that..." This would be novel.

343 Q 40.

344 E.g. Census Act 1920, s. 1(2), and more recently Civil Contingencies Act 2004, s. 27(3).

7 Financial privilege

235. In our Special Report, we said, “We take the financial privilege of the House of Commons as a given. We will not consider

- a) The special status of Supply Bills, including the rule against tacking
- b) The special status of Money Bills
- c) The “privilege amendment” convention, which permits Bills with financial implications to start in the Lords.”³⁴⁵

236. Nonetheless, the Government said, “The Government believes that there would be benefit in greater clarity about the extent of financial privilege ... The Government would welcome a clear statement from the Joint Committee on the proper scope of financial privilege”.³⁴⁶

Lords Economic Affairs Committee

237. In 2002 the Lords agreed that each Finance Bill would be scrutinised by a sub-committee of its Economic Affairs Committee.³⁴⁷ Reference has been made throughout the history of this to Commons financial privilege (see Appendix 6). *Erskine May* says, “The Lords also express their opinion on public expenditure, and the method of taxation and financial administration, both in debate and by resolution, and they have investigated these matters by their select committees”.³⁴⁸

238. The Government say, “the appointment of a Finance Bill Sub-committee, albeit one which has so far been concerned only with tax clarification and administration, risks intruding on Commons financial privilege”.³⁴⁹ In oral evidence, the Leader of the House of Commons used stronger language: the exercise is “incompatible with the conventions”; it is “a quite deliberate claim to additional powers”³⁵⁰ He was not persuaded by the restriction to administrative matters. In supplementary evidence, the Government add that it is “highly irregular” for the Lords to scrutinise the Bill while it is in the Commons.³⁵¹

239. Lord Strathclyde found the Government view “extraordinary and inexplicable”.³⁵² He recalled that the exercise was part of a package of reforms negotiated by the late Lord Williams of Mostyn

345 *Op cit*, para 12.

346 Ev 10, para 72.

347 Q 253.

348 *Op cit*, p 918.

349 Ev 10, para 72.

350 QQ 42-47.

351 Ev 32, para18.

352 Q111.

when he was Leader of the House of Lords. Likewise the Liberal Democrats “cannot understand – and certainly do not share” the Leader of the House of Commons' view.³⁵³

240. Lord Wakeham, writing as Chairman of the Economic Affairs Committee,³⁵⁴ sets out the history in detail, including the fact that the Leaders of the two Houses consulted the Clerks in 2002 and were advised that there was no breach.³⁵⁵ He describes how the Committee has worked, and concludes that it “has played a helpful part in supporting Parliamentary debate on such legislation, that it neither poses a risk of intrusion on Commons financial privilege nor has been guilty of such intrusion in practice and that the initiative introduced four years ago should continue”.³⁵⁶

241. Lord Howe of Aberavon points to the Tax Law Rewrite process as demonstrating that “the Lords’ input (stopping well short of any ‘right to block or delay financial provisions’) has already been of real value in the fiscal field and could well be more so”.³⁵⁷

242. The Clerk of the Parliaments said that, while it was for the Commons to define and defend its privileges, in his view there was no breach.³⁵⁸ The Clerk of the Commons said that there was no breach of the letter; but he could see why the Government might feel there was a breach of the spirit.³⁵⁹

Conclusion

243. The Government consider Lords committee scrutiny of the Finance Bill to be a breach of privilege; most others do not. The House of Lords agreed in 2002 “to prohibit the sub-committee from investigating the incidence or rates of tax, and to allow it only to address technical issues of tax administration, clarification and simplification”.³⁶⁰ The Government were advised that on these terms there was no infringement of privilege, and on this basis they agreed to the exercise at that time. In 2004 the House of Lords agreed, on the recommendation of a Group chaired by the Leader of the House, that “the Sub-Committee should continue to conduct its activities with full regard to the sensitivities involved and in particular to the traditional boundary between the two Houses on fiscal policy”.³⁶¹

244. We endorse this position. **The Lords Committee should continue to respect the boundary between tax administration and tax policy, to refrain from investigating the incidence or rates of tax, and to address only technical issues of tax administration, clarification and simplification. Provided it does so, we believe there is no infringement of Commons financial privilege, and no**

353 Ev 66, para 22.4.3.

354 Ev.

355 See also footnote to Q 260 by the Clerk of the House of Commons.

356 Ev, para 17.

357 Ev 149, para 17.

358 Q 253.

359 Q253.

360 Fifth Report from the House of Lords Procedure Committee, 2001-02, HL Paper 148, agreed to 24 July 2002. See Appendix 6.

361 Third Report from the House of Lords Procedure Committee, 2003-04, HL Paper 184, agreed to 10 November 2004. See Appendix 6.

need to reopen the issue. If the House of Commons believe that their primacy or their privileges are being infringed, it is for them to act to correct the situation.

National Insurance

245. The reason why National Insurance has not been treated as privileged is that when it was set up in 1946 it was contributory, like ordinary insurance: contributors paid into the National Insurance Fund, and could then draw benefits from the Fund. By contrast, general taxation, which is privileged, is paid into the Consolidated Fund and used to fund general public expenditure. But these distinctions have been eroded over time.

246. “[P]rivilege has, in the past, not been claimed in respect of charges on the National Insurance Fund; but the new statutory arrangements for supplementing the National Insurance Fund out of money provided by Parliament make such a claim more likely in future.”³⁶²

247. The Government say, “there is an argument that [financial privilege] should encompass National Insurance”.³⁶³ They suggest that the Lords partially acknowledged this in 2002 when they gave accelerated passage to the National Insurance Contributions Bill³⁶⁴; this Bill was in fact certified by the Speaker as a Money Bill, so the Lords had no choice.

248. The Leader of the House of Commons commented that National Insurance is “inextricably intertwined with overall taxation and economic policy”³⁶⁵; but he avoided the question of whether National Insurance contributions are a tax.³⁶⁶ The Clerk of the Commons said that governments until now had insisted that National Insurance was not.³⁶⁷ But in his view it was, and accordingly the situation should be reviewed.

Conclusion

249. If the Government are prepared to describe National Insurance as a tax, then they can seek to bring it within the scope of financial privilege. But this would be a definite change, not a codification of the *status quo*. It would restrict the rights of backbenchers and opposition parties in the Commons, because of the rules regarding Ways and Means resolutions; and it would arguably require the agreement of the Lords.

362 *Erskine May*, p 919.

363 Ev 10, para 72.

364 Ev 32, para 19.

365 Q 42.

366 Q 47.

367 Q 255.

Amendments in lieu

250. The Lords *Companion* says:

Privilege reasons

6.165 If the Commons disagree to a Lords amendment that infringes their financial privileges, the disagreement is made on the ground of privilege alone, and not on the merits of the amendment, even though the Commons may have debated the merits. The Commons communicate in their message to the Lords that the amendment involves a charge upon public funds ... ; and they add words to the effect that the Commons do not offer any further reason, trusting that the reason given may be deemed sufficient. In such cases the Lords do not insist on their amendment. But they may offer amendments in lieu of amendments which have been disagreed to by the Commons on the ground of privilege.

251. The Clerk of the Parliaments said, “In recent years, there have been several examples of the Lords sending bills back to the Commons with amendments in lieu of earlier Lords amendments which have been disagreed to on grounds of privilege.”³⁶⁸ If the Amendment in lieu would clearly infringe Commons privilege again, this amounted to a breach of convention; Lords staff advised members against it, and this advice was usually accepted.³⁶⁹ The Clerk of the Commons agreed that, if the Amendment in lieu clearly invited the same response as the original Amendment, the conventions would be strained.³⁷⁰

Conclusion

252. If the Commons have disagreed to Lords Amendments on grounds of financial privilege, it is contrary to convention for the Lords to send back Amendments in lieu which clearly invite the same response.

368 Ev 90, para 71.

369 Q 257.

370 Q 258.

8 Codification

Background

253. “Codification” may be taken in at least two senses: (i) the broad sense of an authoritative statement, and (ii) the narrow sense of reduction to a literal code or system. In the context of Parliament, an authoritative statement could take any of the following forms:

- a) a statement made anywhere, e.g. in a book
- b) some form of concordat or memorandum of understanding
- c) a statement made in Parliament, e.g. in Hansard or in evidence to a Committee
- d) a Committee report
- e) a report agreed to by one or both Houses of Parliament
- f) a resolution of one or both Houses of Parliament
- g) a literal Code, such as each House’s Code of Conduct for Members
- h) a statement in the House of Lords’ *Companion to Standing Orders*
- i) words in *Erskine May*
- j) a Standing Order
- k) an Act of Parliament

254. It might be felt that only the most formal of these – a Code, a Standing Order or an Act – would really constitute codification. But the Leader of the House of Commons appeared to have a broader definition in mind when he noted, in the Commons debate on setting up this Committee, that “[t]he manner in which the conventions could be codified ranges from a codification in the body of the Committee’s report, to a code that has been negotiated by both Houses and which we endorse in resolutions, through to its inclusion in Standing Orders or its enshrinement in law. That is a subsequent matter”.³⁷¹ He later said that, in his opinion, “it would be a grave error to put any description of the convention[s] into legislation”.³⁷²

255. We are aware that our remit is to an extent self-fulfilling. The authoritative statements about conventions, by our witnesses and in this report, will be cited in future, even if the report leads to no further action.

371 HC Hansard, 10 May 2006, Vol 681, col 442.

372 HC Hansard, 10 May 2006, Vol 681, col 444.

256. As well as the end product of codification, there is the question of process. Some of the items in the above list have their own process (e.g. a resolution is preceded by debate), but additional steps are possible, e.g. a Speakers' Conference.

Evidence

Political parties and groups

257. The Government seek “a shared understanding” of the conventions,³⁷³ such that there can be no argument as to whether they are being adhered to or breached. “Codification could mean anything from resolutions of both Houses to standing orders to statutory definition. Our view is that greater certainty about the conventions is desirable, but without losing essential flexibility.”³⁷⁴ Lord Falconer of Thoroton even suggested that this Committee's report, without more, might be enough³⁷⁵; but he and the Leader of the House of Commons also talked in terms of both Houses agreeing the report.³⁷⁶ They are aware of the risk of legalism³⁷⁷, and they are not keen to legislate.³⁷⁸

258. The Opposition are opposed to codification.³⁷⁹ It would reduce flexibility (e.g. to save the Planning and Compulsory Purchase Bill in 2004³⁸⁰) and the capacity to evolve. Codification in statute would invite intervention by the courts. The desire to codify is “a lawyer's, rather than a Parliamentarian's, way of looking at the matter”.³⁸¹ They challenge in particular the idea of a concordat between the two Houses. It would be hard to agree and impossible to enforce. “Any definition would be of limited value if generalized and restrict flexibility if it attempted precision”.³⁸² Far from reducing disputes, it would provide new material for disagreement. In any case, there is no problem in this area which requires a solution.³⁸³

259. Lord Cope of Berkeley added a further thought in oral evidence: “with these conventions however much you write them down – and they are to a degree written down, as we know – it is also the spirit in which they are operated which is important.”³⁸⁴

260. The Liberal Democrats start by asserting that “this process with its fundamental constitutional implications should only lead to changes if there is consensus at least among the three main political

373 Ev 3, para 19.

374 Ev 1, para 2. See also QQ 1, 36.

375 Q 3.

376 QQ 21, 32.

377 “To codify is to modify”, Q 36.

378 Ev 3, para 18.

379 Ev 36, para 3.

380 Q 67.

381 Ev 36, para 3.4.

382 Ev 36, para 3.6.

383 Q 58.

384 Q 63.

parties”.³⁸⁵ They agree with the Opposition that relations between the Houses are not a problem; they do however see problems in the relationship between Parliament and government. They are opposed to statutory codification; in particular, in the absence of any higher law protecting individual rights, they oppose any restriction of Parliament’s ability to defend those rights.³⁸⁶

261. Lord Williamson of Horton spoke for the Crossbench peers as follows: “many crossbenchers would take the view that we should leave well alone, but if there is going to be a movement to change conventions ... , keeping essential flexibility is, indeed, the most important objective for us, and that is why we do not want things done by statute”.³⁸⁷ In his view, “if a convention is accepted by both Houses and is reasonably well defined”, there should be no need for enforcement.³⁸⁸ The Crossbenchers would not rule out embodying conventions in resolutions of the two Houses; but some feel that codification would favour the Government.³⁸⁹

Members

262. Lord Howe of Aberavon warns that codification of conventions can lead to increased complexity and reduced effectiveness. He cites as examples the Nolan principles of public life, the concordat between the Lord Chancellor and the Lord Chief Justice, and Commons timetabling and programming. He concludes, “I hope profoundly that the Committee will not be disposed to press beyond some modest clarification of existing conventions, which should be allowed to continue evolving as far as may be necessary”.³⁹⁰

Clerks

263. The Clerk of the Parliaments distinguishes conventions from rules. Conventions evolve; rules are fixed. Rules require enforcement and sanctions; conventions have no sanctions. Conventions may evolve into fixed rules; those under consideration are “too new to have become fixed”. If they were codified and fixed, they would cease to be conventions and become rules.³⁹¹

264. He gives examples of conventions described as such and set out in the *Companion*. One of them, the target rising time of 10pm, was substantially breached 53 times between its introduction in 2002 and the Whitsun recess 2006, showing that recording a convention in an agreed form may introduce clarity without ensuring observance.³⁹²

265. The Clerk of the Parliaments draws attention to the question of who is bound by a convention and is in a position to deliver observance. For the Salisbury-Addison Convention, his answer is, the

385 Ev 56.

386 Ev 59, para 4.4.

387 Q 117.

388 Q 130.

389 Q 127.

390 Ev.

391 Ev 80, para 2; Q 205.

392 Ev 91, para 75.

Leader of the Opposition. But for the reasonable time and delegated legislation conventions it is less clear, and in a self-regulating House any backbencher could provoke a breach.³⁹³

266. If it were intended to embody a convention in a Standing Order or an Act, new clarity would be needed, e.g. in defining a manifesto Bill for the purposes of the Salisbury-Addison Convention. Formally defined powers might be used to the limit, rather than with restraint – though, as he pointed out, the Parliament Acts give the Lords a month to pass a Money Bill but they often do so within days. And legislation would raise the possibility of intervention by the courts, which would be undesirable and “uncomfortable for both sides”.³⁹⁴

267. In oral evidence, the Clerk of the Parliaments canvassed the more acceptable option of a unanimous report from this Committee endorsed by resolutions of both Houses. “It does not mean to say that one cannot depart from the norm, but the clearer the norm is the more the House would have to justify, in the forum of public opinion, taking a different line”.³⁹⁵ Peer pressure would also operate.³⁹⁶ He denied that doing this would inhibit evolution.³⁹⁷

268. The Clerk of the House of Commons, Sir Roger Sands, observed first that “conventions must be understood in the context of the constitutional and political circumstances in which they have been forged ... The 'practicality' of codification ... is not merely a matter of reviewing the technical options; it is a matter of considering whether the settled and predictable constitutional circumstances exist which would provide the necessary context for codification”.³⁹⁸

269. He gave his own list of arguments against turning conventions into rules. This would involve difficulties of definition, and lead to loss of flexibility. It would imply a need for adjudication; for conventions governing relations between the Houses, this would have to be by either an extra-parliamentary body or some kind of Conference of the two Houses. Paradoxically, codifying the conventions could lead to increased delay, while awaiting adjudication.³⁹⁹ And if codification took the form of statute law, it would create a possibility of court intervention, which in his opinion could not be excluded, and which might be more likely with the creation of the new Supreme Court in 2009.⁴⁰⁰ Sir Roger agreed that this would be a “substantial constitutional change”.

270. Commenting on the notion of embodying an agreed description of the conventions in resolutions, the Clerk of the House of Commons confirmed that this would be a weak form of codification. It would warrant entries in *Erskine May* and the *Companion*, “but no more; and so the Speaker would find it very difficult to give rulings just on the basis of a codification in that form”.⁴⁰¹ This is the process proposed by the Hunt report for codifying the Salisbury-Addison Convention,

393 Ev 92, paras 78-79.

394 Ev 93.

395 Q 209.

396 Q 213.

397 Q 222.

398 Ev 99, paras 3-4; see also QQ 219-220.

399 Ev 100, paras 6-10.

400 QQ 280-287.

401 Q 213.

and the Hunt report envisaged eliminating “any doubt or ambiguity as to their [the conventions] application in all circumstances”.⁴⁰² The Clerk of the House of Commons did not think that was “a viable proposition”.⁴⁰³

271. It was put to the Clerks that they might undertake the codification themselves. They agreed to do so if asked. But they could only produce a draft for the Houses’ consideration; and in some areas, e.g. defining a manifesto commitment, they would be unable to help.⁴⁰⁴

Academic witnesses

272. According to Lord Norton of Louth⁴⁰⁵ “codifying conventions’ is a contradiction in terms ... If conventions are codified, they cease to be conventions”. This is because in his view codification by definition involves enforceability and a convention is by definition unenforceable. He admits however that one could adopt “a soft definition of codification”, i.e. “simply listing what are agreed to be conventions”; but in his view this exercise would be “nugatory”. He also admits that “strong” codification, i.e. turning the conventions into enforceable rules, would be possible; but he argues against it. It would change the relationship between the Houses by taking from the Lords the leverage derived from reserve powers; it would require an enforcement mechanism; and in any case the present system works “reasonably well”.⁴⁰⁶ Also it would reduce the capacity of the constitution to evolve in response to political reality.⁴⁰⁷

273. Dr Russell observed that there is “nowhere comparable” to this Parliament for reliance on conventions as opposed to written rules.⁴⁰⁸ Likewise Professor Bogdanor observed, “Conventions are bound to play a most important role in an uncodified constitution such as that of the United Kingdom”.⁴⁰⁹

274. Professor Bradley likewise sees two possible forms of codification: “merely summarising past practice or an exercise in formulating rules for future conduct”. He argues against the rule-making approach. “The British system is dynamic and flexible, rather than rigid”. Its lack of clarity may sometimes seem a nuisance, but it enables it to evolve as circumstances change. A convention may be the practical expression of a principle; in a certain situation it may be possible, even necessary, to appear to breach the convention while upholding the principle. The sovereignty of Parliament means that exceptions must be expected: “a bill may raise a fundamental constitutional question such that it is not possible in advance to predict how the Lords should respond”. In the absence of rules, all this can “come out in the political wash”.⁴¹⁰

402 *Op cit*, Section 8.

403 Q 269.

404 QQ 289-294.

405 Ev 115-116.

406 QQ 305-6.

407 Q 310.

408 Q 299.

409 Ev 165, para 1.

410 Ev 116-118; QQ 302, 309.

275. Professor Bogdanor agrees with Professor Bradley in seeing the conventions as defined by, and changing in response to, the political situation, in which he includes public opinion. He agrees with Sir Roger Sands that now, “when the constitution is in ferment”, is a bad time to try to pin conventions down.⁴¹¹

Overseas

276. According to the Clerk of the Australian Senate, relations between the Houses in Canberra are governed entirely by the constitution and by standing orders.⁴¹² “Various participants in the parliamentary processes have attempted at various times to invent conventions to suit their purposes, but no conventions have been established”.⁴¹³ The Acting Clerk of the Australian House of Representatives provides an interesting illustration of the fact that a written constitution may still leave room for doubt and disagreement on important matters.⁴¹⁴

277. In Australia, a Constitutional Convention met in 1983-85 to “recognise and declare” constitutional conventions previously unwritten. But this concerned the relationship between the Governor-General and the Prime Minister (and in particular the power of the Governor-General to call an Election), not relations between the Houses.⁴¹⁵ Professor Bogdanor commented, “It declared that ‘the following principles and practices shall be observed in Australia’. It is not clear what authority the Commission had for making such a statement”.⁴¹⁶

278. The Clerk of the Canadian Senate says, “In many respects, the relations between the contemporary Senate and the House of Commons, as in the UK Parliament, have followed certain recognisable practices. These practices have never been codified and are not usually identified as conventions”.⁴¹⁷

Conclusions

279. In our view the word “codification” is unhelpful, since to most people it implies rule-making, with definitions and enforcement mechanisms. Conventions, by their very nature, are unenforceable. In this sense, therefore, codifying conventions is a contradiction in terms. It would raise issues of definition, reduce flexibility, and inhibit the capacity to evolve. It might create a need for adjudication, and the presence of an adjudicator, whether the courts or some new body, is incompatible with parliamentary sovereignty. Even if an adjudicator could be found, the possibility of adjudication would introduce uncertainty and delay into the business of Parliament. In these ways, far from reducing the risk of conflict, codification might actually damage the relationship

411 Ev 166-167, paras 4, 16.

412 Ev 141.

413 Ev 142.

414 Ev 155.

415 Ev 91, paras 76-77.

416 Ev 165, para 2.

417 Ev 158.

between the two Houses, making it more confrontational and less capable of moderation through the usual channels. This would benefit neither the Government nor Parliament.

280. However, we offer certain formulations for one or both Houses to adopt by resolution. In our view, both the debates on such resolutions, and the resolutions themselves, would improve the shared understanding which the Government seek.

281. We are unanimously agreed that **all recommendations for the formulation or codification of conventions are subject to the current understanding that conventions as such are flexible and unenforceable, particularly in the self-regulating environment of the House of Lords. Nothing in these recommendations would alter the present right of the House of Lords, in exceptional circumstances, to vote against the Second Reading or passing of any Bill, or to vote down any Statutory Instrument where the parent Act so provides.** The resolutions which we propose are couched in sufficiently general terms to make this self-evident. And a resolution can be amended or rescinded at any point, or even simply allowed to lapse. Therefore, while a resolution may improve clarity and increase shared understanding, it need not rule out exceptions or inhibit evolution.

282. In the Government's words, "A contested convention is not a convention at all."⁴¹⁸ Resolutions of this character would be of no value without the support of the frontbenches of the three main parties. In the Lords, the views of the Convenor of the Crossbench peers would also be important. Ideally, such resolutions would be carried unanimously, or with an overwhelming majority, in both Houses.

283. **We consider that the following formulation is practical:**

Primacy of the Commons

a) The primacy of the Commons is a present fact, requiring no codification (see Chapter 2).

Salisbury-Addison Convention

b) The Salisbury-Addison Convention has evolved, as described above in Chapter 3.

c) It would be practical for the Lords to debate and agree a resolution setting out the terms of the Convention as it has evolved, and to communicate it by message to the Commons, which could then debate a motion to take note of the message.

d) For the reasons discussed above (paragraph 103), we do not recommend any attempt to define a manifesto Bill. Without such a definition, it will be clear that the resolution is flexible and unenforceable.

Reasonable time

- e) There is undoubtedly a convention that the House of Lords considers government business in reasonable time (see Chapter 4). A statement to that effect could be adopted by the House of Lords by resolution and included in the *Companion*.
- f) There is no conventional definition of “reasonable”, and we do not recommend that one be invented (see above, paragraph 154). Without such a definition, it will be clear that the resolution is flexible and unenforceable.
- g) It would however be possible for a new symbol to appear on the Lords order paper, to indicate a Bill which has spent more than a certain period in the House. We suggest 80 sitting days (see above, paragraphs 156-7). This would be a matter for the Lords Procedure Committee.

'Ping-pong'

- h) We find no scope for codification (see Chapter 5).

Secondary legislation

- i) Neither House of Parliament regularly rejects secondary legislation, but in exceptional circumstances it may be appropriate for either House to do so (see Chapter 6). A statement to that effect could be adopted by either House, or both.
- j) Although we have offered a list of examples of exceptional circumstances (paragraph 229), we do not recommend defining them further. Without such a definition, it will be clear that the statement is flexible and unenforceable.

Financial privilege

- k) If the Commons have disagreed to Lords Amendments on grounds of financial privilege, it is contrary to convention for the House of Lords to send back Amendments in lieu which clearly invite the same response (see above, paragraph 252). This matter could be considered by the House of Lords on the basis of a report from the Procedure Committee, with a view to adding to the guidance in the *Companion*.

284. There is universal opposition, including from the Government, to legislation on these matters, and we would not recommend this, or any other form of codification which would turn conventions into rules, remove flexibility, exclude exceptions and inhibit evolution in response to political circumstances. And, however the conventions may be formulated, the spirit in which they are operated will continue to matter at least as much as any form of words.

285. **The courts have no role in adjudicating on possible breaches of parliamentary convention.** Parliament is accountable to the electorate, not to the judiciary. The creation of a new Supreme Court does not alter this position. We do not accept any role for the judiciary in these matters. Nor have we received any evidence which would lead us to conclude that there is or should be any role for the courts in the matter of relations between the two Houses.

9 Summary of conclusions and recommendations

Primacy of the Commons, role of the Lords, and Lords reform

1. We were instructed to accept the primacy of the House of Commons. None of our witnesses has questioned it, and neither do we (paragraph 59). The primacy of the Commons is a present fact, requiring no codification (paragraph 283(a)).
2. Our conclusions apply only to present circumstances. If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again. What could or should be done about this is outside our remit (paragraph 63).

Salisbury-Addison convention

3. The Salisbury-Addison convention has changed since 1945, and particularly since 1999 (paragraph 99). Its provisions are:

In the House of Lords:

A manifesto Bill is accorded a Second Reading;

A manifesto Bill is not subject to 'wrecking amendments' which change the Government's manifesto intention as proposed in the Bill; and

A manifesto Bill is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose (paragraph 101).

4. It would be practical for the Lords to debate and agree a resolution setting out the terms of the Convention as it has evolved, and to communicate it by message to the Commons, which could then debate a motion to take note of the message (paragraphs 116, 283(c)).
5. We do not recommend any attempt to define a manifesto Bill (paragraph 115). Without such a definition, it will be clear that the resolution is flexible and unenforceable (paragraph 283(d)).
6. We recommend that in future the Convention be described as the Government Bill Convention (paragraph 117).

7. In addition the evidence points to the emergence in recent years of a practice that the House of Lords will usually give a Second Reading to any government Bill, whether based on the manifesto or not (paragraph 102).

Reasonable time

8. There is undoubtedly a convention that the House of Lords considers Government business in reasonable time (paragraph 153). A statement to that effect could be adopted by the House of Lords by resolution and included in the *Companion* (paragraph 283(e)).
9. There is no conventional definition of “reasonable”, and we do not recommend that one be invented (paragraph 154). Without such a definition, it will be clear that the resolution is flexible and unenforceable (paragraph 283(f)).
10. It would however be possible for a new symbol to appear on the Lords order paper, to indicate a Bill which has spent more than a certain period in the House (paragraph 156). If there is to be a number of sitting days as an indicative measure, for this purpose, of when a Bill may have spent long enough in the Lords, then 80 days is more appropriate than 60 (paragraph 157). This would be a matter for the Lords Procedure Committee (paragraph 283(g)).
11. When the Government criticise the Lords for making slow progress with a Commons Bill, they are on firmer ground when they can point to full scrutiny in the Commons (paragraph 161).
12. There is scope for better planning of the parliamentary year as a whole, possibly involving greater use of pre-legislative scrutiny and carry-over. If the Government can even out the workload in both Houses throughout the Session, this should reduce time problems on individual Bills (paragraph 166).

"Ping-pong"

13. The exchange of Amendments between the Houses is an integral part of the legislative process that is carried on within the context of the primacy of the House of Commons and the complementary revising role of the House of Lords. It is not a convention, but a framework for political negotiation (paragraph 188). We find no scope for codification (paragraph 283(h)).
14. It would facilitate the exchange of Amendments between the two Houses if the convention that neither House will in general be asked to consider Amendments without notice was more rigorously observed, i.e. if reasonable notice was given of consideration of Amendments from the other House (paragraph 189).

Secondary legislation

15. Neither House of Parliament regularly rejects secondary legislation, but in exceptional circumstances it may be appropriate for either House to do so (paragraph 227). A statement to that effect could be adopted by either House, or both (paragraph 283(i)).
16. Although we offer below a list of examples of exceptional circumstances, we do not recommend defining them further. Without such a definition, it will be clear that the statement is flexible and unenforceable (paragraph 283(j)).
17. There are situations in which it is consistent both with the Lords' role in Parliament as a revising chamber, and with Parliament's role in relation to delegated legislation, for the Lords to threaten to defeat an SI. For example:
 - a. where special attention is drawn to the instrument by the Joint Committee on Statutory Instruments or the Lords Select Committee on the Merits of SIs
 - b. when the parent Act was a "skeleton Bill", and the provisions of the SI are of the sort more normally found in primary legislation
 - c. orders made under the Regulatory Reform Act 2001, remedial orders made under the Human Rights Act 1998, and any other orders which are explicitly of the nature of primary legislation, and are subject to special "super-affirmative" procedures for that reason
 - d. the special case of Northern Ireland Orders in Council which are of the nature of primary legislation, made by the Secretary of State in the absence of a functioning Assembly
 - e. orders to devolve primary legislative competence, such as those to be made under section 95 of the Government of Wales Act 2006
 - f. where Parliament was only persuaded to delegate the power in the first place on the express basis that SIs made under it could be rejected (paragraph 229).
18. This list is not prescriptive. But if none of the above, nor any other special circumstance, applies, then opposition parties should not use their numbers in the House of Lords to defeat an SI simply because they disagree with it (paragraph 230).
19. The most constructive way for the Lords, as the revising chamber, to reject an SI is by motion (or amendment) incorporating a reason (paragraph 232).
20. If the Government lose a vote on a non-fatal motion about a Statutory Instrument, they should respond to the House in some way, at least by Written Statement (paragraph 232).

Financial privilege

21. When the Lords Economic Affairs Committee scrutinises the Finance Bill, it should continue to respect the boundary between tax administration and tax policy, to refrain from investigating the incidence or rates of tax, and to address only technical issues of tax administration, clarification and simplification. Provided it does so, we believe there is no infringement of Commons financial privilege, and no need to reopen the issue. If the House of Commons believe that their primacy or their privileges are being infringed, it is for them to act to correct the situation (paragraph 244).
22. If the Government are prepared to describe National Insurance as a tax, then they can seek to bring it within the scope of financial privilege (paragraph 249).
23. If the Commons have disagreed to Lords Amendments on grounds of financial privilege, it is contrary to convention for the House of Lords to send back Amendments in lieu which clearly invite the same response (paragraph 252). This matter could be considered by the House of Lords on the basis of a report from the Procedure Committee, with a view to adding to the guidance in the *Companion* (paragraph 283(k)).

Codification

24. All recommendations for the formulation or codification of conventions are subject to the current understanding that conventions as such are flexible and unenforceable, particularly in the self-regulating environment of the House of Lords. Nothing in these recommendations would alter the present right of the House of Lords, in exceptional circumstances, to vote against the Second Reading or passing of any Bill, or to vote down any Statutory Instrument where the parent Act so provides (paragraph 281).
25. The courts have no role in adjudicating on possible breaches of parliamentary convention (paragraph 285).

Appendix 1 Members and interests

Members of the Joint Committee:

Viscount Bledisloe	Mr Russell Brown MP
Lord Carter	Mr Wayne David MP
Lord Cunningham of Felling (Chairman)	Mr George Howarth MP
Lord Elton	Simon Hughes MP
Lord Fraser of Carmyllie	Sarah McCarthy-Fry MP
Lord Higgins	Andrew Miller MP
Lord McNally	Rt Hon Sir Malcolm Rifkind MP
Baroness Symons of Vernham Dean	Rt Hon John Spellar MP
Lord Tomlinson	Ms Gisela Stuart MP
Lord Tyler	Mr Andrew Tyrie MP
Lord Wright of Richmond	Sir Nicholas Winterton MP

Relevant interests:

Lord McNally	Leader of the Liberal Democrats in the House of Lords
Lord Tomlinson	former Vice Chairman of the Hansard Society for Parliamentary Government
Lord Tyler	co-author of <i>Breaking the Deadlock</i>
Ms Gisela Stuart	editor of the <i>House Magazine</i>

Full lists of Members' interests are recorded in the Commons Register of Members' Interest and the Lords Register of Interests.

Appendix 2 Witnesses

Oral Evidence

Tuesday 13 June 2006

Rt Hon Jack Straw MP, Leader of the House of Commons, **Rt Hon Lord Falconer of Thoroton QC**, Secretary of State for Constitutional Affairs and Lord Chancellor, and **Rt Hon Lord Grocott**, Government Chief Whip, House of Lords.

Tuesday 20 June 2006

Rt Hon Lord Strathclyde, Leader of the Opposition, House of Lords, **Rt Hon Lord Cope of Berkeley**, Opposition Chief Whip, House of Lords, and **Rt Hon Theresa May MP**, Shadow Leader of the Opposition, House of Commons.

Lord Williamson of Horton, Convenor of Crossbench Peers.

Tuesday 27 June 2006

Mr David Heath MP, Liberal Democrats Shadow Leader, House of Commons, and **Lord Wallace of Saltaire**, Liberal Democrats Deputy Leader, House of Lords.

Tuesday 4 July 2006

Mr Paul Hayter LVO, Clerk of the Parliaments, and **Sir Roger Sands KCB**, Clerk of the House of Commons.

Tuesday 18 July 2006

Lord Norton of Louth, Professor of Government, Hull University, **Professor Anthony Bradley**, Professor Emeritus of Constitutional Law, University of Edinburgh, and **Dr Meg Russell**, Senior Research Fellow, Constitution Unit, University College London.

List of Written Evidence

JCC

01	Lord Filkin, Chairman of the Committee on the Merits of Statutory Instruments
02	Clerk of the Parliaments
03	Clerk of the House of Commons
04	Her Majesty's Government
04A	Supplementary memorandum
04B	Supplementary memorandum
04C	Supplementary memorandum
05	Professor Rodney Brazier, Professor of Constitutional Law, University of Manchester

- 06 Conservative Party
- 07 Clerk of the Senate, Australia
- 08 Donald Shell, Senior Lecturer in Politics, Bristol University
- 09 Lord Denham
- 10 Lord Norton of Louth, Professor of Government, Hull University
- 11 Professor Anthony Bradley, Professor Emeritus of Constitutional Law, University of Edinburgh
- 12 Liberal Democrat Party
- 13 Lord Wakeham, Chairman of the Economic Affairs Committee
- 14 Lord Howe of Aberavon
- 15 Secretary General of the Rajya Sabha, India
- 16 Acting Clerk of the House of Representatives, Australia
- 17 Clerk of the Senate and Clerk of the Parliaments, Canada
- 18 Professor Vernon Bogdanor, Professor of Government, Oxford University
- 19 General Council of the Bar
- 20 Dr Meg Russell, Senior Research Fellow, Constitution Unit, University College London
- 21 Clerk of the House of Commons, Canada

Appendix 3 Opposition to Government Bills at Second Reading in the Lords since 1970

1971 Immigration Bill: Second Reading agreed to on division, 148-40 (24 June). The Bill was a manifesto Bill, and the Labour Opposition spokesman, Lord Gardiner, said, “I should vote against the Second Reading, if it were not the practice of your Lordships’ House not to do so when a Bill has passed the elected Chamber.”⁴¹⁹ There followed a vote on a non-fatal but critical motion by Lord O’Hagan, which was supported by the Opposition but defeated 72-143.

1972 European Communities Bill: Second Reading agreed to on division, 189-19 (26 July). The Labour Opposition spokesman, Lord Shepherd, urged the House to give the Bill a Second Reading, because it had been passed by the Commons. “Maybe there will be a constitutional crisis in which this House should be entitled to take action. In my view, however, this is not such an occasion”.⁴²⁰ He abstained.

1973 Counter-Inflation Bill: division called on Second Reading, but no Tellers for the Not-Contents (5 March).

1973 Maplin Development Bill: division called on Second Reading, but no Tellers for the Not-Contents (26 June).

1978 Scotland Bill: Amendment to motion for Second Reading moved by Lord Wilson of Langside, a Crossbencher, and withdrawn after debate (15 March).

1990 War Crimes Bill rejected at Second Reading, by 207-74 in favour of an Amendment moved by Lord Campbell of Alloway from the government backbenches (4 June). The Bill was not a manifesto Bill, and the vote was a free vote on all sides.

1991 War Crimes Bill again rejected at Second Reading on a free vote, by 131-109, this time on an Amendment moved by Lord Houghton of Sowerby (Labour) (30 April), and passed under the Parliament Acts.

1996 Firearms (Amendment) Bill: amendment to motion for Second Reading withdrawn after debate (16 December). It was moved by the Earl of Strafford (Crossbench), who indicated in his opening speech that he did not intend to divide the House.

1998 European Parliamentary Elections Bill rejected at Second Reading, by 167-73, on an Amendment moved by the Conservative Opposition spokesman, Lord Mackay of Ardbrecknish (15 December). The Bill had failed to pass in the previous Session, and it is now acknowledged that all parties in the Lords agreed that it would be rejected at Second Reading

419 Lords Hansard, 24 June 1971, Vol 320, col 1142.

420 Lords Hansard, 26 July 1972, Vol 333, col 1472.

rather than proceeding through its normal stages. By this means it could be passed under the Parliament Acts in time for the European elections in June 1999.⁴²¹

1999 Sexual Offences (Amendment) Bill rejected at Second Reading, by 222-146 in favour of an Amendment moved by Baroness Young, from the Opposition backbenches (13 April). The Bill was not a manifesto Bill, and the vote was a free vote on all sides. The Bill was reintroduced in the next Session and passed under the Parliament Acts.

2000 Disqualifications Bill: Second Reading was divided upon without notice (27 July). The Bill was not a manifesto Bill. The division was provoked by Viscount Cranborne from the Opposition backbenches. He undertook to put in Tellers but no more⁴²²; but there was no quorum, so debate was adjourned. Second Reading was agreed the next day without further debate or a vote.

2000 Criminal Justice (Mode of Trial) (No. 2) Bill rejected at Second Reading, by 184-88 in favour of an Amendment moved by the Conservative Opposition spokesman, Lord Cope of Berkeley, and supported by the Liberal Democrats (28 September). This was not a manifesto Bill. Earlier in the Session, a Lords Bill to the same effect had been “wrecked” at Lords Committee stage. The Government could have reintroduced the Commons Bill for passage under the Parliament Acts the following Session, but did not do so.

2003 Fire Services Bill: Second Reading agreed to, by 4-61 against an Amendment moved by Lord McCarthy from the Government backbenches (19 June). The opposition parties abstained.

421 For an unofficial account of this incident see *Lords of Parliament* by Emma Crewe, Manchester University Press 2005, p 170.

422 In other words, that only two votes would be cast against the Bill. Lords Hansard, 27 July 2000, Vol 616, col 723.

Appendix 4 Lords sitting days on Government Bills

These tables count all Lords sitting days from First Reading to Third Reading inclusive, except days when the House sat for judicial business only. They exclude Money Bills, Supply Bills, and other Bills whose progress was expedited by dispensing with Standing Orders in order to take more than one stage on one day. They also exclude Bills not passed within the Session: the Hunting Bill in 2002-03, and the Constitutional Reform Bill in 2003-04. Bills which took more than 60 days are in bold.

Session 1980-81

Bill	First Reading	Third Reading	Sitting Days
Armed Forces	20 May 1981	20 July 1981	37
Atomic Energy (Miscellaneous Provisions)	1 June 1981	22 July 1981	37
British Nationality	8 June 1981	20 October 1981	48
British Telecommunications	13 April 1981	25 June 1981	37
Companies (No. 2)	3 February 1981	30 April 1981	47
Contempt of Court	25 November 1980	17 February 1981	36
Criminal Attempts	6 April 1981	9 July 1981	51
Deep Sea Mining (Temporary Provisions)	4 December 1980	26 February 1981	37
Education	15 June 1981	19 October 1981	43
Education (Scotland)	15 June 1981	14 October 1981	41
Employment and Training	11 June 1981	27 July 1981	32
Energy Conservation	26 November 1980	10 February 1981	30
European Assembly Elections	21 January 1981	16 March 1981	32
Fisheries	10 March 1981	4 June 1981	42
Forestry	7 April 1981	1 July 1981	44
House of Commons Members' Fund and Parliamentary Pensions	23 February 1981	17 March 1981	14
Industry	9 February 1981	12 March 1981	21
Insurance Companies	14 April 1981	15 June 1981	28
International Organisations	27 November 1980	19 January 1981	16

Iron and Steel	18 May 1981	9 July 1981	32
Local Government (Miscellaneous Provisions) (Scotland)	30 March 1981	9 June 1981	34
Matrimonial Homes (Family Protection) (Scotland)	3 February 1981	14 April 1981	42
Merchant Shipping	2 December 1980	26 January 1981	19
Parliamentary Commissioner (Consular Complaints)	26 November 1980	26 January 1981	21
Social Security	15 May 1981	2 July 1981	28
Social Security (Contributions)	15 December 1980	29 January 1981	15
Supreme Court	27 November 1980	2 April 1981	60
Town and Country Planning (Minerals)	3 December 1980	12 March 1981	46
Transport	15 April 1981	15 July 1981	49
Water	23 February 1981	2 April 1981	24
Wildlife and Countryside	25 November 1980	30 March 1981	59

Average number of sitting days per Bill: 36

Session 1989-90

Bill	First Reading	Third Reading	Sitting Days
Australian Constitution (Public Record Copy)	8 May 1990	27 June 1990	29
Aviation and Maritime Security	6 March 1990	24 May 1990	43
British Nationality (Hong Kong)	14 June 1990	23 July 1990	27
Broadcasting	15 May 1990	22 October 1990	56
Civil Aviation Authority (Borrowing Powers)	5 February 1990	15 March 1990	25
Coal Industry	17 January	13 March 1990	33
Contracts (Applicable Law)	28 November 1989	24 April 1990	70
Courts and Legal Services	6 December 1989	15 March 1989	47
Criminal Justice (International Co-operation)	30 November 1989	15 February 1990	34
Education (Student Loans)	20 February 1990	29 March 1990	24
Employment	21 May 1990	26 July 1990	41
Enterprise and New Towns (Scotland)	30 April 1990	25 July 1990	52
Environmental Protection	3 May 1990	23 October 1990	62
Food Safety	22 November 1989	19 February 1990	40
Government Trading	22 February 1990	28 June 1990	67
Greenwich Hospital	22 November 1989	19 March 1990	56
Human Fertilisation and Embryology	22 November 1989	20 March 1990	57
Landlord and Tenant (Licensed Premises)	27 February 1990	23 July 1990	81
Law Reform (Miscellaneous Provisions) (Scotland)	19 December 1989	24 May 1990	76
National Health Service and Community Care	19 March 1990	25 June 1990	51
Pakistan	22 November 1989	26 February 1990	44
Pensions (Miscellaneous Provisions)	18 January 1990	29 March 1990	43
Property Services Agency and Crown Suppliers	13 February 1990	18 May 1990	51
Social Security	4 April 1990	2 July 1990	45

Average number of sitting days per Bill: 48

Session 1995-96

Bill	First Reading	Third Reading	Sitting Days
Arbitration	18 December 1995	2 April 1996	53
Armed Forces	14 May 1996	18 July 1996	39
Asylum and Immigration	26 February 1996	2 July 1996	68
Audit (Miscellaneous Provisions)	12 February 1996	22 April 1996	37
Broadcasting	14 December 1995	19 March 1996	46
Chemical Weapons	7 December 1995	2 April 1996	58
Commonwealth Development Corporation	22 May 1996	1 July 1996	21
Community Care (Direct Payments)	16 November 1995	20 February 1996	45
Criminal Procedure and Investigations	16 November 1995	19 February 1996	44
Damages	8 February 1996	11 June 1996	63
Deer (Amendment) (Scotland)	23 November 1995	2 April 1996	68
Defamation Bill	8 February 1996	7 May 1996	47
Education (Scotland)	30 November 1995	20 May 1996	84
Education (Student Loans)	18 January 1996	1 April 1996	43
Family Law	16 November 1995	11 March 1996	57
Health Service Commissioners (Amendment)	29 January 1996	18 March 1996	30
Hong Kong (Overseas Public Servants)	19 December 1995	22 February 1996	29
Housing	2 May 1996	17 July 1996	43
Housing Grants, Construction and Regeneration	1 February 1996	29 April 1996	47
Licensing (Amendment) (Scotland)	2 May 1996	10 July 1996	38
London Regional Transport	3 April 1996	10 June 1996	30
Northern Ireland (Emergency Provisions)	21 February 1996	16 May 1996	46
Nursery Education and Grant-Maintained Schools	20 March 1996	15 July 1996	62
Rating (Caravans and Boats)	15 January 1996	22 April 1996	53
Reserve Forces	16 November 1995	5 March 1996	54
Security Service	15 February 1996	8 July 1996	77

Statutory Instruments (Production and Sale)	4 July 1996	24 July 1996	14
Trusts of Land and Appointment of Trustees	23 November 1995	7 May 1996	81

Average number of sitting days per Bill: 49

Session 1998-99

Bill	First Reading	Third Reading	Sitting Days
Access to Justice	2 December 1998	16 March 1999	48
Commonwealth Development Corporation	25 November 1998	9 March 1999	48
Contracts (Rights of Third Parties)	3 December 1998	14 June 1999	91
Disability Rights Commission	3 December 1998	23 March 1999	50
Employment Relations	13 April 1999	15 July 1999	56
Food Standards	23 July 1999	3 November 1999	25
Greater London Authority	7 May 1999	1 November 1999	70
Health	28 January 1999	25 March 1999	33
House of Lords	17 March 1999	26 October 1999	90
Immigration and Asylum	17 June 1999	2 November 1999	49
Local Government	25 March 1999	15 July 1999	61
Pollution Prevention and Control	26 November 1998	20 May 1999	84
Rating (Valuation)	25 February 1999	24 May 1999	46
Road Traffic (NHS Charges)	21 January 1999	8 March 1999	28
Scottish Enterprise	2 March 1999	22 April 1999	26
Social Security Contributions (Transfer of Functions, etc.)	25 November 1998	1 February 1999	27
Tax Credits	18 March 1999	8 June 1999	39
Trustee Delegation	3 December 1998	9 March 1999	43
Water Industry	11 February 1999	24 June 1999	71
Welfare Reform and Pensions	21 May 1999	27 October 1999	58
Youth Justice and Criminal Evidence	3 December 1998	23 March 1999	50

Average number of sitting days per Bill: 52

Session 2002-03

Bill	First Reading	Third Reading	Sitting Days
Anti-Social Behaviour	24 June 2003	12 November 2003	54
Arms Control and Disarmament (Inspections)	14 November 2002	30 January 2003	36
Communications	5 March 2003	8 July 2003	69
Community Care (Delayed Discharges etc)	16 January 2003	17 March 2003	37
Courts	28 November 2002	19 May 2003	86
Crime (International Co-operation)	19 November 2002	17 March 2003	62
Criminal Justice	21 May 2003	17 November 2003	75
Electricity (Miscellaneous Provisions)	6 February 2003	10 April 2003	41
European Parliament (Representation)	4 February 2003	7 April 2003	40
European Union (Accessions)	5 June 2003	4 November 2003	61
Extradition	26 March 2003	12 November 2003	98
Fire Services	4 June 2003	3 November 2003	61
Health (Wales)	9 January 2003	25 March 2003	46
Health and Social Care (Community Health and Standards)	9 July 2003	18 November 2003	47
Licensing	14 November 2002	11 March 2003	60
Local Government	11 March 2003	10 September 2003	76
National Minimum Wage (Enforcement Notices)	21 November 2002	30 January 2003	32
Police (Northern Ireland)	5 December 2002	30 January 2003	24
Railways and Transport Safety	1 April 2003	3 July 2003	49
Regional Assemblies (Preparations)	27 January 2003	28 April 2003	49

Sexual Offences	28 January 2003	17 June 2003	76
Waste and Emissions Trading	14 November 2002	6 March 2003	57
Water	19 February 2003	9 July 2003	79

Average number of sitting days per Bill: 57

Session 2003-04

Bill	First Reading	Third Reading	Sitting Days
Armed Forces (Pensions and Compensation)	10 May 2004	15 September 2004	51
Asylum and Immigration (Treatment of Claimants, etc)	3 March 2004	6 July 2004	67
Child Trust Funds	4 February 2004	4 May 2004	44
Children	3 March 2004	15 July 2004	73
Civil Contingencies	25 May 2004	16 November 2004	66
Civil Partnership	30 March 2004	1 July 2004	47
Companies (Audit, Investigations and Community Enterprise)	3 December 2003	14 July 2004	113
Domestic Violence, Crime and Victims	1 December 2003	25 March 2004	58
Employment Relations	30 March 2004	8 September 2004	63
Energy	27 November 2003	20 April 2004	68
European Parliamentary and Local Elections	17 December 2003	1 March 2004	32
Fire and Rescue Services	16 March 2004	20 July 2004	68
Gender Recognition	27 November 2003	10 February 2004	36
Health Protection Agency	27 November 2003	29 April 2004	75
Higher Education	1 April 2004	22 June 2004	38
Horserace Betting and Olympic Lottery	3 February 2004	14 September 2004	97
Housing	13 May 2004	3 November 2004	64
Human Tissue	29 June 2004	3 November 2004	40
Hunting	16 September 2004	15 November 2004	24
Justice (Northern Ireland)	4 December 2003	10 February 2004	32

National Insurance Contributions and Statutory Payments	29 January 2004	6 April 2004	37
Patents	15 January 2004	6 April 2004	46
Pensions	21 May 2004	15 November 2004	67
Planning and Compulsory Purchase	10 December 2003	25 March 2004	52
Public Audit (Wales)	27 November 2003	11 May 2004	80
Scottish Parliament (Constituencies)	5 May 2004	13 July 2004	39
Statute Law (Repeals)	16 December 2003	6 July 2004	101
Traffic Management	17 March 2004	8 July 2004	60

Average number of sitting days per Bill: 58

Session 2005-06 (to 25 May 2006)

Bill	First Reading	Third Reading	Sitting Days
Charities	18 May 2005	8 November 2005	53
Children and Adoption	13 June 2005	29 November 2005	56
Civil Aviation	11 October 2005	28 March 2006	90
Commissioner for Older People (Wales)	25 May 2005	15 February 2006	100
Company Law Reform	1 November 2005	23 May 2006	101
Commons	27 June 2005	18 January 2006	68
Compensation	2 November 2005	27 March 2006	75
Consumer Credit	19 July 2005	21 March 2006	89
Council Tax (New Valuation Lists for England)	5 December 2005	8 March 2006	45
Criminal Defence Service	23 May 2005	24 October 2005	42
Equality	18 May 2005	9 November 2005	54
EU (Accessions)	28 November 2005	7 February 2006	34
Fraud	25 May 2005	29 March 2006	122
Identity Cards	19 October 2005	6 February 2006	56
Immigration, Asylum & Nationality	17 November 2005	14 March 2006	58
London Olympic Games and Paralympic Games	7 December 2005	14 March 2006	46
Merchant Shipping (Pollution)	25 May 2005	26 October 2005	42
National Insurance Contributions	19 December 2005	20 March 2006	42
National Lottery	20 January 2006	23 May 2006	62
Natural Environment and Rural Communities	12 October 2005	27 March 2006	88

NHS Redress	12 October 2005	1 March 2006	72
Racial and Religious Hatred	12 July 2005	24 January 2006	63
Regulation of Financial Services (Land Transactions)	21 July 2005	5 December 2005	36
Road Safety	24 May 2005	10 January 2006	78
Terrorism	10 November 2005	1 February 2006	41
Terrorism (Northern Ireland)	1 December 2005	14 February 2006	36
Transport (Wales)	18 October 2005	14 February 2006	63
Work and Families	19 January 2006	8 May 2006	52

Average number of sitting days per Bill: 63

Appendix 5 Packaging: Clerks' joint statement and Lords Procedure Committee report

Commons Written Ministerial Statement 21 July 2004

(A similar Statement was made in the Lords)

PUBLIC BILLS: EXCHANGES BETWEEN THE HOUSES

The Leader of the House of Commons (Mr. Peter Hain): During the final stages of the Planning and Compulsory Purchase Bill in May, a procedural difficulty arose in the House of Lords. Contrary to the intention of this House, it appeared to the House of Lords that a message from the Commons amounted to a "double insistence" in respect of one Lords amendment. In such circumstances, a Bill is normally lost. However, as this was clearly not the wish of either House, the House of Lords agreed to vary the normal practice in that House, to allow the Bill to continue in play.

The Leader of the House of Lords invited the Clerks of both Houses and parliamentary counsel to consider jointly the lessons learnt from this episode and how best to avoid such a situation in the future. In particular, they were asked to look at the practice of considering amendments in the other House in groups or packages and the procedural consequences which can follow.

Following consideration by a working group of Clerks and parliamentary counsel, the Clerks of both Houses have agreed the following statement of position:

Before a Bill can become an Act of Parliament, the two Houses have to agree on the text. The procedure for reaching agreement appears simple in concept, but can become extremely complicated in practice because of the political context. It may involve, for example, one House having to back away from an entrenched position.

Following Third Reading and passing of the Bill in the second House, a list of amendments made by that House is compiled and sent back to the first House for their consideration. If the first House agrees to all of the amendments made in the second House, the Bill is ready for Royal Assent. If it does not, it returns the Bill to the second House, with reasons for disagreeing to the amendments, and/or with further amendments. The second House then considers the reasons and amendments offered by the first House. The exchanges between the two Houses continue until

- (a) agreement is reached, or
- (b) the Session is brought to an end, without agreement having been reached, or
- (c) "double insistence" is reached, which normally results in the Bill being lost.

The term "double insistence" is used to describe a situation where one House insists on an amendment to which the other has disagreed, and the other House insists on its disagreement. If this point is reached, and neither House has offered alternatives, the Bill is lost. This doctrine

is set out in Erskine May, 23rd edition, page 639, which, however, goes on to say "there is no binding rule of order which governs these proceedings in either House, and, if there is a desire to save the Bill, some variation in the proceedings may be devised in order to effect this object".

In the case of the Planning and Compulsory Purchase Bill, two amendments (Lords Amendments Nos. 1 and 3) were still under discussion in the final exchanges between the two Houses. In the Commons, the two amendments were treated as forming a package, and a single amendment (1C) was considered by the Commons to be an amendment in lieu of both Lords amendments. But the reason given for disagreeing to Lords Amendment No. 3 made no mention of the link between Amendment No. 1 and Amendment No. 3. Accordingly, the Lords Clerks advised that double insistence had been reached on Amendment No. 3, and they advised the Government that it would be necessary to move a Motion to vary the normal practice of the House, and thus allow further consideration of the Bill. A Motion was agreed to on 11 May.

We have been asked to consider the lessons which can be learnt from these exchanges.

By way of background, we note that the speed and complexity of exchanges between the two Houses has increased markedly in recent years. This is due partly to political circumstances, and partly to technical advances in text handling, which have made possible extremely rapid turnaround of Bills. Increased speed inevitably carries the risk of misunderstanding or error, and reduces the time available for consideration of the possible consequences of each House's decisions.

Particularly in the Commons, the practice has developed of packaging and grouping amendments during these final stages⁴²³. Packaging and grouping are useful ways of signalling perceived connections between amendments. But these are techniques for organising debate within each House: neither House can be expected either to discover, or to feel bound to follow, arrangements made by the other for the consideration of amendments. Messages between the two Houses, and reasons for disagreement, are ways of communicating perceived connections between amendments, but these in turn depend upon the terms of the Motions in each House. We consider that the wording of Motions could be improved, in order to make clearer the links between the different elements of a "package" of amendments. We also think that the wording should be improved, in order to make the action of one House clearer to the other and, where necessary, to identify any package.

As an example, in a case where one House insists on disagreement to more than one amendment and offers an alternative only to one, intending that single alternative to encourage the other House to reconsider all the relevant amendments, the most certain way of avoiding the need in future for a Motion disapplying the double insistence rule will be to ensure that a single Motion to disagree is laid before the House along the lines of "that this

⁴²³ In this note, "grouping" refers to the practice (in both Houses) whereby related amendments are debated together, but the fate of individual amendments in the group is decided separately. "Packaging" refers to the practice (currently used only in the House of Commons), in the final stages of a Bill's passage, where a number of related amendments may be grouped together for the purposes of both debate and decision. So, for example, a motion on a "package" might invite the House to agree to amendments (a), (b) and (c) to a Bill, in lieu of Lords Amendments 42 to 44 and 61.

House insists on its disagreement to Amendments Nos. 1, 2 and 3 but proposes the following amendment in lieu of Amendment No. 1". The other House will then be able to identify the group of amendments as a package.

We are in agreement that in such a case the resultant message to the other House would not amount to a double insistence, whether or not the House receiving it chose to "unpackage" the amendments for the purposes of debate.

From a practical point of view, we consider that the packaging of amendments has advantages, and that there could be benefits from bringing the practices of the two Houses more closely together in this respect. With this in mind, the Clerk of the Parliaments will invite the Lords Procedure Committee to consider changes to the practice of the House, to allow more flexibility in dealing with Commons amendments which have been packaged.

Although, in many cases, it is likely that the two Houses will be prepared to consider as a whole a package of amendments which has been received from the other House, there will be other cases when either House may wish to consider the elements of a package separately for political reasons. It is not the purpose of procedure to provide political solutions, but rather to facilitate the consideration of options. Each House remains the master of its own procedures, and where there is disagreement about packaging, it will be possible, as at present, for the other House to consider amendments separately to the extent desired.

Extract from First Report of Session 2004-05 from the House of Lords Procedure Committee, to which the House agreed on 24 March 2005

PUBLIC BILLS: EXCHANGES BETWEEN THE HOUSES

4. The Committee considered the implications of the practice of the House of Commons to package Lords' amendments to bills. Packaging is currently used only in the House of Commons, where a number of related amendments may be grouped together for the purposes of both debate and decision. (It differs from grouping in the Lords, where related amendments may be debated together, but the fate of individual amendments in the group is decided separately.)

5. The Commons' practice of packaging gave rise to difficulties in the Lords on the Planning and Compulsory Purchase Bill in May 2004, when the two Houses took differing views on the application of the double insistence rule⁴²⁴. It appeared to the Lords' authorities that double insistence had been reached on an amendment and that the bill was therefore lost, whereas the Commons' intention was that the bill could be further considered since that amendment had been decided in the Commons as part of a "package" with another amendment to which an amendment in lieu had been offered. In the event this difference was resolved by means of an exceptional motion, moved by the Leader of the House of Lords, to provide for further consideration of the bill in spite of the apparent double insistence.

6. Following these events, the Clerks of the two Houses agreed a joint statement (HL Deb. 21 July 2004 WS 19-21 - full text appended) on the subject of double insistence. The Clerks agreed that, if

⁴²⁴ Whereby, if one House insists on an amendment to which the other has disagreed, and the other insists on its disagreement, and neither has offered alternatives, the bill is lost.

a Commons' message clearly identified amendments as a package, "the resultant message to the other House would not amount to a double insistence, whether or not the House receiving it chose to 'unpackage' the amendments for the purposes of debate". Thus the Lords would have the opportunity to consider the amendments in spite of a double insistence within the package. The Clerk of the Parliaments invited us to consider changes to the practice of the House to deal with Commons amendments which have been packaged. Before we could consider the statement, there was a further instance of packaging of amendments on the Hunting Bill, which raised this issue once again.

7. In considering this subject, we had in mind that the House of Commons have been considering Lords' amendments in packages since at least 1997, and are unlikely to change their practice, whatever the decision of this House. There may also be potential advantages to the Lords in considering Commons' amendments in packages, in ensuring coherent and orderly debate by means of fewer, simpler motions. If properly used, packaging can be an aid to Parliamentary scrutiny.

8. However, there is a danger that the packaging of Lords' amendments in the House of Commons would reduce the Lords' legitimate power to ask the Commons to think again, if unrelated amendments were packaged together by the Commons in order to be able to reject them without offering any substantive alternative.

9. We therefore recommend that packages from the Commons should be considered by the House only if they are confined to single or closely related issues, not disparate issues joined together simply for reasons of convenience. We further recommend that, where packages from the Commons are confined to single or closely related issues, the House should in future be willing to consider amendments in packages and, where this is done, the double insistence rule should apply to the whole package and not to individual amendments within it.

10. In practice, this means that, if a bill is returned from the Commons with a clearly identified package of amendments, then in accordance with the joint statement the bill will be placed on the Lords' Order Paper for possible consideration, even if there is a double insistence on part of that package. (By contrast, a double insistence which is not packaged with other amendments will kill the bill, and there can be no further consideration.) If the package concerns a single or closely related issue, the Lords should consider it and ping-pong will continue. If the package is not confined to a single or closely related issue, the Lords should refuse to consider it. The bill will then be lost because it will not be returned to the Commons.

11. When packages are constructed for debate in one House, due regard should be had to how those packages will be dealt with in the other House. However, each House remains master of its own procedures.

12. First Parliamentary Counsel has agreed that Counsel will (wherever possible) liaise with the authorities of both Houses during the preparation of packages, in order to avoid misunderstandings about the effect which a package in one House could have in the other House.

13. We propose that these arrangements should be reviewed in the light of experience.

14. Following the recommendations above on the consideration of packages of amendments from the Commons, we discussed the form of the marshalled list which is prepared when there is disagreement between the two Houses. **We recommend that all motions to be moved should be printed in bold on the marshalled list, identified clearly with a letter. The amendments forming a package should be printed together, whether they are consecutive or not.** These changes will reduce the number of motions to be moved, and make the links between related amendments more immediately apparent.

Appendix 6 The House of Lords and the Finance Bill

Report of the Leader's Group on Working Practices 2002

Scrutiny of financial legislation

12. The House is precluded by Commons financial privilege from amending supply bills (e.g. Consolidated Fund Bills and Finance Bills). The practice is for the committee stage of such bill to be negatived. However, there are a significant number of members on all sides of the House with considerable expert knowledge of financial matters. Their ability to debate and scrutinise annual financial legislation is not at present being well used, and could be better used without encroaching on the financial privileges of the Commons. We recommend that a procedure be established to enable this House to deal more effectively with Finance Bills.

13. We propose that shortly before the Chancellor of the Exchequer makes his budget statement, this House should be given the opportunity to appoint an ad hoc select committee to consider and comment on the budget and Finance Bill. When the Finance Bill is introduced into the Commons and published, the committee should begin its work. The committee should report when the Finance Bill finishes its Commons committee stage, but before Commons remaining stages. The timetable of the committee's work would therefore have to be arranged to fit the legislative timetable in the Commons. The terms of reference of the committee would specifically prohibit it from considering the incidence or rates of tax, but would allow the committee to address technical issues of tax administration and whether the legislation could be clarified or simplified. The committee would be all-party and would be empowered to take evidence from interested bodies.

14. When the committee's views were published, the Government might if it wished move the necessary amendments at report stage in the Commons. The committee's views could also inform the Second Reading debate when the Finance Bill reached this House. A procedure on these lines would enable the Lords to make better use of its members' financial expertise while avoiding any infringements of Commons financial privilege. The aim of this proposal is to complement and help the work of the House of Commons, not to challenge it. Better scrutiny of Finance Bills by Parliament as a whole should result.

Lord Williams of Mostyn in debate on report, 21 May 2002, Col 645

I turn to recommendation (c). One of the strengths of this House is that we have a large number of experts who know of which they speak. We do not fully realise the potential of the financial expertise to be found here. I stress as firmly as I can—this is highlighted several times in the report—that we do not intend in any way to encroach upon the financial privileges of the Commons, but we ought to be able to work towards a procedure to enable this House to deal more effectively, within its limited scope, on matters relating to Finance Bills. I am grateful to the noble Lords, Lord Saatchi and Lord Roper, for their contribution to developing

the proposals either in written evidence or, in the case of the noble Lord, Lord Roper, in his personal comments.

We suggest for consideration at least that, before the Chancellor makes his Budget Statement, this House should appoint an ad hoc committee to consider and comment on the Budget and Finance Bill. The terms of reference would absolutely preclude the committee from considering the incidence and rates of tax rates. It would concentrate on the technical issues of tax administration and make suggestions—they can be no more than that—that the Commons may or may not accept. That would enhance the House's opportunity to contribute in an area of undoubted expertise, but I stress again that we make no form of challenge to the Commons. We simply intend, if the proposal is carried, to offer suggestions.

Lords Procedure Committee Fifth Report, 2001-02, HL148

Group recommendation (c): while we do not intend in any way to encroach upon the financial privileges of the Commons, a procedure should be established to enable the House to deal more effectively with Finance Bills (paragraph 12)

9. We accept Group recommendation (c) and propose that the Committee on Economic Affairs should be given the power to establish a sub-committee to undertake the task of considering the Finance Bill and a power to co-opt additional members to the sub-committee exclusively for its consideration of the Finance Bill. The terms of reference of the Economic Affairs Committee are wide enough to encompass this additional scrutiny work but, in relation to scrutiny of the Finance Bill, they should be amended specifically to prohibit the sub-committee from investigating the incidence or rates of tax, and to allow it only to address technical issues of tax administration, clarification and simplification. As the Group's report makes clear, there is no intention to challenge Commons financial privilege.

Lord Williams of Mostyn in debate on report, 24 July 2002, Col 455

The other thing that I should say is that we have to be careful that we can go forward harmoniously with the Commons. A certain amount of concern has been expressed to me about the proposal in relation to what we might do about scrutiny of the Finance Bill. One of the concerns is that we might envisage proposing amendments to the Finance Bill at the very time that the Bill was having detailed consideration in Committee in the Commons. The other serious concern that has been expressed to me—I think that I have to share it with the House—is the possibility of damaging the balance between the respective roles of the two Houses relating to financial business, which predate the Parliament Acts by a good 200 years. Whatever one thinks about the validity of these concerns, I am obliged to recognise them. I am certainly obliged to retail them to this House.

I am eager to proceed by agreement. I am happy to give an undertaking that I will try that dialogue. I am happy to refer the financial scrutiny matter to the Joint Committee. It is well within its remit. There is a danger that the future of the sub-committee's effective existence would fail if we did not get an agreement from the joint Lords/Commons committee.

I think that I have dealt with all the questions that have been raised on this amendment. I hope that the noble Lord, Lord Lucas, thinks that I have been helpful.

Lord Strathclyde: I am not entirely certain what the noble and learned Lord meant in his final comments about the sub-committee on the Finance Bill in paragraph 13 of the working practices group. This is an important part of the overall package of change; namely, that the Finance Bill should be treated under a new and different procedure which would allow for far more effective scrutiny by this House, using the expertise that we have readily available. I hope that what the noble and learned Lord meant was that, whatever happens next year, we will be setting up this sub-committee of the Economic Affairs Committee to deal with the next Finance Bill, and we do not need to wait for any recommendation that may or may not come from the Joint Committee on Lords Reform—which, of course, is dealing with an entirely different matter. I wonder if the noble and learned Lord can confirm that.

Lord Williams of Mostyn: No; the noble Lord is quite right in his understanding of what I said, which may not accord with what he wishes. However, I cannot pretend to the House that I have not had the strongest possible representations. If we do not achieve a co-operative outcome, the effective future of the sub-committee of the Economic Affairs Committee will be seriously imperilled. I would prefer, if I can, to take forward the proposal of the working party and the Procedure Committee to see what accommodation may be arrived at. I think that one way of usefully doing that is through the Joint Committee. It is well within its remit, because it deals with powers as well as composition. I am obliged to tell your Lordships these things because I have been told them quite plainly.

Lord Roper: On the particular point which the Lord Privy Seal has just raised, we have heard what he has said. I think that some of us were aware that this is a sensitive issue because of the Commons privileges in these matters. Clearly, we can go forward only through co-operation. I hope, however, that it will be possible to find ways to do that without having recourse to the Joint Committee. That should be our last resort. That can be done but if we can a way of moving forward without having to do that, it would be much better.

Lord Elton: Will the noble and learned Lord elaborate on the attractive remarks that he made about taking further the suggestions of my noble friend Lord Norton of Louth? We have to accept that these matters must be conducted in amity with the other place and that unnecessary conflict is not desirable. Will the noble and learned Lord tell us how, if agreement is secured, that will be done and whether we can expect a further Motion on the Order Paper in the next six, eight or 10 months proposing how the matter should be taken forward, or will it simply be a matter of smoke signals?

Lord Strathclyde: Paragraph 9 of the report sets out the procedure for the new finance sub-committee. Am I to understand that even if the House approves that, it will not happen? In which case should not the noble and learned Lord have brought forward an amendment? If the House approves the report, I should expect the Economic Affairs Committee to set up a sub-committee when the next Finance Bill is published, as that is what we are approving. I join the noble Lord, Lord Roper, in emphasising what is written in the report; namely, that there is no intention whatsoever to challenge Commons financial privilege. That is not the purpose of

the sub-committee. Its purpose is to help the Treasury and to help the scrutiny of legislation and to improve it, which is what the whole report is about.

Lord Williams of Mostyn: I accept that and I have no intention of moving an amendment to a report to which I have put my signature. I am simply telling the Committee as candidly as I can of the difficulties that have arisen and of the way that I hope to navigate through them. I repeat that I am certain in my own mind that if we can get some form of agreement with the Joint Committee, that will give the sub-committee's effective existence much more of a fair wind.

Lords Economic Affairs Committee report on the Finance Bill 2003, 2002-03, HL 121

3.1 The Sub-Committee was formally set up by the Economic Affairs Committee on 28 April 2003 and held its first meeting on 29 April 2003. The Sub-Committee's terms of reference followed the recommendations of the Procedure Committee that it should address only technical issues of tax administration, clarification or simplification and not the rates or incidence of tax. The Sub-Committee sought the advice of the Clerks who confirmed that our work would not offend any Commons financial privilege as no legislative activity was envisaged in the Lords on the basis of the scrutiny we proposed to undertake.[4]

4 *Extract from Memorandum by the Clerk of Committees circulated to Sub-Committee members on 6 May 2003:* "Commons financial privilege does not affect the ability of the Lords to debate financial or fiscal matters, not to consider matters in select committees. As Erskine May says (page 797), 'The Lords...express their opinion upon public expenditure, and the method of taxation and financial administration, both in debate and by resolution, and they have investigated these matters by their select committees'. So far as concerns the proposed scrutiny of the Finance Bill by a sub-committee of the Economic Affairs Committee, the House has agreed the recommendation of the Procedure Committee. Adapting the words used by the Procedure Committee, it is clear that the House expects the Economic Affairs Committee to establish a sub-committee with orders of reference 'to consider so much of the Finance Bill as relates to technical issues of administration, clarification and simplification but not the incidence or rates of tax'. Following this injunction will confine the activities of the sub-committee rather more strictly than any issue of financial privilege."

Report of the Lords Leader's Group on Review of Working Practices 2004

SCRUTINY OF THE FINANCE BILL

10. The experimental package provided for the Select Committee on Economic Affairs to appoint a sub-committee to consider the Finance Bill. In order not to encroach upon the financial privileges of the Commons, it was made clear that the sub-committee should address only technical issues of tax administration, clarification and simplification, and should be prohibited from investigating the incidence or rates of tax. In each session of the experimental period the sub-committee has reported, and the report has been debated together with the Second Reading of the Bill.

11. This is an issue of some sensitivity between the two Houses. Concern was expressed in the Group about this and about the feasibility of maintaining a clear distinction between policy

and administration. It is inevitable that there will be differences in interpretation of the remit of the sub-committee. Nevertheless, **we endorse the recommendations previously agreed to by the House. We recommend that the Sub-Committee should continue to conduct its activities with full regard to the sensitivities involved and in particular to the traditional boundary between the two Houses on fiscal policy.**

Lords Procedure Committee Third Report, 2003-04, HL 184

Scrutiny of the Finance Bill

Leader's Group paragraph 11: *We endorse the recommendations previously agreed to by the House. We recommend that the Sub-Committee should continue to conduct its activities with full regard to the sensitivities involved and in particular to the traditional boundary between the two Houses on fiscal policy.*

6. We endorse this recommendation.

Appendix 7 Glossary⁴²⁵

Procedural terms

Committee of the Whole House: the House forms itself into a Committee of all its Members for the committee stage of a Bill.

Companion: the Companion to the Standing Orders of the House of Lords, that House's authoritative procedural manual.

Delegated legislation: legislation made by Ministers under powers granted to them in Acts of Parliament, usually by means of Statutory Instruments. (Also known as secondary legislation).

Filibustering: practice of making very long speeches in order to prolong debate and attempt to prevent a Bill from passing through Parliament.

Financial privilege: the right to approve proposals for taxation or for government expenditure which the Commons asserts as its exclusive privilege.

Grand Committee: the House of Lords Grand Committee has unlimited membership and considers the committee stages of a Bill away from the floor of the House. Any Bill may be sent to a Grand Committee. The proceedings are identical to those in Committee of the Whole House except that no votes may take place.

Grouping: the practice whereby related amendments are debated together, but the fate of individual amendments in the group is decided separately.

Money Bill: a Bill whose sole purpose is to raise taxation or authorise expenditure.

Parliament Acts: the Parliament Act 1911, as amended by the Parliament Act 1949, restricts the power of the Lords to amend Money Bills or delay other Bills passed by the House of Commons.

Packaging: the practice, in the final stages of a Bill's passage, where a number of related amendments may be grouped together for the purposes of both debate and decision.

"Ping-pong": the exchange of amendments between the two Houses is colloquially known as "ping-pong".

"Prayer": a motion praying that a Statutory Instrument be annulled is known colloquially as a "prayer".

Statutory Instrument: Acts which grant power to Ministers to make general legislation almost invariably provide for that to be done by means of Statutory Instruments.

⁴²⁵ See also the glossary on the parliament website, www.parliament.uk.

Supply Bill: a Bill whose primary purpose is to levy taxes or to authorise expenditure. The Commons asserts its sole right to initiate and amend such Bills under resolutions of 1671 and 1678.

Tacking: adding provisions unconnected with Supply to Supply Bills.

Wrecking amendment: an amendment which, if passed, would destroy the purpose of the Bill.

Individuals

Third Marquess of Salisbury: Conservative Prime Minister and Leader of the House of Lords, 1885-86 and 1886-1892; Leader of the House of Lords 1895-1902.

Viscount Cranborne: Conservative Leader of the Opposition in the House of Lords, 1945-51, and, as **the fifth Marquess of Salisbury**, Leader of the House of Lords from 1951-57.

Viscount Addison: Labour Leader of the House of Lords, 1945-1951.

Viscount Cranborne: Conservative Leader of the House of Lords 1994-97; Leader of the Opposition in the House of Lords 1997-98; now **the seventh Marquess of Salisbury**.

Baroness Jay of Paddington: Labour Leader of the House of Lords 1998-2001.

Lord Hunt of Kings Heath: Chairman of the Working Group of Labour Peers on House of Lords Reform, which published its report in July 2004.

Formal minutes

DIE MARTIS, 23^o MAII 2006

Present:

Mr Russell Brown MP	Viscount Bledisloe
Simon Hughes MP	Lord Carter
Sarah McCarthy-Fry MP	Lord Cunningham of Felling
Andrew Miller MP	Lord Elton
Rt Hon. Sir Malcolm Rifkind MP	Lord Higgins
Rt Hon. John Spellar MP	Lord McNally
Ms Gisela Stuart MP	Baroness Symons of Vernham Dean
Mr Andrew Tyrie MP	Lord Tomlinson
Sir Nicholas Winteron MP	Lord Tyler
	Lord Wright of Richmond

The Orders of Reference are read.

The declarations of relevant interests are made:

Lord McNally	Leader of the Liberal Democrats in the House of Lords
Lord Tomlinson	former Vice Chairman of the Hansard Society for Parliamentary Government
Lord Tyler	co-author of <i>Breaking the Deadlock</i>
Gisela Stuart	editor of the <i>House Magazine</i>

The full lists of Members' interests as recorded in the Commons Register of Members' Interest and the Lords Register of Interests are noted.

It is moved that Lord Cunningham of Felling do take the Chair. – (Sir Malcolm Rifkind.)

The same is agreed to.

The Joint Committee deliberate.

A draft Special Report is proposed by the Chairman, brought up and read the first and second time, and agreed to.

Resolved, That the Report be the First Special Report of the Committee to the Houses.

Ordered, That the Chairman do make the Report to the House of Lords and Sir Malcolm Rifkind do make the Report to the House of Commons.

Ordered, That such Reports be laid upon the Tables of each House on Thursday 25 May 2006.

Ordered, That the Joint Committee be adjourned to Tuesday 6th June at 10am.

DIE MARTIS, 6° JUNII 2006

Present:

Mr Russell Brown MP	Viscount Bledisloe
Wayne David MP	Lord Carter
Simon Hughes MP	Lord Elton
Sarah McCarthy-Fry MP	Lord Fraser of Carmyllie
Andrew Miller MP	Lord Higgins
Rt Hon. Sir Malcolm Rifkind MP	Lord McNally
Rt Hon. John Spellar MP	Baroness Symons of Vernham Dean
Ms Gisela Stuart MP	Lord Tomlinson
Sir Nicholas Winteron MP	Lord Tyler
	Lord Wright of Richmond

Lord Cunningham of Felling, in the Chair

The Order of Adjournment is read.

The proceedings of 23rd May are read.

The Joint Committee deliberate.

Resolved, That the Committee do report Memoranda to the House of Commons weekly and that at that time the Committee do place copies in the Libraries of the two Houses and the Record Office.

Ordered, That those who submit Memoranda to the Committee have leave to publish them. – (The Chairman.)

Ordered, That the public be admitted during the examination of witnesses unless the Committee otherwise orders.

Ordered, That the public not be admitted during the examination of the Clerks of the two Houses.

Ordered, That the Joint Committee be adjourned to Tuesday 13th June at 10am.

DIE MARTIS, 13^o JUNII 2006

Present:

Mr Russell Brown MP	Viscount Bledisloe
Mr George Howarth MP	Lord Carter
Simon Hughes MP	Lord Elton
Sir Malcolm Rifkind MP	Lord Fraser of Carmyllie
Rt Hon. John Spellar MP	Lord Higgins
Ms Gisela Stuart MP	Lord McNally
Mr Andrew Tyrie MP	Baroness Symons of Vernham Dean
Sir Nicholas Winteron MP	Lord Tomlinson

Lord Cunningham of Felling, in the Chair

The Order of Adjournment is read.

The proceedings of 6th June are read.

The Joint Committee deliberate.

The following witnesses are examined:

Rt Hon Jack Straw MP, Leader of the House of Commons and Lord Privy Seal, Rt Hon Lord Falconer of Thoroton QC, Secretary of State for Constitutional Affairs and Lord Chancellor, and Rt Hon Lord Grocott, Government Chief Whip, House of Lords.

Ordered, That the Joint Committee be adjourned to Tuesday 20th June at 10am.

DIE MARTIS, 20^o JUNII 2006

Present:

Mr Russell Brown MP	Viscount Bledisloe
Simon Hughes MP	Lord Carter
Sarah McCarthy-Fry MP	Lord Elton
Andrew Miller MP	Lord Higgins
Rt Hon. Sir Malcolm Rifkind MP	Lord McNally
Rt Hon. John Spellar MP	Baroness Symons of Vernham Dean
Ms Gisela Stuart MP	Lord Tomlinson
Mr Andrew Tyrie MP	Lord Tyler
Sir Nicholas Winteron MP	Lord Wright of Richmond

Lord Cunningham of Felling, in the Chair

The Order of Adjournment is read.

The proceedings of 13th June are read.

The Joint Committee deliberate.

The following witnesses are examined:

Rt Hon Lord Strathclyde, Leader of the Opposition in the House of Lords, Rt Hon Lord Cope of Berkeley, Opposition Chief Whip in the House of Lords and Rt Hon Theresa May MP, Shadow Leader of the House of Commons.

Lord Williamson of Horton, Convenor of Crossbench Peers.

Ordered, That the Joint Committee be adjourned to Tuesday 27th June at 10am.

DIE MARTIS, 27^o JUNII 2006

Present:

Mr Russell Brown MP	Viscount Bledisloe
Simon Hughes MP	Lord Elton
Sarah McCarthy-Fry MP	Lord Higgins
Andrew Miller MP	Lord McNally
Rt Hon. John Spellar MP	Baroness Symons of Vernham Dean
Ms Gisela Stuart MP	Lord Tyler

Sir Malcolm Rifkind, in the Chair

The Order of Adjournment is read.

The proceedings of 20th June are read.

The Joint Committee deliberate.

The following witnesses are examined:

Mr David Heath MP, Liberal Democrat Shadow Leader of the House of Commons and Lord Wallace of Saltaire, Deputy Leader of the Liberal Democrats, House of Lords.

Ordered, That the Joint Committee be adjourned to Tuesday 4th July at 10 am.

DIE MARTIS, 4^o JULII 2006

Present:

Mr Russell Brown MP	Lord Elton
Mr Wayne David MP	Lord Fraser of Carmyllie
Mr George Howarth MP	Lord Higgins
Sarah McCarthy-Fry MP	Lord McNally
Rt Hon. Sir Malcolm Rifkind MP	Baroness Symons of Vernham Dean
Rt Hon. John Spellar MP	Lord Tomlinson
	Lord Tyler
	Lord Wright of Richmond

Lord Cunningham of Felling, in the Chair

The Order of Adjournment is read.

The proceedings of Tuesday 27th June are read.

The Joint Committee deliberate.

The following witnesses are examined:

Mr Paul Hayter LVO, Clerk of the Parliaments, and Sir Roger Sands KCB, Clerk of the House of Commons.

Ordered, That the Joint Committee be adjourned to Tuesday 11th July 2006 at 10 am.

DIE MARTIS, 11^o JULII 2006

Present

Mr Russell Brown MP	Viscount Bledisloe
Mr Wayne David MP	Lord Carter
Mr George Howarth MP	Lord Elton
Simon Hughes MP	Lord Fraser of Carmyllie
Sarah McCarthy-Fry MP	Lord Higgins
Rt Hon. Sir Malcolm Rifkind MP	Lord McNally
Rt Hon. John Spellar MP	Baroness Symons of Vernham Dean
Ms Gisela Stuart MP	Lord Tomlinson
Sir Nicholas Winteron MP	Lord Tyler
	Lord Wright of Richmond

Lord Cunningham of Felling, in the Chair

The Order of Adjournment is read.

The proceedings of Tuesday 4th July are read.

The Joint Committee deliberate.

Ordered, That the Joint Committee be adjourned to Tuesday 18th July at 10 am.

DIE MARTIS, 18^o JULII 2006

Present:

Mr Russell Brown MP	Viscount Bledisloe
Simon Hughes MP	Lord Elton
Sarah McCarthy-Fry MP	Lord Higgins
Rt Hon. Sir Malcolm Rifkind MP	Lord McNally
Ms Gisela Stuart MP	Lord Tomlinson
Andrew Tyrie MP	Lord Tyler
Sir Nicholas Winterton MP	Lord Wright of Richmond

Lord Cunningham of Felling, in the Chair

The Order of Adjournment is read.

The proceedings of Tuesday 11th July are read.

The Joint Committee deliberate.

The following witnesses are examined:

Lord Norton of Louth, Professor of Government, Hull University, Professor Anthony Bradley, Professor Emeritus of Constitutional Law, University of Edinburgh, and Dr Meg Russell, Senior Research Fellow, Constitution Unit, University College London.

Ordered, That the Joint Committee be adjourned to Tuesday 17th October at 10 am.

DIE MARTIS, 17^o OCTOBRIS 2006

Present:

Simon Hughes MP	Viscount Bledisloe
Sarah McCarthy-Fry MP	Lord Carter
Andrew Miller MP	Lord Elton
Rt Hon. Sir Malcolm Rifkind MP	Lord Higgins
John Spellar MP	Lord McNally
Ms Gisela Stuart MP	Baroness Symons of Vernham Dean
Andrew Tyrie MP	Lord Tomlinson
	Lord Tyler
	Lord Wright of Richmond

Lord Cunningham of Felling, in the Chair

The Order of Adjournment is read.

The proceedings of Tuesday 18th July are read.

The Joint Committee deliberate.

Ordered, That the Joint Committee be adjourned to Tuesday 24th October at 9.30 am.

DIE MARTIS, 24^o OCTOBRIS 2006

Present:

Mr Russell Brown MP	Lord Elton
Wayne David MP	Lord Higgins
George Howarth MP	Lord McNally
Sarah McCarthy-Fry MP	Baroness Symons of Vernham Dean
Andrew Miller MP	Lord Tomlinson
Rt Hon. John Spellar MP	Lord Tyler
Ms Gisela Stuart MP	Lord Wright of Richmond
Mr Andrew Tyrie MP	
Sir Nicholas Winterton MP	

Lord Cunningham of Felling, in the Chair

The Order of Adjournment is read.

The proceedings of Tuesday 17th October are read.

The Joint Committee deliberate.

Ordered, That the Joint Committee be adjourned to Tuesday 31st October at 9.30 am.

DIE MARTIS, 31^o OCTOBRIS 2006

Present:

Mr Russell Brown MP	Viscount Bledisloe
Mr Wayne David MP	Lord Carter
Mr George Howarth MP	Lord Elton
Simon Hughes	Lord Fraser of Carmyllie
Sarah McCarthy-Fry MP	Lord Higgins
Andrew Miller	Lord McNally
Rt Hon. Sir Malcolm Rifkind MP	Baroness Symons of Vernham Dean
Rt Hon. John Spellar MP	Lord Tomlinson
Ms Gisela Stuart	Lord Tyler
Mr Andrew Tyrie	Lord Wright of Richmond
Sir Nicholas Winteron	

Lord Cunningham of Felling, in the Chair

The Order of Adjournment is read.

The proceedings of Tuesday 24th October are read.

The Joint Committee deliberate.

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 18 are read and agreed to.

Paragraph 19 is read, amended, and agreed to.

Paragraphs 20 to 31 are read and agreed to.

Paragraph 32 is read.

An Amendment is proposed in line 5, after the word "and" to insert the words ", from the opposite point of view," – (*Lord Higgins.*)

The Question is proposed, That the Amendment be made:- The Amendment is, by leave, withdrawn.

The paragraph is agreed to.

Paragraphs 33 to 43 are read and agreed to.

Paragraph 44 is read, amended, and agreed to.

Paragraphs 45 to 57 are read and agreed to.

Paragraph 58 is read.

An Amendment is proposed, in line 7, at the end, to insert the words "However, as the Government have no proposals for the introduction of a written constitution with such provisions, we do not find the evidence on this point persuasive." – (*Lord Higgins.*)

The Question is proposed, That the Amendment be made:- The Amendment is, by leave, withdrawn.

The paragraph is agreed to.

Paragraphs 59 to 61 are read and agreed to.

Paragraphs 62 and 63 are read, amended, and agreed to.

Paragraphs 64 to 98 are read and agreed to.

Paragraphs 99 to 103 are read and postponed.

Paragraphs 104 to 116 (now paragraphs 103 to 115) are read and agreed to.

Paragraph 117 (now paragraph 116) is read and postponed.

Paragraphs 118 to 131 (now paragraphs 117 to 130) are read and agreed to.

Paragraph 132 (now paragraph 131) is read, amended, and agreed to.

Paragraphs 133 to 154 (now paragraphs 132 to 153) are read and agreed to.

Paragraph 155 (now paragraph 154) is read.

An Amendment is proposed, in line 2, to embolden the second sentence. –(*Lord Higgins.*)

The Question is proposed, That the Amendment be made:- The Amendment is, by leave, withdrawn.

The paragraph is agreed to.

Paragraphs 156 to 164 (now paragraphs 155 to 163) are agreed to.

Paragraph 165 (now paragraph 164) is read, amended, and agreed to.

Paragraph 166 (now paragraph 165) is read and agreed to.

Paragraph 167 (now paragraph 166) is read.

An Amendment is proposed, in line 2, to leave out the words “**greater use of pre-legislative scrutiny and carry-over**” and insert the words “**greater use of carry-over of Bills that have been subject to pre-legislative scrutiny**” – (*Lord Elton.*)

The Question is proposed, That the Amendment be made:- The Amendment is, by leave, withdrawn.

The paragraph is agreed to.

Paragraphs 168 to 280 (now paragraphs 167 to 279) read and agreed to.

Paragraph 281 (now paragraph 280) is read.

An Amendment is proposed, in line 1, to leave out the paragraph and insert the words “As we have recorded above, Lord Falconer of Thoroton and Mr Straw talked in terms of both Houses agreeing our report as a means of codification, and Lord Falconer even suggested that our report, without more, might be enough. This approach has the advantage of simplicity and avoids a number of problems of definition.

Alternatively, one or both Houses could adopt by resolution more specific resolutions outlined below.” – (*Lord Higgins.*)

The Question is proposed, That the Amendment be made:- The Amendment is, by leave, withdrawn.

The paragraph is agreed to.

Paragraph 282 (now paragraph 281) is read, amended, and agreed to.

Paragraph 283 (now paragraph 282) is read.

An Amendment is proposed, in line 3, to leave out the word "important" and insert the word "essential" – (*Lord Higgins.*)

The Question is proposed, That the Amendment be made:- The Amendment is, by leave, withdrawn.

The paragraph is agreed to.

Postponed paragraph 99 is read and agreed to.

Postponed paragraph 100 is read and disagreed to.

Postponed paragraphs 101 to 103 (now paragraphs 100 to 102) are read, amended, and agreed to.

Postponed paragraph 117 (now paragraph 116) is read, amended, and agreed to.

Paragraph 284 (now paragraph 283) is read, amended, and agreed to.

Paragraphs 285 and 286 (now paragraphs 284 and 285) are agreed to.

The summary of conclusions and recommendations and the Summary are agreed to.

Appendices 1 and 2 are read and appended to the Report.

Appendix 3 is read, amended, and appended to the Report.

Appendices 4 to 7 are read and appended to the Report.

Ordered, That the Report, as amended, be the Report of the Committee to the two Houses.

Ordered, That the memoranda received by the Committee be published with the Minutes of Evidence.

Ordered, That the Chairman do make the Report to the House of Lords and that Sir Malcolm Rifkind do make the Report to the House of Commons.

Ordered, That such Reports be laid upon the Table of each House on Tuesday 31 October 2006.

Ordered, That where the Chairman considers it appropriate, embargoed copies of the Report may be given to witnesses and other persons not more than twenty-four hours in advance of publication.

Ordered, That the Joint Committee be adjourned.