

Reforming the House of Lords: Breaking the Deadlock

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Preface

House of Lords reform has stalled. Although Labour came to power in 1997 promising a major reform, only the first stage of this was ever completed. The promise was repeated in 2001 but no further progress has been made. Yet as we approach a third election and still no agreement has

List of Supporters

Rt Hon. Lord (Kenneth) Baker (Conservative)
Rt Hon. Alan Beith MP (Liberal Democrat)
John Bercow MP (Conservative)
Roger Berry MP (Labour)
Richard Burden MP (Labour)
Anne Campbell MP (Labour)
Rt. Hon. Kenneth Clarke MP (Conservative)
Rt. Hon. Robin Cook MP (Labour)
Rt Hon. David Curry MP (Conservative)
Lord (Navnit) Dholakia (Liberal Democrat)
Stephen Dorrell MP (Conservative)
Lord (William) Goodhart (Liberal Democrat)
Damien Green MP (Conservative)
Win Griffiths MP (Labour)
Rt Hon. William Hague MP (Conservative)
Rt Hon. Lord (Neil) Kinnock (Labour)
Sir Archy Kirkwood MP (Liberal Democrat)
Andrew Mackinlay MP (Labour)
Rt Hon. Francis Maude MP (Conservative)
Rt Hon. Michael Meacher MP (Labour)
Gordon Prentice MP (Labour)
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Part 1: Background

Lords Reform since 1997

Labour came to power in 1997 on a manifesto commitment stating that:

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

After the election, in November 2001, the government published a (second) white paper on Lords reform, setting out its interpretation of the Wakeham proposals.³ This differed from the Royal Commission on some key issues (some of which are mentioned later in this report) but maintained the idea of a minority elected second chamber. The government proposed a chamber of around 600 members, of whom 120 (20%) would be elected. On powers and functions the government agreed that the current arrangements should be left largely unchanged. Comments were invited on these proposals.

The response to the white paper was largely negative. Members of the Royal Commission were unhappy that it diverged from some of their recommendations, and there were also concerns expressed that the proposed second chamber was too large. But the main issue of concern was the small proportion of elected members. Of those responding to the government's consultation, 89% expressed support for a reformed House of Lords in which the majority of members were elected.⁴

These views were not only expressed by groups and individuals outside parliament, but also by MPs. An Early Day Motion calling for a 'wholly or substantially elected' second chamber was signed by 305 MPs, including 139 Labour members.⁵ The House of Commons Public Administration Committee (PASC) carried out an inquiry in order to respond to the white paper, and published a report in February 2002.⁶ This was agreed unanimously on a cross-party basis, and proposed a second chamber where at least 60% of members were elected. Yet on many other points, such as the method of election or appointment, the length of terms and the powers and functions of the House, the committee was in agreement with the Royal Commission.

Given the opposition to its plans the government chose not to proceed with a bill, but proposed that further consultation should be conducted. A joint committee of both Houses of parliament was established in May 2002, and charged with devising a range of options for the composition of a reformed second chamber, between which parliament could decide. The committee published its report that December.⁷ This set out some principles of composition, which were broadly in line with those already agreed by the government, PASC and the Royal Commission. The report then set out seven options for the composition of the chamber. Each of these specified a proportion of members to be elected and proportion to be appointed. The options were a wholly appointed chamber, a wholly elected chamber, or a chamber with 20%, 40%, 50%, 60% or 80% elected members.

The Commons and Lords voted on these options in February 2003. In the Lords, the only option to achieve majority support was a wholly appointed House. In the Commons all seven options were rejected, but there was far more support for majority elected options than for any others. The proposals of a 20%, 40% or 50% elected House were defeated unanimously, without a division. The option that came closest to being agreed, and was defeated by only three votes, was that of an 80% elected second chamber. Although the

³ *The House of Lords: Completing the Reform*, Lord Chancellor's Department, Cm 5291, 2001. The first white paper had been published at the same time as the House of Lords Bill.

⁴ See *Reform of the House of Lords: analysis of responses to the Government White Paper 'The House of Lords - Completing the Reform'*. London: Lord Chancellor's Department, 2002.

⁵ EDM 226 in the 2001-2 parliamentary session.

⁶ *The Second Chamber: Continuing the Reform, Fifth Report of Session 2001-02*, Public Administration Select Committee, HC 494-I, 2002.

⁷ *Joint Committee on House of Lords Reform—First Report*, HC 171, 2002.

prime minister had expressed his concerns publicly the previous week about a hybrid chamber, and about election, a majority of MP

Reasons for the Deadlock

There have been a wealth of proposals on how to proceed with House of Lords reform. But no consensus has yet been reached about a workable way forward. On some issues there has been a great deal of agreement between the previous bodies considering reform. This applies particularly around the powers and functions of the second chamber, but also on many of the principles of its composition. The difficulty has been finding a precise composition package that commands majority support. But we believe with sufficient political will an agreement on this is now well within our reach.

As discussed above, the main point of contention so far has been on the proportion of second chamber members (if any) who should be elected. However, the root of disagreement is really about the second chamber's power. Despite the significant formal powers of the House of Lords (which can, in practice, delay most bills for about a year and 'money' bills for three months), the chamber's unelected basis means that these powers are comparatively rarely used. Britain has therefore grown accustomed to having a relatively weak second chamber. Whilst there has been a great deal of support for introduction of elected members, some in the political world have been concerned that this would make the second chamber more powerful, and therefore result in a challenge the traditional primacy of the House of Commons. Others have expressed concerns that the 'expert' and 'independent' ethos of the second chamber would be lost in a system based on election. Important amongst these sceptics has been the Prime Minister himself who, answering a question a week before the Commons voted on House of Lords reform, implied that an elected chamber would become a 'rival' chamber.⁹ He also expressed fears, despite the government's previous proposal of such a system, that a 'hybrid' chamber of elected and appointed members 'is wrong and will not work'. This intervention almost certainly made the difference between the House of Commons voting for an 80% elected second chamber, and voting against – which it did by only three votes.

We believe that the concerns that a largely elected second chamber would interfere with House of Commons primacy are misplaced, as detailed in the remainder of this report. We also believe that, to a large extent, the current ethos of independence and expertise can be maintained under such a system. Although some forms of election might fundamentally alter the culture and role of the second chamber, careful design can ensure that this is not the case. The chamber can both have a democratic basis and remain distinct from, and clearly subordinate to, the House of Commons. A largely elected second chamber need be neither a 'rival' nor a 'replica' of the House of Commons.

However, in considering House of Lords reform it is necessary to return to some first principles. In particular it is important to ask some big questions about what we want from a second chamber, and what impact reform would have on our wider system of government. We now turn to consider some of these key issues, which surface regularly in the debate about reform.

⁹ See House of Commons Hansard, 29 Jan 2003, Column 878-8.

The Issues

Before embarking on a discussion about the detail of second chamber reform, it is wise to first think about the principles that should govern our decisions. Despite its relatively low profile in comparison to the House of Commons, the House of Lords lies at the heart of our system of government. It considers all legislation that passes through parliament, and often makes numerous amendments. It carries out important scrutiny functions – not only examining the work of the UK government, but also the proposals coming from EU institutions. It carries out influential inquiries, often on politically sensitive issues. It also takes a particular interest in constitutional and human rights matters. All of these roles are influential in how British democracy functions.

The reform of the second chamber must therefore start by thinking about how these functions are carried out, and what weaknesses are inherent in the system as it stands. Any scheme to reform parliament must seek to maintain the strengths of our current system, but also enhance it further where this is possible. This requires us to ask big questions about the role of parliament, and what change might be necessary to better suit the needs of the modern age. More specifically, in this case, we need to be clear about what the contribution of the second chamber, rather than the House of Commons, should be.

These questions have been addressed in the ma

remain in office, but no similar requirement applies to the House of Lords. This is central to our system of democracy, and means that the relationship between the government and the two chambers of parliament is quite different. But this is not simply a product of the Lords' unelected basis – the same distinction applies in virtually all bicameral parliaments around the world.¹⁰ Indeed such a provision is generally written into the constitution, including in countries such as Japan where the second chamber is wholly directly elected. As well as this, even in systems where the second chamber is elected, its formal powers over legislation are generally closely specified. Despite the fact that 48 out of the 67 second chambers in the world are largely or wholly elected, their power is almost always subordinate to that of the primary chamber.¹¹

Parliament versus the Executive

Aside from these misconceptions, there is another more fundamental problem that haunts the debate about House of Commons primacy. Often what drives the concerns of those that raise this issue is not the power of the House of Commons itself, but the ability of government to proceed with its business unimpeded. The argument about the relative powers of the two chambers of parliament thus gets confused with the different and bigger question of the power of parliament with respect to the executive.

The desire by some, including many in government, to maintain the supremacy of the House of Commons is often a proxy for wishing to maintain the current relations between parliament and the executive. In our system the government's need to maintain a disciplined majority in the House of Commons, coupled with the relative weakness of the House of Lords, have resulted in a high degree of centralised executive power. The growing complexity of government, and growing volume of legislation, has meanwhile made it increasingly difficult for parliament to keep up. There is thus a general perception, amongst the public, academics and the political classes themselves, that the executive could be more effectively held in check by parliament. This requires parliament to be reformed. But it doesn't follow that the executive need be weak – it is possible to have both strong government and strong accountability.

We believe that reform of the House of Lords can help to strengthen parliament. This does not mean that the second chamber should stand in the way of the House of Commons – the two chambers of parliament should be partners in their work, not rivals. A reformed second chamber that was better respected and more closely linked to the public would be able to operate with greater confidence. It would therefore help to ensure good government. However at the end of the day, as now, the House of Commons would remain the senior partner.

The Legitimacy of the Second Chamber

One of the primary difficulties with the current House of Lords is that it lacks the legitimacy to carry out these duties as effectively as it might. Due to the chamber's unelected basis it is

¹⁰ The exception is the Italian parliament, where various reform packages have been proposed to bring the system into line, but none has yet been agreed.

¹¹ The best known counterexample is the US Senate, which is equally or even more powerful than the House of Representatives. This is a very unusual case, but unfortunately because of the visibility of US politics has too often influenced the British debate. The US system is obviously also a presidential rather than a parliamentary system, making the relationship between the executive and legislature in general very different to ours.

easily dismissed, particularly by government ministers. An important recent example was the intervention in the debate on postal balloting in the 2004 European elections, when members of the Lords were attacked for meddling in such matters when they themselves were not elected. This was despite the fact that they were largely expressing concerns put by the independent Electoral Commission, many of which proved to be borne out by events. Similarly the Lords' objection to the introduction of 'closed' lists for the European Parliament elections in 1999 was easily discounted – although there was widespread sympathy with the point that was being made. Had the chamber had more democratic legitimacy its concerns would have had to be taken more seriously. This might have resulted in a change of heart on the part of government. Nonetheless, even with a reformed chamber it would have been the role of the House of Commons to finally decide.

The importance of the second chamber gaining greater legitimacy has been widely accepted by those considering reform. This was emphasised by the Royal Commission on House of Lords reform, and was one of the five key qualities seen as essential by the Joint Committee. However, there has been concern amongst some that the second chamber could become 'too' legitimate, with the result that it challenged the House of Commons too frequently. Despite the existing safeguards to Commons primacy, as described above, we acknowledge that there is some foundation in these concerns. However, this does not mean (as the Royal Commission seemed to suggest) that only a minority of second chamber members could be elected. There are many ways to ensure that a largely elected chamber cannot claim equal democratic legitimacy to the House of Commons. The most obvious is the inclusion of a minority of appointed members. However, there are also other important features, such as long terms of office and a rolling membership, which are used in many elected second chambers overseas.

A Chamber Distinct from the House of Commons

It is often emphasised that the two chambers of parliament must be distinct, and one must not simply be a pale imitation of the other. We absolutely agree. A bicameral system depends on the first and second chambers reflecting different interests and having a distinct ethos and approach to their work. But this is not a convincing argument against election. In part, the different ethos of the second chamber simply results from its powers and the nature of its relationship with the executive. It will always tend to attract individuals who are primarily interested in scrutiny rather than high executive office, and safeguards can be built into its design to ensure that this is the case. There are also numerous ways in which an elected chamber can be composed. We propose that the basis for the second chamber is very different to that for the House of Commons, which will ensure that its membership complements rather than duplicates the work of MPs. Crucially, as part of this, we propose that no single party should be able to gain a majority in the second chamber.

An Independent and Expert House

One of the key ways in which the House of Lords differs from the House of Commons is that it includes a large number of members who take no party whip. This tradition is generally valued, and would continue under our plans. But it is also generally considered important that the chamber as a whole is more independent of the executive than is the House of Commons, and that those members who do take a party whip are more able to express their opinions freely. This feature is crucially linked to the chamber's formal status with respect to the executive and the fact that the government does not rely on its confidence in order to remain in office. However, the relative independence of members is also linked to their

background, and another commonly recognised feature – its ‘expertise’. Groups such as the Royal Commission and the Joint Committee have valued both of these features together, and each is related to the other. The fact that many members are appointed to the chamber for their achievements, often at the end of their careers, may give them a greater confidence in their knowledge and abilities that encourages independent behaviour.

We have sought as far as possible to maintain the traditions of independence and expertise in our proposals for a reformed second chamber. It is important, however, not to exaggerate the extent to which the House of Lords operates as either an expert or an independent House at present. These descriptions often set themselves against a supposed House of Commons which has neither of these features. However, the differences between the chambers are not as stark as they sometimes seem. For example party discipline in the House of Commons is less strict than it is in many parliaments, and rebellions against the whip are relatively common in all party groups.¹² At the same time, research by a prominent member of the House, Professor the Lord Norton of Louth, has shown that relatively few votes are cast by peers against their party’s line.¹³ With respect to expertise, the Commons includes members with varied professional backgrounds, who often contribute to debates on the basis of knowledge gained outside the chamber, as well as through work on specialist select committees. Meanwhile the House of Lords includes many, particularly on the Crossbenches, who are high achievers in their professions. But on the Labour benches, for example, more than 50 of the 202 members were previously MPs and five were MEPs, whilst at least 20 are ex trade union officials and around another 10 were previously members of party staff. This is not to say that these members have little to contribute – merely to point out that they do not differ as much as is commonly perceived from their elected colleagues in the Commons.

Breaking the Deadlock

The aim of our report and draft bill is to break the existing deadlock over House of Lords reform. Being clearer about the objectives of reform is an important part of making this happen. But our particular reason for optimism about the prospects for achieving change is

Part 2: Our Recommendations

In this part of the report we set out in detail our proposals for the reform of the second chamber. These cover the functions and powers it should have, how it should be composed, and how we might make the transition to the reformed second chamber from the current House of Lords. In each case we include concrete recommendations for reform. A summary of these recommendations is also included at the end of this report.

The Functions and Powers of the Second Chamber

There has been a large extent of agreement on issues of powers and functions, between the different groups that have previously considered Lords reform. We agree that there is no need, at least at this time, for a radical change to what the chamber does. We also suggest that there should be no immediate change to the powers of the second chamber, though this matter should be kept under review. In the short term we suggest that significant improvements to the chamber's relationship with the House of Commons could be made through procedural change, not itself requiring legislation.

The Functions of the Second Chamber

The House of Lords currently carries out many important functions which are complementary to those of the House of Commons. The most obvious of these is the consideration of government legislation, where the chamber has gained a reputation for detailed scrutiny and amendment (though it must be remembered that many of the amendments introduced in the Lords originate with the government). In addition many government bills are introduced in the Lords before going to the Commons, and members of the chamber may introduce their own bills (though relatively few of these reach the statute book). The Lords plays a key role in holding government to account, through written and oral questions to ministers, through responding to government statements, and through debates. Its established committees, on Science and Technology and the European Union, conduct specialist scrutiny and inquiries. Through the Select Committee on Delegated Powers and Regulatory Reform, and the Joint Committee on Statutory Instruments, its members play an important role in monitoring executive action. More recently, and in line with recommendations of the Royal Commission, members have also engaged in valuable legislative scrutiny and inquiries through the Lords Constitution Committee and the Joint Committee on Human Rights. These developments have enhanced the chamber's reputation as a 'guardian of the constitution'.

All of these roles are valuable and should, we believe, continue. There are ways in which the chamber could increase its productivity – for example through taking the committee stage of

veto over these matters, in part because the use of secondary legislation was minimal when the 1911 Act was passed. In practice the chamber rarely uses the power it has, and only two pieces of secondary legislation have ever been vetoed (in 1968 and 2000). Consequently there have been proposals that the Lords' power would become more 'usable' if it was reduced to one of delay. The Royal Commission suggested a change, to a delaying power of up to three months, and the government endorsed this conclusion in 2001. However other groups, including the Public Administration Committee, expressed concern that this would in practice neuter the Lords. We agree that this is a matter that should be treated with care. The fact that vetoes do not happen does not mean that the Lords' power is worthless – indeed it may simply indicate that government takes the chamber's views properly into account before statutory instruments are introduced. On occasion instruments are withdrawn by the government and redrafted after debate in the Lords without there having been an explicit rejection. Particularly given the chamber's expertise in this area, through the respected work of the two committees mentioned above, this seems a healthy state of affairs. Given these factors, and the lack of agreement amongst earlier groups, we are not inclined to recommend any change in the chamber's powers in this area.

Although there was virtual unanimity amongst earlier groups on the matter of the second chamber's powers (with the exception of those over secondary legislation), there is evidence that this consensus is breaking down. Some suggest that since the chamber's reform in 1999 it is becoming more assertive, resulting in a need to review its powers. Others suggest that if the chamber were further reformed to include elected members its confidence to use its powers would grow further still, and it might be appropriate for these to be reduced. Such questions were considered in some detail recently by a committee of Labour peers which issued a report in July 2004, suggesting that there should be a new Parliament Act, that should apply to bills starting in the Lords as well as the Commons, and which might reduce the Lords' delaying power.¹⁴ The Labour Party itself has shown interest in the possibility of reducing the chamber's powers, and there have been rumours that this will appear in its election manifesto.

We do understand these concerns, and would not wish to dismiss them altogether. However, there are a number of difficulties with seeking action in this area. First, there is the principled objection that the chamber's powers at present are moderate, and that upsetting the current balance could have unpredictable consequences. Second is the factor that whilst change in the chamber's behaviour might result from a reform to its composition, this too is unpredictable and so it is difficult to know what change to its powers would be appropriate until its composition is settled. But equally important are the pragmatic considerations. House of Lords reform since 1999 has stalled, not because of differences about the chamber's powers but because of conflicts over composition. This situation has not been helped by the fact that there are so many interrelated factors – such as the proportion and nature of appointed members, the timing and system of elections, and the length of terms members should serve. Achieving change even on composition alone will require, as we are seeking to do, building on existing areas of consensus. A consensus on the chamber's powers did exist, and stepping outside this can only make reform more difficult to achieve. A bill that sought to change the chamber's powers as well as its composition would essentially include double the number of matters on which members could disagree, and would thus have a lesser chance of success. Given the difficulties in achieving agreement to date, this is a very important consideration.

¹⁴ *Reform of the Powers, Procedures and Conventions of the House of Lords*, Lorioection ma7.5603 8 214.9wers bue

We believe that there are arguments for a wider review of the legislative process, which might well include reform to the Parliament Acts. Recent innovations such as publication of bills in draft, and 'carry over' of bills from one session to the next are potentially valuable – as recognised by many independent groups.¹⁵ However, there are limits on how much these mechanisms can be used within the current statutory framework. 'Carry over', in particular, which potentially rationalises the legislative process by ensuring that all bills have equal time for consideration, fits awkwardly with the Parliament Acts, which are based on parliamentary sessions. A review of these matters would thus be valuable, and could fit well with a more general review of the second c

Resolving Disputes with the House of Commons

Although we are not proposing statutory change to the House of Lords' powers, we believe that more could be done to encourage dialogue rather than conflict between the two chambers of parliament. At present the Commons and Lords operate almost entirely separately, with little institutionalised contact between their members – apart from limited work in joint committees. When disputes occur over legislation they are treated in an adversarial fashion, with the Commons voting on Lords amendments and vice versa, until one side is prepared to back down. We believe that it would be more efficient and rational for there to be some opportunity for differences between the chambers to be discussed in a forum that included members of both. In this

Principles of Composition

The design of the second chamber's composition should be determined by its purpose. We have already indicated some of the principles that we consider important. For example the chamber should be more independent of the executive and the political parties than is the House of Commons. It should continue to be a source of varied expertise within the parliamentary process in a way that complements, rather than competes with, the role of MPs. But it should also have the legitimacy to command respect from the public, the media and other politicians if it is to carry out its duties effectively.

Election and Appointment

We believe that a mixed elected-appointed chamber has the greatest potential to meet these competing demands. Only through election can members enter the chamber who are truly representative of all areas of the UK, and can these members avoid the jibes from ministers that they have no legitimacy to challenge the executive. Yet only through appointment will the chamber be able to attract those who are not professional politicians – and particularly those who have no strong affiliation to a political party. The presence of independent members in the House of Lords is valued, and we believe that this tradition should be maintained. This requires that at least some members of the chamber be appointed.

Concerns have been raised by some in the past about the prospect of a mixed (or 'hybrid') chamber. We believe that these concerns are unfounded. The House of Lords has long contained different types of members – hereditary peers, Bishops, Law Lords and, since 1958, life peers. Only rarely have tensions between these groups arisen. The key exception was the controversy over the remaining presence of the hereditary peers in the chamber. But this resulted from the clear anachronism of people inheriting seats in parliament, coupled with the fact that Conservative supporters were over-represented amongst their ranks. In a chamber that is designed to be representative of public opinion, and where entry to the chamber is on merit, such difficulties should not arise.

It is clear that there is no 'pure' model of composition for the chamber that commands sufficiently wide support. A mixed chamber allows the strengths of both the elected and appointed models to be combined. It also helps ensure that whilst the chamber gains legitimacy, it can never challenge the primacy of the fully elected House of Commons. We believe that the diversity that a mixed chamber can bring should be celebrated. A hybrid model has been recommended by most other groups that have reported on Lords reform, including the Royal Commission, the Public Administration Committee and the government, and five of the seven options proposed by the parliamentary joint committee were for a mixed elected/appointed chamber.¹⁷ The fact that mixed membership of second chambers is practical is also demonstrated by its relatively common use in other countries.¹⁸

Recommendation: We believe that the second chamber should have a mixed membership, including both elected and appointed members.

¹⁷ The government proposed a mixed chamber in its 2001 white paper. A mixed chamber was also proposed by the Mackay Commission set up by the Conservative Party (*The Report of the Constitutional Commission on Options for a New Second Chamber*. London: Mackay Commission, 1999).

¹⁸ For example the Italian, Irish and Indian second chambers include a small number of appointees alongside elected members. The Spanish second chamber includes a mixture of directly and indirectly elected members.

Having agreed the principle that the membership of the chamber should be mixed, it then remains to decide the balance between elected and appointed members. This is the point on which agreement failed to be reached when the House of Commons voted on Lords reform in February 2003. What was clear from those votes, however, and from the debate in the months that preceded them, was that there was little support for a minority elected House. Although this was proposed by both the Royal Commission and the government it achieved little support amongst MPs or the public.

We believe that the *majority* of members in the second chamber should be elected, not only because this proposal is popular, but also because it is right. Through elections the chamber will gain legitimacy, and the full geographic spread of the UK will be represented. Whilst we accept the argument that some appointed members should be included in the chamber, we can see no justification for these members making up a majority. Appointments to the chamber should be for those who are unlikely to be able to secure election, particularly including independents. Those who seek to represent the parties, on the other hand, should be prepared to subject themselves to the electoral process. This does not necessarily mean that they will be 'clones' or the members in the House of Commons. Given the different nature of the second chamber's work, and through the operation of the electoral and appointments systems, the tradition of the second chamber including distinguished political figures such as those currently sitting in the House of Lords can be maintained.

Recommendation: We believe that a majority of second chamber members should be elected.

The principles of a mixed chamber and majority election are more important than the precise balance between elected and appointed members. However, in the end a decision must be *rtantinciples*

membership of the House and the peerage shou

Terms of office

At present one of the big cultural differences between the House of Commons and House of Lords is that, whilst MPs are elected for short terms of 4-5 years, most members of the Lords are appointed for life.²¹ This clearly brings problems, but also has some advantages. Members of the Lords are able to take a longer term view on issues, and can provide important continuity when governments change. The fact that peers do not have to seek reappointment means that they can, if they wish, behave more independently of the party whip. Because members of the Lords are not subject to recall by constituents, as members of the House of Commons are, they have less incentive to engage in local work and functions, and thus potentially have time to concentrate on parliamentary duties. All of these are valuable features which reform should seek to preserve.

Although life terms are now seen as anachronistic, there are therefore strong arguments for ensuring that members of the second chamber continue to serve relatively long terms of office. Several earlier groups have proposed long terms of office – for example the Royal Commission proposed terms of 15 years, whilst PASC proposed roughly eight years. We believe that something in the middle is about right. Linking second chamber elections to general election day, with members serving the equivalent of three House of Commons terms, would give term lengths of roughly 12-14 years. This is what we recommend.

Recommendation: Elected and appointed members of the second chamber should serve longer terms of office than MPs. We recommend terms equivalent to three House of Commons terms, which would normally amount to 12-14 years.

There are also strong arguments for making terms non-renewable. We recommend this below, where there is a fuller discussion of this issue.

An added feature of the discontinuity in the House of Commons compared to the House of Lords is that in the Commons all members are elected at once, whilst in the Lords members are added gradually to an existent chamber (and leave gradually, as they die). In second chambers overseas it is relatively common for the membership to be renewed only in parts, even where the chamber is elected.²² Unlike the first chamber, the second chamber is therefore never dissolved, but a portion of members come and go at each election. This helps maintain a sense of continuity and long term thinking, which can be lacking in the lower house. The Royal Commission and Public Administration Committee, and various other bodies, have suggested that this arrangement should apply in the UK. We agree that this would help to maintain another of the best traditions of the current House of Lords.

Recommendation: Members of the second chamber should be renewed in parts, in order that there is continuity in the chamber's membership. We recommend that one third of members are renewed at the time of each general election.

Ministers and the second chamber

The nature of our parliamentary system is that a government is formed by the party (or parties) that can command majority support in the House of Commons. Government must

²¹ The exception is the Bishops, who serve until they retire from office. However some Bishops do then go on to be appointed as life peers.

²² For example in the Czech Republic, France, India and the US elected upper house members are renewed in thirds. In Australia and Japan they are renewed in halves.

then maintain the confidence of the Commons in order to remain in office. It is thus to the Commons that ministers primarily report, and from where most ministers are drawn. This is an important element of the Commons' status as the pre-eminent chamber.

relatively rarely, but in recent years has resulted in the appointment of, for example, Lord Falconer, Lord Hardie and Lord Sainsbury. The first two of these were appointed as Law Officers, which is a common reason for this power being used. Although the validity of this process can be questioned, the alternatives are potentially worse. If the prime minister were not able to appoint ministers to the second chamber this might result in his encouraging retirements from the House of Commons in or

We realise that many members of the House of Commons will disagree with this conclusion. However, we do not believe that Lords reform should be thwarted by an argument about this separate and sensitive matter. If members of the Commons wish to pursue reform of the Bishops' role, we suggest that this should be taken forward as a separate short bill.

Recommendation: Whilst we believe that there are arguments for removing the Bishops

England. This leaves no obvious basis for electing English members. Thus whilst this form of indirect election may have its attractions, there

across as well as between parties, and thus maximises voter choice.²⁵ Candidates are ranked in order as individuals by the voter. Thus, for example, a voter might cast most of their votes for one party, but also support a candidate from another party with a good record on a particular issue. Alternatively a voter might choose to prioritise women or ethnic minority candidates from more than one party.

Table 2: Allocation of elected seats by nation and region

	Seats elected at each round	Total seats
East Midlands	6	18
East	8	24
London	10	30
North East	4	12
North West	11	33
South East	12	36
South West	8	24
West Midlands	8	24
Yorkshire and the Humber	8	24
<i>England total</i>	<i>75</i>	<i>225</i>
Northern Ireland	2	6
Scotland	8	24
Wales	5	15
TOTAL	90	270

On balance, we feel that it is desirable to maximise voter choice in elections to the second chamber, and to make these elections as different as possible from those for the House of Commons. It is in keeping with the ethos of the current House of Lords, where background and expertise are considered equally important to party allegiance, that people should be free to support candidates from more than one party if they wish. One difficulty that is sometimes raised with respect to STV is that it encourages constituency work, as members must compete for visibility within the area. However, given that we are proposing non-renewable terms of office, and that the electoral regions are large, we believe that the incentives for such work in this case will be minimal.

Recommendation: We believe that the electoral system for the second chamber should maximise voter choice, and we therefore reject the idea of closed party lists. We thus propose that elections should be carried out using either open lists or STV. On balance we believe that STV is more in keeping with the needs of the second chamber.

²⁵ For more details about STV see <http://www.electoral-reform.org.uk/votingsystems/systems3.htm>. For an application of the system to second chamber elections see Lewis Baston, *Direct Elections for a Second Chamber*, London: Electoral Reform Society (2004).

One objection sometimes raised about direct election is that it would end the tradition

their party. This enables them to more readily vote with their conscience than many members of the House of Commons feel able to do. Although members of the second chamber under our proposals would no longer serve life terms, we feel that the tradition whereby they only need to earn the support of their party once for entry to the chamber, and thereafter can follow their own instincts, is one that has largely served us well and is therefore worth preserving.

We realise that there are strong arguments in the other direction. Some would suggest that the very essence of accountability under a system of election is the right of recall by the electorate. These points have validity, but we feel that on balance they are outweighed by the benefits of a system of non-renewable terms. Of course, there are also potential difficulties if the second chamber is denied the experience of good members who have already served a single term. For this reason (as discussed in the next section) we believe that the Appointments Commission should be free to reappoint members who leave the chamber after an elected term for a single additional term, this is justified on the strength of their expertise.

Recommendation: Members of the second chamber should be able to be elected only once, for one long term.

Leaving the Second Chamber

One of the curious features of the current House of Lords is that once a life member is appointed, they can never leave unless they die. Under the Peerage Act 1963 hereditary peers were given the right to renounce their peerages and to stand for the House of Commons. However, the same entitlement has never been extended to life peers.

There has been unanimity amongst those considering the second chamber question that this anomaly should end. The Royal Commission, the government and the Public Administration Committee have all proposed that members of a reformed second chamber should be entitled to retire. We agree with this analysis. However, we also agree with the proposal from the Royal Commission and the Public Administration Committee that there should be limits on members' ability to immediately stand for the House of Commons. If members could leave the chamber when they wished, and gain an immediate right to stand for the Commons, there is a danger that the second chamber would become a kind of training ground for aspiring MPs. This would be entirely contrary to its current culture and would be damaging to the standing of the chamber.²⁸ Consequently these other groups have proposed that there should be a limit on members' ability to stand for the Commons in the first years after they leave the second chamber. Both proposed a compulsory waiting period of 10 years. We believe that this is probably overly restrictive, but support a compulsory five year wait before a member is entitled to stand for the Commons. This is enough to avoid somebody seeking selection as a candidate whilst still in the second chamber, and then leaving in order to stand (or even having just been elected) in the forthcoming general election. We also believe, however, that there is a danger that this limitation alone would still allow people to serve a few years in the second chamber and then leave prematurely in order to pursue a career as an MP. We therefore agree with the Royal Commission that the restriction should apply not from the date that the member leaves the chamber, but from the date that their original term was due to end.

²⁸ A situation such as this exists in Ireland. See M. Russell, *Reforming the House of Lords: Lessons from Overseas*, Oxford University Press (2000).

At present there are a number of conventions in place that he

political activism, where they are independent minded and have other important qualities to offer.

The Prime Minister's Appointees

As already mentioned above, we believe that the prime minister should retain the right to appoint a small number of individuals to the chamber (no more than four per parliament) with the express purpose of making them ministers. A condition of this power being used would be that the individual must be appointed to ministerial office immediately they enter the House. We did consider whether these individuals should be expected also to leave the chamber immediately after they cease being ministers. However, whilst this has some attractions we feel that it is outweighed by the disadvantages. Former ministers can be very valuable members of the chamber, and if such members were to immediately lose their seats it would also make their own position very

Because the chamber is largely elected the Appointments Commission will have no major role in deciding the balance between the parties (as, for example, it would have done under the plans of the Royal Commission, where the majority in the chamber was to be appointed). However, if there are a small number of appointees included with a political allegiance, it will still be important to monitor the balance in the chamber to some extent. We propose that the political balance in the chamber should be determined only by the outcome of second chamber elections. The overall balance should be decided, as it is amongst the elected members, by the *three* previous second chamber elections. Where there are any appointed members with political allegiances, it should therefore be the duty of the Appointments Commission to ensure that the overall balance in the chamber reflects these election results. This is particularly important with respect to the prime minister's appointments. It should not be possible to use these to gain an advantage for the governing party in terms of numbers in the chamber. If prime ministerial appointments are made the Appointments Commission should thus have the discretion to balance these with a small number of appointees who are allied to the other parties.³⁰ Additionally if other appointees are included who are members of parties, there should be a requirement on the Commission to ensure that the appropriate balance between them is maintained.

Recommendation: The balance between political party members in the chamber should be determined by the last election of the governing party.

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vacancies as and when they occur. Where an appointed member is replaced the new member would serve only the equivalent of the remainder of the departing member's term, in order that the practice of appointing one third of members at each second chamber election is maintained. This means in practice that if a member dies or retires close to the end of their term it may not be seen as practical by the Appointments Commission to replace them. In this case the seat would remain vacant until the next round of appointments.

Recommendation: If a vacancy is created amongst appointed members, the normal practice should be for the Appointments Commission to fill it, within a maximum of six months. However the new member would serve only to the end of the term of the member they have replaced.

Reappointment

We have recommended that elected members of the second chamber should not be able to stand for re-election, in order to reduce the incentives for constituency work, and maximise independence from the parties. However, the same difficulties do not apply with respect to the appointed members of the House, who are chosen by the Appointments Commission on the basis of their expertise and likely contribution, rather than for their party loyalty.

We therefore propose that the Appointments Commission should have the discretion to appoint second chamber members for one single additional second chamber term. In considering members for reappointment the Appointments Commission should be free to consider those who have previously served either as appointed, or exceptionally as elected, members. A similar recommendation to this was made by the Royal Commission. However, given the relatively small number of appointments to be made at each round under our proposals, we anticipate that reappointment would be rare. The mechanism might be most commonly used to accommodate those members who had not had the opportunity to complete a full term previously, if they entered the chamber as the result of a vacancy. Clearly if the Appointments Commission chose to appoint members who had previously been elected, they would also need to take into account the impact of this on the party balance in the House.

Recommendation: The Appointments Commission should have the discretion to appoint members to the chamber for a single additional second chamber term. This applies whether they first entered the chamber by election or by appointment, but the expectation is that this would be rare.

The Peerage

Some of the difficulties with the current House of Lords stem from the fact that membership of the chamber is linked to the receipt of a peerage. This makes it unclear whether membership is an honour or a job. Some members accept a peerage as an honour, and yet in practice play little or no role in the work of the House. This creates confusion about the chamber's size, and makes its active membership unpredictable. These difficulties are multiplied by the fact that it is impossible to leave the chamber, as life peerages cannot be renounced. It also means that some individuals may be resistant to entering the chamber, if they do not wish to accept the title that comes with membership.

Almost all groups that have considered reform have proposed that the link between the second chamber and membership of the peerage should end. The obvious exception was the

government's white paper of 2003. We concur with the Royal Commission, the Public Administration Committee and the government's earlier proposals that this practice should end. This would not result in any current members of the chamber losing their peerages, and peerages could continue to be bestowed as an honour. The key difference would be that this no longer resulted in automatic membership of the second chamber.

Recommendation: The automatic link between the peerage and membership of the second chamber should end.

The Name of the House

It is far more important who sits in the chamber, and what functions it performs, than what it is called. Nonetheless the name of the chamber is an issue which attracts understandable attention whenever reform is proposed. We do not consider this issue to be of very great significance, but it is clearly important that the chamber has a name – not least when a Bill describing it is being drafted. We were tempted to suggest, as the Royal Commission seemed to do, that the name of the chamber should remain unchanged. However, it would be somewhat anachronistic to have a House of Lords where increasing numbers of members are not Lords (or Ladies), existing in a wider environment where there are many titled members who no longer have the right to sit in the chamber. We are not attracted to the name 'Senate' which, though widespread throughout the world, is too reminiscent of the US Congress. We therefore propose that the chamber should take on the functional name of either Second Chamber (as the Public Administration Committee proposed). This way members would be likely to be referred to as MSCPs (Members of the Second Chamber of Parliament).

Recommendation: We do not consider the name of the House to be a particularly important matter. However, we believe that it would be somewhat anachronistic for it to maintain the title the House of Lords. We therefore propose that it should in future be referred to as the Second Chamber, and its members as MSCPs.

Administrative Matters

At present members of the House of Lords are very poorly resourced in comparison to members of the House of Commons. Although matters have improved in recent years, many peers do not have a desk at Westminster, and there are only limited facilities to pay staff salaries.³¹ Instead peers are entitled to a daily secretarial allowance and attendance allowance for the days that the House is sitting.

The inclusion of elected members of the House means that there will need to be some change to these arrangements. Particularly for members elected to represent areas outside London and the south east, the commitment to be present on a daily basis for the business of the chamber will come only at significant cost. At the moment this is managed by a disproportionate number of members coming from London and the surrounding areas, and a disproportionate number having already retired from full time work. A necessary condition to making the chamber more representative therefore is to change the basis on which allowances are paid. At present the chamber is often referred to as a 'full time House of part time members', although in practice it is maintained by a core of members, mostly

³¹ Under current arrangements the maximum that peers can claim for staff costs, if they attend the House every single sitting day, is around £13,000.

retired, who attend all or most days at some personal cost and with little administrative support.

The reform of the House offers the opportunity – and indeed the imperative – to review this situation. The reduction in the number of members means that there should be more office space to go around. In addition we believe that it is reasonable that members be paid a salary, and have some allowance to pay staff to support them in secretarial and research roles. However, given that members are not burdened with constituency duties, we would expect them to receive a lower salary and significantly lower staff allowances than are currently available to MPs. The correct way of resolving this matter is to refer it to an independent organisation, and the Senior Salaries Review Body (which currently reviews the pay of MPs and senior civil servants) is the correct body to carry out this task.

Recommendation: Once the principles of composition in the reformed second chamber are agreed, the issue of salaries and allowances for members should be referred to the SSRB for consideration. We believe that resources to members should be better than they are now but should be lower those payable to MPs - particularly in terms of availability of staff, many of whom in the Commons support members in their constituency duties

The Transition from Here to There

In the previous section we set out our blueprint for a reformed second chamber, which will be largely elected but contain a minority of appointed members. We have sought in our proposals to retain the most valued features of the current House of Lords, but to create a chamber that will have sufficient legitimacy to carry out its duties effectively. In many of our proposals we have emphasised the need for continuity with the current arrangements, and the same spirit must inform consideration of how we move from the current chamber to the one that we propose should be created.

We believe that ‘big bang’ reform to move straight to a largely elected chamber is infeasible, and indeed in many ways is undesirable. This would provide a major shock to the political system, and might result in important traditions being lost. In addition it would be

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Recommendation: We do not propose a ‘big bang’ reform to establish a largely elected second chamber overnight. Instead we believe that it is more practical and desirable to make a gradual transition to the new chamber so that continuity and tradition is maintained.

Assuming that our recommendations are implemented after the forthcoming general election, the first second chamber elections would be held in roughly 2009, 2013 and 2017. We recommend that at each of these elections, when one third of the new elected and appointed members enter the chamber, one third of the current members should retire.

chamber. Then half of those remaining should depart at the second such election. At the third election, all of the remainder would leave. This would ensure that the party balance amongst the life and hereditary peers who remain in the chamber during the transition mirrors what it is now.

The detail of these internal elections amongst peers should be left to the House authorities, but we would anticipate that members first be offered the chance to withdraw voluntarily, and an election should then be held (if necessary) to choose between those that seek to remain. The electorate in each case would be all remaining members of the old House, excluding Bishops. For these purposes, life peers and hereditary peers would be treated equally. It would then be a matter for members of each group to decide whether they wished to vote for removal of hereditary colleagues first. There may be merit in offering a bonus in the retirement package to those who seek to go voluntarily rather than standing for election.

Recommendation: If there are insufficient voluntary retirements from the chamber the decision on who remains at each round should be decided by the party groups, through election. At the first stage one third of each group should be required to depart, and the second stage half of the remainder, and at the last stage all of the rest.

We have also proposed a reduction in the number of Bishops entitled to sit in the chamber, from 26 to 16. In order to ease this transition we propose that the Bishops should also be able to reduce their numbers gradually over time. This is likely to happen as existing Bishops who sit in the chamber retire, but the detail of how this transition is managed should be left to the Church of England to decide.

Recommendation: The number of Bishops should also be gradually reduced over three elections, from 26 to 16.

Another means by which current members of the House of Lords may seek to remain in the chamber is through standing for public election. We believe that this should be encouraged. If existing peers stand for election this increases the element of continuity in the House, and will help set a precedent for the kind of people selected as candidates in the future. We do not believe that there should be any restriction on members' ability to stand in these public elections. We therefore do not believe that they should be faced with the dilemma of whether to stand in the internal or the public elections. We propose that the internal elections to choose members to remain should be held immediately *after* each of the first two second chamber elections. In this way members who stood publicly as candidates but failed to get elected can still be considered for continued membership of the House.

Recommendation: Existing members of the House should be free to stand for public election to the reformed second chamber, with no restriction. In order that such members are not disadvantaged, elections internally to choose who should remain during the transition should be held immediately the first two public elections.

Of course members may also wish to leave the House of Lords and stand instead for the House of Commons. This opportunity was made available to departing hereditaries in 1999, and was taken up by John Thurso (now a Liberal Democrat MP). Although in the future we think that leaving the second chamber and standing immediately for the House of Commons should be disallowed, we do not think that it would be fair to apply these same restrictions to the members being evicted from the present House of Lords. On the other hand, once

existing life or hereditary peers have chosen to remain in the transitional House, we believe that it is fair that they should be treated in the same way as incoming elected members.

Recommendation: Departing members of the House of Lords should be able also to stand for election to the House of Commons. At the time of the first second chamber elections

Summary of Recommendations

The Functions and Powers of the Second Chamber

- The second chamber should continue to operate as a House of review, scrutiny and

- Most cabinet ministers should continue to be drawn from the House of Commons.
- The prime minister should retain the right to appoint up to four members of the house per parliament, to serve as ministers.
- Whilst we believe that there are arguments for removing the Bishops from the chamber, this opens up bigger issues which could derail Lords reform. We therefore propose that, for the moment, the Bishops should remain in the chamber, but their number should be reduced from 26 to 16. In the future a separate short bill might end their formal representation altogether.
- We have assumed that the 'Law Lords' will be leaving the chamber under the government's plans for a Supreme Court. In future, retired senior judges may continue to make valuable members of the House, but should be considered on their merits for appointments rather than gaining automatic seats. The retired Law Lords currently in the House should be subject to the same transitional arrangements as apply to other members.
- We propose that the chamber should have up to 385 members in total, 270 of whom should be elected and 87 of whom should be appointed by an independent commission. In addition the Bishops would continue to hold 16 seats and there would be up to 12 places for prime ministerial appointees. Thus elected members would make up 70-72% of the total, and independently appointed members roughly 23%.

Elected Members

- The elected members of the chamber should be directly chosen by the people, rather than result from any kind of 'indirect' election.
- The boundaries used for elections to the second chamber should be the established nations and regions of the UK, as used for European Parliament elections.
- We believe that the electoral system for the second chamber should maximise voter choice, and we therefore reject the idea of closed party lists. We thus propose that elections should be carried out using either open lists or STV. On balance we believe that STV is more in keeping with the needs of the second chamber.
- We believe that as far as possible the tradition of selecting high profile and experienced members for the second chamber should continue. The political parties should make this a priority in their selections for elected seat

- Members of the second chamber should be free to retire before the end of their term. However, they should not immediately be able to stand for the House of Commons. A five year bar should apply to standing for the Commons, starting at the date that the member's term in the second chamber was due to end.

Appointed Members

- There should be a statutory Appointments Co

entered the chamber by election or by appointm

Appendix 2: Results of the Parliamentary Votes on Lords Reform

The House of Commons and House of Lords voted on seven options for the composition of a reformed second chamber on 4 February 2003. The options had been put forward by the parliamentary Joint Committee on House of Lords Reform. The results of the votes are shown in the tables below.

In total 594 MPs took part in the divisions in the House of Commons. Of these, 302 voted for either a 60% or 80% elected House. When those voting for a wholly elected House are included, this figure rises to 336. Meanwhile the minority elected options, and the option of an all appointed House, were heavily defeated. Particularly given that the prime minister had expressed concern about election (and himself voted for a wholly appointed House), this clearly demonstrates that there is a latent majority in the Commons for a largely elected second chamber.

Votes in the House of Commons

	All appointed	20% elected	40% elected	50% elected	60% elected	80% elected	All elected
Votes for	245	none	none	none	253	281	272
Votes against	323	all	all	all	316	284	289
Majority	-78	-	-	-	-63	-3	-17

In the House of Lords the option of a wholly appointed chamber received majority support, whilst all of the options providing for elected members were rejected. Again the minority elected options were defeated most heavily. Although the Lords clearly expressed opposition to a largely elected chamber, in the event of a conflict with the House of Commons it is normally accepted that it is the Commons' will that should prevail.

Votes in the House of Lords

	All appointed	20% elected	40% elected	50% elected	60% elected	80% elected	All elected
Votes for	335	39	60	84	91	93	106
Votes against	110	375	358	322	317	338	329
Majority	225	-336	-298	-238	-226	-245	-223

Appendix 3: Length of Terms

