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**TIME TO GET A GRIP ON
LORDS APPOINTMENTS**

April 2011

House Full: Time to get a grip on Lords appointments

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Executive summary

- We are currently awaiting the government's proposals for large-scale Lords reform. This report does not seek to pre-empt or challenge those proposals, but to call for short-term changes which are urgently needed now, even if the government's plans meet their most optimistic timescale.
- Concern about rising numbers in the House of Lords has been expressed for some years, but the situation has become critical since May 2010. The addition of 117 new peers in less than a year is unprecedented in recent times, and has had negative effects on the functioning of the chamber. Any further increase in size risks rendering the House of Lords completely unable to do its job.
- There are particular concerns about the coalition's stated objective of achieving proportionality between the parties in the House of Lords in relation to general election vote shares: as demonstrated below, putting this promise into effect would require a minimum of 269 additional peers to be appointed, taking the size of the chamber to 1062.
- The current membership of the House of Lords stands at 792, or 831 in total, once those temporarily excluded from the chamber are counted. This is by far its largest size since reform in 1999, at which point it had 666 members.
- The recent rise in membership is - perhaps surprisingly - not primarily due to attempts to achieve proportionality, as 39 new Labour peers have been added since May 2010. This demonstrates problems with conventions governing the current appointments process, which are long overdue for reform. In particular, the conventions of resignation and dissolution honours; but more generally the significant patronage still enjoyed by the Prime Minister over appointments.
- We come from different parties and none, and have differing views on the long-term future of the House of Lords and its reform. But we are united now in calling for three things:
 - An immediate moratorium on Lords appointments, to be lifted only once the number of members eligible to attend the chamber has dropped below 750. Thereafter this should be an absolute cap on the size of the chamber.
 - Immediate implementation of the non-statutory proposals from the Leader's Group chaired by Lord Hunt of Wirral, to allow retirements from the Lords.
 - Any future appointments to be put on a more transparent and sustainable basis, with the House of Lords Appointments Commission to determine the number of vacancies, divide these using a clear formula between the parties (and Crossbenchers), and invite the parties to nominate. The simplest formula would be to appoint each batch of *new* appointments in proportion to election votes.
- These proposals are not a substitute for 'wholesale' Lords reform, but a necessary addendum. If wholesale reform proceeds as the government hopes, they need be only temporary. They can and should be implemented immediately, without the need for legislation. If wholesale reform does not succeed, there may be a desire to put them on a statutory basis in the future.

Introduction

House of Lords reform is once again on the political agenda. The coalition government proposes to create a wholly or largely elected second chamber, and a draft bill is expected shortly. This report does not seek to pre-empt those proposals, nor to offer an alternative to them. Rather, it raises a separate and more urgent problem: of the need to get a grip, in the short term, on the volume of appointments to the House of Lords. If the government's proposed reform proceeds we nonetheless face a major short-term problem; if it is delayed, or fails to be agreed, then this problem will become very serious indeed.

The last major reform of the chamber took place when over 650 peers departed under the House of Lords Act 1999. This left it with 666 members. In the 12 subsequent years the number of members in the House of Lords has crept gradually upwards, but it has accelerated particularly rapidly since the general election of May 2010. This rapid growth in membership has caused problems for the effective operation of the chamber. There is now a major concern that if appointments continue, the House of Lords will simply cease to be able to function. Something must therefore urgently be done.

The pattern of appointments over recent years, and particularly since 2010, illustrates various problems with the current system. Appointments continue to be controlled primarily by the Prime Minister, with no clear template as to how many members should be appointed and when. Various conventions continue to operate, some of which are long overdue for reform. An added problem is the government's stated objective of achieving proportionality between the parties in the House of Lords: this would require a huge number of new appointments, which would damage the chamber severely.

We conclude that it is essential to get a grip on House of Lords appointments. Arrangements must be put on a more transparent and sustainable basis, and the outdated conventions must end. Introduction of some form of retirement from the chamber is also necessary, but will not be sufficient in itself. The new arrangements should take account of proportionality between the parties, but not in the form that the coalition agreement proposes. In the short term we consider that a moratorium on Lords appointments is necessary, until the chamber's total membership drops below 750. Even if the government's House of Lords reform bill proceeds rapidly, elected members will not enter the chamber for four years; hence the changes that we propose are needed now if parliament is to remain functional in the meantime.

This short report sets out the details of recent appointments to the House of Lords, how the current rules operate, and what proposals have previously been made. It reviews routes out of the chamber as well as routes in. It also considers the consequences of a proportionality formula, and the prospects for larger-scale reform. It ends by proposing what must be done immediately to resolve the current problem. We hope that this report will be considered a constructive contribution, and that its recommendations will be taken seriously and acted upon.

The pattern of appointments to the House of Lords since 1997

The number of appointments made to the House of Lords since the coalition government took office in May 2010 is unprecedented in comparison both to recent years and longer history. Ever since 1999 there have been concerns that the number of members in the House of Lords is creeping gradually upwards, but in the last year this situation has suddenly become far worse.

Table 1 shows the number of peers appointed to the House of Lords by Prime Ministers Tony Blair, Gordon Brown and David Cameron, broken down by party group. As can be seen, since David Cameron became Prime Minister less than a year ago, around one third the number of peers have been appointed as were appointed by Tony Blair during his 11 years in Downing Street. Presented as an average number of appointments per full calendar year, this equates to a rate nearly four times that under Blair. And in historical terms, Blair's rate of appointment was high: for example during Margaret Thatcher's premiership only 18 peers were created on average per year.²

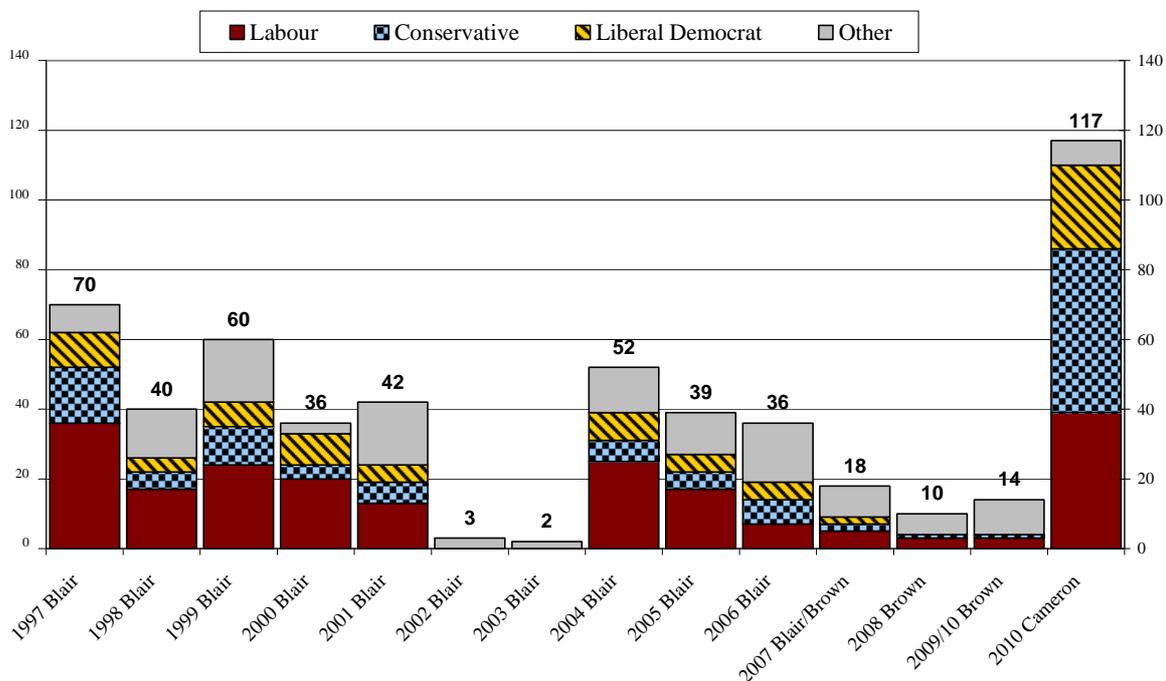
Table 1: Appointments to the House of Lords by Blair, Brown and Cameron

	Blair 1997 – 2007	Brown 2007 – 2010	Cameron 2010 – 2011	Total 1997 – 2011
Conservative	62	4	47	113
Labour	162	11	39	212
LibDem	54	2	24	80
Other	96	17	7	120
Total	374	34	117	525
Average/year [†]	37	12	128	38

Source: Adapted from L. Maer and A. Brocklehurst, *Peerage Creations since 1997*, House of Commons Library Standard Note SN/PC/5867, February 2011. Excludes Bishops and hereditary peers (both replaced on a one-in-one-out basis), and Law Lords appointed under the Appellate Jurisdiction Act 1876.

[†] Calculated from a monthly average, scaled up (Blair 121 months, Brown 35 months, Cameron 11 months).

Figure 1: House of Lords appointments annually, 1997-2010



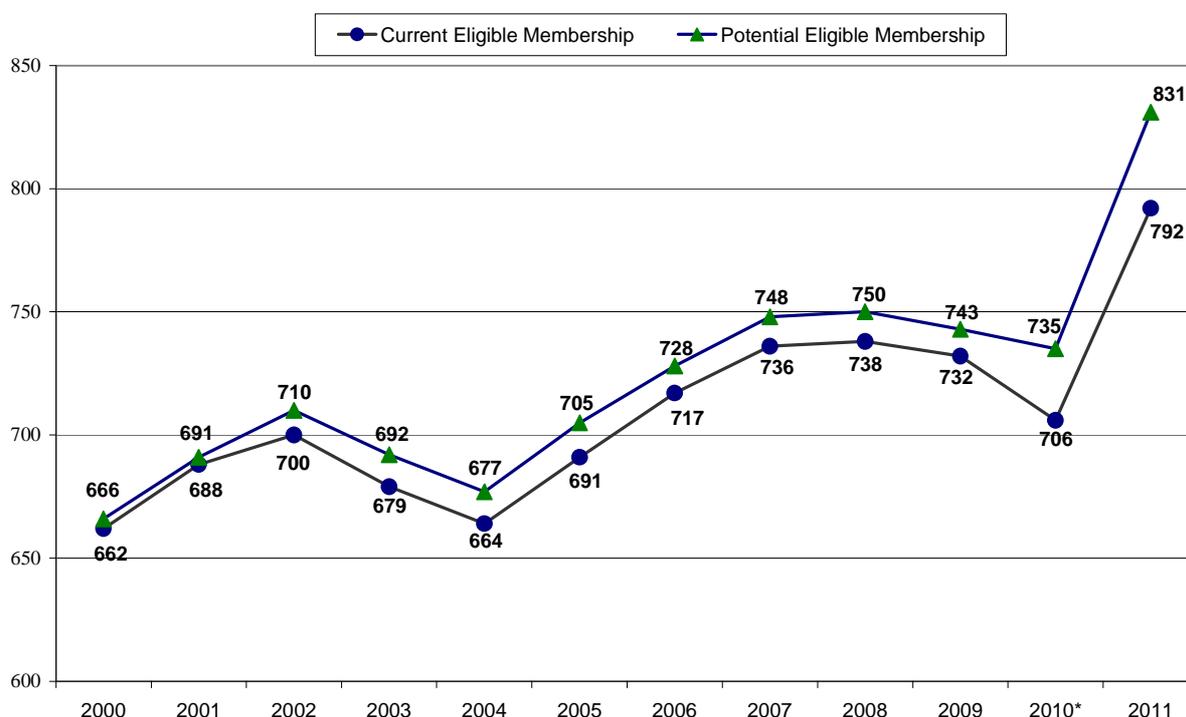
Source: Constructed from figures provided by House of Commons Library. Figures exclude Bishops, hereditary peers, and Law Lords appointed under the Appellate Jurisdiction Act 1876.

Although Tony Blair was often criticised for making a large number of appointments to the Lords, his record has thus been far exceeded since May 2010. In comparison to Cameron’s first year as Prime Minister, Blair made ‘only’ 70 appointments to the chamber. In every intervening year the number of appointments was substantially lower, as shown in Figure 1.

An ever-expanding House of Lords

Not surprisingly, this large volume of appointments has resulted in a significant increase in the size of the House of Lords. The number of members of the chamber dropped sharply - from 1330 to 666 - in November 1999, with the departure of the majority of hereditary peers. As shown in Figure 2, its overall size has been drifting slowly upwards since then, but has taken a sharp turn and this year and is now by far at its highest level since that time.

Figure 2: Number of House of Lords members January 2000 – April 2011



Source: Constructed from figures provided by House of Lords Information Office. All figures are for January, except 2011 which is figure for April.

*The drop from 732 to 706 between 2009 and 2010 is explained largely by one-off changes: the introduction of disqualification for serving ‘Law Lords’ and MEPs, and two suspensions.

As of 1 April 2011, there were 792 members entitled to attend and vote in the House of Lords, with the breakdown shown in Table 2. These figures in fact downplay membership numbers. There are an additional 39 members who potentially could return to the chamber, taking its total membership to 831. These comprise 21 members who have taken voluntary ‘leave of absence’, 15 who are currently disqualified as members of the senior judiciary (but are entitled to return following their retirement from judicial office), one who is (likewise) disqualified as an MEP, and two who are temporarily suspended.

As Table 2 shows, the Conservatives, Labour and the independent Crossbenchers currently have roughly equivalent numbers of peers, and the Liberal Democrats (and other groups) significantly fewer. Labour is marginally the largest party, although as an opposition it is

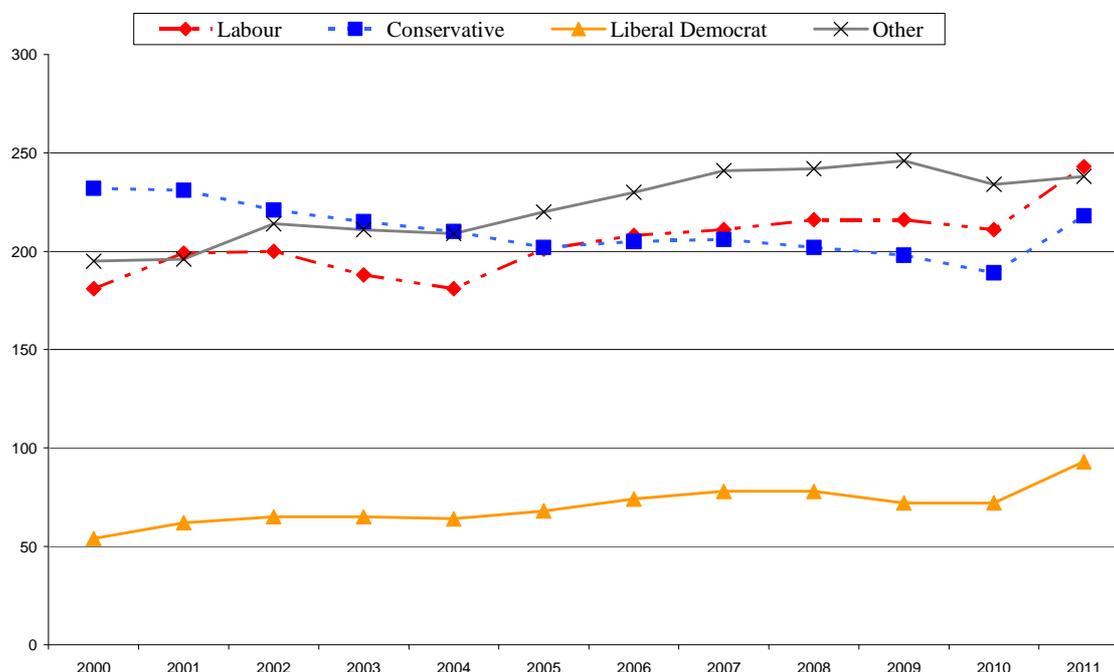
significantly outnumbered by the combined forces of Conservative and Liberal Democrat peers on the government benches. The Crossbenchers make up 23% of the total. The Bishops have a fixed allocation of 26 seats (of which one is currently vacant, as is one seat for a hereditary peer).³ Figure 3 shows the change in membership since 1997 broken down by political party (for simplicity all peers not aligned with the three main parties are shown here as a single block). This demonstrates that Labour, Liberal Democrat and “other” numbers have all risen gradually since the chamber was last reformed. Conservative numbers gradually fell in the 10 years following 2000, but have been significantly revived since May 2010. Notably, as the figure shows, it was not until 2006 that Labour as the party of government became the largest party in the Lords.

Table 2: Breakdown of Membership of the House of Lords, 1 April 2011

Affiliation	Life Peers	Hereditary Peers	Bishops	Total	% of House	% appointed by Cameron
Labour	239	4	-	243	31%	16%
Conservative	170	48	-	218	28%	22%
Lib Dem	89	4	-	93	12%	26%
Crossbench	153	31	-	184	23%	3%
Bishops	-	-	25	25	3%	-
Other	27	2	-	29	4%	7%
Total	678	89	25	792	100%	15%

Source: House of Lords website, combined with figures in Table 1. Excludes members on leave of absence and otherwise temporarily absent from active membership (39 in total).

Figure 3: Number of House of Lords members by party/group January 2010 – April 2011



Source: Constructed from figures provided by House of Lords Information Office

Problems for the functioning of the House of Lords

Quite apart from the general concerns about the unsustainability of a parliamentary chamber ever increasing in size, the arrival in the House of Lords of over 100 new members in less than a year has had significant effects on the chamber's functioning. To the world outside the most obvious effect might be the rising cost, in terms of allowances, etc. This is particularly the case given that even immediately after the 1999 reform the House of Lords was the largest second chamber in the world. It also stands alone internationally as the only second chamber to be larger than its respective first chamber.

These problems could be seen as merely presentational however. The far bigger problem is the effect of the House of Lords' growing size on its ability to function effectively. In this respect, there are three interconnected problems.

First, and most mundanely, the increased number of members puts increasing pressure on the House of Lords' limited resources. This is most obvious in terms of office space, where the Lords has expanded significantly in recent years in order to make better facilities available to members. These are now very much under pressure, and once again peers are faced with working in overcrowded conditions, with limited access to computers and telephones, and little or no space for staff. This is far from conducive to effective working. In addition, of course, pressure has increased on shared resources, including the House of Lords Library, and catering facilities, at a time when budget constraints mean that downsizing rather than expansion is the order of the day. Even space in the chamber itself is now under great pressure. An extra 15 seats were made available in the chamber in October 2010, but since then 54 more peers have been added, and there is frequently insufficient space for those wishing to attend.

Second, the same kind of difficulties apply in terms of ability to contribute to the work of the House. For example, there are now many more peers seeking to contribute to debates, ask questions, and become members of committees. This has created a more fractious atmosphere in the chamber, and growing frustration amongst members who cannot contribute effectively. Again, this has a negative effect on the House of Lords' ability to function, with members who have much to contribute becoming unable to do so. It also has the potential to increase costs, for example through increased numbers of written questions which Whitehall departments must answer.

Third, the fact that so many members have entered the chamber so quickly has had a separate and negative impact upon its culture. In the past, members of the House of Lords have been added only gradually, and become socialised in the chamber's practices and conventions. Most obviously, the chamber is known for having a non-partisan ethos, and a courteous atmosphere. It has been widely noted - in the media as well as within parliament itself - that the influx of a large number of new members, including many former MPs, has resulted in changed behaviour. This was particularly evident over the Parliamentary Voting System and Constituencies Bill, which was significantly delayed in the House of Lords. One of the notable features of the Lords since its reform in 1999 has been that its culture has changed only gradually, and generally in a constructive way: moving towards greater assertiveness, but retaining the old courtesies, and with a growing professionalism. These changes have been seriously threatened by the appointments which have already taken place. Should further appointments follow, the culture, practices and effectiveness of the House of Lords would be greatly at risk.

The unsustainability of achieving proportionality

A particularly pressing concern in terms of membership size is the statement in the May 2010 coalition agreement that ‘Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election’.⁴ At present strict proportionality clearly does not apply, as Labour is the largest party. To bring membership into line with general election votes would therefore require a large number of additional appointments. It also raises other concerns.

In one respect it is clearly difficult to make an all appointed chamber proportionate to general election vote shares. A significant proportion of members of the Lords are Crossbenchers, aligned to no political party. For this reason alone the coalition’s stated objective cannot be fully met, unless these members are removed. A less literal reading of the words from the coalition agreement would assume that the balance between the *party political* peers in the House of Lords should reflect general election votes. This too is unrealistic, however.

Since members cannot currently leave the chamber (see discussion below) the only way of achieving greater proportionality is through new appointments. Table 3 demonstrates the number of appointments that would be required to align with the 2010 general election result, using a baseline of the membership of the chamber at 1 March 2011. An open question is whether a second chamber ‘reflective of the share of the vote’ would contain seats for parties not currently represented in the House of Lords: including the Green Party, Scottish National Party (SNP) and British National Party (BNP). Other ‘minor’ parties currently hold a handful of seats, as shown in the table.⁵ It is therefore difficult to see how a proportionality formula could legitimately apply only to the three main parties. Both models in the table assume that other parties should gain representation.

Table 3: Changes required in order to make membership proportional to 2010 election

Affiliation	Current total*	% of House	% of party peers only	General election vote§	Proportionality, model 1	Proportionality, model 2	New peers
Labour	242	31%	43%	29.0%	242	242	0
Conservative	219	28%	37%	36.1%	301	301	82
Lib Dem	94	12%	17%	23.0%	191	191	97
UKIP	2	0%	0%	3.1%	26	26	24
Plaid Cymru	1	0%	0%	0.6%	5	5	4
DUP	4	0%	0%	0.6%	5	5	1
UUP	4	0%	0%	0.3%	4	4	0
SNP	0	0%	0%	1.7%	14	14	14
BNP	0	0%	0%	1.9%	16	16	16
Green Party	0	0%	0%	1.0%	8	8	8
Other parties†	0	0%	0%	2.7%	23	23	23
<i>Party peers</i>	566	71%	100%	-	835	835	269
Crossbenchers	183	23%	-	-	183	263	(80)
Bishops	25	3%	-	-	26	26	0
Other	18	2%	-	-	18	18	0
Total	792	100%	100%	100%	1062	1142	269 (349)

* Source: House of Lords website, 1 March 2011.

§ Source: BBC website (<http://news.bbc.co.uk/1/shared/election2010/results/>)

† No other single party achieved 1% or more of the vote.

Model 1 simply scales up the number of seats needed by all parties based on Labour's current representation (as the relatively overrepresented party), and leaves the number of non-party peers unchanged. This results in 269 new appointments and a chamber of 1062 members (among them would be 16 members of the BNP, as well as eight Greens and an additional 26 UKIP members).⁶ However, under this model the Crossbenchers would lose out proportionately, with their 183 members forming only 17% of the total, compared to the current 23%. Model 2 therefore scales up the Crossbenchers so that they retain 23% of seats. This requires an additional 80 Crossbench appointments and results in a chamber of 1142 members.

It should by now be clear that the objective of a House of Lords membership proportional to general election vote shares is unrealistic: it would require the appointment of, at a minimum, 269 new peers. This would have disastrous consequences for the operation of the chamber, and be deeply unpopular with the public. Even if this was not the case, it would be a foolish and unsustainable course to pursue, as it would result over time in a second chamber whose size spiralled ever upwards. A convention that the chamber was rebalanced after each general election could only be honoured through rebalancing upwards (until some mechanism for removing members is adopted). Thus if the 2015 election is reached and wholesale reform has not yet happened, whichever party increases its vote share, the House of Lords would become larger still. This pattern would be repeated at future elections.

In fact, the appointments made by David Cameron to the House of Lords have not greatly enhanced its proportionality. As was shown in Table 1, he has appointed 39 Labour peers to the chamber, and only 47 Conservatives. As Labour was already the overrepresented party compared to vote shares, this has made the situation greatly worse: it would now require even more appointments to achieve proportionality than it would have done in May 2010. The reason that David Cameron made so many Labour appointments is a product of the old conventions. These are dealt with in the next section, and we argue that they must change.

We conclude that the objective of achieving proportionality must be dropped, at least until other changes have been made. Only when there is a route for significant numbers of members to depart the House of Lords - as discussed below - can proportionality be achieved without unreasonable pressure on numbers. Until such changes have been made, the government should perhaps content itself with two things. First, in contrast to Labour's time in government, the coalition parties already hold a political majority over the opposition. Second, there is a clear precedent for a more patient approach: Labour did not become the largest party in the Lords until 2006, nine years after first gaining office (see Figure 3, above).

Problems with the current routes into the Lords

Currently there are essentially four distinct routes into the House of Lords: appointment as an independent peer by the House of Lords Appointments Commission, direct appointment by the Prime Minister as a party political or independent peer, appointment to the Bishops' benches, and election as a hereditary peer. All of the current routes into the chamber are described in further detail below. By far the largest group comprises direct appointments over which the Prime Minister retains discretion, and these may themselves be broken into five relatively distinct categories. Although there have been proposals to remove the hereditary peers and Bishops, and not all agree with the presence of appointed independent peers, these are essentially 'second stage' issues, to be dealt with in any future package of reform. Our primary concern here is with the almost wholly unregulated appointments made by the Prime Minister

himself, as the large growth in House of Lords numbers is principally due to these appointments. While there have been some developments in recognition of the more active and professional House of Lords post-1999, several practices continue which are now outdated.

1. Independent Appointments Commission peers

The House of Lords Appointments Commission was created in 2000, to take over some of the Prime Minister's responsibilities for appointing peers. It has two primary functions: first, to select individuals to be appointed as independent Crossbench members, and second, to vet political appointments for propriety. Apart from the propriety check, the Commission has no role in actually selecting political peers. However it does invite applications from those wishing to be appointed as independent peers, from which it chooses a small number to put forward to the Prime Minister for appointment. In practice, the Prime Minister has approved all names so far put forward by the Commission. He remains responsible for determining how many such appointments should be made, although there is an implicit agreement with the Appointments Commission that this will be 'five or six a year'.⁷ To date, 57 independent peers have been created via this route.

2. Direct Prime Ministerial appointments

Most House of Lords appointments remain directly in the hands of the Prime Minister, who retains very significant patronage power. They include all political appointments to the chamber, but also a small number of independent members. Prime Ministerial appointments can be seen as falling into five relatively distinct categories, although there is no absolutely hard and fast line between them:

- A small proportion are **non party-political appointments**. When Tony Blair gave up most of his discretion over appointing independent peers to the House of Lords Appointments Commission in 2000 it was initially expected that the Prime Minister would no longer make any such appointments. However, Blair continued to make a small number. An agreement was thus reached with the Appointments Commission in 2005 that up to 10 non-political appointments per parliament should remain in the gift of the Prime Minister for 'distinguished public servants on retirement'. These have been used to reward retiring senior figures, such as Cabinet Secretaries and heads of the armed services. Such figures were given peerages almost by right before the House of Lords Appointments Commission was established. This convention has therefore largely continued, and since 2000, approximately 24 such peers have been appointed. Given that the Appointments Commission now runs a merit-based selection process for independent peers, it should arguably now make the final decision on all such appointments.
- All other Prime Ministerial appointments are of party-political peers, and these may mostly be broken into four groups. The most problematic category in the present context is perhaps the **resignation honours** list, made by a departing Prime Minister. Many of David Cameron's first group of appointments were in fact Gordon Brown's resignation honours. It has become an established convention that a departing Prime Minister should be able to leave such appointments for his or her successor, though (probably due to the controversy over 'cash for honours' shortly beforehand) no resignation honours were made after Tony Blair stepped down. David Cameron's first block of 56 appointments in May 2010 included 32 resignation honours, 23 dissolution Honours (see below), and one other (a peerage for retiring Metropolitan Police Commissioner Ian Blair, falling into the category above). Gordon Brown's list of resignation honours was unusually large in historical terms: for example, Edward Heath left a list of only nine names, James Callaghan left ten and

Margaret Thatcher seven.⁸ David Cameron could in theory have refused such a large list, and arguably should have done, but he may have felt duty bound to respect the outgoing Prime Minister's wishes. The convention regarding resignation honours is unclear; as the Public Administration Committee has noted, 'resignation honours are, of course, relatively rare and "the usual way" is in fact more of a series of isolated examples'.⁹ When the party of government changes a resignation honours list is obviously likely – as in this case – to tilt Lords' membership towards the party leaving power, which is contrary to the desire to achieve proportionality. This practice no longer seems suited to the contemporary House of Lords.

- Relatively more common are **dissolution honours** at the end of each parliament. These are peerages given to retiring (or defeated) MPs. Again, there is no clear rule regarding how many such appointments should be made, and again they are likely to favour the outgoing party when there is a change of government. In 2010, 23 such appointments were made, of which 13 were Labour. To some extent conventions still exist that retiring former Cabinet ministers should be rewarded with a peerage, but these conventions are both ill-defined and seem to have been stretched over time to reward more junior figures. Several of those on the 2010 list had not reached Cabinet. There have been concerns expressed for many years that such peerages are used to encourage long-serving MPs to give up seats for candidates favoured by party leaders, and there are presently concerns that such promises may be made to some of the 50 MPs facing expulsion as a result of the forthcoming boundary changes. Again, the Prime Minister can in theory turn down the requests of other party leaders for honours, and this has happened in the past.¹⁰ But there is no constraint on the Prime Minister himself.
- A different form of political appointment is the creation of new peers by the Prime Minister **to immediately take up ministerial office**. This form of appointment is historically relatively unusual, but has been used on several occasions in recent years. The largest such group were those appointed when Gordon Brown became Prime Minister, to join his so-called 'government of all the talents', and thus became colloquially known as 'goats'.¹¹ They included Lord Malloch-Brown, Lord Jones of Birmingham and Lord Darzi of Denham. Other such appointments include Baroness Morgan of Huyton and Lord Adonis, appointed by Tony Blair, and Lord Sassoon and Lord Green of Hurstpierpoint, appointed by David Cameron. There have been around 15 such appointments since 1999. This major patronage power by the Prime Minister is currently completely unregulated.
- The largest group of political appointees in recent years have been the **regular lists of new working peers** announced by the Prime Minister. Members of the above three categories may also be working peers, so this last group is distinguished simply by comprising neither resignation, dissolution nor ministerial appointees. Again, there is no fixed pattern or rule by which these peers are appointed. As with the other groups above, there is some expectation of political balance amongst those appointed (with the Prime Minister inviting nominees from the other party leaders), but this is not fixed. In theory the Prime Minister could appoint as many such peers, and with whichever political balance, as he saw fit. Tony Blair made several rounds of such appointments (as demonstrated by Figure 1), and David Cameron appointed a group of 54 in November 2010. As with all of the other groups above, the tendency to appoint in this way has increased significantly in recent years.¹²

3. Bishops

There is a fixed number of 26 seats in the chamber for Bishops and Archbishops of the Church of England. Five of these are *ex officio* (for the Archbishops of Canterbury and York, and Bishops of London, Durham and Winchester), and the remainder are chosen by the church on the basis of seniority. After appointment, Bishops and Archbishops hold their seats until their retirement from the church, at which point they also retire from the Lords (being the only group currently able to do so). When vacancies arise due to retirements they are filled by the next officeholder, or next most senior Bishop, as appropriate. Various recent proposals have suggested the removal of the Bishops or a reduction in their number. We do not deal with that matter here.¹³

4. Hereditary peers

Under the House of Lords Act 1999 there remain 92 hereditary peers in the chamber. These members now serve for life, and do not pass their seats directly down the family line. Instead, in most cases, following the death of a hereditary peer a byelection is held to choose a successor. Candidacy is limited to hereditary peers not currently members of the chamber. For 75 of these seats the electorate is formed by the remaining members of the departed member's party (or Crossbench) group. For 15 of the seats the electorate is instead all members of the House. The remaining two seats are reserved for royal officeholders. As in the case of the Bishops, there have been many calls for the remaining hereditary peers to be removed. But because their number of seats is fixed, this group has had no impact on the rising numbers in the chamber since 1999. If the hereditary peers were removed, many have proposed that this should be via the ending of byelections, with the current incumbents effectively turned into life peers. This would clearly have no immediate effect on the size of the chamber.

Existing proposals for reform of appointments

There have been various proposals in recent years for reform of these arrangements. Obviously, many of these exist within the context of a desire for 'wholesale' or 'second stage' House of Lords reform. Most packages propose the addition of at least some elected members, and either the ending of appointments altogether or the passing of any remaining appointments to a statutory Appointments Commission. Most packages propose the removal of the remaining hereditary peers, and removal or reduction in number of the Bishops. Our concern in this report is not with wholesale reform. The government has a programme for this, which will proceed in due course. Instead our concern is with how the current process should be made more satisfactory in the short term, until such reform is achieved. On this question there have been fewer proposals, but nonetheless some consistent calls for reform.

One of the most important voices on this question has been the House of Commons Public Administration Select Committee (PASC), which has reported repeatedly on the honours system and the granting of peerages. PASC has an important role in this debate, as it effectively shadows the Cabinet Office, which both processes Prime Ministerial appointments to the Lords and supports the House of Lords Appointments Commission. The Appointments Commission is one of the 'associated bodies' overseen by PASC, and its chair has regularly given oral evidence to the committee. More recently (in 2010 and 2011) the chair has also given evidence to the Constitution Committee of the House of Lords.

PASC first reported on House of Lords reform in 2002, following the report of the Royal Commission on the Reform of the House of Lords, and the government's White Paper of 2001. Like both of these documents the committee's report recommended a mixed chamber of

elected and appointed members (but with elected members being in the majority). Like the Royal Commission and the government, PASC proposed that the House of Lords Appointments Commission should be put on a statutory basis, and that it ‘should allocate the numbers of politically nominated members to each party, based on the share of the vote won by the parties in the most recent second chamber election’.¹⁴ Major reforms did not proceed, and PASC returned to the subject of Lords appointments following the ‘cash for peerages’ affair. In a 2007 report the committee reiterated its belief that the Appointments Commission should be given greater powers, and be put on a statutory basis. In particular it suggested that changes should be made to ‘allow the Commission to determine the size and party balance of the second chamber, on agreed principles’.¹⁵ Recognising the political realities, the committee suggested that:

*If there are problems about parliamentary time, or concerns on the part of the Government that a limited Bill might get derailed by wider issues of second chamber reform, there is a remedy to hand. Just as the last Prime Minister set up the House of Lords Appointments Commission without legislation, the current Prime Minister could make changes without needing Parliamentary approval.*¹⁶

The government’s response to the committee’s report stated that it saw no advantage in an interim House of Lords Bill, but it did not address the question of possible non-legislative action. When the government produced its white paper *An Elected Second Chamber: Further reform of the House of Lords* in 2008, PASC published a short response. It concluded that ‘we believe that change is needed and possible in advance of any legislation on the future shape of the second chamber’.¹⁷ Recognising that major reform was promised, it stated that ‘in the meantime, we have proposed changes that should be made with immediate effect to bring fairness and transparency to the interim arrangements between now and the completion of reform’.¹⁸ These once again included the proposal that the Appointments Commission should be ‘empowered to determine the balance of the parties in the House’.¹⁹ Major reform did not proceed, but neither were these interim non-legislative proposals put into effect. This was a missed opportunity.

The Constitution Unit has also consistently argued for House of Lords appointments to be put on a more transparent and sustainable footing, and for the Prime Minister to surrender more of his patronage powers to the House of Lords Appointments Commission. The Unit has published reports over many years drawing attention to the dangers of House of Lords membership spiralling out of control, particularly if attempts are made to apply too rigid a proportionality formula.²⁰ In October 2007 Meg Russell gave evidence to PASC’s inquiry on *Propriety and Peerages*, recommending a non-statutory surrendering of Prime Ministerial patronage power to the Appointments Commission, with the Commission made responsible for deciding the number and balance of appointments, as ultimately recommended in the committee’s report. In 2007 the Constitution Unit made this recommendation in a briefing published to mark Gordon Brown’s arrival as Prime Minister.²¹ In 2009 the Unit published a briefing written by Conservative MPs Andrew Tyrie and George Young which called – in the short term, pending further reform – for life peerages to be replaced by ‘term peerages’ whereby new members would serve for only three House of Commons terms.²² When the Constitutional Reform and Governance Bill (further discussed below) passed through the House of Commons later that year Andrew Tyrie and other MPs sought to add an amendment allowing for term peers. One reason given by Andrew Tyrie for this change was to address the ‘inevitable upward ratchet in the size of the House’.²³ The amendment was supported by

Conservative and Liberal Democrat MPs, but opposed by the Labour government and defeated in a division.

Another important voice in this debate has been Lord Steel of Aikwood, who has repeatedly tabled private member’s bills calling for short-term reforms of the House of Lords. Very similar bills were tabled in the 2006-07, 2007-08 and 2008-09 sessions, and another such bill is currently under consideration. The aim of the bills has been to create a statutory House of Lords Appointments Commission, with a defined responsibility to determine party balance and maintain 20% of the chamber as independent Crossbench peers, plus to allow new means to leave the chamber (the latter provisions are discussed below). Lord Steel’s bills have achieved support in the House of Lords, but at best a lukewarm response from government.

Problems with routes out of the Lords, and existing proposals for reform

The immediate problem is the large number of recent appointments to the House of Lords, and the threat of further such appointments in the future. But this situation is of course made a great deal worse by the lack of routes out of the chamber. If more such routes existed they would at least offer the potential for membership numbers to be reduced. As outlined above, the vast majority of members of the House of Lords serve for life, and therefore permanently depart only upon their death. Since 2000, 18 peers have died on average per year. As Table 4 shows, new appointments have far outstripped these relatively modest reductions through ‘natural wastage’.

Table 4: Net change to size of House through appointments and deaths, 2000-2010

Year	New peers	Deaths	Net change to size of House
2000	36	16	+20
2001	42	24	+18
2002	3	17	-14
2003	2	18	-16
2004	52	20	+32
2005	39	18	+21
2006	36	14	+22
2007	18	14	+3
2008	10	16	-6
2009	14	16	-2
2010	117	21	+96
Total	369	194	+175

Source: Figures provided by House of Commons Library (appointments), combined with Constitution Unit records (deaths). Figures exclude Bishops, hereditary peers, and Law Lords appointed under the Appellate Jurisdiction Act 1876.

The only members of the chamber who can currently retire are the Bishops.²⁴ In addition, under the Constitutional Reform and Governance Act 2010 members of the chamber must now declare themselves resident in the UK for tax purposes, and otherwise face permanent disqualification. Under these arrangements five members permanently departed the chamber in 2010 – however further such departures are not permitted. Otherwise the only routes out of the chamber are temporary. The most important is the ability to take ‘leave of absence’, whereby members give notice that they do not intend to attend. It is common for members to take leave

of absence when in very poor health, in which case many do not return. But many who have taken leave of absence either for health, professional or other reasons do choose to return to active attendance, and this option always remains open. Similarly, MEPs and senior members of the judiciary (since the creation of the Supreme Court) are disqualified from membership of the House of Lords: but peers holding these offices remain entitled to return to the chamber once their term of office has expired.

One key means to keep control over numbers in the House of Lords could therefore be the introduction of some kind of retirement mechanism. Many have argued for this, not only to contain the size of the House, but also simply to offer peers greater freedom to end their parliamentary careers when they wish.

The most consistent contributor to this debate has been Lord Steel of Aikwood, via his private member's bills. These have provided for the ending of byelections for hereditary peers, the introduction of retirement or 'permanent leave of absence', and the automatic exclusion of peers convicted of a serious criminal offence.

The previous government initially did not respond positively to Lord Steel's proposals, but ultimately it included very similar provisions in its Constitutional Reform and Renewal Bill in 2009. In its original form the bill would have ended hereditary byelections, allowed peers to retire, and allowed expulsion and suspension from the chamber in the case of wrongdoing. Unfortunately it reached the House of Lords very late in the 2009-10 session, and thus did not complete its stages before the general election. In the 'wash up', when government and opposition parties select which parts of remaining bills should be rushed through before prorogation, these parts of the bill did not survive. In retrospect this is deeply regrettable.

Most recently the options for retirement from the House of Lords have been considered by the Leader's Group established by Lord Strathclyde in June 2010 and chaired by Lord Hunt of Wirral. This group reported on 13 January 2011.²⁵ It proposed that there should be greater encouragement to peers to take leave of absence, and that peers who attended the chamber fewer than four times in a session should be written to by the Clerk at the Parliaments at the start of the subsequent session and urged to take such leave. Recognising that legislation to allow retirements was unlikely to be quickly forthcoming, the Group further recommended that members should be encouraged to voluntarily retire, with their departure 'marked by the House in some suitable way, perhaps analogous to the ceremony of introduction by which the beginning of a member's Parliamentary career is marked'.²⁶

The Leader's Group noted, however, that members might be reluctant to retire unless it was clear that their party group would not suffer as a result. It therefore concluded that it was necessary 'that the party leaders and the Convener [of the Crossbench peers] should develop a new understanding... about the proportion of seats in the current House on which it would be appropriate to each party or group to rely'.²⁷ The Group was clearly very concerned about the rising numbers in the House of Lords, and while it stopped short of proposing a complete moratorium on new appointments, its report ended by stating that 'we do urge that restraint should be exercised by all concerned on the recommendation of new appointments to the House, until such time as debate over the size of membership is conclusively determined'.²⁸

Lord Strathclyde has asked the House of Lords Procedure Committee to draw up detailed proposals to put these changes into effect. However, it is not known how many members will

take them up – especially if the retirement provision is not combined, as the Leader’s Group proposed, with a new ‘understanding’ about the division of seats between the parties.

Prospects for ‘wholesale’ Lords reform

The backdrop to all of these developments is, of course, the plan for larger-scale reform of the House of Lords: the long-awaited ‘stage two’ to follow the ‘stage one’ reform implemented by Labour in 1999. At present we are awaiting a draft bill to put into effect the objective in the coalition agreement to ‘bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation ... by December 2010’.²⁹ Its publication has clearly been delayed, but it is currently expected in May. Once the draft bill is published, the government proposes that it should be subject to detailed scrutiny by a joint committee of MPs and peers. Lord Strathclyde has indicated that this will be a ‘substantial committee’, including representatives from the Crossbenches and the Bishops’ bench (both absent from the previous cross-party talks), as well as party representatives, and that it ‘will have a substantial job to do’.³⁰ Once the joint committee has reported on the bill, the next step is for the government to introduce a bill formally, and for this to go through the legislative process in both chambers.

Even in the government’s most optimistic scenario, therefore, the next major stage of Lords reform will take many months. Given that the joint committee will be set up only a short time before the parliamentary summer recess, it does not seem possible for a Lords reform bill to be formally introduced during this parliamentary session. It will therefore fall into the 2012-13 parliamentary session, at best. If the bill is passed, the first elections are likely to take place alongside the general election, scheduled for May 2015. That leaves at least four years during which the present Lords needs to continue to function. It is worth noting that the more members are appointed to the House of Lords the more difficult and expensive reform may become, due to the expectation of transitional arrangements – and possibly financial compensation – for departing peers. Hence those pressing for an elected chamber should be worried by the present situation.

But of course, many are not optimistic about the prospects for this reform. After 1999 the chamber remained unreformed for 11 years when Labour was in office, despite numerous proposals. That period saw four different government white papers on Lords reform, as well as a Royal Commission, a joint committee of both Houses, two rounds of free votes on second chamber composition (the first inconclusive, the second with the Commons supporting 80% or 100% election), and numerous proposals from outside groups. But it is not just these recent experiences that suggest House of Lords reform is difficult to achieve.³¹ It was on the agenda for most of the 20th century, and while piecemeal reforms succeeded (regarding the chamber’s powers, in 1911 and 1949, and its membership in 1958, 1963 and 1999), larger-scale reform did not succeed (and in 1968 it dramatically failed). The present government may buck the historical trend, and few doubt the determination of the Deputy Prime Minister, as the responsible minister, to achieve his goal. But it would be very foolish to take the success of this reform for granted.

The worst-case scenario, therefore, is that appointments to the House of Lords continue in an uncontrolled way, pushing membership ever upwards, while the government’s proposals for reform go on to fail. That would leave Britain with a wholly dysfunctional second chamber, inefficient, expensive, and unable to carry out its functions. Since changes to the appointments process are needed even to maintain stability in the short term (should larger reform succeed), the case seems unarguable that change should be introduced now.

Conclusions: what must be done?

The present path is clearly unsustainable. The House of Lords' effective functioning has already been compromised by the recent rapid rise in membership, in ways which are damaging its effectiveness. Any further increase in size could fundamentally undermine the chamber's ability to do its job. Nor is there any desire in the country for an ever-larger parliament. This report has highlighted problems with the existing conventions for Lords appointments, with the coalition's plans to achieve proportionality, and with the lack of exit routes from the chamber. In order to avoid disastrous consequences for the House of Lords, and thus for parliament as a whole, we conclude that the current system of appointments must change, with immediate effect.

All three parties have seen significant numbers of new members appointed in the last 11 months, and the Appointments Commission has kept the Crossbenches replenished in recent years. All groups therefore now have 'new blood', and sufficient members who can play an active part in the House. A halt in appointments at the present time would damage no group. In contrast, continued appointments would damage the chamber as a whole.

The first step should therefore be an immediate moratorium on new Lords appointments. This need only be a temporary measure, but it should be absolute. Until the size of the chamber has dropped below 750 eligible members, the House of Lords should simply be considered 'full'. As numbers now exceed 830 (including those on leave of absence), it will take several years for this target to be reached by 'natural wastage' alone.³² But it may be reached more quickly if retirement is introduced. Until numbers have dropped, and until a sustainable formula for future appointments has been agreed, appointments to the Lords should simply cease.³³

If the size of the chamber is to be contained, and appointments to be resumed in the foreseeable future, a new route out of the House of Lords is required. In an ideal world retirement from the Lords would be enacted in legislation. This is politically difficult, and the urgency of the problem is such that these difficulties should not be allowed to get in the way. A first step would be the immediate implementation of the recommendations of the Leader's Group chaired by Lord Hunt of Wirral. The government should provide time as soon as possible for the chamber to debate and agree the nonstatutory retirement ceremony that it recommended.

Until this change is put in place, it is not known how many members will take up the option to voluntarily retire. There is no guarantee that the result of this process will yield many names, nor that the result will make the chamber more proportionate to party strength. In this case the desire to create new peers must be resisted. The only alternative is to create a forced retirement scheme (which could, for example, include a requirement for party groups to reduce proportionately), but that would almost certainly require legislation.

In preparation for the time when the number of eligible members falls below 750, future appointments must be put on a more justifiable, more transparent and more sustainable basis. As the Leader's Group has noted, the retirement scheme may fail if a clear understanding of this kind is not put into effect. The new arrangements should have three elements:

- A controlled system of appointments, to ensure that the overall size of the chamber remains within limits. As the House of Lords should be considered 'full' at 750, appointments should be made on at most an annual basis, and only to fill 'vacancies' up to this limit.

- A clear formula by which new peers are divided between the parties. As demonstrated above, a formula to make total membership of the House proportionate to general election votes is not compatible with a cap on numbers: instead, the need to rebalance after each election would push numbers inexorably up. The more sustainable approach would be to appoint each batch of *new* peers in proportion to votes at the last general election. This would clearly not deliver instant proportionality, but would ensure that the balance moved in the right direction, was relatively stable, and that all groups were regularly renewed.
- An independent system to regulate the above, taking these decisions out of the hands of the Prime Minister. The appropriate body to oversee the system - i.e. to a) determine the number of vacancies existing on an annual basis, b) determine how they should be divided between the parties, and then c) to invite the parties to nominate - is the existing House of Lords Appointments Commission.

These arrangements could be established in legislation, and if they are to continue in the longer term, they should be. But for now the Prime Minister should simply surrender these powers to the existing Appointments Commission. The Commission already exists on a non-statutory basis and carries out its duties in a professional and respected way. It should be handed these additional powers on a similar basis, as soon as possible. This is in line with repeated proposals from the House of Commons Public Administration Committee.

This system requires that many of the vestigial conventions surrounding House of Lords appointments must now end. In a chamber with limited space, and a target of proportionality, conventions such as prime ministers' dissolution and retirement honours lists cannot any longer be sustained. There should be just one route into the House of Lords: via the Appointments Commission invitation to party leaders to fill vacancies, combined with its own selection of members to fill vacancies on the Crossbenches. In an announcement handing more power to the Commission, the Prime Minister should make this clear.

This system suggests that the Prime Minister's vestigial powers over appointing Crossbenchers should be changed to the right to propose former office-holders to the Appointments Commission for appointment as independent peers, as and when seats are available. Similarly, while it may be reasonable for the Prime Minister to retain the ability to appoint a small number of new peers to take up immediate ministerial office, these should fall within the relevant party's quota and respect the overall cap of 750 members.

Some suggest that these arrangements could be assisted if future appointment to the House of Lords was to shift to a fixed term basis (of say 15 years), to replace the existing system of lifetime appointment. However this proposal is more controversial, and could not be strictly enforced without legislation.

Because there are obvious political difficulties in passing legislation on Lords reform, we propose the above arrangements as an interim solution, for immediate implementation without the need for legislation. They are urgently needed, even if the coalition's plan for large-scale Lords reform goes ahead to their preferred timetable (i.e. an Act on the statute book in two years' time, and elections to the chamber in 2015). If the coalition's plans for large-scale reform do not succeed, it may become necessary at a later date to put these interim arrangements on a statutory basis.

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- ¹ The House of Lords (Harvester Wheatsheaf, 1992), *The House of Lords at Work* (with David Beamish, Clarendon Press, 1993) and *The House of Lords* (Manchester University Press, 2007).
- ² Figures for earlier Prime Ministers include Macmillan (1958-63): 16 per year, Douglas-Home: 26, Wilson (1964-70): 25, Heath: 12, Wilson (1974-76): 38, Callaghan: 19, Major: 25. Source: A. Brocklehurst, *Peerage Creations 1958-2008*, House of Lords Library Note LLN2008/019, July 2008.
- ³ There is a fixed number of 92 seats for hereditary peers (as described later in the report), but two of these peers are currently on leave of absence.
- ⁴ HM Government, *The Coalition: Our Programme for Government* (2010), p.27. Available via the Cabinet Office website at http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf
- ⁵ Official House of Lords figures normally treat these members as ‘Other’ peers, though their existence is increasingly explicit: the figures in the table are taken from the House of Lords website.
- ⁶ Note that the discrepancy in figures here is due to the assumption that the Bishops will be at their full complement of 26 (rather than the present 25).
- ⁷ Oral evidence by Lord Jay of Ewelme, Chair of the House of Lords Appointments Commission, to the House of Lords Constitution Committee, 16 February 2011, question 52.
- ⁸ Donald Shell, *The House of Lords*, 2nd ed. (Hemel Hempstead: Harvester Wheatsheaf, 1992).
- ⁹ Public Administration Select Committee, *Propriety and Honours: Interim Findings*, (London House of Commons, 2006). para. 42.
- ¹⁰ See Shell at note 8, page 38, for details of Margaret Thatcher’s treatment of the proposed honours list presented by Michael Foot in 1983.
- ¹¹ For an analysis of these appointees, and their success, see Ben Yong and Robert Hazell, *Putting Goats amongst the Wolves: Appointing Ministers from Outside Parliament*, (London: The Constitution Unit, 2011).
- ¹² Though certain other forms of appointment have declined: in the past it was far more common for peerages to be included in the Queen’s birthday honours and New Year’s honours lists. In the post-1999 House of Lords these routes in have essentially been replaced by regular working peers lists.
- ¹³ For a summary, see Lucinda Maer and Chintan Makwana, *Religious Representation in the House of Lords*, House of Commons Library Note SN/PC/05172 (London: House of Commons, 2009).
- ¹⁴ Public Administration Select Committee, *The Second Chamber: Continuing the Reform*, (London: House of Commons, 2002). para 146.
- ¹⁵ Public Administration Select Committee, *Propriety and Peerages: Second Report of Session 2007-08*, (London: House of Commons, 2007). para. 181
- ¹⁶ *Ibid.*
- ¹⁷ Public Administration Select Committee, *Response to White Paper: “An Elected Second Chamber”*, (London: House of Commons, 2009). para. 7.
- ¹⁸ *Ibid.*, para. 8.
- ¹⁹ *Ibid.*, para. 7.
- ²⁰ See Ben Seyd, *Rebalancing the Lords: The Numbers*, Constitution Unit briefing 18 (1998); Ben Seyd, *A Transitional House of Lords: The Numbers*, Constitution Unit briefing 45 (1999); Meg Russell and Robert Hazell, *Next Steps in Lords Reform: Response to the September 2003 White Paper*, Constitution Unit briefing 105 (2003).
- ²¹ Robert Hazell et al., *Towards a New Constitutional Settlement: An Agenda for Gordon Brown’s First 100 Days and Beyond*, (London: Constitution Unit, 2007). p.25
- ²² Andrew Tyrie and George Young, *An Elected Second Chamber: A Conservative View*, (London: Constitution Unit, 2009).
- ²³ House of Commons Hansard, 26 January 2010, cols 732–3.
- ²⁴ Consequently retiring Bishops – particularly the Archbishops of Canterbury and York – are often appointed as life peers by the Prime Minister (being another example of retired office-holders made non-political peers). For example Lord Carey of Clifton was made a life peer after retiring as Archbishop of Canterbury, as was Lord Hope of Thornes, the former Archbishop of York
- ²⁵ Leader’s Group on Members Leaving the House, *Members Leaving the House: First Report* (2011)
- ²⁶ *Ibid.*, para. 32.
- ²⁷ *Ibid.*, para. 36.
- ²⁸ *Ibid.*, para. 67.
- ²⁹ *The Coalition: Our Programme for Government*, p.27.
- ³⁰ House of Lords Hansard, 29 June 2010, column 1665.
- ³¹ For a fuller discussion of reform prospects see Meg Russell, “House of Lords Reform: Are We Nearly There Yet?,” *The Political Quarterly* 80 (2009), 119-25.
- ³² It would be more desirable to cap the size of the chamber at 700, or even at a lower number. However we recognise that it has exceeded this figure for some years now and managed to function effectively. A more

ambitious target may be unrealistic. Nonetheless the cap should include those temporarily excluded from the chamber (currently numbering 39). This implies that the present chamber must shed 80 members.

³³ We see no immediate need to apply this 'no new members' rule to the Bishops, whose number is capped at 26. Maintaining the current one-in, one-out arrangement for Bishops therefore has no impact on the overall size of the House. Likewise, hereditary peer byelections are required by statute, but have no net effect on the size of the House.