

# **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 been reached, there remains a general acceptance that reform of the second chamber is essential. The task therefore is to find a reform package around which broad consensus can be built.

The purpose of this report is to kick-start the Lords reform process, and demonstrate that such a consensus is possible. We have come together, as representatives of all three main parties, to present a set of practical proposals that we believe can command majority support. Given the failed attempts of recent years it is clear that the government needs to find a new way forward on Lords reform. We have developed our proposals in a spirit of helpfulness, to indicate what that way forward might be.

We welcome the statement agreed at the Labour Party conference in September 2004 that the reformed second chamber should be 'as democratic as possible'. This appears to show a recognition that, after seven years of debate, only a largely elected second chamber can command majority support amongst both politicians and the public. We ourselves propose this model – both because we think it is achievable, and because we think it is right. However, we also recognise that it is essential for the second chamber not to become a replica of the House of Commons, and to maintain its own distinct ethos and role.

Many groups have already explored Lords reform in its detail, and in 2003 both chambers of parliament expressed their opinions on the matter in free votes. At first glance it might therefore appear that, because no agreement has yet been reached, none will be able to be found. However, a closer look at previous proposals, and at the views of the House of Commons, shows that there is far more that unites us than divides us. We therefore believe that it is not necessary to propose radical new directions beyond those already suggested. Rather, our job has been to build upon the existing proposals to demonstrate that there is a package that can both command broad support, and also make a real improvement to the way in which Britain is governed.

We believe that we have devised such a package, and it is described in the pages that follow. We commend it to you.

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Rt. Hon. Kenneth Clarke MP (Conservative)

Rt. Hon. Robin Cook MP (Labour)

Dr Tony Wright MP (Labour)

Rt. Hon. Sir George Young MP (Conservative)

**Other supporters of this initiative are listed overleaf.**

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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)  
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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.*

The first part of this commitment was enacted in the 1998-99 parliamentary session with the passage of the House of Lords Act. This removed the automatic right of hereditary peers to sit and vote in the House of Lords. As a result 655 hereditary peers left the chamber, and parliament convened in November 1999 with a second chamber which was far smaller, and far more politically balanced, than previously. However, compromise was necessary in order to achieve this. The government accepted an amendment moved in the House of Lords stating that 92 hereditary peers would remain, until the next stage of reform was reached. The current breakdown of the chamber is shown at Appendix 1.

The second stage of reform has, however, remained elusive. At the same time that the House of Lords Bill was published, the government set up a Royal Commission, chaired by Lord Wakeham. This was to consider the role, functions and composition of the second chamber and make recommendations for further reform. The Commission's report was published in January 2000.<sup>1</sup> It proposed that there should be no major change to the chamber's powers or functions (although it should take on additional responsibility for scrutinising constitutional matters and for reflecting the devolution settlement). The chamber's members should be largely appointed, with a minority of elected members (between 12% and 35%) to represent the 'nations and regions'. All members would serve long terms of office, and there would be a new statutory appointments commission to choose the appointed members.

These plans were not well received by the press and groups outside parliament, and questions were raised about why the Commission had proposed that only a minority, rather than a majority, of members should be elected. A poll in September 2000 found that 78% of those who expressed a preference believed there should be a majority rather than a minority elected presence in a reformed upper house.<sup>2</sup> Nonetheless the government broadly welcomed the Commission's proposals. Labour's 2001 general election manifesto included a commitment to implement the Wakeham proposals 'in the most effective way possible', which allowed for some flexibility in their interpretation. The manifesto also committed Labour to a reform that made the second chamber 'more representative and democratic', and specifically to remove the remaining hereditary peers.

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<sup>1</sup> *A House for the Future*, Royal Commission on the Reform of the House of Lords, Cm 4534, 2000.

<sup>2</sup> Guardian/ICM.

After the election, in November 2001, the government published a (second) white paper on Lords reform, setting out its interpretation of the Wakeham proposals.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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

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<sup>3</sup> *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.

<sup>4</sup> 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.

<sup>5</sup> EDM 226 in the 2001-2 parliamentary session.

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

<sup>7</sup> *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 MPs voting (and, indeed, of Labour MPs voting) supported one of the majority elected options. Meanwhile the proposal for a wholly appointed chamber was heavily defeated. A detailed breakdown of the votes is included in Appendix 2.

As no option had secured majority support in the Commons there was no clear way forward. The joint committee went into abeyance, and the government instead proposed a 'tidying up' exercise. This would have removed the remaining hereditary peers and created a statutory appointments commission to take over the prime minister's role of appointing members to the Lords. A further white paper setting out these proposals was published in September 2003.<sup>8</sup> The commitment to a bill along these lines was then made in the Queen's Speech two months later. However, these proposals were controversial, as they would effectively cement an all appointed House – which had been explicitly rejected by the House of Commons. The proposal to remove the remaining hereditaries was also not welcome in the House of Lords, where there had been an understanding that these members would remain until the final stage of reform was complete. Faced with threats of opposition from both chambers of parliament, including threats that amendments would be tabled to introduce elections, the government announced in March 2004 that it would not proceed with the bill. At this stage attention turned to what policy could be enacted after the next general election.

The Labour Party, at its annual conference in September 2004, noted that reform of the House of Lords remained part of the 'unfinished business' of constitutional reform. In discussing policies for a possible third term in government the conference voted to accept a statement that the second chamber should be 'as democratic as possible'. Charlie Falconer, the Lord Chancellor and Secretary of State for Constitutional Affairs, stated that the second chamber 'should become much more representative of the people it serves'. We, and many others, believe that the best way of achieving this is to ensure that the majority of members of the chamber are elected. Despite widespread support for this option there are a number of reasons why it has not been implemented so far, as we explore below. But we strongly believe that this is the only viable option for reform. Our report and draft bill are intended to help bring it about as quickly as possible.

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<sup>8</sup> *Constitutional Reform: Next Steps for the House of Lords*, Department for Constitutional Affairs, CP14/03, 2003.

## 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.<sup>9</sup> 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.

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<sup>9</sup> 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 many previous investigations into possible reform of the House of Lords. The Royal Commission and the government's first two white papers devoted significant space to the role of the second chamber. The Joint Committee set out some valuable principles which it suggested should guide the composition of a reformed House of Lords. Nonetheless we believe that often a preoccupation with the detail, combined with some misplaced assumptions about our current system, have obscured the bigger issues that need to be resolved. Ironically, we believe, facing some of these big issues will make it easier to reach agreement about reform.

### The Primacy of the House of Commons

The importance of maintaining the House of Commons' primacy has been a constant theme in debates about House of Lords reform. Concerns that a reformed second chamber would challenge the Commons, and perhaps even replace it as the primary chamber, have driven many of those who have been resistant to introducing elected members.

We believe that these concerns are greatly exaggerated, and are based on a misconception about how the House of Commons derives its power. The legacy of the old House of Lords has led to a belief that it is simply because the first chamber is elected, whilst the second chamber is not, that the House of Commons is the more powerful of the two. This factor was indeed important in the development of the system that we have now, and explains how the hereditary House of Lords lost its power. However today there is much else that guarantees the supremacy of the House of Commons, and that would remain unchanged even with a *wholly* elected second chamber.

Most obviously there are the Parliament Acts of 1911 and 1949, which formally restrict the powers of the Lords over legislation. But there are also fundamental conventions in our system that give the second chamber a more marginal role than that of the House of Commons. Crucially, a government must maintain the confidence of the Commons to

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.<sup>10</sup> 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.<sup>11</sup>

## **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

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<sup>10</sup> 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.

<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.

## **A More Representative Chamber**

Another feature often discussed with respect to Lords reform is the need to make the chamber, in Lord Falconer’s words, ‘much more representative of the people it serves’. Currently the Lords is overwhelmingly male, with a preponderance of members from London and the South East, and an average age amongst members of 67. The need for greater representativeness has been emphasised by most groups considering Lords reform, particularly the Royal Commission and the Joint Committee. Goals might be to increase the number of younger people in the chamber, and the number of members from other parts of the UK. We are generally sympathetic with these sentiments. However, it must also be realised that greater representativeness is, to some extent, in conflict with the desire for an expert House. In particular, bringing in more younger members necessarily means that fewer will enter the second chamber as experts at the end of their careers. Meanwhile, creating a chamber that is more representative of the whole UK will make it impractical for members to remain active in a profession in their home area whilst also serving in the second chamber – as some do now. These demands therefore need to be balanced, and this is what we have sought to do in our proposals.

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<sup>12</sup> See, for example, P. Cowley, *Revolts and Rebellions: Parliamentary Voting Under Blair*. London: Politico’s (2002).

<sup>13</sup> See *Cohesion without Discipline: Party voting in the House of Lords*, at <http://www.revolts.co.uk/Cohesion%20without%20Discipline.pdf>. This shows that in the 2001-2 session dissenting votes were cast against the party whip in only 29% of divisions by members of any party, and most rebellions comprised just one or two peers.

## 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 the degree of agreement on key issues between the various groups that have previously considered reform. Our job therefore has not been to reinvent the wheel, but to draw out the strongest points from earlier proposals, and to use them to create a package that is both internally coherent and capable of commanding majority support. We believe that it is what we have done. In making our proposals we have also sought to protect some of the most valued aspects of the present House of Lords, whilst introducing many new features that will help to address its weaknesses.

We hope that our proposals amount to what can be a stable settlement, after a period of much uncertainty about the future of the second chamber. Given the nature of the existing chamber this package of reform may appear bold, but we have also taken care not to recommend change for the sake of change. Indeed one of the biggest difficulties with the current House of Lords is not what it does, but how its members, and the chamber as a whole, are perceived. We believe that our proposals will result in a second chamber that is more effective, but which crucially can also command widespread popular support. This will be a good thing for British politics, and for our parliamentary system as a whole.

## **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 more bills off the floor of the House, or through setting up more specialist committees. However, it obviously must operate within its resource constraints, currently including the fact that many members attend on no more than a part time basis. After reform, with a change to the type of members entering the chamber, there may be scope for it to develop new roles. However, in line with other groups such as the Royal Commission and the Public Administration Committee, we believe that the general role of the second chamber – as one of review, scrutiny and deliberation – should continue largely as it is now. Any future changes should be at the discretion of its members, but should be made within a framework

where the chamber continues to complement, rather than duplicate, the work of the House of Commons.

**Recommendation: The second chamber should continue to operate as a House of review, scrutiny and deliberation. Following reform its capacity may be increased, and new specialisms be added. However, the chamber should seek to complement, rather than duplicate, the work of the House of Commons. Although there are procedural changes which might improve the working of the House these matters are under the control of its members, and we therefore make no proposals for change in this area.**

## **The Powers of the Second Chamber**

The main formal power of the House of Lords is in relation to legislation. Under the Parliament Acts of 1911 and 1949 the chamber can cause around one year's delay to ordinary bills that are sent to it by the House of Commons, after which time they may be passed by the Commons alone. With respect to 'money bills' the delaying power is only three months. These powers are enough to make government think again, and to ensure that a controversial issue is fully aired in the media and other political forums before the final decision is made. However, the second chamber cannot ultimately prevent government from achieving political change, where this has backing from a majority of MPs. This principle is the correct one, we believe, and should be maintained.

Previous groups considering reform have looked hard at the issue of Lords' powers over legislation, and most have concluded that these should remain roughly as they are. This was the view of the government, in its white papers of 2001 and 2003, of the Royal Commission and the Public Administration Committee. When comparing the House of Lords with other second chambers overseas its powers over legislation are found to be moderate. In some cases (such as Canada and Australia) second chambers have an absolute power of veto, whilst in others (such as Ireland and Spain) they can impose only a short delay. The British situation represents a compromise between these two extremes and, we believe, gets the balance about right.

There are two areas in which changes to the House of Lords' power have been more frequently discussed. One is whether the terms of the Parliament Acts should be extended to cover bills that start in the Lords, as well as bills that start in the Commons. We agree that the current situation is somewhat anomalous in this regard. It means that important government bills introduced in the Lords can potentially be vetoed altogether. However, the arrangement also reflects the tradition that the House of Commons is the primary legislative chamber, and major controversial bills should normally be introduced there. The fact that ministers got into difficulties with respect to the Criminal Justice (Mode of Trial) Bill and the Local Government Bill (which included the proposals to abolish Section 28) in 2000, reflected to a large extent lack of planning on government's part. Defeat on these matters in the Lords was largely predictable. Such difficulties can therefore be avoided if proper account is taken of the Lords' existing powers, and bills introduced there are limited to less controversial matters. We note that the Royal Commission, the Public Administration Committee and the government in 2001 all rejected extending the Parliament Acts to bills that start in the Lords and, whilst we are sympathetic in part to the proposal, we do not think that it requires urgent action.

The second area where there have been proposals for reform is in the Lords' power over secondary legislation. In contrast to primary legislation the second chamber has an absolute

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.<sup>14</sup> 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.

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<sup>14</sup> *Reform of the Powers, Procedures and Conventions of the House of Lords*, Labour Peers Working Group on House of Lords Reform, July 2004.

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.<sup>15</sup> 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 chamber’s powers, after its composition has been agreed. However, we believe that this should be considered as a separate matter from the more urgent question of changing the membership of the chamber. The current settlement on Lords powers has served us well for more than half a century, and should not be altered without careful thought.

It is important that the long overdue reform to make the second chamber more democratic and representative does not get bogged down in arguments about the powers of the chamber. And a discussion about the legislative process should take place in the full knowledge of who will be sitting in the reformed House of Lords. We therefore recommend that no immediate change is made to the second chamber’s powers, but that these matters are kept under review and might be changed as part of a more general reform of the legislative process.

**Recommendation: There should be no immediate reform to the Parliament Acts, or to the second chamber’s power over secondary legislation. The more urgent matter is acting on the chamber’s composition, which has been the subject of greatest debate and where agreement now appears achievable. Including powers in the package would, we fear, derail it. However, a wide-ranging review of the legislative process would be welcome, and the appropriate time for this would be after the composition of the second chamber has been agreed.**

As discussed in the previous part of this report, one of the defining features of our parliamentary system is the convention that the government must maintain the confidence of the House of Commons, but not the House of Lords. It is this, above all else, that gives the Commons its status as the primary chamber. No group has suggested that this should alter as a result of reform. For the avoidance of doubt we simply confirm our absolute belief that this situation should continue.

**Recommendation: At the heart of our parliamentary system is the convention that governments must maintain the confidence of the House of Commons, but not of the House of Lords. This pattern is commonly repeated in other parliamentary systems, even where the second chamber is elected. Such a convention should continue after the second chamber is reformed.**

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<sup>15</sup> See, for example, the report of the Hansard Society Commission of 2001 (*The Challenge for Parliament: Making Government Accountable*), where many of these proposals were made, and the report of the House of Lords Constitution Committee inquiry on the legislative process (*Parliament and the Legislative Process*, 14<sup>th</sup> Report of Session 2003-4) which has recently welcomed their effects.

## 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 way compromise might more often occur at an earlier stage.

Joint conciliation arrangements are relatively common in bicameral systems overseas, and such an arrangement was recently proposed by the committee of Labour peers that considered the chamber's powers and procedures. The Royal Commission also suggested that such an arrangement should be investigated. In practice these arrangements, when practised in other parliaments, vary widely.<sup>16</sup> The most obvious model within the UK would be that used for joint committees, where there are equal numbers of members drawn from each chamber, in proportion to party strengths. It would be appropriate for some of those members with the greatest interest in the bill to be included in the committee, such as members who took part in legislative or pre-legislative scrutiny, and Lords members with particular expertise in the area. To maximise the committee's influence it should always include senior members from each of the parties. If organised on a non-statutory basis, which is what we propose initially, such committees would be charged with coming up with proposals on which the two chambers would vote. If agreement could be reached within such a committee, and particularly if a consensus was achieved, its proposals would potentially be influential in both chambers.

We suggest that the two chambers consider, initially, writing establishment of such committees into standing orders. A committee would then be convened if, after a bill has been through all its stages in both chambers, outstanding difficulties remain. It would be given a short time (say two weeks) to reach agreement on these issues, after which the two chambers would vote again. Initially such an arrangement would therefore be created within the framework of the existing Parliament Acts. However, if it was considered successful it might later be given statutory basis, as generally exists in parliaments overseas. Establishment of a statutory committee could be considered as part of the general review of the legislative process which we proposed above.

**Recommendation: In order to resolve disputes between the chambers on legislation more constructively, a joint committee system should be established, where members are charged with proposing compromise amendments on which both chambers should vote. Initially such arrangements should be implemented through standing orders, but should be reviewed as part of the general review of the legislative process, and might later be made statutory.**

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<sup>16</sup> See M. Russell, *Resolving Disputes between the Chambers*, London: Constitution Unit (1999).

## 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.<sup>17</sup> The fact that mixed membership of second chambers is practical is also demonstrated by its relatively common use in other countries.<sup>18</sup>

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

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<sup>17</sup> 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).

<sup>18</sup> 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 taken on this matter. The Public Administration Committee recommended, on a unanimous cross party basis, that elected members should make up 60-70% of a reformed second chamber. When the Commons voted, a majority of those taking part supported either a 60% or 80% elected House. Meanwhile independent members currently make up around 27% of members of the House, and there are strong arguments for retaining that representation at around the proportion it is now. We therefore believe that a second chamber which was 70% elected would achieve broad public and political support, and meet the need for both greater legitimacy and protection of the independent element in the Lords.

**Recommendation: Elected members should make up 70% of the reformed chamber.**

### **The size of the chamber**

The House of Lords currently has around 700 members. It is bigger than the House of Commons and is one of the largest parliamentary chambers in the world. In part this is a product of the kind of members that it includes. For example, because members are appointed for life many are elderly and unable to attend the chamber regularly. Some accept peerages as an honour and do not wish to play an active part in the work of the House. The average daily attendance in the 2002-3 session was 362 members. This is a better reflection of the 'working' size of the House of Lords.

When the chamber is reformed, many of the traditional features that lead to its excessive size will no longer apply. We propose that appointment for life should be ended and replaced with appointment or election for limited terms. We also propose that the link between

membership of the House and the peerage should be broken. In the future members would also be able to leave the chamber if they wished, which they cannot currently do. It is thus practical to suggest that the second chamber should be significantly smaller than it is now. There are many benefits of a smaller chamber. For example this would make it easier to provide adequate accommodation for members' offices, and it would potentially enhance the strength of collective ethos amongst second chamber members.

The Royal Commission recommended that a reformed chamber should have around 550 members, and the government white paper of 2001 suggested a membership of 600. These figures were widely criticised for being too large, and the Public Administration Committee instead proposed a chamber of roughly 350 members. We believe that it would be both practical and desirable for the size of the chamber's membership to be reduced.

**Recommendation: We believe that the second chamber should be significantly smaller than it is now.**

### **Balance between the parties**

One of the key criticisms of the old (pre-1999) House of Lords was that its membership was dominated by one party. Immediately before reform took place the Conservatives had 471 members, to Labour's 179.<sup>19</sup> This was not only potentially problematic for Labour governments, it also weakened the House of Lords, making it impractical for it to use the powers it had. Since reform no single party has been able to command a majority in the chamber, or even a majority amongst its party political members (which is important as the voting turnout amongst independent members is far lower<sup>20</sup>). This means that policy has to be negotiated, and that party groups must treat each other with courtesy and respect. These are beneficial features, which reform should seek to preserve. All three main parties, and most bodies considering Lords reform, have stated that no single party should be able to gain a majority in the second chamber. We believe that this is an essential principle if the second chamber is to act neither as a rubber stamp nor an automatic block to government policy.

**Recommendation: No party should have a majority in the second chamber.**

Our proposal is that the second chamber should be largely elected, and the exact proportion of seats held by each party will thus depend on election results. But the commitment to ensure that no party has an overall majority implies that a proportional electoral system should be used. This will also ensure that the second chamber is distinct in its composition to the House of Commons.

**Recommendation: The precise balance between the parties should be determined by the elections to the second chamber, which should be based on a proportional system.**

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<sup>19</sup> This figure excludes peers without a Writ of Summons or on Leave of Absence (most of them hereditaries). The Liberal Democrats held 72 seats.

<sup>20</sup> There are good reasons for this. Independent members have far fewer research resources than party members, and need to make up their minds how to vote on an issue-by-issue basis, without pressure from a party whip. Even with amongst active independent members their voting record is always likely to be lower.

## 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.<sup>21</sup> 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.<sup>22</sup> 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

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<sup>21</sup> 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.

<sup>22</sup> 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. Along with limits on the second chamber's power, this lies at the heart of its subordinate status. But the second chamber also benefits from a greater independence as a result of these arrangements. Because there is no risk of a confidence vote, whipping in the Lords is less rigid. And government need not have a majority in the second chamber.

Given these features, all of which we believe are valuable and should remain, there are valid questions about the role of ministers in the House of Lords. At present ministers can be appointed from either House, although most senior ministers are drawn from the Commons. There is a strong argument that the distinction between the two chambers could be emphasised, and the independence of the second chamber reinforced, if it ceased to include ministers amongst its members. This would not mean that ministers were always absent from the second chamber. As in many other countries' parliaments, ministers who were not members of the chamber could still attend in order to present bills, answer questions, and appear in front of select committees. But their exclusion from membership would emphasise the separation between the second chamber and the executive.

We have thought hard about this question. We see the potential attractions of removing ministers from the second chamber. But we also believe that this would bring disadvantages. At the moment ministers in the Lords are familiar with its ethos and ways of working. This can help improve understanding between the chamber and government as a whole. By the time they rise to the rank of minister most members are already known personally to others in the House. They also continue to be present on a regular basis after they have been appointed to government, including in the division lobbies. This again helps to facilitate good communication with other members in the House. We therefore believe that, whilst there might be a case for removing ministers from the chamber as part of a future reform, the arguments are not sufficiently strong for doing this at the present time. Indeed, preserving the current arrangements can help to maintain important continuities between new chamber and the traditions of the old.

**Recommendation: Although there are strong arguments for removing ministers from the second chamber, we do not believe that this move is justified at the present time.**

Nonetheless, we do believe that it is important for the current conventions with respect to ministerial appointments to be retained. That is, that most cabinet ministers are drawn from the House of Commons rather than from the second chamber. In practice this is likely to appear naturally, given that it is the House of Commons to which the government is primarily responsible, and with whom it is important that senior ministers maintain good relations. The maintenance of this system is also important to ensure that the second chamber does not become a training ground for high ministerial office, and that those who are most ambitious in this regard continue to stand for the House of Commons instead.

**Recommendation: Most cabinet ministers should continue to be drawn from the House of Commons.**

Once a decision has been taken to retain ministers as members of the second chamber, questions arise about one further aspect of current tradition. That is the way in which the prime minister can currently use his power over appointments to the House of Lords to extend ministerial office to individuals currently outside parliament. This power is used

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 order that particular members could become MPs, which would result in costly byelections, and encourage greater interference by party leaders in selection of local candidates. We therefore believe that the balance of arguments is in favour of the prime minister continuing to be able to appoint a small number of members to the House – specifically in order to take up ministerial positions. We note that the government’s 2003 white paper suggested that this should apply to up to five members per parliament. Given that we propose a smaller chamber overall we would reduce that slightly, but we are happy to retain the principle.

**Recommendation: The prime minister should retain the right to appoint up to four members of the house per parliament, to serve as ministers.**

### **The Bishops**

One of the more complex issues in House of Lords reform concerns the role of the Church of England Bishops, and religious representation in general. At present there are 26 Bishops and Archbishops in the Lords, but no formal representation of other faiths. The Archbishops of Canterbury and York sit in the chamber as of right, as do the Bishops of London, Durham and Winchester. In addition there are 21 other Bishops, appointed based on their seniority in the church.

There has been relatively little agreement between earlier groups on this point. The Royal Commission proposed that the representation of the Church of England should be reduced to 16 seats, with 10 seats for other Christian faiths and five seats for representatives of non-Christian faiths. The government’s 2001 white paper agreed that the Church of England’s representation should be reduced to 16, but made no formal provision for representation of other faiths. The Public Administration Committee proposed that the Bishops should be removed from the chamber altogether.

We believe that there are strong arguments for ending the formal representation of the Church of England in the second chamber. But this is a matter on which there are firmly held beliefs, not least in the Church itself. Removing the Bishops would end a 900 year tradition, and represent a symbolic change in the relationship between the Church and the state. This is therefore more than a matter of House of Lords reform alone. We have sought to build our proposals on consensus, and whilst there is no consensus on such a major issue we are inclined on balance to leave the principle of religious representation as it is. An attempt to upset the current arrangements could threaten the success of the package as a whole, which would be regrettable as there is so much agreement on other points. In any case the Bishops have often proved to be valuable members of the chamber, even in modern times. We therefore propose, like the government and the Royal Commission, that the Bishops should remain in the chamber but that their number should be reduced from 26 to 16. The choice of who takes these seats should be left to the Church itself. Meanwhile it should be the duty of the appointments commission and the political parties to ensure that other faiths are represented in the chamber.

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 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.**

## The Law Lords

The other group that currently sits in the chamber is the Lords of Appeal in Ordinary ('Law Lords') who, alongside other peers who have held high judicial office, contribute to the House of Lords' role as the UK's highest court of appeal. The government's stated intention is to remove these members and transfer the chamber's judicial role to a new Supreme Court – an objective that is currently being pursued through the Constitutional Reform Bill. We believe that this is the correct course of action, and have assumed that the change will be implemented in the near future. We have therefore assumed that the Law Lords will no longer be members of the House.

Under the current arrangements, the Law Lords are appointed for life, albeit under a separate statute. The chamber includes a number of retired Law Lords, and it has been suggested by some that retiring members of the Supreme Court should be eligible for appointment to the House of Lords. We believe that whilst these members may have something to contribute, and might be considered on their merits for appointment, they should not have automatic membership of the House. Similarly the existing retired Law Lords, all of whom sit on the Crossbenches, should not have any automatic right to remain. They should be subject, alongside other members, to the transitional arrangements set out below.

**Recommendation: 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.**

## Summary

These basic principles of composition now allow us to sketch out the membership of the new second chamber, as shown in Table 1. This shows a 70% elected House, with 16 Bishops and space for up to four prime ministerial appointments per year. The remaining members of the House are to be independently appointed, depending on their expertise. This last group accounts for around 23% of the chamber as a whole. We propose that the chamber in total should include up to 385 members – slightly more than was proposed by the Public Administration Committee.

In the remainder of this section of the report we consider in greater detail how each of these groups of members should be made up. We then turn to the transitional arrangements needed to achieve the new chamber that we propose.

Table 1: Breakdown of members in the new House

	Total	At each round	% of total*
Elected members	270	90	70%
Bishops	16	n/a	4%
PM's ministerial appointments*	up to 12	up to 4	3%
Other appointees	87	29	23%
<b>Total (max)*</b>	<b>385</b>	<b>123</b>	<b>100%</b>

\* Note that the Prime Minister is entitled to appoint *up to* four members per parliament, but this complement of members is likely to often not be fully used. In this case the overall total will be slightly lower and the percentage elected slightly higher.

**Recommendation: 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 largest group in the new chamber will be the elected members. They will ensure that the chamber is made representative of the whole of the UK, and maintains a fair balance between the political parties. The inclusion of a large group of elected members will also ensure that the chamber is sufficiently legitimate in the eyes of the public to carry out its duties – including, at times, questioning the proposals made by the government and the House of Commons.

### Direct or indirect election

The most obvious way of electing members of the second chamber is direct election by the people. However, during debates about Lords reform, some have proposed that a form of ‘indirect’ election would be more appropriate. Under such a system one group of elected members (such as local councillors or members of devolved institutions) would be responsible for electing all or some of the members of the second chamber. Such mechanisms are relatively common overseas.<sup>23</sup> We have some sympathy with this idea, but note that it has not been proposed by any major group so far considering Lords reform. It was rejected by both the Royal Commission and the government as impractical, and there has been little interest amongst the devolved assemblies themselves, or from local government, in this form of representation. One difficulty is that (particularly following the recent failure of the referendum in the North East) there is no immediate prospect of regional government in

<sup>23</sup> For example in Austria and the Netherlands all members of the second chamber are elected by regional assemblies, whilst in India most members are elected in this way and in Spain a minority are. In France an electoral college including local councillors, regional councillors and MPs is responsible for electing members of the upper house.

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

Another system commonly described as indirect election is where groups representative of society (for example business, trade unions, charities or professional organisations) are given responsibility for electing members of the second chamber. Such a system has been championed by David Clelland MP, but has not won support from any of the main groups considering Lords reform. There are no real examples of this system in use in other parliaments around the world, and there are many obstacles to its introduction.<sup>24</sup> For example it would be extremely difficult to identify which groups should take part in the elections, and to decide how seats should be shared between them. It would also be difficult to ensure that they used democratic methods to choose their representatives. We therefore reject this method as impractical.

A final mechanism sometimes referred to as 'indirect election' is the so-called 'secondary mandate' proposed by the singer-songwriter Billy Bragg. Under this system seats in the second chamber would be allocated between the parties on the basis of their share of votes in the general election. However, voters would not be able to cast a specific vote for the second chamber or have any say over who the individual candidates elected were. This is not equivalent to indirect election in the sense employed in other settings, where those participating do vote on these important matters. Indeed in practice the secondary mandate could simply be viewed as a kind of appointment by the parties. More importantly, we believe that it is fundamentally problematic to ask voters to cast one vote which is used to decide the makeup of two institutions that have quite different functions. In this sense it is a denial of voter choice. In practice the 'secondary mandate' would also play havoc with tactical voting, and could therefore confuse the results of elections to the House of Commons. For all of these reasons we reject this proposal.

These are all negative arguments which lead to the conclusion that members of the second chamber must be directly elected. However, more important are the positive reasons to make this choice. Direct election is transparent, easily understandable, and creates a direct link between voters and the second chamber. It ensures that the makeup of the chamber reflects the views of the electorate themselves. For these reasons we believe that elected members in the second chamber should be chosen by direct election.

**Recommendation: The elected members of the chamber should be directly chosen by the people, rather than result from any kind of 'indirect' election.**

## **Electoral system and boundaries**

If most members of the second chamber are to be directly elected, it is very important that they are chosen by a system that is distinct from that used for electing MPs. It is also important that the political makeup in the chamber does not simply mirror that in the Commons. We have already concluded that this means the second chamber should be elected by some kind of proportional system. We believe that it is also important that the electoral system used for the second chamber does not encourage its members to compete

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<sup>24</sup> The example often given of this approach is the Irish Senate, however in Ireland the electorate comprises local councillors and MPs, whilst vocational bodies only have responsibility for nominating candidates. In practice all of those elected by this method are representatives of the political parties. See M. Russell, *Reforming the House of Lords: Lessons from Overseas*, Oxford University Press (2000).

with MPs over constituency work. It is the job of the MP to represent his or her locality – the representative role of members of the second chamber should be separate and distinct.

All of this points to members of the second chamber being elected to represent large geographic areas, and the most obvious means of doing this is to use the electoral boundaries of the existing ‘nations and regions’. This mechanism has various advantages. Aside from providing a different representative basis from the House of Commons it also uses a system that is already relatively familiar to voters, since these boundaries are used for elections to the European Parliament, and – in Scotland, Wales, Northern Ireland and London – for the devolved assemblies. Using these boundaries to elect members of the second chamber would also encourage joint working between them and MEPs, and representatives of the devolved institutions where these exist. In the remaining areas of England it would allow some co-ordination with the existing government offices and regional chambers. The Royal Commission, the government in 2001 and the Public Administration Committee all proposed that regional boundaries should be used for elections to the second chamber. We endorse this conclusion.

**Recommendation: 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 have proposed that there are 270 elected members in total in the chamber, with one third chosen at each election. This results in 90 members being elected at each round of voting – slightly above the 78 members currently elected to the European Parliament. This is about the lowest number practical to ensure a broadly proportional result. It also creates a second chamber of roughly the correct size. Based on our other proposal that elected members should be 70% of the total, this results in a chamber of up to 385 members.

If the share of seats given to each region is based on the size of its electorate, Table 2 shows the allocation of seats between the existing nations and regions.

To conduct proportional elections across large regions there are a number of different electoral systems on offer. Elections to the European Parliament are now based on a list, whereby the parties place candidates in order of preference on the ballot paper, and voters can express support for one party list or another. However, the fact that such lists are ‘closed’ (meaning that voters cannot express choices between individual candidates) has caused widespread concern. Indeed opposition in the Lords to these proposals led to the European Parliamentary Elections Bill being forced through under the Parliament Acts. Consequently, other groups considering Lords reform have rejected the idea of using closed lists to choose the elected members. The Royal Commission favoured ‘partially’ open lists and the Public Administration Committee supported ‘fully’ open lists or the Single Transferable Vote (STV).

We agree that the use of ‘closed’ lists is undesirable, and can easily reject this suggestion. The choice between the other options is a rather more difficult one to make. All offer a greater degree of voter choice and therefore have their attractions. Under ‘partially’ open lists voters can support either a party or an individual candidate, and if a candidate receives a high level of support they may be elected even if they are relatively far down a party’s list. With ‘fully’ open lists there is no predetermined party order, and the candidates from each party with the most votes are elected. However, these systems generally require that voters support candidates from one party only, and cannot split their votes between outstanding candidates from different parties if they see fit. In contrast, STV allows people to express preferences

across as well as between parties, and thus maximises voter choice.<sup>25</sup> 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>	75	225
Northern Ireland	2	6
Scotland	8	24
Wales	5	15
<b>TOTAL</b>	<b>90</b>	<b>270</b>

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.**

<sup>25</sup> 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 whereby experts and people of senior political rank enter the second chamber. We believe that there is no reason this should be the case. The type of member appointed is currently determined entirely by the prime minister. If he chose to, he could potentially appoint a group of young and inexperienced members, eager for ministerial office. The primary reason that he doesn't is simply tradition and convention. These same conventions could just as well be transferred (and indeed apply in some countries such as Italy) to the type of candidates that parties propose for election to the second chamber. The use of STV across regions would tend to benefit high profile figures, making it quite possible that established experts or retired senior politicians could gain seats in the chamber. But the means of ensuring that they do is for the parties to commit to maintaining the best of current traditions when carrying out their selections. We propose below that, in the transitional phase, existing members of the House of Lords should be encouraged to continue serving in the chamber by standing for its elected seats. If members choose to do this in the first three elections to the chamber, it would help set the tone for years to come.

**Recommendation: 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 seats. In addition existing members of the House should have the entitlement to stand, from the first election onwards.**

### **Timing of Elections**

There have been various proposals about the time at which second chamber elections should be held. One concern is that elections to the second chamber should not contribute to 'voter fatigue', by requiring an additional trip to the polls. There is thus general agreement that they should be held alongside another existing election. One option, which the Royal Commission favoured, is to hold second chamber elections on the same day as elections to the European Parliament. This has the advantage that terms for the Parliament are fixed at five years, and this would therefore create fixed terms for members of the second chamber. Additionally, these elections are carried out on the same boundaries that we propose, so regional campaigning is already taking place. An alternative is to hold second chamber elections alongside elections to the devolved institutions, where they exist. These also have fixed terms (of four years) and obviously use the same boundaries. However, given that these do not exist in most of the UK, elections in other areas would instead need to be timed with those for local government.

We believe that both of these options have their attractions, but these are outweighed by one major disadvantage. Using devolved or European election days, given that these elections take place on a different cycle to the House of Commons, would be likely to suffer from a 'mid term effect'. Voters often seek to punish the government at Westminster through votes in the middle of its term, whilst returning to vote for it at the next general election. This would have the unfortunate effect of creating a disproportionately hostile second chamber. In any case, we believe, it is correct that there should be just one polling day when people are asked to consider how they want to be represented at Westminster. It therefore makes sense for the elections to the second chamber to be held on general election day. This was the option backed by both the government and the Public Administration Committee, and we support this conclusion.

**Recommendation: Elections for the second chamber should be held on general election day.**

The difficulty of holding elections on general election day is that this is not fixed. The prime minister can in theory ask for the House of Commons to be dissolved at any time and call fresh elections. This has often happened in the past when the government's majority in the Commons is fragile, or if it disappears altogether. It seems undesirable however that a 'snap' election caused by problems in the Commons should result in members of the second chamber losing their seats prematurely. We have already proposed that members of the second chamber serve long terms of office, which should equate to three House of Commons terms. However, if several elections to the Commons were held in short succession, this could result in second chamber members serving relatively short terms. As we are also proposing that second chamber members should not be able to stand for re-election, this would make their tenure potentially very insecure.

We therefore propose that there is a mechanism whereby second chamber elections are not automatically held if general elections take place in quick succession. If a general election is called within two years of the previous election there would not normally be a simultaneous election to the second chamber. The exception would be if there were two short parliaments one after the other, which in total added up to at least two years. If this occurred, a second chamber election would be held on the second occasion. This means that a second chamber term could be as short as just over six years, though in practice this would be very unlikely. The way this system would have worked since 1918 is illustrated in Appendix 3. Apart from the exceptional period during the war when there was no general election for 10 years, the arrangement we propose would have resulted in second chamber terms of 13-15 years duration.

**Recommendation: Second chamber members should normally serve three House of Commons terms. However, if two general elections are held within two years there would not normally be a requirement to hold a second chamber election. The exception would be if the previous parliament had also been a short one, and the two parliaments together added to more than two years.**

The inclusion of elected members in the chamber raises questions about what happens if one of them dies, or for some reason wishes to leave the second chamber (see below). If this happens in the House of Commons a byelection is held. In contrast if a member withdraws from the European Parliament between elections, they are automatically replaced by the next person from that party's list. The Royal Commission proposed that this mechanism should be applied to vacancies occurring in the second chamber, as did the government in 2001. Applying a similar principle with an STV election would require the seat to be given to the next most popular candidate from the original election who still wanted to serve. We, however, are not convinced by this general approach. In some cases vacancies in the European Parliament have had to be given to people who were very far down the original party list. For the second chamber, where term lengths are longer, at times it might not be possible to find anybody from the original ballot who still wants to fill the vacancy. In any case, we feel that filling vacancies in this rather haphazard way would not provide sufficient accountability to the electorate.

We believe that it would be more transparent if new members that enter the chamber to fill vacancies were themselves directly elected. However, it would not be practical to hold a byelection across a whole region simply to elect one member. We therefore propose that any

such seats are left vacant initially, and that at the next second chamber election in the relevant region one additional member should be elected. This member would serve only for the remainder of the term that was vacated – i.e. for one or two House of Commons terms.<sup>26</sup>

**Recommendation: There should be no system of byelections for the second chamber. Nor should there be a mechanism whereby people are automatically replaced by others from party lists. On the rare occasions when vacancies arise, an additional seat should be elected from that region at the next second chamber election, for the remainder of the original term.**

### **Non-renewable terms**

There have been various concerns raised in the past about the inclusion of elected members in a reformed second chamber. One is that these members will act as a rival to MPs, and another is that they will not have the same independence from the party line that is currently enjoyed by members of the House of Lords. In addition, experience in Scotland and Wales since devolution has created concerns amongst some MPs about competition from members of elected second chamber. In Scotland and Wales there are now two representatives elected in each constituency, and there are also ‘additional’ members of the Scottish Parliament and Welsh Assembly elected from regional lists. Some tensions have developed between these different types of member, with competition over constituency work in particular. In some cases regional members have advertised themselves as the ‘local’ member, seeking to maximise local profile and even to ‘nurse’ a particular constituency for a future election.<sup>27</sup> We agree that it is undesirable for this form of competition to develop between second chamber members and MPs. Indeed we believe that it is undesirable for second chamber members to engage in constituency work at all, as one of the strengths of the current House of Lords is that its members are free from these responsibilities and can therefore devote more of their time to parliamentary duties.

We have already sought to avoid these difficulties by proposing that second chamber elections are based on large regions rather than local constituencies. This will go some way to solving the problem. But the dangers could be further minimised if elected members of the second chamber were ineligible to stand for re-election. Aside from the general desire to help the public, one of the strongest motivations to conduct constituency work is to raise the member’s local profile in order to help ensure that they are re-elected. If this motivation is removed, competition between MPs and members of the second chamber is far less likely to occur.

There are also other arguments to recommend non-renewable elected terms, which were recognised by both the Royal Commission and the Public Administration Committee – both of which recommended this option. At present the independence of members of the House of Lords is reinforced by the fact that they do not have to go through another selection by

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<sup>26</sup> In practice the ‘vacancy’ would be considered to be filled by the last person elected in the region, when seats are apportioned proportionately. This means that they would not necessarily be drawn from the same party as the member that vacated the House. However, we believe that this would happen sufficiently rarely to not create a major problem. The fact that a member’s seat would not necessarily go to somebody from the same party would in fact act as an incentive for members to remain and serve their full term.

<sup>27</sup> See J. Bradbury, O. Gay, R. Hazell and J. Mitchell, *Local Representation in a Devolved Scotland and Wales: Guidance for Constituency and Regional Members*. Devolution Policy Papers, ESRC Devolution and Constitutional Change Programme. Birmingham: University of Birmingham (2003).

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.<sup>28</sup> 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.

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

The exception to this rule, we believe, should be the members who are forced to leave the current House of Lords as a result of its reform. We therefore propose that at the start of the transitional phase (discussed in greater detail at the end of the report), departing peers should have the immediate right to stand for the House of Commons.

**Recommendation: 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

Although elected members will make up the majority of the chamber, they will also be balanced by a minority of appointed members. These members will help to bring additional expertise to the work of the chamber, and bring more independent voices. Their presence will also help to underline the fact that the second chamber does not have equal democratic legitimacy to that of the House of Commons.

### A Statutory Appointments Commission

At present the majority of appointments to the House of Lords continue to be determined by the prime minister. He decides when appointments should be made, how many new appointees there should be, what the share of seats should be between the parties, and who the representatives of the government party are. Although a non-statutory House of Lords Appointments Commission was created in 2000, its role in political appointments is limited to checking these for propriety. It has control only over the independent members of the chamber, and responds to requests for names from the prime minister.<sup>29</sup>

Under our proposals these arrangements would be radically altered. The number of appointees would be fixed and (with the limited exception of those chosen by the prime minister to be ministers) all these individuals would be chosen by an Appointments Commission.

In order to put the new arrangements on a stable footing, we agree with other groups that a new Appointments Commission should be created on a statutory basis. This proposal was made in the government white papers of 2001 and 2003, as well as by the Royal Commission and the Public Administration Committee. The 2003 white paper set out these proposals in a great deal of detail.

The existing Appointments Commission has seven members. It is chaired by a Crossbench peer, who sits with one representative from each of the other parties in the House of Lords, and three external independent members. In its 2003 white paper the government suggested that a statutory committee have nine members, which would allow the independents to have a majority. We believe that the current arrangements are broadly correct, and in particular that the Crossbench peers should be represented on the Commission. However, given that the Commission is primarily picking non-party members, we do not see the need for the parties to have formal representation on it. Therefore, we believe, it should be possible to keep the Commission at its current size.

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<sup>29</sup> See: <http://www.lordsappointments.gov.uk/index.htm>

It is very important that the Commission is seen to be independent of government. Its members should not be appointed by ministers, but should come through a more independent route. We believe that the most appropriate means of achieving this should be for them to be appointed by parliament itself. All previous groups have proposed that the names of commissioners should need to be approved by parliament, and the Public Administration Committee specifically proposed that this should be done under the guidance of a committee of both Houses. We believe that such a committee should be created, under the chairmanship of the Lords Speaker, to appoint members of the Commission and to oversee its work.

**Recommendation: There should be a statutory Appointments Commission, with responsibility for choosing all appointed members of the chamber (except for the small number that the Prime Minister appoints as ministers). Some, but not a majority, of members of the Commission should be Crossbench members of the House. The members of the Commission should be appointed by parliament, on the recommendation of a joint committee of both Houses. This committee should also have responsibility for overseeing the Commission's work.**

### **The Type of People Appointed**

There are two main purposes for including appointed members in the second chamber. One is to benefit from the particular background or expertise of members who are not likely to stand for election to either chamber of parliament. The other is, in particular, to ensure the continued representation of independent members.

The core function of the Appointments Commission should be to identify individuals of outstanding ability who have an important contribution to make to the second chamber. A secondary requirement should be to ensure that these individuals complement the skills, knowledge and experience of other existing members of the chamber, and of members of the House of Commons. Elections to the chamber are likely to result in a body of members which is representative in various dimensions. In particular elected members will be representative of the geography of the UK, and are likely to have backgrounds in a range of professions and bring a range of political interests. The existence of the Appointments Commission, however, creates an opportunity to rebalance any shortcomings amongst elected members, particularly where expertise is needed to fulfil the specific functions of the House. For example the House of Lords Science and Technology Committee is widely respected, as are the set of EU Committees. Their work is made possible in part by the expertise of members in the House with a scientific background, or who have worked in the EU's institutions or, for example, as senior civil servants. The Appointments Commission should thus have a responsibility to take into account the current makeup of the House and how this is matched to its functions, in order to bring in individuals with specific expertise. This includes the need to bear in mind the representation of other faiths beside that already represented by the Bishops, and to ensure that the membership of the House is relatively gender balanced and ethnically diverse. These principles have been agreed by all previous key groups considering House of Lords reform, and we are happy to endorse them.

**Recommendation: The main responsibility of the Appointments Commission should be to identify individuals of outstanding ability who have an important contribution to make to the second chamber. In doing so the Commission should be required to have regard to the current makeup of the House, and any gaps that need to be filled.**

At present there are a number of conventions in place that help determine who is appointed to the House of Lords, particularly to the Crossbenches. For example ex Speakers of the House of Commons, Cabinet Secretaries and Chiefs of the Defence Staff are generally made peers, as are retiring Archbishops of Canterbury. In its 2003 white paper the government proposed that these conventions should remain, and that the prime minister should continue to offer peerages to these individuals. However, we believe that the prime minister's powers of patronage should be reduced as far as is practicable. We also believe that it would be unduly rigid to require the Appointments Commission to automatically appoint any particular group of individuals. Appointment should be on merit alone, and although many of these individuals may be considered good candidates for inclusion by the Commission, this should be left to their own discretion. One reason why the government proposed to maintain the convention of prime ministerial appointment for these groups was that they did not propose breaking the link with the peerage. As discussed below, we disagree. We therefore conclude that if the prime minister wishes to continue to give these individuals peerages as an honour he should remain free to do so. But this would no longer guarantee them admission as members of the second chamber.

**Recommendation: There should be no automatic inclusion of ex office holders in the reformed second chamber, though the Appointments Commission should be free to consider these members on their merit.**

One of the key reasons for including appointed members in the second chamber is to ensure representation for individuals who are relatively independent of political party. But first and foremost appointment to the chamber should be guided by expertise, and by the contribution that the member in question is likely to be able to make. It is interesting to consider that if members of the public were asked to name an independent member of the House of Lords they might well mention individuals such as Sebastian Coe, Robert Winston, Julia Neuberger, David Puttnam or Melvyn Bragg – who have well-established reputations for their work outside the House. However, every one of these individuals actually sits on the party benches. In addition, some members who currently sit on the crossbenches – such as those who were previously Speakers of the Commons – have represented political parties in the past.

We therefore believe that there should be no rigid artificial line drawn between political and non-political members. The current Appointments Commission, indeed, is not barred from choosing individuals who are members of political parties. If such a delineation was made too rigidly, there is a danger that some valuable individuals would fall between the cracks – not wanting to stand for a party in an election, but disqualifying themselves from appointment due to some past or present political activity. We therefore believe that the Appointments Commission should be free to choose people who are members of political parties, if this is justified on their other merits. However, the emphasis should be strongly on people who are of an independent mind. There should be an expectation that most appointees do not have strong party links, and that at least 20% of members in the House do not take any party whip. Retiring MPs, for example, would normally be expected to stand for election if they wanted to enter the second chamber.

**Recommendation: There should be an expectation that most individuals appointed by the Appointments Commission have no strong link to the political parties, and the Commission should seek to ensure that at least 20% of members take no party whip. However the Commission should not be barred from appointing people with a history of**

**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 precarious. We therefore propose that any members appointed by the prime minister should be able to serve roughly the same terms as other members.

**Recommendation: The prime minister should be entitled to a maximum of four appointees per parliament, on the condition that they are made ministers straight away. These members should serve roughly the same terms as others in the chamber, and not be required to leave if they cease holding ministerial office.**

### **The Timing of Appointments**

At present members can be appointed to the House of Lords at any time, on the discretion of the prime minister. In practice a batch of appointments has generally been made around once a year, with small numbers of individuals appointed in between. We believe that in the new chamber the terms and conditions for elected and appointed members should as far as possible be equalised, to discourage any division between these two groups. We therefore consider it important that elected and appointed members serve equivalent terms of office. This principle has been recommended by all the other key groups considering Lords reform thus far.

We also think that this principle should be extended to the mechanism by which the appointed members in the chamber are renewed. Thus we propose that one third of members are appointed at around the time of each second chamber election. Given that there are to be 87 appointed members in total, in practice this means that 29 would be appointed alongside each election. In this way elected and appointed members would enter and leave the chamber together, with continuity within both groups, and equity between them.

**Recommendation: Appointed members should serve the same terms of office as elected members. This means that one third should be appointed at the same time as each second chamber election, and these members should leave the chamber at the same time as the members elected at that election.**

### **Maintaining Political Balance in the Chamber**

As already indicated, the main purpose of including appointed members is to bring expertise to the chamber, and the expectation would be that most members appointed had no strong connection to a political party. However, we have proposed that this rule should not be applied rigidly, and some members with a party background may be included. In addition, the prime minister's appointees will have a clear political allegiance.

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.<sup>30</sup> 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 three second chamber elections. Where there are any political appointees, the Appointments Commission should have a duty to ensure that this balance is maintained. In particular it should have the power to counterbalance prime ministerial appointments with appointees allied to other parties, if necessary.**

### **Term Lengths, Vacancies and Leaving the Chamber**

As already stated, we believe that as far as possible the terms and conditions of elected and appointed members of the second chamber should be the same. This means that term lengths should be equalised, and similar conditions should apply when vacancies occur and if members leave the chamber.

As we have proposed for elected members, then, appointed members should be free to leave the second chamber if they wish before the end of their term. However, they should not be able to stand for the House of Commons until five years after their term was due to expire.

**Recommendation: Like elected members, appointed members of the second chamber should be free to leave the chamber before the end of their term, but be barred from standing for the House of Commons until five years after their term was due to end.**

Where elected members leave the chamber (or die) before the end of their term we have proposed that there should be no facility to replace them immediately, as byelections would be cumbersome and replacement from lists is not sufficiently accountable to the public. The same restrictions need not apply to appointed members, however. Given that the Appointments Commission will be a continuously existing body, it should be able to fill any

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<sup>30</sup> In practice these numbers will be very small, given that the prime minister can make only four appointments per parliament and would often not take up this full allocation. In particular if there is a change of the party in office, the appointments of the new prime minister may simply counterbalance those of the old. The issue only really arises in any serious way if a government serves three terms and the prime minister uses his or her full complement of appointees (i.e. adding 12 members from the governing party).

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.<sup>31</sup> 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

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<sup>31</sup> 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 unnecessarily disruptive to the current members of the House of Lords, many of whom have given years of committed public service for relatively little personal gain.

The nature of our proposals make it relatively easy to design a smooth transition from the current House to one of the form that we propose. Our recommendation is that only one third of elected and one third of appointed members join the chamber at any one time, meaning that it takes three electoral cycles of the House of Commons to achieve a complete turnover in second chamber membership. We propose to apply this same principle to the transitional phase, so that as new elected members enter the chamber in three groups, they replace some of its existing members.

The House of Lords has of course already made one major transition in recent years, at the point that the majority of hereditary peers left the chamber in 1999. This transition can provide us with a precedent to guide the future reform of the Lords. In particular the amendment that allowed 92 hereditary peers to stay in the chamber resulted in elections amongst these members in party groups. We believe that this mechanism can usefully be applied again, with respect to the current members of the House.

**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.

**Recommendation: Existing members should leave the chamber in three tranches, as new members are added. This transition would begin at the general election after next.**

We have considered whether life peers and hereditary peers should be treated differently in this regard. The government has a commitment to remove the remaining hereditary peers, and in 2003 proposed that there should be a short bill to achieve this end. There are therefore arguments that the hereditary peers should be the first to go, and that they should go in one group. However, the hereditary peers that remained in the chamber were the most active amongst those who originally sat, and many of them make an important contribution. In addition, since the round of appointments in May 2004 the balance between the parties is now roughly equal, weakening the political imperative for Labour to remove the remaining hereditary peers. We therefore believe that it should be a matter for the members of the House themselves to decide which life peers and hereditary peers leave, and in what order. For the purposes of the transition the two groups should be treated equally. However, we do propose that the bill to reform the second chamber ends immediately the process of byelections by which new hereditary peers can enter the House.

**Recommendation: For the purposes of the transition life peers and hereditary peers should be treated equally. There should be no automatic requirement for the hereditary peers to leave first. However, byelections amongst hereditary peers should end immediately.**

Although allowances paid to members of the chamber are small, there are clearly many who depend on the income that they receive from attending the House. This includes some members who have forsaken pension in order to serve as working peers, many of whom are now very elderly. We believe that for these reasons, and in order to encourage members to volunteer to leave the chamber, a generous retirement package should be offered to members who depart. The details of this package should be worked out by the Senior Salaries Review Body (SSRB). But we would expect any package to take account of a departing member’s age, length of service in the House and record of attendance.

**Recommendation: In order to encourage members to volunteer to leave the House, and to provide justice to those that depart, a generous retirement package should be offered, based on age, length of service and attendance.**

We anticipate that the availability of a retirement package will encourage many members of the House to leave voluntarily, particularly at the first round. However, this may not be sufficient on its own. We propose that the final decision of who leaves the chamber at each round should be taken in elections amongst peers, organised in party groups. The requirement should be that one third of each group (Labour, Conservative, Liberal Democrat, Crossbench, Other) leaves the chamber at the time of the first public elections to the second

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 *after* 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 they should be able to do this without restriction. Any members who remain in the chamber after the first elections, however, should be subject to a five year delay after leaving the House if they later decide to stand as an MP.**

**Summary**

Table 3 shows roughly how numbers in the chamber can be expected to develop over time, as the transition is completed.

Table 3: Numbers in the House during the transition

Type of member	Now	First elections ~2009	Second elections ~2013	Third elections ~2017
Life and hereditary peers	671	447	223	0
Bishops	26	23	20	16
Law Lords*	12	0	0	0
Elected members	0	90	180	270
New appointed members	0	29	58	87
PM's appointees (max)	0	4	8	12
<b>Total (max)</b>	<b>709</b>	<b>593</b>	<b>489</b>	<b>385</b>

\* There are 29 members under the Appellate Jurisdiction Act. We have assumed that the 12 non-retired members will leave the chamber. The other 17 have been included as life peers in the above figures, and all sit on the Crossbenches. They would be subject to our proposed conditions of retirement or internal re-election, in the same way as other members of this group.

# 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 deliberation. Following reform its capacity may be increased, and new specialisms be added. However, the chamber should seek to complement, rather than duplicate, the work of the House of Commons. Although there are procedural changes which might improve the working of the House these matters are under the control of its members, and we therefore make no proposals for change in this area.
- There should be no immediate reform to the Parliament Acts, or to the second chamber's power over secondary legislation. The more urgent matter is acting on the chamber's composition, which has been the subject of greatest debate and where agreement now appears achievable. Including powers in the package would, we fear, derail it. However, a wide-ranging review of the legislative process would be welcome, and the appropriate time for this would be after the composition of the second chamber has been agreed.
- At the heart of our parliamentary system is the convention that governments must maintain the confidence of the House of Commons, but not of the House of Lords. This pattern is commonly repeated in other parliamentary systems, even where the second chamber is elected. Such a convention should continue after the second chamber is reformed.
- In order to resolve disputes between the chambers on legislation more constructively, a joint committee system should be established, where members are charged with proposing compromise amendments on which both chambers should vote. Initially such arrangements should be implemented through standing orders, but should be reviewed as part of the general review of the legislative process, and might later be made statutory.

## *Principles of Composition*

- We believe that the second chamber should have a mixed membership, including both elected and appointed members.
- We believe that a majority of second chamber members should be elected.
- Elected members should make up 70% of the reformed chamber.
- We believe that the second chamber should be significantly smaller than it is now.
- No party should have a majority in the second chamber.
- The precise balance between the parties should be determined by the elections to the second chamber, which should be based on a proportional system.
- 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.
- 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.
- Although there are strong arguments for removing ministers from the second chamber, we do not believe that this move is justified at the present time.

- 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 seats. In addition existing members of the House should have the entitlement to stand, from the first election onwards.
- Elections for the second chamber should be held on general election day.
- Second chamber members should normally serve three House of Commons terms. However, if two general elections are held within two years there would not normally be a requirement to hold a second chamber election. The exception would be if the previous parliament had also been a short one, and the two parliaments together added to more than two years.
- There should be no system of byelections for the second chamber. Nor should there be a mechanism whereby people are automatically replaced by others from party lists. On the rare occasions when vacancies arise, an additional seat should be elected from that region at the next second chamber election, for the remainder of the original term.
- Members of the second chamber should be able to be elected only once, for one long term.

- 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 Commission, with responsibility for choosing all appointed members of the chamber (except for the small number that the Prime Minister appoints as ministers). Some, but not a majority, of members of the Commission should be Crossbench members of the House. The members of the Commission should be appointed by parliament, on the recommendation of a joint committee of both Houses. This committee should also have responsibility for overseeing the Commission's work.
- The main responsibility of the Appointments Commission should be to identify individuals of outstanding ability who have an important contribution to make to the second chamber. In doing so the Commission should be required to have regard to the current makeup of the House, and any gaps that need to be filled.
- There should be no automatic inclusion of ex office holders in the reformed second chamber, though the Appointments Commission should be free to consider these members on their merit.
- There should be an expectation that most individuals appointed by the Appointments Commission have no strong link to the political parties, and the Commission should seek to ensure that at least 20% of members take no party whip. However the Commission should not be barred from appointing people with a history of political activism, where they are independent minded and have other important qualities to offer.
- The prime minister should be entitled to a maximum of four appointees per parliament, on the condition that they are made ministers straight away. These members should serve roughly the same terms as others in the chamber, and not be required to leave if they cease holding ministerial office.
- Appointed members should serve the same terms of office as elected members. This means that one third should be appointed at the same time as each second chamber election, and these members should leave the chamber at the same time as the members elected at that election.
- The balance between political party members in the chamber should be determined by the last three second chamber elections. Where there are any political appointees, the Appointments Commission should have a duty to ensure that this balance is maintained. In particular it should have the power to counterbalance prime ministerial appointments with appointees allied to other parties, if necessary.
- Like elected members, appointed members of the second chamber should be free to leave the chamber before the end of their term, but be barred from standing for the House of Commons until five years after their term was due to end.
- 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.
- 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*

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

#### *The Name of the House*

- 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*

- 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*

- 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.
- Existing members should leave the chamber in three tranches, as new members are added. This transition would begin at the general election after next.
- For the purposes of the transition life peers and hereditary peers should be treated equally. There should be no automatic requirement for the hereditary peers to leave first. However, byelections amongst hereditary peers should end immediately.
- In order to encourage members to volunteer to leave the House, and to provide justice to those that depart, a generous retirement package should be offered, based on age, length of service and attendance.
- 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.
- The number of Bishops should also be gradually reduced over three elections, from 26 to 16.
- 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 *after* the first two public elections.
- 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 they should be able to do this without restriction. Any members who remain in the chamber after the first elections, however, should be subject to a five year delay after leaving the House if they later decide to stand as an MP.

## Appendix 1: Current composition of the House of Lords

Figures correct at 10 January 2005.

Party	Life Peers	Hereditary Peers	Bishops	Total
Conservative	155	47	0	202
Labour	197	4	0	201
Liberal Democrat	64	4	0	68
Crossbench	151	33	0	184
Bishops	0	0	26	26
Other	9	1	0	10
Total	577	89*	26	691

\* There are currently two vacancies (one Conservative and one Liberal Democrat) amongst the hereditary peers and a further hereditary member is on leave of absence.

## 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

This table illustrates how term lengths of members of the House would have developed, if the chamber had been based on our model since 1918.

General election day	Members elected leave in	Term length
14 Dec 1918	1931	13 years
15 Nov 1922	1935	13 years
6 Dec 1923	n/a - no election	
29 Oct 1924	n/a - no election	
30 May 1929	1945	16 years*
27 Oct 1931	1950	19 years*
14 Nov 1935	1955	20 years*
5 July 1945	1959	14 years
23 Feb 1950	1964	14 years
25 Oct 1951	n/a - no election	
26 May 1955	1970	15 years
8 Oct 1959	Feb 1974	15 years
15 Oct 1964	1979	15 years
31 March 1966	n/a - no election	
18 June 1970	1983	13 years
28 Feb 1974	1987	13 years
10 Oct 1974	n/a - no election	
3 May 1979	1992	13 years
9 June 1983	1997	14 years
11 June 1987	2001	13 years
9 April 1992	2005/6	13/14 years

\* The long terms here are exceptional. They result from no general election having been held for 10 years over the wartime period.

## **Appendix 4: The Bill**