

**An Elected Second Chamber  
A Conservative View**

**Andrew Tyrie MP  
Rt Hon Sir George Young Bt MP  
Roger Gough (editor)**

**The Constitution Unit**

ISBN: 978-1-903903-56-8

Published by The Constitution Unit  
Department of Political Science  
UCL (University College London)  
29-30 Tavistock Square  
London WC1H 9QU  
Tel: 020 7679 4977 Fax: 020 7679 4978  
Email: [constitution@ucl.ac.uk](mailto:constitution@ucl.ac.uk)  
Web: [www.ucl.ac.uk/constitution-unit/](http://www.ucl.ac.uk/constitution-unit/)  
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First published July 2009

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## **Acknowledgements**

We would like to thank Roger Gough for his research, drafting and editing work on this paper.

We would also like to thank Oonagh Gay, Adam Mellows-Facer and Richard Kelly of the House of Commons Library for pursuing a number of enquiries on our behalf and for providing data on matters such as second chambers around the world and the analysis of the Commons votes on Lords reform.

Robert Hazell and Meg Russell made a number of helpful comments and suggested amendments. However, the responsibility for the final version of this paper, and for the views expressed in it, remains with us.

## Introduction

The votes in the House of Commons in March 2007 in favour of a democratically elected second chamber represented a vital step forward in this long debate. Subsequent to the vote, a cross-party group has discussed the key steps needed for reform to be implemented; the results of these discussions informed the White Paper published in July 2008 (*An Elected Second Chamber: Further reform of the House of Lords*).<sup>1</sup> The discussions revealed important areas of agreement, but also key issues that have yet to be resolved.

The White Paper invited comment on these issues, and in the wake of the Commons expenses scandal the Prime Minister has pledged to “come forward with published proposals for the final stage of House of Lords reform before the summer Adjournment.”<sup>2</sup> This paper represents the views of two Conservative MPs who served on the party’s Democracy Task Force, both of whom have contributed to debate on parliamentary and constitutional issues over many years. In writing it, we hope to influence both our own party, as it draws up its manifesto for the next election, and the wider debate heralded by the White Paper and by the Prime Minister’s statement.

## Executive Summary

- We believe strongly in the role of a second chamber as a check on the concentration of power in the executive. In this we follow a strong Conservative tradition of bicameralism, and of support for reform to entrench the role of the second chamber. We see it as a partner with the Commons in holding the government to account, not as a rival for power
- We support a predominantly elected second chamber, but believe that there is a strong case for retaining a 20% appointed element, following one of the two options favoured in the Commons vote of March 2007
- We favour a system of Proportional Representation for elections to the chamber. We believe that the First past the post system, with its ability to deliver clear party majorities, works well for the Commons and entrenches its role as the source of legitimacy for a government; however, the second chamber requires a demonstrably different system
- Elections for the chamber should be on the basis of the regions that are used for European elections, although the electoral system should favour greater voter choice than a pure party list approach. Large electoral areas, coupled with the use of a long, non-renewable term, will reduce the danger of members of the second chamber encroaching on MPs’ constituency work and thereby diluting their own revision and scrutiny role
- We believe that the initial aim should be for a reformed chamber with 400-450 members, although this will in any case be accomplished only gradually because of the continuing presence of existing life peers. Longer-term, there should be a review to examine the possibility of further reductions in numbers
- We believe that, until reform is accomplished, the Appointments Commission should undertake the appointment of all peers, not only ‘non-political’ appointees; the current

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<sup>1</sup> *An Elected Second Chamber: Further reform of the House of Lords* (Ministry of Justice, 2008 Cm 7438).

<sup>2</sup> House of Commons Hansard, 10 June 2009, column 798.

system retains far too much patronage for the parties and thus fails to break the potential link to financial contributions

- We support David Cameron's proposal for a wholly independent Appointments Commission, put on a statutory basis, to be implemented immediately
- We agree with the White Paper's proposal that, so long as there is an appointed element in the chamber, Church of England Bishops should retain their presence, albeit with their numbers reduced in line with the overall size of the chamber. The issue of faith representation should periodically be reviewed by the Appointments Commission
- We believe that existing proposals for filling vacancies are inadequate. The new member should serve out the remainder of the parliament in which the vacancy arose, and the two subsequent parliaments
- We are not persuaded of the arguments for recall ballot provisions. We believe that adoption of an independently supervised register of interests, as applied in the Commons, and of appropriate disciplinary sanctions, would be a more effective safeguard against misconduct or neglect of duties by a member of the second chamber. These measures should be put in place as soon as possible
- With respect to the transition arrangements, we believe that existing life peers should remain members of the chamber for life if they so wish, and that the remaining hereditary peers should be able to take life peer status for this purpose. Existing peers should be offered one-off payments for voluntary retirement. We believe that this approach would be just to existing peers who wish to continue to contribute; does not work against the interests of any political party; and nonetheless will encourage a reasonably rapid transition to the new, smaller chamber
- We believe that 'Upper House' is an appropriate name for the reformed second chamber; however, the issue of the chamber's name should not be a distraction from substantive reform
- While most of our recommendations reflect the aim of moving to a predominantly elected chamber, we also set out interim measures that could be beneficial while avoiding the full-scale confrontation with the Lords that a shift to election is likely to trigger. This embraces not only the standards and sanctions regime, as well as changes to the appointments process, but also a move to 'term peerages' as the basis for new creations. Term peers would serve for the single, three-parliament term envisaged for the reformed chamber.

## Conservatives and the Second Chamber

We have reached the centenary of the 1909-11 constitutional crisis, instigated by Lloyd George's 'people's budget' and its rejection by the House of Lords, that initiated a still uncompleted debate on the role and composition of the second chamber of parliament.<sup>3</sup>

Throughout that period the Conservative Party has been a consistent supporter of a bicameral system. This is in contrast to the Labour Party, which has argued for a unicameral solution – abolition, not reform – in four elections: those of January 1910, December 1910, 1935 and 1983. Conservative bicameralism is rooted in an enduring distrust of the concentration of power; constitutional checks and balances are an essential component of limited government.

Although many Conservatives took their opposition to the reduction of the Lords' powers in 1911 "to the last ditch", the party adapted quickly to the need for a new, non-hereditary basis for a second chamber. Senior Conservatives served on the all-party group that produced the Bryce Report of 1918. The report advocated a predominantly (indirectly) elected second chamber, and the 1918 manifesto of the Conservative-dominated coalition was pledged to "a second chamber which will be based upon direct contact with the people."

In the interwar period, Conservative leaders examined a variety of proposals to strengthen the second chamber; Churchill, though not always consistent in his views, came to be doubtful of the "trumpery foundation" of "mere nomination". He insisted: "If we are to leave the venerable, if somewhat crumbled, rock on which the House of Lords now stands, there is no safe foothold until we come to an elected chamber." However, a workable and widely accepted solution proved elusive.

Returning to power in 1951, the Conservatives found a chamber with its powers reduced further by the 1949 Parliament Act, and in danger of utter irrelevance. This was averted by the introduction of life peerages in 1958. This measure tackled two obstacles to an effective House of Lords: it introduced new talent and widened the narrow social and political base represented by a purely hereditary house. It did not, however, confer democratic legitimacy. It was the crisis of the 1970s that led Lord Hailsham not only to fear "elective dictatorship" but also to argue for an elected Lords as a bulwark against it.<sup>4</sup> Similarly, in 1977-78, Mrs Thatcher set up an inquiry chaired by Lord Home, which advocated a predominantly elected house. It is in our view regrettable that the Conservative governments of 1979-97 did not act on these recommendations.

Since early in the 2001-05 Parliament the Conservative Party has argued consistently for an elected second chamber. In the most recent Commons votes of March 2007, of the 184 Conservative MPs (out of a then total of 196) who participated in the various divisions on the issue, 108 (59%) voted for at least one of the predominantly or wholly democratic options (a 60%, 80% or 100% elected chamber). Traditional party differences were also in evidence in the vote; while all but one Conservative MP voted to keep some form of second chamber, almost half (48%) of Labour MPs voted to abolish it.

The case for an effective second chamber is as strong as ever, given the ever-growing volume of legislation, significant amounts of which arrive in – and leave – the Commons in poorly constructed and incoherent form. We believe that the Commons can and should be more effective in its role as a check on the executive, and the proposals put forward elsewhere by the

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<sup>3</sup> This and the subsequent paragraphs draw on Andrew Tyrie MP, *Reforming the Lords: A Conservative Approach* (Conservative Policy Forum, 1998), pp. 9-29.

<sup>4</sup> Lord Hailsham, *The Dilemma of Democracy* (Collins, 1978), pp. 149-55.

Conservative Democracy Task Force are designed to achieve that.<sup>5</sup> However, the dominance of the majority party of the day, coupled with other demands on MPs' time from constituency casework, put some limit on the Commons' ability to perform a scrutinising and revising role. It is this role that a second chamber, differently constituted from the Commons, should discharge. Even though the current House of Lords is increasingly effective, we believe that only a democratic mandate can entrench the position of a second chamber.

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<sup>5</sup> Conservative Party Democracy Task Force, *Power to the People: Rebuilding Parliament* (2007).



## Pressures and prospects for reform

The Commons votes of March 2007 showed wide-ranging cross-party agreement on the case for a largely elected House. As already noted, 59% of Conservative MPs voted for at least one of the ‘democratic’ options; for Labour and the Liberal Democrats, the figures were 76% and 98% respectively. The cross-party talks that led to last year’s White Paper showed significant, though not complete agreement on the shape and nature of the resulting chamber.

Meanwhile, a number of scandals in recent years have put a harsh spotlight on the Upper House and its working and disciplinary practices.

- **Cash for clauses.** This is the issue raised by the Sunday Times allegations of January 2009, and has focused particular attention on the Lords’ weak disciplinary procedures. As one of the peers cited in the Sunday Times allegations reportedly put it, “The thing with the Lords is that there’s virtually nothing they can do with you, unless you break the law .... There’s nothing they can do but jump up and down.”<sup>6</sup> This widespread belief turned out not to be wholly accurate: two of the peers implicated in the scandal have been suspended. However, overall disciplinary provisions remain inadequate and there is still no provision for expulsion.
- **Cash for peerages.** The issues underlying the 2006-07 investigation, which included the first ever police interview of an incumbent Prime Minister, have yet to be resolved. Although the House of Lords Appointments Commission carries out its work effectively, significant patronage remains in the hands of the Prime Minister.
- **The system of allowances.** This is fast becoming a source of scandal of its own, with media commentary focusing on the laxity of the regime, which is in many respects the worst of both worlds. It does not reward full-time commitment adequately, yet its requirements are relatively easy to fulfil, with only a signature for attendance needed to claim daily expenses and no proper system of receipts. Given current concerns over expenses in the Commons, the system in the Lords needs urgent review.

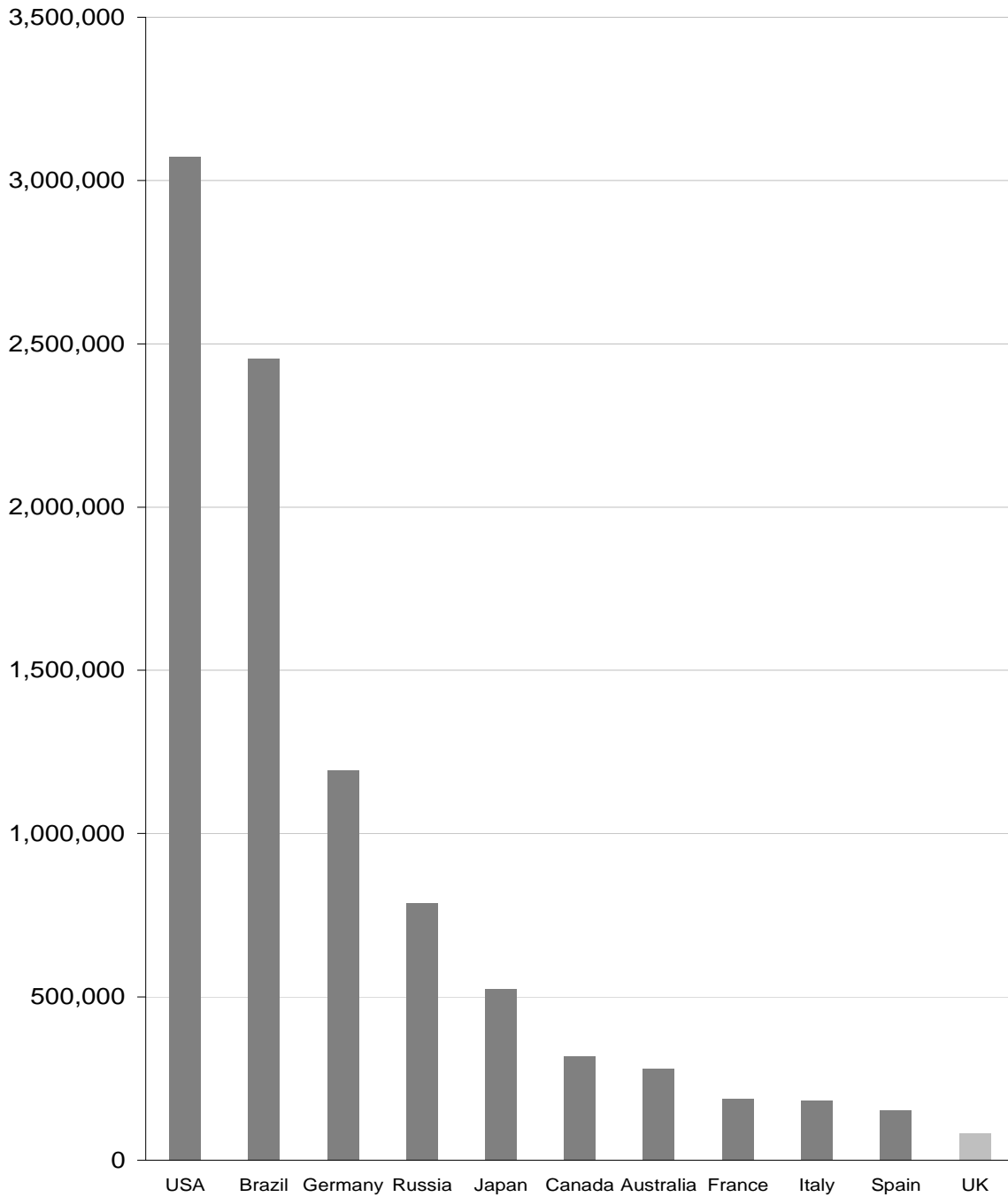
Two other features of the existing Lords add to the pressures for change. Firstly, the Lords is too big, and risks becoming bigger still. Even after the expulsion of most of the hereditaries in 1999, it remains (at 740 members) the second-biggest chamber in the world, according to the lists kept by the Inter-Parliamentary Union (IPU): only the Chinese National People’s Congress, with 3,000 delegates meeting for two weeks a year, is bigger. The United Kingdom is also the only bicameral country, out of 76 listed by the IPU, in which the upper house is bigger than the lower. This, it must be remembered, is in spite of the Commons being itself relatively large (it comes fourth in the IPU’s ranking, with North Korea’s Supreme People’s Assembly sandwiched between the two British chambers).<sup>7</sup> Chart 1, comparing the UK with a number of other bicameral countries in terms of the population per upper house legislator, shows this country to be particularly “densely populated”. Admittedly, average daily attendance in the Lords (413 in the 2007-08 session) is much lower than overall membership; however, this is still quite a large figure, and the difference between membership and attendance figures underscores the peculiarly optional nature of the legislative power enjoyed by peers under the current system.

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<sup>6</sup> Attributed to Lord Moonie: Sunday Times, 25 January 2009.

<sup>7</sup> We are grateful to Adam Mellows-Facer of the House of Commons Library for these figures.

### Population per Upper House Member

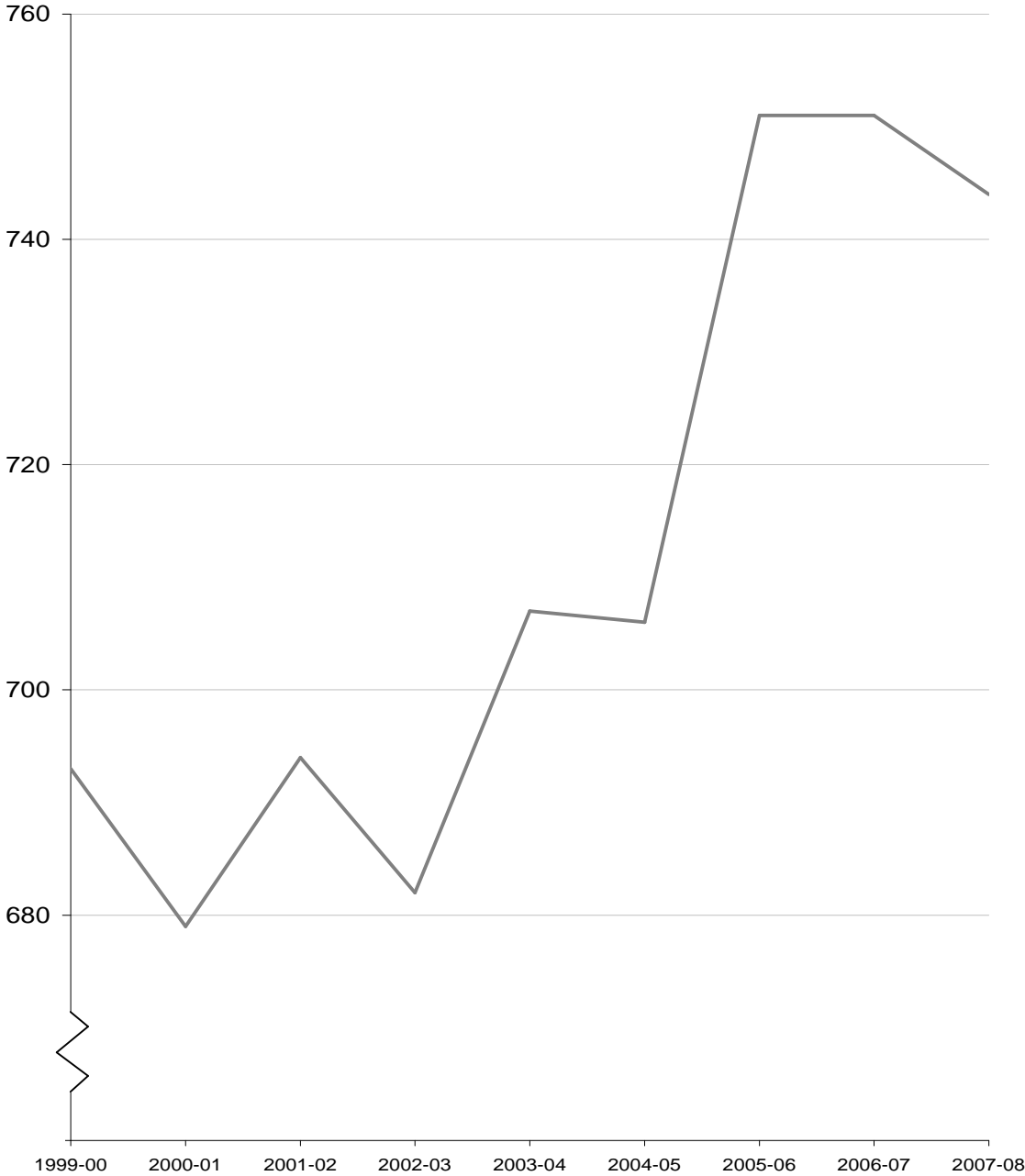


Source: House of Commons Library

These numbers are likely to grow. While removing the hereditaries, Tony Blair created life peers at an exceptionally rapid rate for much of his premiership to counterbalance Labour's historic disadvantage in the chamber. During his term of office, 163 Labour peers were created, compared with 62 Conservatives and 53 Liberal Democrats; his total tally of 386 creations (including cross-benchers) was just one fewer than that of Thatcher and Major combined. At the end of the 2007-08 session, there were 744 members of the Lords, an increase of 51 (7%) on the first post-hereditaries session of 1999-2000. At the time of writing, this had fallen slightly, to 740 members.

That process now looks overdone. Of the 725 members of the Lords (excluding those on leave of absence or suspended), 214 are Labour peers, while the 201 crossbenchers outnumber the 196 Conservatives. This imbalance is likely to grow during the remaining term of the Labour government. In addition, the Conservative peers (with an average age of 70) are older than their Labour (average age 68) and Liberal Democrat (average age 66) counterparts. The Conservatives also find themselves over-dependent on the remaining hereditary peers, who make up a quarter of their total membership and are on average younger and more active than their life peers.

**Membership of the House of Lords**



Source: House of Commons Library

Thus a future Conservative administration is likely to undertake significant creations of peerages to prevent finding itself in a very weak position in the second chamber. Taking the current party

balance, and applying the proposal in Lord Steel's bill that the governing party should have a lead over the opposition party of up to 3 per cent of the chamber, this would imply some 26 creations of Conservative peers alone; allowing for some opposition creations, the overall number would be bigger. If this is done through life peerages, it will swell the chamber further for many years to come. Frequent changes of government – following the pattern of the 1960s and 1970s, rather than that of the last three decades – could mean that this process is repeated.

The second peculiarity of our current arrangements is that the anachronistic hereditary principle has proved surprisingly tenacious. The Blair – Cranborne deal in 1998 to retain 92 hereditaries ensured that change was far less radical than outward appearances suggest. It secured the retention of roughly half the active hereditary peerage; most of those ejected to oblivion rarely if ever attended. It also created a new and serious abuse: by-elections conducted by hereditaries to fill vacancies caused by deaths of their colleagues. Lord Steel has described the absurdities involved in the process: “we [the Liberal Democrats] had six candidates for a by-election and four voters. Before the Great Reform Bill of 1832, the rotten borough of Old Sarum had at least 11 voters. In the Labour Party, there were 11 candidates and only three voters, and we had the spectacle of the Clerk of the Parliaments declaring to the world that a new Member had been elected to the British Parliament by two votes to one.”<sup>8</sup>

In spite of all this, even supporters of a full-scale reform – moving to a fully or predominantly elected chamber – have for some time believed that there is little prospect of its early accomplishment.<sup>9</sup> For any government, tackling the most serious recession in half a century will be a much higher priority; it will not want to put its rescue measures at the mercy of delay by the Lords. In some of the confrontations of recent years, there have been clear threats from the peers to wreck not just individual measures that they found offensive, but the government's wider legislative programme. This tactic was employed with considerable effect in 2003-04, when the government proposed to remove the remaining hereditary peers without moving to an elected chamber but was ultimately forced to back down.<sup>10</sup> Similar threats were made over the eviction of the hereditaries in 1998-99 and the Hunting Bill in 2004. Proposals for comprehensive reform of the Lords risk triggering the same reaction; as Justice Secretary Jack Straw has noted, “Lords reform can come with a heavy political cost”, including “disruption to the legislative programme”.<sup>11</sup>

In spite of the renewed interest in comprehensive Lords reform of recent weeks, and Mr Straw's hope that cross-party agreement could yield legislation early in the next Parliament,<sup>12</sup> the practical difficulty of confronting time-consuming resistance in the Lords remains. In recognition of this reality, the final section of this paper deals with a series of interim measures – in particular, the creation of ‘term peers’ – that could be enacted more easily. This, however, is a pragmatic judgement; at the level of the debate around the White Paper and any new government proposals, we can both look to the longer term and, taking many broad principles as agreed, focus on the details of implementation. The bulk of this paper addresses these measures needed for an enduring reform.

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<sup>8</sup> House of Lords Hansard, 20 July 2007, column 485.

<sup>9</sup> House of Commons Public Administration Select Committee, Response to White Paper: “An Elected Second Chamber”, Fifth Report of Session 2008-09, p. 4: “a fully or largely elected second chamber ... is some years off even at best.”

<sup>10</sup> When the proposals were set out, Lord Strathclyde warned the then Lord Chancellor that “he can expect a major fight on his hands, and it will not be confined to this Bill” (House of Lords Hansard, 18 September 2003, column 1062). A few months later, he warned that “I don't think we want to look too closely at the shambles the government programme could end up in.” (Independent, 12 January 2004). Two months later, the government shelved the planned changes to the Lords.

<sup>11</sup> Rt Hon Jack Straw MP, Constitution Unit Annual Lecture, University College London, 24 October 2006.

<sup>12</sup> “I certainly want to see draft legislation and all three parties committed to ensuring that that legislation, if we can't get it through before the election, is introduced and fully in place shortly after the election.” Rt Hon Jack Straw MP, The Andrew Marr Show, 21 June 2009.

## Measures for reform

### Points of agreement

As the White Paper notes, the Commons votes and the work of the cross-party group have established a number of points of agreement. These points are not, of course, agreed by all MPs and certainly not by the majority of members of the Lords; nonetheless, they represent a starting-point in setting out a future for the second chamber.

Firstly, there was agreement that the second chamber should be predominantly (80%) or wholly elected. There is strong consensus that the elected members should be directly, not indirectly elected. It was also agreed that, if there is to be an appointed element, it should be solely on a non-party basis; party representatives should enter only via the elected route. This does not preclude an appointed member of the second chamber having known political views; however, they could not be nominated by a political party.

There was also agreement – and has been since the report of the Wakeham Commission – that elected members should serve a single, long, non-renewable term, and that members should be elected in thirds. There is agreement between the Conservative and Labour parties – which we share – that the term should equal three parliaments, and that elections for the second chamber should take place on the same day as those for the House of Commons. (The Liberal Democrats have argued that elections for the second chamber should be on the same days as those for the devolved assemblies, guaranteeing members a uniform twelve-year term. However, this would bring in new members of the second chamber part-way through both parliamentary terms and sessions; we believe it is better that changes to the second chamber coincide with the start of a new parliament).

All parties are agreed that, if one general election follows rapidly after another – as was the case in 1950-1, 1964-66 and 1974 (February and October) – the second election should not trigger an election for the second chamber. This would prevent members' terms being cut excessively short. The government argues that this should apply for any parliament that lasts less than three years; the Conservatives that the limit should be two years. We are content to support the Conservative position, while noting that in practice the choice of either option will rarely make a difference: only once in the last century (1929-31) did a parliament last more than two years and less than three. Parliaments have generally either been dissolved relatively quickly – reflecting the lack of a governing majority, or a very small majority – or have run for close to four years or more.

At least as importantly, there is widespread agreement that a change to a predominantly or wholly elected second chamber should not result in a major revision of its powers. We welcome the White Paper's clear statement that "there is no persuasive case for reducing the powers of a reformed second chamber."<sup>13</sup> The Lords' current powers of revision and, if necessary, delay can force the Commons to think again. This is more than a formality: in 40% of the occasions that the government was defeated in the House of Lords between 1999 and the 2005 general election, it accepted its defeat.<sup>14</sup> The Lords' other key functions – such as the work of the Committee on the Merits of Statutory Instruments, or the scrutiny carried out by the Lords' committees – enhance its revising and influencing role.

However, none of this undermines the primacy of the Commons. The provisions of the Parliament Act ensure that, when the Commons has a settled view on an issue, its will prevails.

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<sup>13</sup> An Elected Second Chamber, Cm 7438, July 2008 para 5.1.

<sup>14</sup> Meg Russell and Maria Sciarra, 'The Policy Impact of Defeats in the House of Lords', BJPIR (2008) 10:4, 571-589.

The Commons' position is reinforced by its financial privilege, by the need of governments to maintain its confidence and by the presence in the Commons of the Prime Minister and the large majority of cabinet ministers.

There is also widespread agreement that, since the peerage as an honour will be separated from membership of the reformed chamber, the name 'House of Lords' will need to change. The White Paper suggested, without giving a firm commitment, following widespread international practice and using the term 'Senate'. We prefer 'Upper House'; however, we do not believe that wrangling over the chamber's name should be allowed to get in the way of substantive change.

Given the long and tortuous history of debates on the second chamber, these points of agreement are very welcome. They suggest that, over the last decade, there has been a growing convergence of opinion within the Commons on key issues. Nonetheless, as the White Paper makes clear, there are many other issues still to be resolved.

### **The process of election**

The cross-party group was divided on the interrelated questions of the size of the chamber, the size of constituencies and the electoral method used. In examining them, we should recall some principles underlying the role of the chamber. These put a premium on the independence of members and capacity for scrutiny and revising work. It is critical that members of the second chamber have the time to focus on these roles and operate under different influences from those that affect the House of Commons. This is the logic behind fixed, non-renewable terms of office; it also indicates that there should be as little blurring as possible of the mandates of members of the two houses.

The Conservative Party has argued for a first past the post voting system for the second chamber; for a chamber of 250-300 members, rather than the 400-450 proposed by the government; and for constituencies based on traditional county and city identities rather than larger, more amorphous areas such as the regions used for European Parliament elections. These three proposals are linked; a relatively small chamber, returning between 80 and 100 members at each election, with smaller constituencies than would be the case under some other options, would return only one candidate per constituency, making first past the post the alternative vote (AV) the only possible systems.<sup>15</sup>

On these points, we differ from the view that our party has taken so far. We are strong believers in the first past the post system for the House of Commons. However, it could have an undesirable effect on the operation of the second chamber. The White Paper includes some illustrations of the possible outcomes of different electoral systems on the composition of a hypothetical elected second chamber over the past forty years. Inevitably, these involve some strong (and questionable) assumptions, notably that votes would have been cast identically for both chambers. Nonetheless, they have some illustrative value.

One consequence of the first past the post system is that, in spite of the house coming up for election in thirds, one party could win an outright majority. This applies particularly – but not solely – if the house were to be fully elected. Thus, even with an 80% elected second chamber, there would have been government majorities in 1983, 1987 and 1992; with a fully elected chamber, 2001 and 2005 would also have resulted in government majorities. In contrast, the lack

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<sup>15</sup> The July 2008 White Paper demonstrates some confusion on this point. It states (4.24) that “the Conservative Party agrees with the broad approach of multi-member constituencies and long terms”, but this is not fully compatible with the party's other requirements. The first past the post examples (4.49, 4.50) are based on single member constituencies.

of a party majority in the current house seems to reinforce and give legitimacy to its independent-mindedness.

There are two further implications of the White Paper's estimates. One is that if – as has been the case over recent decades – one party is in power for several terms, then its position in the second chamber will strengthen with each successive victory (because of the second chamber coming up for election in thirds, the effect of less favourable performance in the past will be gradually erased). Yet governments are not necessarily at their wisest in their third terms, and would on this model face the fewest restraints from the second chamber at just this point. The second is that a new government, especially one coming to office after a long period in opposition, would be likely to face an opposition majority in the second chamber (because of the continuing effects of earlier elections in which the other party had been victorious) and so might face particularly strong challenge to the programme on which it had just taken power.<sup>16</sup>

These arguments militate against using first past the post for elections to the second chamber; they apply equally to the alternative vote, which is as or more likely to throw up strong party majorities. We do not believe that electing the second chamber by a proportional system would enable it to claim greater legitimacy than that of the Commons because its system was 'fairer'; because of the system of election by thirds for the second chamber, the Commons could always claim the more recent mandate. Nor do we believe that use of a proportional system for the second chamber need threaten the continuation (which we believe to be desirable) of first past the post for the Commons. Australia provides an example where the lower house is elected by a non-proportional system (the alternative vote), while PR is used for the upper house; the two have been able to coexist for more than half a century. Admittedly, the Australian Senate returns equal numbers of representatives from each state, diluting its ability to claim an equal or superior democratic mandate to that of the House of Representatives; nonetheless, in Britain the Commons' ability to claim the more recent and complete mandate would have something of the same effect.

We believe that each system's merits would be appropriate to the chamber to which it applied. The strengths of first past the post are that it enhances the constituency role of MPs and allows for the formation of a strong, single-party executive. The former is taking on ever-greater significance as MPs' caseloads increase; the latter has enduring strengths of providing clarity and accountability for government. The strength of a proportional system is that it gives voice to a wider range of opinion, including that of parties in parts of the country where they are relatively weak (such as Labour in the south east, or the Conservatives in Scotland). An additional benefit of holding second chamber elections (under PR) on the same day as general elections (under first past the post) is that it would give parties an incentive to maximise their vote even in parts of the country in which at present such votes are 'wasted'.<sup>17</sup>

Given that we favour a broadly proportional (and hence multi-member) system for the second chamber, and that between 80 and 120 members would be elected at any one time<sup>18</sup>, electoral areas of at least 1.5 – 2 million people would be required. This rules out county and city-based constituencies; electoral areas would have to be either sub-regional or regions such as those used

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<sup>16</sup> An Elected Second Chamber, Cm 7438, July 2008, Annex 2.

<sup>17</sup> We believe that it is important to find ways to make votes "count" across the country without losing the benefits of the first past the post system for the Commons; the Democracy Task Force's proposals for considering a link between taxpayer support and votes won at the previous general election, and for a taxpayer-funded matched funding scheme, would also have this effect. Conservative Democracy Task Force, *Trust in Politics: A Programme for Restoring Public Respect for the Political System* (2008), p. 2.

<sup>18</sup> This assumes that an appointed element is retained in the chamber; see next section.

for the European elections.

We favour the use of larger regions precisely because it would work against competition for constituency business with members of the House of Commons (and also with local councils). This would be compatible with either list systems or the Single Transferable Vote. The latter is, however, better suited for a system in which candidates build a strong personal following by attention to local issues (as is the case in the Republic of Ireland), rather than for very large electoral areas. The only national second chamber for which it is used is the Australian Senate, and there it is in fact closer to a closed list system, as party list votes are allowed and there are significant disincentives to vote instead for specific candidates. In addition, the Australian Senate differs from the second chamber envisaged for Britain in that it has powers that almost equal those of the House of Representatives, and its members are able to stand for re-election.

However, while we favour using the regions that are used for the European elections, we are opposed to the fully closed party list system currently used to elect MEPs; it gives voters no option but to follow the decisions and rankings of the party machine. Instead, an open or semi-open list system would give much greater weight to voter preferences for individual candidates. A fully open list system is the purest way to do this; however, it may be realistic to recognise that many voters, especially in a large electoral area, will not differentiate between individual candidates and will wish to vote for a party. The semi-open list gives voters the choice to vote either for an individual candidate or for the party. Individual candidates who score above a certain share of the vote thereby override the rankings of the party list; if no candidate achieves this (or not enough candidates to fill all the party's places), then it is the party list which applies.

We are in agreement with the government's proposal for a second chamber of 400-450 members, at least in the short term. This would represent a significant reduction from the size of the current House of Lords, but would be close to current levels of average attendance. This suggests that it would be adequate to carry out the work of the chamber. In practice, membership would for some time be bigger because of the continuing presence of the existing life peers alongside the new members; however, the target is still a valid one.

However, there may be a case for a smaller chamber; once the new membership has been installed, there should be a review, alongside that of the number of MPs, to examine the case for further reductions.

### **Appointed members**

In the House of Commons votes of March 2007, there were majorities for both an 80% elected second chamber – therefore maintaining an appointed element, albeit much smaller in number than at present – and for a fully elected chamber. The former commanded a majority of 38, the fully elected option a majority of 107.

There are arguments for either option. A fully elected chamber has the merit of consistency. It also avoids the potential difficulty of one set of upper house members having more democratic legitimacy than others, a difference that could become a point of controversy if appointed members' votes were to change an outcome (especially, perhaps, if this brought the chamber into conflict with an elected government).

However, an appointed element would enable the chamber to draw on the expertise and independent viewpoint of members who would be unwilling to stand for election (one of the merits cited for the existing chamber). It would offset the probable dominance of the parties over the elected element. In addition, it would make it harder, even if a non-proportional system is



used for the chamber, for any one party to gain a majority; again, this would maintain the position of the current house. Nor is a combination of elected and appointed members as outlandish as is sometimes suggested: hybrid second chambers are to be found in Belgium, Ireland, Italy and Spain.<sup>19</sup>

Thus, in spite of arguments from consistency and the greater majority in the Commons for a fully elected chamber, we favour the option of 80% elected membership in the belief that this would add to the independence of the second chamber and maintain some of the merits of the current house. We share the widespread view that appointed members should serve on the same terms as elected members – that is, for a non-renewable term stretching over three parliaments.

The July 2008 White Paper argues that, if there is an appointed element in the second chamber, then these appointments should be made through the House of Lords Appointments Commission; that all such appointments should be made on a non-party basis, although this would not preclude those with known party affiliations being put forward on their own merits; that appointments should be made according to published criteria, focusing on the individual's ability to contribute to the work of the chamber; and that the Commission should be put on a statutory basis. The latter provision would entrench the Commission's independence from the Prime Minister; at present, it relies on a 'self-denying ordinance' by the Prime Minister not to amend the names put forward by the Commission. We agree strongly with David Cameron's view, set out some years ago, that the Commission should be put on a statutory basis, accountable to parliament.<sup>20</sup> The 2008 White Paper proposes that the Commission should be accountable to the Prime Minister; as the Public Administration Select Committee has pointed out, no justification has been offered for this reversal of the position set out in the Government's 2007 White Paper, which favoured parliamentary accountability.<sup>21</sup> We believe that the latter is the correct course.

With this one exception, we are in agreement with the White Paper's proposals concerning the operation of the Appointments Commission. In addition, we believe that there should be stronger scrutiny of appointees to the Commission. The chair is already subject to pre-appointment scrutiny by the Public Administration Select Committee, on the model applied first to members of the Monetary Policy Committee and more recently to a wide range of senior public appointments. Given the importance of the Commission's work, we believe that this process should be applied to all its members.

In addition, as we argue, until full reform of the second chamber is accomplished the Commission should undertake the appointment of all members of the House of Lords, not only 'non-political' peers. This is a point to which the Public Administration Select Committee has recently returned, arguing that there would be cross-party support for such a move and that it could be accomplished without the need for legislation. Under the 'longlist' approach, parties would put forward more names than there were places, and the Commission would make selections on the basis of nominees' ability to contribute to the chamber.<sup>22</sup> As was pointed out in The Conservative Party's Proposals for the Funding of Political Parties, this would cut back party patronage and cut possible links between financial contributions and nomination to the chamber.

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<sup>19</sup> M. Russell, *Reforming the House of Lords: Lessons from overseas* (OUP, 2000).

<sup>20</sup> For David Cameron's view, see his foreword to Andrew Tyrie MP, *The Conservative Party's Proposals for the Funding of Political Parties* (Conservative Party, 2006). The Conservative representatives on the cross-party group argued against putting the Appointments Commission on a statutory basis; however, in addition to David Cameron, other Conservative views have been in favour of it. See Democracy Task Force, *Trust in Politics*, pp. 2-3, and Tyrie, *The Conservative Party's Proposals* ..., p. 6.

<sup>21</sup> The House of Lords: Reform, Cm 7027, February 2007 para 8:15, House of Commons Public Administration Select Committee, Response to White Paper: 'An Elected Second Chamber', Fifth Report of Session 2008-09 (January 2009), p. 5.

<sup>22</sup> *Ibid.*, pp. 3-4.

The Commission should be renamed the Honours Commission, taking responsibility for honours as well as for appointments to the Lords. It would (as now) check whether or not nominees for peerages and other high honours have made donations and loans to a political party within the last five years. It should require a certificate from party leaders to this effect. Party treasurers should be placed under a statutory duty to enable party leaders to complete the certificate accurately. This will require providing all relevant information about the financial relationship between a candidate for an honour and his or her party. The statutory requirements on declaration may need to be accompanied by statutory protection of donors from discrimination. Donations should not be a bar to an award but must be and be seen to be unconnected to the award.

These changes would have two major implications for the Lords. Firstly, political as well as non-political nominees would be assessed against the Commission's criteria, notably being "able to make an effective and significant contribution to the work of the House of Lords."<sup>23</sup> This will add to the professionalism of the chamber; it will be forward-looking as to what candidates can contribute, rather than being a prestige award for past services.

Secondly, it should curtail suspicions that places in the chamber can be bought. For some, the shift from a prestige to a normally working chamber would reduce the appeal of trying to buy into it. Admittedly, others might find the power offered by a significant legislative role appealing enough to be worth spending money on; however, the inability of party leaders to offer any certainty as to the success of an application, coupled with full transparency, should militate against the appearance or reality of "cash for peerages".

The question of which party nominees are chosen is separate from that of party balance within the chamber. This must be addressed through consultation between the political parties. This should work on the principles of bringing the balance of party appointees into rough parity with the share of votes cast at the previous election, and of no party having a majority. These are the principles that the government set out when it removed the bulk of the hereditaries, and they are reasonable ones – although, as mentioned before, they have been somewhat stretched by the Labour government of late.

### **Automatic membership and eligibility**

The 2008 White Paper raises a number of issues as to who can or should be members of the chamber. We recognise the strength of its arguments for the retention of Church of England Bishops as part of an appointed element, albeit with their numbers reduced commensurately with the overall size of the chamber.<sup>24</sup> The result would be to have a handful of bishops in place, compared with the current<sup>25</sup>. The issue of faith representation should be periodically reviewed by the Appointments Commission. We also agree that it is desirable that the Appointments Commission should encourage applications from the wide range of other faiths and denominations in Britain.

The position of the Law Lords will change, as the White Paper notes, with the creation of a new Supreme Court. Members of the court will not have a seat in the House of Lords, and so the question of their role in a reformed second chamber does not arise; they would, however, be able to be considered for appointment to the chamber (assuming that there is an appointed element) after retirement.

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<sup>23</sup> House of Lords Appointments Commission appointment criteria, in Ministry of Justice, *An Elected Second Chamber*, Cm 7438, July 2008, Annex 6, p. 132.

<sup>24</sup> As indicated in the White Paper (6.49), the Bishops would not count towards the 20% of the chamber that would be chosen by the Appointments Commission.

In general, we do not favour automatic appointments to the chamber. The White Paper raises the possibility of such a right of appointment for former senior public servants, such as the Archbishop of Canterbury, the Cabinet Secretary or the Chief of the Defence Staff. Clearly, such individuals would be very strong candidates, but we do not believe that they should be an exception to the normal process of appointment.

Most of the White Paper's stipulations as to eligibility for membership are reasonable (including extending to the second chamber the rules that apply in the Commons to exclude those convicted of a criminal offence and sentenced to a prison term of more than twelve months; any tightening of this rule for the Commons should be matched for the second chamber). However, we disagree with the government's proposal that being resident in the UK for tax purposes should be a condition of membership. We believe that the requirement should be for members to be on the electoral register in the UK, and to pay tax here on their UK income.

With respect to the relationship between membership of the chamber and that of the Commons, we agree with the government that members of the second chamber should be eligible to stand for election to the Commons after the end of their term, but that this should only be possible after a five-year cooling-off period. This would reduce the risk that members of the second chamber would use it as a platform for their campaigns to the 'other place'. We do not believe that the same issues arise in the case of an MP standing for election to the second chamber, and thus do not believe that a comparable cooling-off period is needed.

### **Vacancies and recall**

The White Paper asks for opinions as to how vacancies should be filled. The list system that we favour would entail a process of substitution rather than a by-election; this matches current practice for the European Parliament. The lengthy terms proposed for the second chamber add a complication, since a vacancy could arise many years after an election. We believe that the first option for taking the seat should go down the most recent party list that has been presented in an election. If no candidate from that list is available, the option should transfer to lists presented previously, going back if necessary to the list presented at the time that the member whose seat has become vacant was elected. The White Paper does not raise the question of what should happen if a vacancy were to arise for a seat held by a small party that had not put up a complete list and had no replacement to put forward. We believe that in this case the vacancy should remain unfilled; since the regional constituencies would be multi-member, constituents would still have representation.

The lengthy, non-renewable term raises a second problem with respect to vacancies; if the vacancy arises late in the member's term, it could offer a prospective replacement an unattractively short period in office. However, allowing the new member to stand again could leave the possibility of their serving an excessively long term. The White Paper suggests two, very different possibilities: that the new member would be able to stand for re-election if there were only three years to go or less before the term of office expired; or that he or she would be eligible so long as the previous member had served out the whole of the first of the three parliaments in their term.

Both these proposals have major flaws. The second option can be ruled out on the basis that it would allow a member an unacceptably long term of office; worse, it would offer that very long term to a member who had failed to secure a sufficiently high place on the list to get elected initially. Yet even the first option is subject to a similar objection; it would give a member whose

list position had been relatively low a longer term (by up to three years) than that of members who had been elected in the normal way.

We therefore believe that an alternative option should be examined: that the new member should serve out the remainder of the parliament in which the vacancy arose, as well as the subsequent two parliaments. In other words, he or she would serve as close as possible to (but no more than) the normal term of three parliaments. This would have the consequence that different elections would not necessarily be for a precise third of the chamber; however, assuming that the distribution of deaths and resignations would be fairly random, the effect would presumably not be significant.

The cross-party group discussed the use of recall ballots. We are doubtful as to the merits of this proposal. The White Paper acknowledges the importance of defining the grounds for recall in such a way that it could not be used to undermine or intimidate members from exercising their judgement on individual issues; it could be applied only in cases of incompetence, neglect of duties, corruption or misconduct. However, very tight definition would be needed to ensure that the recall provision did not have undesired effects, and the incompetence criterion in particular would be open to dispute. If the definition were tight enough, other, less elaborate means could be used to bring about the member's resignation.

A similar dilemma exists in relation to the threshold number of signatures required to trigger a recall election. The White Paper's proposal (40% of votes cast when the member was elected) is intended to be sufficiently stringent to prevent frivolous or malicious attempts at recall, the more so since the signatures have to be gathered within 90 days. However, with big constituencies, the absolute numbers involved are so large that the recall provision looks likely to be ineffective, or capable of being used only by very well-funded groups or individuals. Yet much lower trigger points would run the risk of the process being abused by well-organised political or lobby groups. If the recall option is not taken, other methods are needed to ensure some kind of accountability, given that members – whether elected or appointed – will not have to face the electorate (again) after entering the chamber. This applies to issues both of conduct or probity, and to matters of attendance and commitment.

### **Standards, sanctions and attendance**

The White Paper addressed the issue of standards rather tentatively, raising the question of whether the second chamber's procedures should come more into line with those of the Commons. We believe that they should; however, the scandal surrounding the allegations in the Sunday Times in January made this a matter of much greater urgency than was foreseen in the White Paper, which saw it as taking place "in the run-up to the creation of a reformed second chamber."<sup>25</sup> With reform of standards in the Lords now caught up in the debate on measures for the Commons in response to the expenses scandal, the likely pace of change has accelerated further.

The major issues are:

- **Registration of interests.** The rules under which peers operate remain less tightly defined than those of MPs; in particular, there is no need for peers to give financial details about their roles in what are (somewhat generously) defined as "non-parliamentary consultancies". This cannot be sustained. In addition, outside consultancies - the grey area most evident

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<sup>25</sup> An Elected Second Chamber, Cm 7438, July 2008, para 7.22.

in the Sunday Times affair - should no longer be able to include work related to Parliament even if they do not amount to “paid advocacy”.

- The Commissioner for Standards. At present, there is no Lords equivalent of the role of the Parliamentary Commissioner for Standards in investigating complaints about MPs’ conduct and presenting findings to the Committee on Standards and Privileges. In the Lords, all these functions are undertaken by the Committee for Privileges; in other words, the Lords still operates in a pre-Nolan world. Under the new Parliamentary Standards Bill, the Independent Parliamentary Standards Authority and the Commissioner for Parliamentary Investigations would adjudicate on complaints relating to financial issues and registration regarding the Commons. The Leader of the House of Commons, Harriet Harman, indicated that “the new body should also take responsibility for such issues in the Lords”<sup>26</sup>, though a lot of detail was left unresolved by her statement and the Parliamentary Standards Bill, presented on 23 June, related only to the House of Commons. We believe that the Lords’ current arrangements cannot continue even without wider reform of the second chamber, and certainly could not be carried over to a predominantly elected House. Either the new Commissioner’s role should take in the second chamber, or a comparable post should be established.
- Sanctions. When the Sunday Times allegations were made, it was widely believed and reported that the Lords could do no more than “name and shame” offending members. However, following (conflicting) legal advice from the Solicitor General and from Lord Mackay of Clashfern, the Lords decided in May to follow the latter in concluding that it did have a power of suspension, albeit one last used when Oliver Cromwell was a rising Commons backbencher. As a result, Lords Taylor and Truscott were suspended until the end of the parliamentary session (approximately six months) for their role in the Sunday Times affair. However, the Lords clearly have no power of expulsion. As with the wider standards regime, this is likely to change in the aftermath of the Commons expenses scandals. In any case, the second chamber’s rules for automatic exclusion should match those of the Commons; at present this is triggered by conviction of an offence carrying a year or more’s imprisonment, though these provisions may be tightened. The second chamber should have the wider ability, acting under advice, to exclude a Member.

Given the absence of accountability by the Lords to the electorate, powers of suspension or expulsion are even more essential there than they are in the Commons. (This would remain the case even in a fully-reformed chamber, since the agreed model is one of long single terms). The use of suspension in the Commons is a sanction with undesirable side effects, since it means that for the period of a Member’s suspension his or her constituents are unrepresented; this problem does not arise in a reformed second chamber, given the large multi- member electoral areas, and the need to avoid replicating MPs’ constituency link. Provision for expulsion would require changes to the current system of the Writ of Summons; however, both the Titles Deprivation Act 1917 and (more significantly) the expulsion of the bulk of hereditary peers in 1999 suggest that this can be resolved through primary legislation that establishes general principles for exclusion.

An effective standards regime would, we believe, be better and more effective at redressing misconduct by members than would a system of recall ballots. As the White Paper notes, such provisions – and the ability to enforce them to the extent of removing a member if necessary – would in any case be required for appointed members. The White Paper mentioned, almost in passing, that this powerful disciplinary role should be in the hands of the Appointments Commission. We believe that this would be an unwarranted change to the nature and role of the

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<sup>26</sup> House of Commons Hansard, 20 May 2009, column 1506.

Appointments Commission. In similar vein, current government proposals are murky. They make clear that the new Commissioner for Parliamentary Investigations can only make recommendations for sanctions such as suspension and expulsion to be applied to an MP; it is for the Committee on Standards and Privileges, and ultimately the whole House, to decide. However, they are much less clear about the procedure for the Lords. We believe that these decisions should be a matter for a committee of the House, acting under external advice from the Commissioner, as is the case in the Commons.

While these sanctions would apply for cases of grave ethical lapses, there is also a need to have some sanction against neglect of duties. This is made easier by the proposal in the White Paper that membership of a reformed second chamber should be a salaried post. (We agree with this proposal, though we believe that pension provision should be on a defined contribution basis; the creation of a new regime gives an opportunity to nudge the public sector, and elected representatives in particular, in the direction that the private sector has been taking for a number of years). In its White Paper, and following on from discussions that had taken place within the cross-party group, the government showed some cautious interest in “the feasibility of linking a salary to a Member’s contribution”. This would be done either by linking the salary to attendance or by deductions if attendance fell below a specified level.<sup>27</sup>

Adopting this principle is essential if a new system of remuneration is to work. This should apply deductions for non-attendance on days when the Lords is in session. There may also be a case for more positive incentives, such as extra payments for committee chairs. The current system of allowances does, of course, provide some incentive to attend; however, it is still something that members can take or leave as they choose. A combination of tighter rules on external interests, payment of an acceptable salary and deductions for poor attendance should help ensure that members make a serious commitment to their duties.

There is also a need for a long stop provision for more extreme absenteeism. Local authority attendance requirements (Section 85 of the 1972 Local Government Act) provide for the removal of a councillor if he or she does not attend any council meeting for six months, with exceptions for legitimate reasons for absence such as illness. This offers a framework that could be applied to the second chamber, and the White Paper recommends doing so. However, the limits should be stricter. For one thing, salaries for members of the Lords are likely to be much higher than those for councillors (the White Paper suggests levels in between those of MPs and those of members of the devolved assemblies). In addition, members of the second chamber, unlike councillors, face no electoral sanction. Thus non-attendance without good reason for a period of three months should be sufficient for a member to be removed.

## **Transition arrangements**

In addressing the arrangements needed for the transition to the new second chamber, the White Paper seeks to balance out a number of factors:

- Existing members of the House of Lords have an important contribution to make in ensuring a smooth transition that carries over the virtues of the current House to its successor. The White Paper also reiterates the position of its predecessor (published in February 2007 in the run up to the Commons votes on Lords Reform) that: “The current members have entered the House in the expectation that they will stay for life. Some will have given up careers and other roles to do so. It would be unfair to require them to leave in these circumstances.”<sup>28</sup> We agree strongly with these propositions.

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<sup>27</sup> An Elected Second Chamber, Cm 7438, para 7.41.

<sup>28</sup> 2007 White Paper, The House of Lords: Reform, Cm 7027 p. 50: cited in An Elected Second Chamber, Cm 7438, para 8.15.

- As already mentioned, the White Paper proposes that members of the new second chamber should be paid taxable salaries, somewhat lower than those paid to members of the House of Commons but higher than those paid to their counterparts in the devolved assemblies. We agree with these proposals. The White Paper raises but does not resolve the question of whether members of the existing House who continue to serve during the transition should be paid on the same basis as the new members
- There is also a need, as the White Paper points out, to ensure that transitional arrangements do not disadvantage any political party. This is very relevant for the Conservative Party, since it has a relatively high proportion of the remaining (elected) hereditary peers: 48 out of 92 take the Conservative whip. In addition, the average age of Conservative life peers is higher than that of the other parties. The same considerations apply to crossbenchers.

We welcome the efforts made in the White Paper to balance these factors; however, we believe that it is possible to improve on the options that it sets out for the transition. The three options are:

- That existing life peers should remain members of the chamber for life, while the remaining hereditary peers should leave once the three elections required to complete the establishment of the new second chamber have taken place
- That all existing hereditary and life peers should leave the chamber at the same time once its new composition is established
- That hereditary and life peers should leave together in three groups in step with each of the three elections that establish the new chamber.

The first option respects the commitment that life peers should remain members for life; the second and third options seek to balance out party interests. No option is able to do both.

However, if the existing hereditary peers were to be given the option of converting to life peerages, then it should be possible to resolve the issue. We agree with the White Paper that, once the transition process is under way, there is no case for election of new hereditary peers to replace those who die; if the hereditary peers were to take life peer status, the issue of election would not arise. All those then categorised as life peers would remain members for life; with this amendment, it should be possible to adopt the first option without disadvantaging any party or group.

However, it will also be necessary to address the issues of remuneration and retirement. We have already indicated our support for the White Paper's suggestion that salaries could be linked to members' attendance and contribution to the work of the chamber, with the possibility of deductions if attendance were to fall below a certain level. However, we believe that this should be combined with a one-off retirement payment for members who wish to resign from the chamber.

Since the average age of the House of Lords is 69, and attendance of older members (those over 80) is significantly lower than the average, this would enable existing peers to contribute to the chamber for as long as they were able and then to depart on reasonable terms. It would also have the probable effect of limiting the period during which, because of the overlap between the current chamber and its successor, total membership would expand; it would encourage a somewhat more rapid transition to the new, smaller chamber.

## The interim options

So far, we have addressed the issues raised in the White Paper with a view to achieving a lasting settlement for the second chamber. However, given the risk of obstructionism within the Lords, and doubts over the willingness of governments to risk other measures for the sake of constitutional reform, it is important to look at measures that could be enacted in the near term without provoking a confrontation.

The most notable recent attempt at an interim solution has been Lord Steel's House of Lords Bill, which received its Second Reading at the end of February 2009 and has since moved to Committee. This proposes putting the Appointments Commission on a statutory basis and giving it the sole right to make recommendations for life peerages; setting criteria for the party balance and the proportion of non-party members; ending the election of new hereditary peers; and establishing procedures for resignation ('permanent leave of absence') and expulsion of members.<sup>29</sup>

Many of these proposals make sense as interim measures. However, there is a more wide-ranging change that, while falling short of a predominantly or wholly elected chamber, could assist the transition to a new sort of chamber. This would provide a new basis for salaried, time-limited service in the Lords. We have chosen to call this 'term peerages'. Arguably, the peerage element is unnecessary; since there is widespread agreement that in the longer term the link between the peerage and membership of the upper house should be broken, it might be preferable to create fixed term appointments that were not peerages at all. However, this approach would represent a more direct challenge to the existing second chamber; it might be less inflammatory to keep the form of the House of Lords while making an important change to its substance.

Term peerages would adopt the approach already agreed between the parties for members of a wholly or predominantly elected second chamber to serve a single, non-renewable term of three parliaments. Term peers appointed at the beginning of a parliament would serve for three parliaments; those appointed during a parliament would serve for that parliament and the next two. If term peerages, created on this basis, were to replace life peerages as the basis for appointing new members of the House of Lords, it could bring about a significant and rapid change in the nature of the chamber. Yet, since it does not invoke the principle of election, it is much less likely to precipitate a crisis.

A key feature of term peerages is that they would be salaried posts with a defined contribution pension, emphasising that the peers are expected to be active, working politicians. This would be a clean break from the current system of allowances. There would, however, still need to be some form of allowable expenses to cover matters such as office costs and the costs of staying in London (for peers from outside the capital). This raises many of the same issues that are currently confronting the Commons. We therefore believe that, once Sir Christopher Kelly has completed his review of the allowance regime in the Commons, he should undertake a similar review of the system in the Lords.

The arrival in the second chamber of new members who expect to be there for a more or less specified period of time, and who are paid to do a fairly clearly-defined job, would bring a significant change to the current informal system. The effect of this change in composition, while apparently intangible, would over time be enormous.

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<sup>29</sup> Lord Steel's bill was first introduced in 2007; it had Second Readings on 20 July and again on 30 November that year. However, the Front Benches were unenthusiastic about it and made no further progress. Lord Steel withdrew his Bill, but reintroduced it early in the new session (with minor changes from its original version).



The shift to term peerages should also help address some of the problems highlighted earlier in this paper. Large-scale creations following changes of government could swell the chamber yet further, while any move to an elected chamber would also act to keep membership high if, during the transition, life peers continued to serve. The latter would be a temporary effect, but one that would last for decades.<sup>30</sup> The use of term rather than life peerages would attenuate the impact of either or both these eventualities.

The proposal is open to the criticism that, as a practical matter, it could come too late. A new government would want to create peers quickly to strengthen its position in the Lords; they would have to be life peers, since their creation would be well in advance of the passage of legislation to establish term peerages. We propose therefore that those accepting new peerages would be required to sign a commitment, to be lodged with the House of Lords Appointments Commission, that if term peer legislation were to be enacted, they would transfer to that status, backdated to the date of their appointment. Such an agreement would have to be a matter of cross-party consensus.

Once the process of creating term peers had begun there should be no further creation of life peers (at least as members of the legislature). This should also be the point at which elections for hereditary peers should cease, while existing hereditaries should be given the option to convert to life status. As a result, there would be a gradual shift towards a House in which term peerages were the predominant, and ultimately only form.

There are various lines of possible objection to this reform. Some are also those used against an elected second chamber. All can be refuted.

It creates a 'two tier' peerage. The peerage already has numerous tiers. The archbishops and bishops do not remain members of the House of Lords for life; in that sense, we already have a form of term peers. Members already find their way into the House by varied means: as elected hereditaries, or hereditaries holding specified offices; law lords (peers created under the Appellate Jurisdiction Act 1876); and life peers created through various routes.

Like any reform to introduce elected peers, it would require primary legislation. This is indeed the case, but as already discussed the Lords is far less likely to block it than would be the case with a bill for an elected House.

If there is to be an elected House of Lords, it could make the transition more difficult. There is no reason to believe this. The transition to an elected House, if and when it takes place, will in any case be a complex process. The three options set out in the White Paper with respect to existing peers have already been described. If the creation of term peers is timed appropriately, it could be coordinated with the dates on which elections to the new House take place. This system would be very compatible with the option of staged departure of existing peers, but it does not require it: existing life peers could be treated separately and continue for life unless they take up a severance payment and retire. Natural justice favours the latter option; the promises made to existing peers must be honoured ("life should mean life"). Pragmatism points in the same direction; the peers are more likely to obstruct a measure that consigns them to the constitutional oubliette.

It would increase the number of peers when the consensus (reflected in the White Paper) is for a reduction in numbers. This is not the case. The pressures for further creations are already there, and doing so through term rather than life peers would produce a less lasting increase. The

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<sup>30</sup> See Chart 8.1 on p. 77 of Ministry of Justice, *An Elected Second Chamber*, Cm 7438, July 2008.

proposal for a severance payment should also cut down the size of the Lords, as non-attenders take the money and leave.

This implies a significant increase in party-political nominations which will alter the nature of the House. The proposal does not have any particular implications for the balance between party-affiliated and independent peers; the latter would be chosen through the Appointments Commission as at present, though (like the party nominees) on a term rather than life basis. The contribution of non-party expertise would be no less than at present.

Fewer “top” people will want to become term rather than life peers. There is no particular evidence for this; only those who see membership of the Lords as an honour rather than as an opportunity to contribute to the legislature are likely to be deterred. Payment may also attract those – perhaps a less traditional type of member – who would have much to contribute to the House and to politics.

Lord Jay, Chairman of the House of Lords Appointments Commission, recently emphasised that the Lords should “move further along that curve from honour to job.”<sup>31</sup> The institution of term peerages could assist this process while avoiding the constitutional crisis that – at this of all times – we cannot afford. A number of the other measures outlined in earlier sections of this paper – notably changes to the standards and sanctions regime, and to the operation of the Appointments Commission – should also be enacted as part of an interim reform. We do not believe that this would provide a durable settlement; election is needed to entrench the legitimacy of the second chamber. However, these measures could provide worthwhile improvements and offer a staging-post to full-scale reform.

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<sup>31</sup> Lord Jay, interview on BBC Radio 4, the Today programme, 25 March 2009.

## **Conclusion**

The need for an effective second chamber has become greater than ever. The role and effectiveness of the House of Lords have been enhanced in the decade since the departure of most hereditary peers. However, we do not believe that an appointed second chamber – whether by party leaders or by a seven-member committee – can ever command the legitimacy that full and effective discharge of its role requires. It is therefore vital that we establish an effective structure that combines a predominantly democratic mandate with the capacity for reflection that a revising chamber requires.

We believe that the debate of recent years has enabled us to make significant progress towards this goal, notably through agreement on the concept of a long, non-renewable term. In this paper we have set out what we believe to be the best options for the electoral system, the role of appointed members and new approaches to remuneration and sanctions for misconduct. We have also set out a detailed path for transition to the new arrangements which will be both fair to different political parties and to new and existing members, while enabling a relatively rapid move to a reformed chamber.

The Conservative Party has been a consistent supporter of effective bicameralism. Our proposals for the operation of a predominantly elected second chamber are in that spirit and that tradition.