

**The Constitution Unit**

**Reforming the Lords: A step by step guide**

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## ***A CONSTITUTION UNIT PAPER***

### **REFORMING THE HOUSE OF LORDS: A STEP BY STEP GUIDE**

#### **EXECUTIVE SUMMARY**

**INTRODUCTION ..... p.1**

**STAGE ONE - REMOVING THE HEREDITARY PEERS ..... p.1**

- (a) The Bill
- (b) Timescale
- (c) The Cabinet Committee
- (d) Broader issues

**STAGE TWO: CONSOLIDATING AN APPOINTED ..... p.3  
SECOND CHAMBER**

- (a) Rebalancing the Lords
- (b) Knock-on issues
  - the appointments system
  - the position of the minor parties
  - attendance
- (c) The Joint Committee of both Houses
- (d) Powers

**STAGE THREE: WIDER REFORM OF THE LORDS ..... p.7**

- (a) Catalyst and timetable
- (b) Substance of stage three: the second chamber's
  - role
  - functions
  - powers
  - composition
- (c) Taking forward stage three
  - possible mechanisms
  - process for stage three
  - suggested mechanism
- (d) Terms of reference and timescale

**ANNEX A - Timescale for Lords reform ..... p.15**

**ANNEX B - Carrying out stage three reforms ..... p.16**



# REFORMING THE HOUSE OF LORDS: A STEP BY STEP GUIDE

## Executive Summary

Reform of the House of Lords is likely to involve three stages:

1. Legislation to remove the hereditary peers
2. A consolidation stage, to redress the party imbalance, and open up the appointments process
3. Wider reform, involving a review not just of whether the Lords should be elected, but of what role it should play in the new constitutional settlement.

The first two stages are for the current parliament; there is a strong case for holding over stage three until the next.

### Stage one

A short bill to remove the hereditary peers is likely to be introduced in the 1998-99 Parliamentary session. The only immediate consequence is how many hereditary peers should be offered life peerages, and how they should be selected.

### Stage two

But it will be difficult to avoid addressing the wider consequences of a 'House of Patronage', in particular how far to redress the continuing party imbalance, and how to open up appointments. These issues could be referred in stage two to a Joint Committee of both Houses, charged with developing a new set of conventions to govern appointments to an all-nominated House of Lords.

The size of the Lords will inexorably increase if full rebalancing takes place in each parliament, to reflect the votes cast at the previous election. There may need to be only partial rebalancing, or the introduction of term appointments, or even a retirement age.

### Stage three

Even if the focus for stage three is limited to re-examining the composition of the Lords, the review cannot avoid a more fundamental analysis, because the whole of the UK's constitutional architecture is changing, and the role of the Lords is likely to change with it. In particular, a stage three enquiry must take account of any change to the electoral system for the House of Commons, devolution, the growing influence of the EU and incorporation of the ECHR: with possible roles for the Lords in representing the nations and regions of the UK, or as a human rights and constitutional watchdog.

An independent, non-parliamentary body offers the best means of exploring the implications of these other changes for the role, functions and composition of the Lords. A Joint Committee of both Houses might then be charged with reviewing its conclusions and developing detailed proposals for the government to implement.

# **REFORMING THE HOUSE OF LORDS: A STEP BY STEP GUIDE**

## **Introduction**

The Labour party was elected to government on the following manifesto promise to reform the House of Lords:

“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 legislative powers of the House of Lords will remain unaltered.

The system of appointment of life peers to the House of Lords will be reviewed. Our objective will be to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election. We are committed to maintaining an independent cross-bench presence of life peers. No one party should seek a majority in the House of Lords.

A committee of both Houses of Parliament will be appointed to undertake a wide-ranging review of possible further change and then to bring forward proposals for reform.”

Reform of the Lords will therefore involve at least three stages:

### **Stage One**

Legislation to end the voting and sitting rights of the hereditary peers.

### **Stage Two**

Consolidation of stage one: rebalancing the party composition of the life peers; the development of new conventions for appointing peers.

### **Stage Three**

Wider review of the House of Lords, involving a review of its role, functions and powers, as part of a new constitutional settlement.

Each of the three stages will involve major changes to the second chamber, and throw up a range of difficult issues. This paper considers these issues, and looks at the decision making procedures that will be required to address them. Particular attention will be paid to the role of a joint parliamentary committee, as a means of securing agreement between the parties in both Houses, in carrying forward stages two and three.

## **Stage One: Removing the hereditary peers**

### ***(a) The Bill***

The initial Bill to reform the composition of the Lords could be a short one. It would prevent hereditary peers from voting or sitting in the Lords, and enable them to stand or vote in elections to the House of Commons. (See the draft Bill in Appendix A to

the Constitution Unit's 1996 report on *Reform of the House of Lords*). The Bill would be drafted to take effect from the following session, and would override the writ of summons issued to hereditary peers for the whole parliament.

The narrow issues raised by the Bill would include:

- the number of hereditary peers to be offered life peerages: each of the parties and the cross-benchers will want some of their hereditary peers to remain in a reconstituted Lords
- hereditary peers of first creation (such as Viscount Whitelaw), who could also be allowed to remain
- whether all peers, including life peers, should be allowed to vote in elections to the House of Commons (as proposed by the Labour government in the Parliament [No 2] Bill 1968).

The government will need to consult the other parties and the cross-benchers on how many hereditary peers should be offered life peerages. These might be limited to hereditary peers who are front bench spokespeople, but they could also be extended to a limited number of hereditary peers who are deemed to make a particularly valuable contribution to the Lords (e.g. chairmen of committees). The opposition parties could be invited to nominate their candidates, but it would be harder with the cross-benchers, whose convenor does not have the same authority as a party leader.

#### ***(b) Timescale***

No timescale for Lords reform has yet been made public, but it is likely that the Bill to end hereditary peers' rights will be introduced in the 1998/9 parliamentary session. The Conservative Leader in the Lords, Lord Cranborne, has indicated that his party will not oppose the Bill at second reading, observing the convention established by his grandfather, Lord Salisbury, that the Opposition in the Lords should not block a measure contained in the winning party's election manifesto. Nonetheless, the Conservatives cannot control all the hereditary peers and there can be no guarantee that the Bill will pass the Lords at the first attempt.

It is possible that the government will be forced into invoking the Parliament Acts, which would enable the government to reintroduce the Bill in the following session, and then bypass the blockage in the Lords; the effect would be to delay the Bill by one year from its second reading.

Annex A shows the likely timetable for the legislation, and the effect on the timetable if the Parliament Acts have to be invoked. In terms of implementation, the effect would be that the hereditary peers would be removed from parliament in the autumn of 2000 instead of the autumn of 1999.

#### ***(c) The Cabinet Committee***

The Cabinet Committee CRP(HL) began meeting in January, to oversee the government's programme for reforming the Lords. The main issues for the Committee will be:



- developing the policy, and preparation of the legislation, to end hereditary peers' rights
- assessing what issues then arise for stage two
- deciding what role might be played by a joint committee in exploring solutions to these issues
- establishing the government's agenda for stage three of the process and the machinery required to develop options for more radical reform of the Lords.

The policy on Lords reform will be developed by the Leader of the Lords, Lord Richard, with the Cabinet committee chaired by the Lord Chancellor, Lord Irvine. Responsibility for developing the policy and preparing the instructions for the legislation will fall to the Constitution Secretariat in the Cabinet Office.

*(d) Broader issues*

The initial Bill to end hereditary rights will probably be short and simple. But it will be difficult to avoid the consequential issues that arise when parliamentarians contemplate a second chamber composed solely of life peers, and consider the government's wish to move to a more democratic and representative second chamber. These issues include:

- the party composition of the second chamber: how far and how fast to adjust the present imbalance
- whether rebalancing can be achieved by consensus, which might develop into a convention between the parties, or will simply be imposed
- changes to the appointments system, to give it greater legitimacy
- the wish of the Liberal Democrats, and some reformers in the Labour Party, to move on to an elected second chamber (the Liberal Democrats called for a "predominantly elected second chamber" in their 1997 election manifesto).

Labour's election manifesto referred to stage one as "an initial, self-contained reform, not dependent on further reform in the future"; but it will in fact raise a number of issues, which will require further attention. Stage one leads on to stage two, but not necessarily to stage three.

**Stage Two: Consolidating an appointed second chamber**

Stage two represents a 'tidying up' exercise, designed to buttress and consolidate the move to a second chamber based wholly on appointment.

*(a) Rebalancing the Lords*

A key question for stage two is the form that a more 'representative' second chamber should take, along with the timescale involved. Labour's election manifesto commits the government to a rebalanced second chamber based on the parties' share of the vote at the previous general election. The principal options by which this could be

achieved, and the numbers involved, are explored in a companion Constitution Unit paper (*Reforming the Lords: the numbers*) and summarised in Exhibit 1.

#### **Exhibit 1 - Reforming the Lords: the numbers**

Ending hereditary peers' rights will reduce the Lords from 1,274 to 526 members, with the Conservative life peers as the largest single group. There are then three key decisions to be made in deciding how to achieve greater proportionality between the parties:

- the nature of proportionality: should the government aim for full proportionality between the parties, or simply rebalance numbers so that the Conservatives are no longer the largest single party?
- timescale: how soon should proportionality be achieved - over the course of one or two parliaments?
- redistribution: should deaths among peers be used to rebalance party numbers? (ie where one party does not necessarily replenish its peers who die each year, but may 'lose' those places to the other parties)

If it is decided to achieve full proportionality within the current parliament, and without using natural wastage rates to rebalance party numbers, an additional 55 Labour, Liberal Democrat and minor party peers will need to be created each year, with the total size of the Lords increasing from 526 to 749 peers by the year 2002. Using natural wastage rates, 25 new peers will need to be created each year, increasing the total size of the Lords to 626 peers by 2002.

Thereafter, the size of the Lords is likely to increase by on average about 100 peers in each parliament, depending on the outcome of future elections. After each election, the number of new peers that will need to be created to rebalance the parties will depend on:

- the size of the swing between the parties at the election
- whether natural wastage is used to redistribute numbers between the parties.

Depending on these two variables, a fully proportional second chamber in twenty years' time (2017) could vary in size between 668 and 1,146 peers. The Government will need to take note of these projections and choose a method for rebalancing numbers in the current parliament that can be adopted by successive governments so that the total size of the Lords does not increase to unsustainable levels.

In deciding how the Lords should be made more representative, the government will need to seek the views of the other parties. Ending hereditary peers' rights will significantly change the nature of the Lords, and this initial step must be followed by measures that guarantee consistency and stability. A system in which one party in government sought to rebalance party numbers in the Lords according to one formula, and another party by a different formula, would quickly denude the Lords of its legitimacy. The method of rebalancing the Lords in this parliament should be agreed by the parties (not only by the two largest parties, but also by the Liberal Democrats, the minor parties and the cross-benchers) as the basis for any further rebalancing in succeeding Parliaments. The government should thus aim to establish its stage two reforms not as unilateral actions, but as agreed changes to the Lords that can attain the status of parliamentary conventions.

***(b) 'Knock on' issues***

The move to an all-appointed second chamber will expose the composition of the Lords to a far closer and more critical scrutiny than currently. Unless the government intends to move immediately to a more fundamental review of the Lords (stage three), it must aim to secure the legitimacy of the second chamber and address the major issues arising from stage one:

- **The appointments system**

There are two major - and linked - issues that need to be dealt with. The first is whether the base from which members of the Lords are drawn is sufficiently broad, in terms of geographical, social and ethnic groups. The second is the need to reduce the element of patronage, and 'open up' the appointments system. This applies as much to the appointment of party nominees as to the cross-benchers. If the Lords is to become more representative of the overall population, the government needs to encourage greater individual and corporate participation in the nominations procedure (especially in the nomination of people to sit on the cross-benches). Our 1996 report on *Reform of the House of Lords* proposed a new parliamentary Appointments Commission to lessen the element of patronage in the appointment of nominees.

- **The position of the minor parties**

The Labour manifesto's proposal to rebalance the second chamber according to parties' share of the election vote raises the issue of whether the minor parties should be formally represented in the Lords (the only parties currently operating a whip in the Lords are the Conservatives, Labour and the Liberal Democrats). The Constitution Unit companion paper, *Reform of the Lords by Numbers*, shows that the number of peers needed to ensure such representation would be small; nonetheless, a decision needs to be taken on whether the minor parties should be formally represented in the Lords, according to their electoral share.

- **Attendance**

The removal of the hereditary peers will halve the size of the Lords, from almost 1,300 peers to just over 500. This will affect the capacity of the second chamber to undertake its range of functions (e.g. committee work). An assessment will be needed of how far a smaller House of Lords, based on voluntary attendance, can continue to perform these functions or whether minimum attendance requirements are needed. This in turn raises the issue of whether the award of a peerage is intended to confer an honour or represents a job of work; and if it is a job, whether it should be properly paid.

***(c) A Joint Committee of both Houses***

It is highly desirable that any stage two reforms in these areas should command the support of all the parties.

One option would be for the government to draw up proposals on its own, which it could then use as the basis for informal consultations with the other parties and the cross-benchers. Informal inter-party consultations would, however, be largely hidden from public attention, potentially hindering the chances of popular support for whatever reforms are agreed.

This is where a Joint Committee of both Houses might play a useful role: to look into the issues arising from stage one of Lords reform, and consider how they should be dealt with. A Joint Committee could probably not be established until stage one is completed, although it should sit as soon as possible after this point to minimise the delay between the start of an all-appointed second chamber and any reforms needed to underpin its composition. Assuming that it would take six months to report, a Joint Committee with this purpose could be established at the beginning of the 1999/2000 session (assuming that the hereditary peers Bill is enacted in the previous session). For the Joint Committee to work effectively, the government will need to prepare the ground well. Exhibit 2 sets out the main issues that will need to be addressed.

#### **Exhibit 2 - Preparing for a joint committee**

##### *Size*

A balance will need to be achieved between ensuring that an adequate range of interests are represented on the committee and avoiding too large a membership. Discussions with parliamentary clerks suggest that the optimum size for the joint committee would be between 12 and 16

##### *Composition*

- \* the balance between the two Houses: while there is a parliamentary presumption of equal membership of the two Houses on a joint committee, there is no bar on unequal representation, and this may allow a greater presence on the committee from the Commons, to strengthen the links between the committee's work and MPs
- \* the party balance on the joint committee: this will broadly match the parties' share of seats - in line with Commons' convention - although exact numbers will be decided by the parties. The government will want to have an overall majority on the committee, to ensure it maintains control
- \* it would also be desirable for at least one cross-bencher to sit on the committee, to provide an independent perspective

##### *Chairmanship*

An issue for the government to resolve will be who should chair the committee, and whether ministers should sit on it. The main advantage of ministerial involvement on the committee would be the extra clout given to its work, and the opportunity it would offer for the government to steer the committee. Ann Taylor, as chair of the Select Committee on Modernisation of the Commons, has guided this committee's work and developed a sense of how far and fast the government could go.

##### *Steer*

A formal parliamentary committee places the government under greater pressure to accept its recommendations than would a less formal conference between the parties (which has a lower stature and can operate wholly in private). The government will need to give the committee a clear steer. This can come from the committee's chair, but the government will also need to submit an initial memorandum, as it did for the Committee on Modernising the Commons.

.../...

*Terms of reference*

Suggested terms of reference for the joint committee are:

To consider the party balance and other issues which arise following the removal of the hereditary peers from the House of Lords, and to make recommendations, particularly in relation to:

- \* achieving a more proportionate party balance
- \* the position in the Lords of the minor parties
- \* the system of nominations and appointments
- \* the number of peers necessary for the House of Lords to undertake its functions, and whether measures are needed to ensure minimum attendance levels

***(d) Powers***

While the Labour election manifesto ruled out any explicit changes in the Lords' powers as part of stages one and two, the initial reforms may well impact on the second chamber's willingness to use its powers. The Lords currently exercises a self-restraint on account of its large hereditary element, which will almost certainly disappear with the move to a more 'representative' second chamber. The Lords may start to vote down secondary legislation that has passed the Commons, and the Salisbury Convention (whereby the Lords will not deny a second reading to a bill heralded in the government's manifesto) may no longer be observed. This is an issue that the parties should be aware of, although it is not suggested that their discussions on stages one and two should formally address the powers of the second chamber.

**Stage three: Wider reform of the Lords**

***(a) Catalyst and timetable***

Although the Labour election manifesto refers to "a wide ranging review of possible further change" to the Lords, following stages one and two, no timescale has been set for this, and it is not clear what will prompt it. Two scenarios may act as the catalyst.

The first is that the move to an all-appointed second chamber, in spite of any consequential reforms made as part of stage two, undermines its legitimacy. The government might then decide that more fundamental reforms to the Lords' composition are needed, in order to put it on a more secure footing. The second scenario is that the stage two reforms succeed in shoring up the legitimacy of the Lords; a move to stage three would then be a proactive decision by the government to reform the Lords as part of its wider programme of constitutional change. Devolution, electoral reform for the House of Commons, or other elements in the constitutional programme could themselves provide the trigger for further reform of the Lords.

The timescale for stage three of Lords reform is thus wide open (see Annex A). If the government decides to move quickly from stage one (ending hereditary peers' rights), to stage three (broader reforms), it could do so by conflating stages two and three and initiate a review of the Lords as early as the beginning of the 1999/2000 session.

However the government may well want to take matters more slowly, to let its own ideas develop and to allow other elements of the new constitutional arrangements to settle down, before deciding what role a fully reformed Lords might best play in the new constitutional architecture. In particular, it might want to await the outcome of the referendum on the electoral system for the Commons, see how the devolution settlement beds down, and assess what position the Lords might take in helping to underpin devolution and the rest of the new constitutional settlement. If these arguments carry weight, the inquiry into stage three might be left until the next parliament, or initiated in this parliament, but allowed to carry through to the next.

***(b) Substance of stage three***

Whether the trigger for stage three is the need to make the Lords' composition more legitimate (scenario one), or a desire to effect more fundamental reform of the second chamber (scenario two), it is likely to entail a wide ranging review of the Lords' role, powers and composition. Even if stage three is initiated because an appointed second chamber is felt to lack legitimacy, the review will be unlikely to focus solely on compositional issues. This is because it is impossible to decide a satisfactory system for Lords' membership without first deciding what interests peers are there to represent. Thus, stage three cannot avoid addressing the question of what the role of the Lords should be in our political system, its relationship with the Commons and other levels of government and the functions and powers it needs to carry out that role. Only then is it possible to determine the composition required to carry out those functions, exercise those powers and fulfill that role.

The agenda for stage three is therefore a broad one, probably comprising the following key elements:

**The role of the second chamber**

This is the biggest and most difficult question for stage three to address. As we said in our first report on *Reform of the House of Lords*:

“It is clear that many, although not all, of the reasons given for needing a second chamber are derived from the de facto pursuits of the House of Lords, rather than resulting from any more fundamental analysis of the necessary functions of parliamentary government”.

It will be difficult for stage three to avoid this fundamental analysis, particularly given the demands arising from other items in the government's constitutional reform programme. The whole of the UK's constitutional architecture is changing, and the role of the Lords is likely to change with it. In particular, any consideration of the role of the Lords must take account of:

- devolution, with the emergence of national and regional assemblies within the UK
- the growing influence of the EU, and the increasing demands on national parliaments to scrutinise European legislation
- ECHR incorporation, and possible roles for the Lords as a human rights and constitutional watchdog

- the growth of constitutional litigation, and the future of the Lords as the UK's highest court
- possible changes to the electoral system for the Commons.

Each of these points will be briefly considered in turn.

### ***Devolution***

The function most often proposed for a fully reformed Lords would be to represent the nations and regions of the UK. It is the classic function of second chambers in federal systems: it binds the federation together, by giving the states and provinces a strong stake in the institutions at the centre. But the method of representation can vary:

- direct election. In the USA and Australia, directly elected senators represent the people of the different states, not the state government. This model does little to cement federal/state relations
- indirect election, as with the German Bundesrat. In Germany it is the state governments which are represented in the Bundesrat; an alternative would be to elect representatives of the state parliaments
- appointment, as with the Canadian Senate. The UK's rolling programme of devolution might require that representatives be appointed from those regions which do not initially have devolved assemblies.

### ***European Union***

The Lords has a Select Committee on the European communities which does most of its work through five sub committees. It conducts in-depth inquiries, reporting on 15 to 20 documents per session, while the equivalent Commons' committees issue reports on 300 to 400 documents. If desired, the Lords could take more of this burden from the Commons.

### ***European Convention on Human Rights***

Parliament will need to develop an enhanced capacity to scrutinise legislation to ensure compliance with the ECHR. The Lords have considerable expertise here, and could contribute to the scrutiny exercise. The Human Rights White Paper (Cm 3782) suggested that parliament establishes a Joint Committee of both Houses, or separate committees for each House, partly for this purpose.

### ***The Law Lords***

ECHR, devolution and other constitutional changes will bring more political issues before the courts and may lead to increasing questioning of the presence of the law lords in the legislature. Stage three reform will need to examine the case for a constitutional or supreme court separate from the Appellate Committee of the Lords.

## ***Electoral Reform***

The role of the Lords must be complementary to that of the Commons, and if both chambers are elected, it must be on a different basis. It makes no sense to decide on the franchise for an elected Lords until it has been decided whether the electoral system for the Commons is to change.

## **Improving existing functions**

In addition to such major changes in the Lords' constitutional role, stage three might examine whether the Lords could improve some of its existing functions:

- *its legislative function*: various schemes have been proposed to help the Lords to scrutinise legislation more effectively: two options are pre-legislative scrutiny of bills and special standing committees to consider bills off the floor of the chamber;
- *its select committee role*: the success of its two existing select committees - on European legislation and science and technology - have prompted proposals for the scope of the Lords' committee work to be extended, to include areas not covered by the Commons' select committees (e.g. relations between central and local government and justice);
- *scrutiny of the executive*: the Lords has a less important function here than the Commons. Stage three might examine in what ways the Lords could better complement the scrutiny carried out by the Commons; a likely area for consideration will be whether its role in scrutinising secondary legislation and powers should be strengthened.

## **Powers of the second chamber**

Many of these changes in function might be introduced without any increase in the Lords' formal powers. The Commons is unlikely to agree to any significant increase in the Lords' powers, but it will also need to take account of any indirect effects caused by changes to the Lords' composition. Reforms that boost the democratic legitimacy of peers may reduce their inhibition in using existing powers to revise primary legislation and veto secondary legislation. In the light of this, stage three should consider whether:

- the period of legislative delay should be altered: the Liberal Democrats, for example, have proposed that the period of delay be increased to two years
- the power over secondary legislation should become one of delay rather than veto - only used once, in 1968.

Any increase in the legitimacy and strength of the second chamber increases the risk of deadlock between the two Houses. Stage three will need to consider how to resolve such conflict. Research could profitably be carried out on arrangements in other legislatures (why, for example, is dispute resolution in India's bicameral system relatively successful compared to that in Australia?<sup>1</sup>).

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<sup>1</sup> See *The Role of Second Chambers*, the report of a Commonwealth Parliamentary Association study group, 1982



## **The composition of the second chamber**

Stage three of Lords reform would be the appropriate time to consider the size of the Lords. International comparisons suggest the Lords is unnecessarily large: 65% of other second chambers comprise between 11 and 200 members, and only 21% of second chambers comprise over 300 members<sup>2</sup>. Attendance in the Lords on a typical day in the 1993-94 session was 378<sup>3</sup>. Second chambers are generally smaller than first chambers, often about half the size.

A stage three inquiry will almost certainly involve an examination of elected models for the Lords. If the post-stage one - appointed - second chamber is deemed to lack legitimacy, electoral models will be explored as a way of providing that support. If the appointed second chamber already commands a reasonable level of support, the immediate goal of stage three will be transforming the Lords' role; yet elected models will also need to be considered as a means of underpinning this role.

### ***Indirectly elected membership***

This option is favoured for second chambers in France and Germany as a way of representing local and regional government in the national parliament. It might prove more difficult in the UK because devolution will be non-uniform, and implemented in a rolling programme. But representatives could initially be indirectly elected from Scotland, Wales and any other parts of the country which have elected assemblies, and appointed from the remainder.

### ***Directly elected membership***

The issues that would need to be decided here are:

- *the electoral system*: the analysis carried out by the Plant Committee in 1993 can be drawn on here. The two main considerations - both discussed by Plant - are the underpinning each electoral system gives to the role of the second chamber, and their relationship to wider political factors, such as the position of the political parties. These considerations might conflict. For example, if the second chamber is to act as a representative body for the regions/nations, a regional list system of voting might be chosen. Yet this would potentially give greater power to the national arm of the political parties, and might thereby undermine the purpose of the second chamber as a territorially representative body, unless the parties develop regionally specific policies, or new regional parties emerge
- *the timing of elections*: it is likely that the second chamber will incorporate fixed terms, since it would be undesirable for elections to take place at the same time as those for the Commons. An issue will be whether to hold elections to the second chamber at the same time as local, regional or European elections; the confusion for

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<sup>2</sup> Derbyshire and Derbyshire: *Political systems of the world*, 1989

<sup>3</sup> Nicholas Baldwin: *The House of Lords - sessional statistics*, paper given to colloquium on the House of Lords, University of Ulster, May 1995

voters of using potentially two different voting systems will be an important factor in any decision

- *other topics:* the number of representatives per region and the regional boundaries; the length of members' tenure of office and their terms, including remuneration.

### ***Appointed element***

This option will need to be addressed alongside an examination of elected models, especially if it is thought desirable to retain the cross-benchers, who will only survive as a result of appointment, not election. If the system of appointment has not been reviewed as part of stage two, the case for an Appointments Commission could be explored.

### ***(c) Taking forward stage three***

#### **Mechanisms**

The government will need to give thought to what mechanism would be most appropriate to explore the agenda for stage three. The main options are:

- *a Cabinet committee:* stage one of Lords reform will be overseen by a Cabinet committee, and this could be retained to draw up proposals for stages two and three. But this would fail to involve the opposition parties and therefore to achieve consensus on stage three reforms. The government's decision to convene a cross-party committee to explore modernisation of the Commons shows the value of consensus when it comes to reform of parliament. Although on its own not a suitable body to take forward stage three, a Cabinet committee will need to be convened when stage three is reached, to enable the government to draw up a clear set of objectives for further reform of the Lords
- *a joint committee of both Houses:* as suggested in Labour's election manifesto. This would offer the benefits of cross-party agreement on a course of action, and of drawing systematically on the views of both Houses. But exploring stage three reform of the Lords would be a huge task, and a much wider enquiry than party committees are usually asked to undertake
- *inter-party consultations:* talks between the government and the other parties could be held, with a view to an agreed solution emerging. Consultations would not be governed by parliamentary procedure, and would thus be less formal than a joint committee. They would lack the status of a joint committee, which might be a drawback when recommendations are produced. The more public nature of a joint committee (at least through its witness sessions) may help avoid the suspicion among MPs and peers that arose from the secrecy of the inter-party conference in 1968. However, if the government is not committed to stage three of Lords reform, an informal conference, whose recommendations could more easily be rejected than those of a joint committee, might be preferred

- *a non-parliamentary commission*: an independent commission would bring in a wider expert constituency to facilitate a broad enquiry into the role of the Lords. Unless MPs and peers had opportunities to comment on the commission's findings, however, it would risk failing to gain support within parliament.

Stage three of Lords reform will probably need to be divided into a two part process. The first part would involve investigating the role, powers and composition of the second chamber in the broad perspective of the UK's constitutional and parliamentary system. The second part would focus on implementation. Annex B sets out some of the ways in which the mechanisms identified above could be combined to reach a conclusion on Lords reform under this two part process.

### **The process for stage three**

In deciding what mechanism to use to explore stage three of Lords reform, three factors should be borne in mind:

- the need to involve MPs and peers closely in decision taking. Treating Lords reform as a primarily constitutional exercise overlooks the important political agenda: the 1968 proposals to reform the Lords aroused the hostility of MPs precisely because they saw the changes as upsetting the balance between the two Houses. There is no evidence that the same concerns will not re-surface this time
- the need for the process to be 'open' to public input and scrutiny. On an issue that has such wide political and constitutional implications, efforts should be made to involve a range of interests - both sectoral and geographical - in decision making. It would be undesirable for the process to be wholly determined by MPs and peers
- the need for the process to be time limited. The 1968 attempt to reform the Lords was preceded by only seven months of deliberations, although even this was longer than initially envisaged. With discussions both inside and outside parliament, timetables must be set and momentum maintained. Apathy and drift, as much as outright opposition to change, could hinder stage three's chances of success.

### **Suggested mechanism**

One route for the government would be to draw up its own proposals for stage three, and to hold inter-party talks to see if agreement can be reached. If consensus is reached on the principles underlying reform, a more formal joint committee might then be convened to draw up more detailed proposals for introducing these reforms.

A preferable route would be for the investigatory stage to be opened up to a wider input, through an independent commission, drawing on public submissions. Models for such a body include the Plant Commission and the recently established Commission on Voting Systems. The danger with non-parliamentary bodies is that they 'drift' from the government's views, leading to recommendations that the government finds difficult to accept. For an external commission on Lords reform to work, an imperative will be to balance its independence and ability to range widely with a clear

steer from the government so that its conclusions are broadly in line with government thinking. One option would be for the three main parties and the cross-benches to each nominate a candidate (probably a senior backbench MP) to sit on the commission, to ensure a direct parliamentary input into its deliberations, as occurred with the Nolan Commission.

While a non-parliamentary body might be the best means of exploring possible broad changes to the role, powers and composition of the Lords, it will be important that MPs and peers have an input into the decision making process. A joint committee following on from an independent commission could be given the task of reviewing its conclusions and putting forward detailed proposals for the government to act on. In this model, the commission would act as a broad research exercise, leaving the specifics to a parliamentary body.

*(d) Terms of reference and timescale*

An independent commission, set up to conduct a broad review of the Lords, might be given the following terms of reference:

*To determine:*

- *the role and functions appropriate to the second chamber, including its relations to local, regional, national and supra-national tiers of government*
- *the powers appropriate to the second chamber, including its relation to the Commons*
- *the composition of the second chamber, including the system of appointing peers, and the desirability, and operation, of an elected system of membership*

The timetable for a commission, and for a joint committee to examine in more detail the commission's proposals, depend largely on how far and how fast the government wishes to go. If stage two is an interim stage, and the government wants to move quickly to a more radically reformed second chamber, then stage three could start almost immediately hereditary peers cease to sit in the Lords, possibly in autumn 1999 (see Annex A). To maintain the momentum, the government might well want to press ahead in this way.

But it would not necessarily be wise to establish a commission so early, or to press it to deliver an early report. For the commission will need to consider the options for a fully reformed second chamber against the other constitutional changes that are in train. No decisions about an elected second chamber can sensibly be made until we know the outcome of the referendum on the voting system for the House of Commons, which may be in 1999, but may not be until 2001/02 (see timetable at Annex A).

It may also be wise to wait and see how devolution settles down, and what changes might be required at Westminster to reflect the changed arrangements. All this means that while stage three might be initiated in this parliament, it is unlikely to be concluded until the next.

ANNEX A: Timescale for Lords reform

	<b>Stage One of Lords reform</b>	<b>Stage Two of Lords reform</b>	<b>Stage Three of Lords reform</b>	<b>Devolution</b>	<b>Electoral system</b>
<b>1998</b>	introduction of Bill to remove hereditary peers	inter-party talks on rebalancing numbers		<i>Referendum on Greater London</i>	
<b>1999</b>	Bill a) accepted or b) rejected by HoL  a) hereditary peers cease to sit	joint committee established	first date for independent commission	<i>RDAs start</i>  NI settlement & referendum?	<i>PR elections for Scottish, Welsh assemblies and Euro Parl</i> + referendum on elec system for House of Commons?
<b>2000</b>	b) hereditary peers cease to sit	joint committee reports  consultation period  government announces new 'conventions'	commission review ends; jt committee sits	<i>Scottish, Welsh assemblies start</i>	
<b>2001</b>			joint committee reports	<i>Greater London Authority starts</i>	
<b>2002</b>	-----	-----	GENERAL ELECTION  first date for legislation	-----  White Paper on English regional government	-----  + referendum on elec systems
<b>2003</b>			broad stage 3 review following stage 2 reforms		

Note: As no official timetable for Lords reform has yet been made public, much of this Annex is based on the Constitution Unit's own projections. Where the government has indicated a timetable, items appear in italics.

ANNEX B: Carrying out stage three reforms

