

Reforming the Lords: The Role of the Bishops

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June 1999

£5.00

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Executive Summary

Of the 43 diocesan Bishops in England 26 have seats in the House of Lords, 5 ex-officio and 21 by seniority of appointment. Their number is limited by statute.

The Government's White Paper on Reforming the House of Lords proposes to retain the 26 Bishops in the transitional House of Lords. For the future it suggests the second chamber should reflect the multicultural nature of modern Britain, perhaps by representation of other religious bodies.

This Briefing considers whether the Church of England Bishops should continue to sit as legislators in the second chamber, and then explores the issues involved in the representation of other faiths. It sets out the arguments for and against in a balanced way to inform wider public debate.

Arguments for the Bishops remaining as legislators include that the Church of England is the established Church, and that Parliament continues to legislate for it. Arguments against are that the presence of the Bishops in Parliament is a hangover from the Middle Ages, like the hereditary peers; and that Parliament could legislate for the Church without the presence of the Bishops, or could cease to legislate for the Church altogether.

Clergy have been represented in other European parliaments - for example in France, Ireland, Spain and Sweden. That representation has disappeared with the modernisation of their constitutions. The UK is the only Western democracy in which the church is still represented in Parliament.

Other Christian denominations might not all wish to be represented in the second chamber: the Roman Catholic Church, for example, does not currently permit its priests to be members of secular legislative bodies. Some churches are organised on a congregational basis and do not have recognised leaders. Some churches might object to the representation of other churches.

Other faiths in the UK, with the approximate number of their adherents in brackets, are Islam (1.2m), Sikhism (400k), Hinduism (360k), Judaism (285k), Buddhism (25k). Not all have a central structure or are organised so as to enable them to provide hierarchical elected or appointed representatives.

The idea of 'religious representation' could give rise to many practical and numerical problems. It is debateable whether the 26 Bishops in the House of Lords are 'representative' of the Church of England. If the idea is pursued, it might be better to think in terms of 'voices' to 'reflect' the multi-faith nature of modern Britain.

The Annex to this Briefing sets out the established status of the Church of England and the Church of Scotland.

Background

- 1 In Chapter 7 of the White Paper on Reforming the House of Lords paragraphs 21 and 22 set out the Government's views on religious representation, which may be summarised as:

the Government does not propose any change in the transitional House of Lords in the representation of the Church of England within the House. It proposes to retain the present size of the bishops' bench, which it accepts is justified;

- there is a case for examining the position of the Church of Scotland which is an established church but has never had representation as of right in the second chamber;
- the House of Lords should reflect more accurately the multicultural nature of modern British society in which there are citizens of many faiths, and of none. But at least at first, other religious representation will not take the form of providing regular representation such as is enjoyed by the Church of England; and
- for the longer term, consider if there is a way of overcoming the legal and practical difficulties of replicating that regular representation for other religious bodies.

Scope of this briefing

- 2 This paper aims to set out the factors bearing on any changes which may be made to the present arrangements for religious representation in the House of Lords, including:
 - A. the issues involved in the question whether bishops of the Church of England should sit as legislators;
 - B. the issues involved in the question whether the Church of Scotland should be represented in the House of Lords;
 - C. the questions which arise in relation to the representation of other Christian denominations and other faiths;
 - D. religious representation generally, including the number of legislators, geographical coverage, and representativeness;
 - E. representation of the churches in other democracies; and
 - F. the implications for the House of Commons of religious representation in the House of Lords.

Annex

- 3 The Church of England and the Church of Scotland are, in different ways, established churches, and the Annex to this paper sets out in summary form the

constitutional relationship between those churches and the State under the following headings:

- Bishops in the House of Lords
 - The State's role in the Church of England's legislation
 - The State's involvement in other Church of England affairs
 - The Church of England's role in the State
 - Scotland, Wales and Northern Ireland
 - Church and State: Establishment.
- 4 Other religious organisations are, like the established Church of England and Church of Scotland, voluntary bodies, but their presence is not in the same way mapped out in constitutional provisions. Most of the information used in this paper about other religious organisations is given for illustrative purposes only and is drawn from the 1999 edition of Whitaker's Almanack.
- 5 The arguments which can be marshalled for and against various forms of religious representation are not always evenly balanced; are sometimes mutually contradictory; and in some cases depend on interpretations of history. Some factors bear equally on different situations and are therefore sometimes repeated in different sections of the paper. The arguments are offered here in summary form, without evaluation, as material for wider public debate.

A. Should bishops of the Church of England sit as legislators?

- 6 There are 43 diocesan bishops in England (including the two Archbishops) and the following 26 now have seats in the House of Lords: the Archbishops of Canterbury and York; the Bishops of London, Durham and Winchester; and 21 other bishops according to seniority of appointment to a diocesan see. They receive the Writ of Summons as of ancient right, but their number is limited by statute. Bishops are not peers but they are Lords of Parliament. Unlike the Law Lords, bishops cease to sit when they retire as diocesan bishops, so they are the only truly ex-officio members of the House.

Factors in favour or neutral in relation to the bishops as legislators

7 *History*

Bishops have been members of the House of Lords throughout its existence; the historical background is set out in the Annex. Since 1847 their number has been limited, but the size of the rest of the House of Lords has greatly increased. It might be said that in the light of history the bench of bishops forms only a small part of the present day House, and their role is not unduly prominent or controversial.

8 *Church legislation*

The Church of England is a law-making body. It submits Measures to Parliament which can be rejected, but not amended, and which if accepted have the force of an Act of Parliament. No government Minister has direct responsibility to Parliament for the substance of Church legislation. The bishops in the House of Lords are (apart from the Second Church Estates Commissioner in the House of Commons) the only ex-officio voices which the Church, as a law-maker, has in Parliament. If they were removed, it might be necessary to revisit the Enabling Act, the statutory settlement under which Church legislation is currently handled.

9 *Other legislation*

The bishops take an active part in all aspects of the work of the House of Lords. In some cases the bishops have a direct interest in non-Church legislation; for example, the Church is a major provider of school education. In other cases, they contribute to debate from a broad base of ethical and religious concerns. That is sometimes welcomed by other denominations and faiths as a way of keeping spiritual matters on the national agenda. It is arguable that, with their diocesan bases, the bishops are the nearest the House of Lords has to members with a constituency.

10 *Church and State: Establishment*

The presence of the bishops in the House of Lords is neither a necessary nor a sufficient condition for its status as an established church, but it is a significant element in establishment in England. Church and State are entwined in complex ways in the fabric of the nation and can be said to bestow some legitimacy on each other. These elements are set out in the Annex, as are the arguments that might be deployed if the reform of the House of Lords were to trigger a debate on disestablishment.

Factors against the bishops as legislators

11 *History*

It could be said that since the Government plans to change the whole historic basis of the House of Lords, the arguments from history are no longer relevant. With the abolition of the right of hereditary peers to sit, the bench of bishops will be the only body in the House with a right of succession, albeit not hereditary succession. Their presence in the House of Lords goes back to the Middle Ages, when - like the hereditary peers - they were feudal landholders: as were the abbots who sat in the Lords with them until the dissolution of the monasteries (see para 2 of the Annex). In other European countries the church was represented on a similar basis as one of the Estates of the Realm. That representation has gradually gone with the modernisation and democratisation of their constitutions, leaving the UK as the only Western democracy in which the church still has seats in Parliament (see paras 53-56).

12 *Church legislation*

There is no direct functional connection between the fact that bishops sit in Parliament, and the fact that Parliament passes legislation for the Church. Parliament used to deal with Church legislation on the same basis as all other Bills until its role was substantially reduced by the Church of England Assembly (Powers) Act 1919. In theory Parliament could by means of primary legislation - whether or not the bishops continued to sit - either increase the extent to which it can now intervene in Church legislation; or cease to be involved altogether. Either course would, however, be controversial and the latter might be regarded as disestablishing the Church.

13 *Other legislation*

Lay members of both chambers of Parliament, some of whom have strong religious affiliations, are well able to - and do - articulate ethical, moral, religious and spiritual concerns in debate.

14 *Church and State: Establishment*

Removing the bishops from the House of Lords would not of itself affect the established nature of the Church, but it might trigger a debate on disestablishment. The Church of Scotland is established, but has no formal presence in Parliament.

15 *Representativeness*

Although the bishops as legislators express ethical and moral concerns which may be shared by other denominations and faiths, they do not in any formal sense represent religion in general. The White Paper refers to "the present representation" making it possible "for the Church to ensure its perspective is represented". It can be argued that the bishops are not in any sense "representative" of the Church of England and that the Church is not democratically enfranchised by the presence of the bishops in the legislature. The Church of England does not choose or vote for its bishops: they are appointed by the Crown on the advice of ministers. It does not choose or vote on which 26 of the 43 diocesan bishops should go to the House of Lords: they sit by seniority. In geographical terms, the bishops represent England only; and only 26 of the diocesan areas.

16 The bishops are not in any sense mandated either by the General Synod or their dioceses, or bound to agree with or represent their views. Authority within the Church of England is dispersed and each bishop in the House of Lords speaks and votes as he thinks fit. Although women can be ordained in the Church of England only men can be bishops, so it could be argued that bishops do not even "represent" the priesthood.

17 These factors raise questions about the meaning of "religious representation" as used in the White Paper, and how it is to be applied to other denominations and faiths (see paragraph 52, below).

B. Should the Church of Scotland be represented in the House of Lords?

- 18 The presbyterian Church of Scotland is the established church in Scotland (see Annex). The Sovereign swears to protect it, and when in Scotland the Sovereign is a presbyterian. In England, Church and State are engaged in a complex set of inter-relationships, but in Scotland they are largely distinct and each is sovereign in its own sphere. In Scotland there is no royal supremacy, the chief officers of the Church do not sit in the House of Lords, and Parliament has no authority over how the Church runs its affairs.
- 19 The Church is presbyterian in constitution and has a hierarchy of councils of ministers and elders. The General Assembly is the supreme authority and is presided over by a Moderator chosen annually by the Assembly. The Sovereign if she attends sits in the gallery of the Assembly chamber, and if not present in person is represented by a Lord High Commissioner who is appointed by the Crown.
- 20 The White Paper says there is a case for examining the position of the Church of Scotland, which is an established church but has never had representation as of right in the second chamber.

Factors in favour or neutral in relation to the representation of the Church of Scotland in the House of Lords.

21 *Parity with England*

Giving the established Church of Scotland representation as of right would give it parity with the established Church of England, albeit on a different historical basis. It is, however, significant that the leaders of the Church of Scotland played a constructive role in the events leading up to the devolution of power to a Scottish Parliament, but without seeking formal representation for the established Church in that Parliament. On the other hand, the Church might take the view that it has a proper place in a second chamber expressly designed to be representative of the United Kingdom as a whole. The views of the Church itself on the issue raised in the White Paper will be of key importance.

22 *Binding the Union*

The representation of the Church of Scotland in the United Kingdom Parliament would add to the factors which bind the Union and in turn strengthen Parliament's representation of the people as a whole.

23 *Representativeness*

Not being an episcopal church, the Church of Scotland would have to be represented on a different basis from the Church of England, but it already elects its own leaders annually and might in the same way elect the same or other leaders to serve (probably for longer terms) in the second chamber.

Factors against the representation of the Church of Scotland in the House of Lords.

24 *Church of Scotland Act 1921*

The Church of Scotland Act 1921 is within the scope of the Scottish Parliament, though the rest of the Queen Anne settlement is not. Giving the Church of Scotland seats in the United Kingdom second chamber might seem to conflict with the spirit and purpose of the 1921 Act, which in effect recognises and endorses the patriation of the constitution of the Church of Scotland and affirms its pre-existing independence. (It is in that sense that it is "established".)

25 *Geographical problems*

Representation in the second chamber might entail the risk of creating another version of the West Lothian question with the established Church of Scotland having for the first time a voice and votes on matters which do not affect Scotland. It might also give rise to calls for religious representation for Wales, which will continue to be much more directly affected by the work of the Westminster Parliament.

C. Representation of other Christian denominations and other faiths

26 The position of other Christian denominations and other faiths in the United Kingdom varies greatly. This brief seeks only to identify some of the non-religious issues which will need to be addressed in relation to their possible representation in the second chamber of Parliament.

Other Christian denominations

27 The White Paper refers to the bishops, to the Church of Scotland and to other faiths, but not to the other Christian denominations. It seems likely, however, that those denominations would wish their interests to be taken into account. The Christian denominations might broadly be described as Roman Catholic, Anglican and non-conformist. The Anglican Church is established in England and its bishops sit in the House of Lords; but it is no longer established in Wales, Scotland and Ireland and bishops from those Provinces do not sit in the House of Lords. No other religious body has a seat as of right in either chamber of Parliament.

28 It would be necessary to ascertain which Christian denominations wished to be represented in the second chamber; which thought there should be no religious representation; and which might accept the presence of the bishops as providing a sufficient voice for Christianity in parliamentary debate.

- 29 Some denominations might regard themselves as so distinct from the rest of Christian society as to merit a separate voice. Some Christian denominations are in communion with each other. The Church of England and the Methodist Church, for example, are engaged in long term discussions about possible unity. Other denominations have histories and doctrines which form barriers to closer relations. It is possible that some Christian churches would regard themselves as compromised by involvement with the State. Some would be reluctant to accept non-trinitarian churches such as the Mormons and Jehovah's Witnesses as Christian denominations to be treated on an equal footing with others.
- 30 The Roman Catholic Church does not at present permit its priests to be members of secular legislative bodies, which would form a real barrier to seeking parity of representation between the Christian churches.

Other faiths

- 31 The White Paper says that considering whether there is a way of overcoming the legal and practical difficulties of replicating for other religious bodies regular representation in the second chamber, such as is enjoyed by the Church of England, should form one of the issues for examination in longer-term reform of the Lords. The principal non-Christian religions in the United Kingdom are Buddhism, Hinduism, Islam, Judaism and Sikhism. About 5 per cent of the population are adherents of these other faiths.

32 *Buddhism*

There are estimated to be 25,000 adherents in the United Kingdom. There is no supreme governing body in Buddhism. In the United Kingdom communities representing all schools of Buddhism have developed and operate independently.

33 *Hinduism*

There are about 360,000 adherents in the United Kingdom. The largest Hindu communities are in Leicester, London, Birmingham and Bradford. Orthodox Hindus revere all the Hindu gods and goddesses equally, but there are many sects, including the Hare Krishna and other movements. Hinduism does not have a centrally-trained and ordained priesthood.

34 *Islam*

There are about 1.2 million Muslims in the United Kingdom. The largest communities are in London, Liverpool, Manchester, Birmingham, Bradford, Cardiff, Edinburgh and Glasgow. Both the Sunni and Shi'ah traditions are represented in Britain, but the majority of Muslims in Britain adhere to Sunni Islam. There is no central organisation, but the Islamic Cultural Centre (which is the London Central Mosque) and the Imams and Mosques Council are influential bodies. There are many other Muslim organisations in Britain.

35 *Judaism*

There are an estimated 285,000 adherents of Judaism in the United Kingdom. A synagogue is led by a group of laymen who are elected to office. The Rabbi is primarily a teacher and spiritual guide. The Chief Rabbi of the United Hebrew Congregations of the Commonwealth is the rabbinical authority of the Orthodox sector of the Ashkenazi Jewish community. His authority is not recognised by the Reform Synagogues of Great Britain (the largest progressive group) or by other congregations, but he is generally recognised both outside the Jewish community and within it as the public religious representative of the totality of British Jewry.

36 *Sikhism*

There are about 400,000 adherents in the United Kingdom. The largest communities are in London, Bradford, Leeds, Huddersfield, Birmingham, Coventry and Wolverhampton. Every gurdwara (temple) manages its own affairs and there is no central body in the United Kingdom.

General considerations

37 There are some further factors which may need to be taken into account more generally in considering religious representation in the second chamber.

38 *Disqualification*

It would be necessary to decide if persons or office-holders eligible for seats as religious representatives in the House of Lords, but not actually occupying such seats, should be disqualified from standing for election to other seats in the second chamber (or in the House of Commons). For example, could a diocesan bishop who is not yet sufficiently senior to have a seat in the House stand as a political party candidate for a non-religious seat?

39 *Selection*

It would be necessary to decide if faith communities should put forward their own representative for seats in the House of Lords or if they should be selected and appointed by some other method. Faiths and religions differ in the extent to which they have any central structure which has power in terms of authority, doctrine, finance or organisation. Some faiths are congregational, with each centre of worship being largely autonomous and self-governing. Some are strictly hierarchical; some have leaders who hold office for limited periods; and some are riven into different internal factions. Those features could in turn make it difficult to establish consistency in the nature of religious representation.

40 *Race*

Some faiths are closely bound up with their followers' racial identity. Their representatives might be said also by definition to provide representation for some racial groups.

41 *Gender*

Some faiths (eg the Church of England) do not permit women to hold high office, so some thought will have to be given to the gender balance among religious representatives, and its effect on the gender balance in the second chamber as a whole. It would have to be established whether it was acceptable to seek religious representatives other than from among the holders of high office within each faith.

42 *Control*

The government will need to decide if there are any constitutional implications if Parliamentary representation is offered to a faith or religion which is subject to direction from, or answerable to, an authority outside the United Kingdom.

D. Religious representation: numbers, geographical coverage, and representativeness.

Numbers

43 The White Paper says that, for the transitional House of Lords, "the Government proposes to retain the present size of Bishops' bench which we accept is justified, because the Church's official representation is made up of serving diocesan Bishops, who have duties which frequently call them away from the House". The present number of bishops is 26.

44 If, as seems likely, a future second chamber is numerically smaller than the present House of Lords (as will be the transitional House when the hereditary peers leave), the size of the bench of 26 bishops - and its voting strength - will be proportionately greater. If there are to be bishops in a reformed House of Lords, it will be necessary to decide if any reduction in the number of bishops is to be justified in terms of their proportionate strength in the current House; or in the transitional House; or on completely different grounds. (The argument that the current number of bishops is justified because they have other calls on their time could cause problems; the same is likely to be true of all religious representatives.)

45 Whatever the number of bishops, that number is likely to be used as a benchmark in discussions on the scale of other religious representation - so long, that is, as the concept of "representation" is retained (see paragraph 52 below).

46 There are difficulties about simply adopting the number of adherents of any faith as the basis of reckoning for religious representation in the House of Lords. The established Church of England offers its nation-wide parochial ministry for everyone in England to draw on as they wish and it is arguable - and argued - that its strength and its position in the life of the nation are not to be measured by church attendance alone. Other denominations and faiths are to varying degrees membership bodies, so that people recognisably either do or do not belong to them. If the Church of

England is in future to continue to be represented in the upper chamber on a different basis from other churches and faiths, the Annex provides material which could be used to justify that position.

- 47 Another problem is that the number of adherents of any faith can be difficult to establish; and it varies over time influenced by, for example, patterns of migration. (There were 400,000 Muslims in the United Kingdom in 1975 and 1.2 million by 1995.) Nevertheless, Whitaker's Almanack offers the following estimate of religious affiliation in the United Kingdom. About 65 per cent of the population (38.1 million people) would call itself broadly Christian (in the trinitarian sense), with 45 per cent (26.1 million) identifying with Anglican churches, 10 per cent (5.7 million) with the Roman Catholic Church, 4 per cent (2.6 million) with Presbyterian Churches, 2 per cent (1.3 million) with the Methodist Churches and 4 per cent with other Christian churches; but only about 8.7 per cent of the population of Great Britain (3.98 million people) regularly attends a Christian church. Church attendance in Northern Ireland is estimated at 30 to 35 per cent of the population. About 2 per cent of the UK population (1.3 million people) is affiliated to non-trinitarian churches; and 5 per cent (3.25 million) to other faiths. About 28 per cent of the population is non-religious.

Geographical coverage

- 48 If the second chamber is to be representative of the United Kingdom as a whole, it may be necessary to consider the geographical balance within the body of religious representatives. The bishops in the House of Lords are drawn from England only. It is now proposed that the Church of Scotland should for the first time be represented. That would leave Wales and Northern Ireland unrepresented.
- 49 The Annex describes the position of the Church in Wales. It was disestablished in 1920 (against its will) largely on the ground that it was a minority church outnumbered by non-conformists of various kinds. Wales will in future be much more closely affected by the work of the United Kingdom Parliament than will Scotland or Northern Ireland. If there were to be any religious representation from Wales, it would have to be decided whether it should be Anglican or non-conformist.
- 50 The Anglican Church of Ireland covers the whole of the island of Ireland and was disestablished in 1869. As it happens, the present Primate of All Ireland, Lord Eames, has a life peerage. The prohibition on Roman Catholic priests sitting in legislatures suggests that any religious representation from Northern Ireland might best be found from among the laity of the various denominations.
- 51 Paragraphs 33 to 36 above give some information about the geographical distribution of other faiths, but the number of representatives from those faiths is unlikely to be sufficiently large for geographical balance to be an issue.

Representativeness

- 52 Paragraphs 15 to 17 above set out arguments to suggest that the bishops in the House of Lords cannot be described as representing the Church of England in any sense in which that word is normally understood in the political and electoral context. Many of the arguments adduced there apply also to other faiths and other denominations. In addition, many religious bodies are not organised so as to enable them to provide their own properly elected or appointed representatives. The term "religious representation" could be taken to connote the enfranchisement of religions, or the grant to them of a right to be represented in Parliament. This brief draws attention to some of the practical (and numerical) problems which that would involve. An alternative might be to adopt the terminology of providing "voices" to "reflect" the multi-faith nature of modern Britain.

E. Representation of the churches in other democracies

- 53 As the history of the bishops' involvement in the House of Lords is a long one, so is the involvement of church representatives in parliamentary chambers overseas. In some countries the clergy were originally represented in separate parliamentary chambers. For example the Swedish parliament had four chambers from the 15th century, representing the peasantry, towns, nobility and clergy. Sweden became bicameral in the 19th century and ultimately unicameral in 1970. In France there were three parliamentary chambers, representing the aristocracy, the clergy and the people. After a short unicameral spell following the French Revolution the parliament became bicameral, with the upper chamber largely elected from 1875 and wholly elected from 1958.
- 54 In other countries the representation of the church continued until later through the upper chamber. For example the old Irish parliament which sat from 1264 was tricameral, with a House of Commons, a House of Lords and a house of clerical proctors. This third chamber was abolished in 1536. However, when the Irish parliament was subsumed in the British parliament in 1800, Irish representation included four Protestant bishops, who sat in the House of Lords along with 28 Irish peers. When a new Irish parliament was established in 1920 there was continuity through representation in the Senate by four Roman Catholic and two Church of Ireland bishops. However these disappeared in the Free State constitution of 1922 and the 'vocational' Irish Senate now includes no representation of the church. In Spain, political upheavals resulted in a constantly changing constitution during the 19th century. However, under most arrangements clerics were amongst the groups which were represented in the Senate. This tradition died with the advent of dictatorship in 1923, and the new Spanish Senate, reinstated in 1978, is wholly elected.
- 55 Despite this long history, representation of the church in modern western democracies has now entirely disappeared. This is demonstrated in the analysis in *Second Chambers Overseas: A Summary*, a companion briefing published by the Constitution Unit. It is in large part due to the modernisation and redrafting of

constitutions in many countries during this century, following major upheaval which has provided a clear break with the past. These include the new constitution of Ireland in 1937, the post-war constitutions in France, Germany and Italy, and the new constitution drafted in Spain after the death of Franco in 1975.

F. Implications for the House of Commons of religious representation in the House of Lords

- 56 Some thought will have to be given to the voting strength of the religious representatives in the House of Lords in the light of the upper chamber's relationship with the House of Commons, where there is no religious representation. Would it be acceptable to the House of Commons for its legislation (on issues, perhaps, such as abortion or euthanasia) to be defeated by reason only of the strength of the religious vote?
- 57 A further issue arises in relation to the disqualification of some ministers of religion from the House of Commons. Clergy of the Church of England and ministers of the Church of Scotland are prohibited under the House of Commons (Clergy Disqualification) Act 1801 from standing for election to the House of Commons. Clergy of the Church of Ireland are also disqualified. A Roman Catholic in holy orders is likewise debarred by the Roman Catholic Relief Act 1829; in addition, priests are currently prohibited by the Roman Catholic Church from sitting in secular legislatures. No statutory or other prohibition applies to members of other faiths and denominations. A clergyman who may not sit in the Commons may currently sit in the House of Lords if he is a hereditary or life peer (retired Archbishops, for example, are often given life peerages).
- 58 One argument might be that if religions in the United Kingdom are to be formally represented in the House of Lords, they should not be able also to seek power in the House of Commons and the prohibition should apply equally to all denominations and religions. The difficulty with that is that not all religions have an easily definable priestly class; and in any case the lay adherents of any faith can be quite as devout as its priests.
- 59 The contrary argument would be that all formal religious disqualifications from standing for the House of Commons should be removed on the grounds that they were designed to meet the historical circumstances of the time and no longer serve any political purpose. That would mean that if the bishops lost their seats in the House of Lords, or if their numbers were reduced, they could stand for election to the House of Commons. (And, if there is an elected element in the Lords, they could stand for election also to the second chamber).

Conclusion

60 This brief has sought to provide material to help people evaluate the options facing the government in relation to religious representation in the second chamber. Broadly these might be summarised as follows:

Option 1: Retain the status quo

61 This would leave untouched the present position of the 26 bishops in the upper chamber, with no formal representation for other faiths. The arguments for this position would rest largely on the established nature of the Church of England and the difference between that and the established nature of the Church of Scotland (as set out in the Annex). The brief sets out some of the difficulties which would be involved in finding a basis of representation for other denominations and faiths.

Option 2: Include all religious faiths

62 This would involve considering the representation of the Church of England on the same basis as any other faith or denomination in the United Kingdom. The brief describes some of the practical and other difficulties involved in securing true "representation" from religious bodies; an alternative might be to plan in terms of finding "voices" to "reflect" the multi-faith nature of modern Britain.

Option 3: Remove the bishops

63 Removing from the Bishops of the Church of England their ancient right to sit in the House of Lords would bring to an end all formal religious presence in the upper chamber. It would in some ways be comparable with the removal of the hereditary peers' right to sit. It would not of itself disestablish the Church of England but it would bring in its train a string of complications related to establishment (these factors are set out in the Annex); and might reopen the debate about disestablishment.

ANNEX

Introduction

- 1 This Annex aims to provide, in summary form, factual background information on the presence of the bishops of the Church of England in the House of Lords. It also aims to show (a) that the establishment of the Church of England consists of a set of inter-relationships with the State whose complexity should not be underestimated; and (b) that the establishment of the Church of Scotland consists of an almost complete absence of relationship with the State, the principled nature of which should not be underestimated.

Bishops in the House of Lords

- 2 The Bishops have been members of the House of Lords throughout its existence. In medieval times a king's court or council would include the people upon whom he depended for the exercise of power - the feudal landholders which included the bishops and mitred abbots in their secular capacities. As the circle of those from whom money was raised grew to include the knights and burgesses, they came to meet separately and to form two chambers. Before the Reformation the clerics were all members of the Church of Rome. The Act of Supremacy 1534 repudiated papal supremacy and declared Henry VIII to be supreme head of the Church in England. The dissolution of the monasteries (1535-39) diminished the number of ecclesiastics in the upper chamber- who had until then outnumbered the secular peers - with the disappearance of about 28 abbots, and there was an increase in the number of lay peers. Many of the new lords were endowed out of monastic property. There were 36 lay lords when Henry VIII came to the throne in 1509, and 81 by the time Elizabeth I died in 1603.
- 3 The Lords Spiritual are the Archbishops and Bishops of the Church of England having seats in Parliament. They receive the Writ of Summons as of ancient right, but their number is limited by statute. In 1847, on the creation of the bishopric of Manchester, it was enacted that the number of bishops sitting in Parliament should not be increased in consequence, and similar provision has been made for bishoprics which have been created since.
- 4 There are 43 diocesan bishops in England (including the two Archbishops) and the following 26 now have seats in the House of Lords: the Archbishops of Canterbury and York; the Bishops of London, Durham and Winchester; and 21 other bishops according to seniority of appointment to a diocesan see.
- 5 The bishops sit on the Government (traditionally the Spiritual) side of the House on the two front benches on the right of and nearest to the Throne. Bishops are Lords of Parliament but they are not Peers. Bishops do not enjoy the privilege of peerage but they do enjoy the privilege of Parliament and take part in all aspects of the business of the House in the same way as the Lords Temporal.

- 6 Unlike the Law Lords, who are also members by virtue of office, bishops do not remain members of the House of Lords for life but only for so long as they continue to be diocesan bishops. Bishops are therefore the only truly ex-officio members of the chamber. The retirement age for bishops is 70. Retired bishops who have sat in the House of Lords are entitled to continue to use the facilities of the House and may (as may diocesan bishops who have not yet seats in the House; and the Dean of Westminster) enter the Chamber to listen to debates from the steps of the Throne.

The State's role in the Church of England's legislation

- 7 The original legislative bodies of the Church of England were the Convocations of Canterbury and York, which have greater antiquity than Parliament. They are entirely clerical bodies and had the right to tax the clergy and to make Canons, which were binding on the clergy. The Convocations can meet only if summoned by Royal Writ, and could only promulge Canons after receipt of the Royal Assent and Licence. Although they no longer have power to make Canons, the Convocations still exist and meet. Under the Church of England Convocations Act 1966 the Queen is required to summon new Convocations as soon as may be convenient after the dissolution of the old so Convocations can no longer - as they were in the eighteenth century - be suspended. Clergy become members of the General Synod through being elected as Proctors in Convocation, so the General Synod could not meet unless the Convocations were first summoned by Royal Writ.
- 8 The Church of England Assembly (Powers) Act 1919 (usually known as the Enabling Act) gave the Church of England a wide measure of self-government. Before that, only Parliament could legislate for the Church. The Church of England Assembly was in 1970 replaced by the General Synod, which comprises three Houses. The House of Bishops (ie the Upper Houses of the two Convocations) consists of all the diocesan Bishops, together with nine elected suffragan bishops. The House of Clergy (ie the Lower Houses of the two Convocations) consists of representative and ex-officio members including, for example, three armed services chaplains and the Chaplain General of Prisons. Members of the House of Laity are elected by the lay members of deanery synods in each diocese.
- 9 The General Synod has very substantial powers. Not only can it make Canons, submitting them through ministers for Royal Licence, and pass Acts of Synod; it can propose Measures - statute laws - on any matter concerning the Church of England. Measures may amend or repeal Acts of Parliament. Measures must be laid before both Houses of Parliament, which cannot amend them but must either accept or reject them. These laws which the General Synod proposes, subject only to a veto by Parliament, have the same force as Acts of Parliament and their validity cannot be questioned in any court of law.
- 10 The procedure for handling Measures in Parliament reflects this delegated structure. The Ecclesiastical Committee, a statutory joint committee of both Houses of Parliament established under the 1919 Enabling Act, is by that Act required to state

its views on the expediency of a Measure "especially with relation to the constitutional rights of all His Majesty's subjects".

- 11 Measures are introduced in the House of Commons by a Member of Parliament who has been appointed by the government as Second Church Estates Commissioner. (He also answers for the Church Commissioners, with his own slot for Parliamentary Questions, in the Commons which alone of the two chambers may deal with such financial matters.) In the House of Lords, Measures are introduced by a bishop. In practice, the Ecclesiastical Committee never has a bishop among its members. A Measure is presented with the Ecclesiastical Committee's views on it, which are first seen in draft by the Legislative Committee of the General Synod, which may at that point withdraw the Measure if it so wishes.
- 12 For the purposes of internal government, it has become settled that the Church should have the initiative in proposing legislation, and that an unamendable Measure is the appropriate vehicle. At times of controversy, however, such as over the ordination of women, the argument is still sometimes rehearsed that major changes should be made by way of a Bill, which would bring the matter more fully within the purview of Parliament.

The State's involvement in other Church of England affairs

- 13 The State does not endow the Church but it recognises and protects the possession of property by the Church. It exercises some control through its representation on the Church Commissioners, which also reports annually to Parliament.
- 14 The Sovereign, on the advice of the Prime Minister, appoints Archbishops, bishops and deans of the Church of England. The names of candidates for appointment are submitted to the Prime Minister through the Church of England's Crown Appointments Commission.
- 15 The jurisdiction of the Ecclesiastical Courts is recognised by the State. The final court of appeal in some ecclesiastical matters is the Judicial Committee of the Privy Council.
- 16 Clergy of the Church of England and ministers of the Church of Scotland are prohibited under the House of Commons (Clergy Disqualification) Act 1801 from standing for election to the House of Commons. A Roman Catholic in holy orders is likewise debarred: Roman Catholic Relief Act 1829. Clergy of the Church of Ireland are also disqualified. No such prohibition applies to members of any other denomination or faith. A clergyman who may not sit in the Commons may sit in the House of Lords if he is a hereditary or life peer.

The Church of England's role in the State

- 17 The Sovereign is the Supreme Governor of the Church of England. The Act of Settlement and the Bill of Rights require the Sovereign to join in communion with

the Church of England; and on accession to make a declaration, now in the form prescribed in the Accession Declaration Act 1910, that he is a faithful Protestant and will uphold the enactments securing the Protestant succession to the Throne. The Sovereign may not marry a Roman Catholic.

- 18 The Archbishop of Canterbury crowns the Sovereign and then does homage. Section 2 of the Act of Settlement requires the Sovereign to take a coronation oath in the form provided by the Coronation Oath Act 1688 and modified by subsequent enactments. The present oath requires the Sovereign to promise, among other things, to maintain the laws of God, the true provision of the Gospel, and the Protestant reformed religion established by law; to maintain and preserve inviolably the settlement of the Church of England and the doctrine, worship, discipline and government thereof, as in law established in England; and to preserve unto the bishops and clergy of England and to the Church therein committed to their charge, all such rights and privileges as by law do or shall appertain unto them or any of them.
- 19 There are many other manifestations of the involvement of the Church of England in the life of the State. Those mentioned here suggest that establishment is to some extent a matter of the degree to which Church and State are intertwined in various ways as much as a matter of law or fact. In precedence, after the immediate Royal Family the ranking is: Archbishop of Canterbury, Lord Chancellor, Archbishop of York, Prime Minister. The Anglican bishops in the House of Lords are the only religious leaders who are members of the House of Lords by virtue of office. Diocesan bishops must pay homage to the Sovereign and priests must make an oath of allegiance to her. The two Archbishops are members of the Privy Council, as are some Bishops. The daily sittings of both Houses of Parliament are opened with prayers by a bishop or priest of the Church of England. The State recognises the Church of England as the national church in chaplaincies to the armed forces and prisons. Diocesan bishops have a right of access without notice to any prison in their diocese.

Scotland, Wales and Northern Ireland

- 20 The bishops who sit in the House of Lords of the United Kingdom Parliament have since 1920 been drawn from among the bishops of England only.
- 21 The Church of Scotland is an established church but its establishment is separate from, and different from, the establishment of the Church of England and it does not by virtue of establishment have a presence in the United Kingdom's legislature. The Church of Ireland and the Church in Wales were disestablished by detaching them from the rest of the Church of England and depriving them of their seats in the legislature, but without disturbing some of the more difficult issues about the place of the Christian faith in national life which would be raised by the disestablishment of the 'residual' established church, the Church of England.

22 *Scotland*

The presbyterian Church of Scotland is the established church in Scotland. The Sovereign swears to protect it, and when in Scotland the Sovereign is a presbyterian. It is a collegial church, with supreme authority residing in the body of its members, the General Assembly (which can meet on its own initiative), and not in the State.

23 In 1592 an Act of the Scottish Parliament established the presbyterian form of government in the Church of Scotland. The Stuarts tried to impose episcopacy, but the Episcopal Church was disestablished and disendowed in 1689. The Treaty of Union of 1707 between England and Scotland virtually entrenched the position of the Church of Scotland by providing as a condition of the union an "Act for securing the Protestant religion and Presbyterian Church government".

24 The Church of Scotland Act 1921 ratified and confirmed the pre-existing self-governing status of the Church and renounced the right of Parliament to legislate on its behalf. The 1921 Act does not make constitutional provision for the Church but it recognises as lawful certain declaratory articles, which include the statement that the Church receives from Christ "the right and power subject to no civil authority to legislate, and to adjudicate finally, in all matters of doctrine, worship, government, and discipline in the Church". In Scotland there is no royal supremacy, the chief officers of the Church do not sit in the House of Lords, and Parliament has no authority in spiritual matters.

25 *Wales*

The Church in Wales was disestablished by the Welsh Church Acts of 1914 and 1919, which came into force in 1920. An estimate was made of the proportion in which it contributed to or drew from local and central Church of England funds. Some of the resulting sum went to the Church in Wales but some - controversially - went to the County Councils and other bodies for the carrying out of charitable purposes which they had historically taken over from the Church. This is sometimes referred to as a disendowment. The Church in Wales has a Governing Body consisting of the three orders of bishops, clergy and laity and a Representative Body to deal with property and finance. Wales has six diocesan bishops, one of whom is also the Archbishop.

26 *Ireland*

The Irish Church Act 1869 provided that the statutory union between the Churches of England and Ireland should be dissolved and that the Church of Ireland should cease to be established by law. The Church of Ireland covers the whole of the island of Ireland. It has a General Synod consisting of a House of Bishops and a House of Representatives. The Church of Ireland has diocesan bishops who elect the Archbishop of Armagh from their own number.

27 *The islands*

The Bishop of Sodor and Man is a diocesan bishop of the Church of England but has never been entitled to sit in the House of Lords; he has a seat in the House of Keys in

the Isle of Man. The Channel Islands fall within the diocese of Winchester, whose bishop always has a seat in the House of Lords.

Church and State: Establishment

28 The disestablishment of the Church of England was a major topic of debate in the nineteenth century. There were also Archbishop's Commissions on Church and State in 1916, 1935 and 1970. The latter sat while Richard Crossman's Bill to reform the House of Lords was being debated. It seemed to take a relaxed view of the proposed reduction in the number of members of the House, including the number of bishops, and suggested that other denominations also be represented.

29 If proposals for the reform of the House of Lords did trigger a renewed debate on the merits of the established status of the Church of England, the arguments on each side might be marshalled broadly on the following lines. Some of the arguments would also apply to the formal representation of other churches or faiths in the legislature.

30 *The case against establishment*

From within the Church, it might be argued that the link with the State compromises the Church. The national responsibilities of the Church itself and the seniority of Church leaders within the constitutional and social hierarchy limit the freedom of the Church to speak out on public issues. Its privileged position makes it difficult for it to speak for or to the marginalised in society. It bestows a false legitimacy on the State. The Church should control all aspects of its own business, including choosing its own leaders. All other Anglican churches are disestablished and find it no disadvantage. The existence of a nominal faith impedes the teaching of a more demanding faith. People of little or no faith can make unreasonable demands on the Church for social purposes in relation to weddings and baptisms. Few parliamentarians are wholehearted Anglicans and Parliament should not have ultimate authority to override the Church's own democratic institutions. The Church gains nothing from having the Queen at its head. The restrictions on the beliefs and marriages of the Royal Family are no longer justified. Establishment is a barrier to unity with other churches.

31 Some Christian denominations believe it is actually wrong for there to be any relationship with the State. From outside the Church, it could in addition be argued that the Church no longer represents the nation: few believe in its teachings so the State should not lend them authority. The position of the Church arises from a historical anomaly and has no clear constitutional or theological justification. The Church opposes the State more than it upholds it. Britain is now a multi-cultural nation and no one denomination or faith should be favoured above another.

32 *The case for establishment*

It might be argued that in the light of history the present position of the Church of England in the life of the nation commands general acceptance. In the absence of a

written constitution it is difficult to tinker with one part of the system without damaging others. Constitutional monarchy works largely because the office-holder is consecrated to duty, self-sacrifice and obedience to God; it makes little sense in other terms and it is not wise to undermine it.

- 33 The establishment of the Church gives a religious dimension to public life and keeps spirituality on the national agenda. The presence of the Bishops in the House of Lords institutionalises the articulation of the Christian ethic in legislative debate. This also benefits other churches and other religions. The standing of the Church allows it to have some political influence, usually on behalf of the marginalised in society. By virtue of being established the Church serves a much wider constituency than is represented in the General Synod. The assertion that society is now secular is unproven; there is a need for a national church for all the people.
- 34 It might also be argued that a State which publicly endorses and protects the beliefs of an established church has a legitimate interest in any changes made to the institution, so ultimate parliamentary control is justifiable. The Queen is Supreme Governor by virtue of being Head of State; as a constitutional monarch she can act only on the advice of her Ministers, so the Prime Minister's involvement in senior Church appointments is unavoidable.