Towards an Effective House of Lords

Target Paper

Towards an Effective House of Lords

Andrew Taggart & Samuel Emery

with a foreword by Lord (Philip) Norton of Louth; Professor of Government, University of Hull

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Foreword

The House of Lords was described by one of my colleagues in the Lords as ‘one of this country’s best kept secrets’. The future of the second chamber is often hotly debated. People have views as to what it should be in the future and pet schemes for reform are devised. In this, there is nothing new. The debate has been going on not just for decades, but for centuries.

However, the current debate is notable for not being well grounded either in fact or in principle. Schemes are offered without deriving from any clear thought as to what purpose is and should be served by the second chamber. What should be the end point of consideration is both the beginning and the end. Demands for change are often based on claims taken as self-evident, such as that an elected second chamber is the ‘democratic’ option. Election of the first chamber is essential in a democracy but it does not follow that the second chamber must be similarly elected: indeed, there are powerful arguments to the contrary. Many write without knowing much about the House of Lords, what it does and how it relates to the other parts of the political system. Some visualise the House of Lords solely in terms of the picture of peers in their robes at the state opening of Parliament, constantly reproduced by lazy editors who never think of illustrating stories about the House of Commons with pictures of MPs stood at the Bar of the House of Lords during the same ceremony.

There is also a notable confusion in the use of terminology. Proposals for a largely or wholly elected chamber are proffered under the rubric of House of Lords reform. They are not proposals for reform of the House of Lords. They are proposals for its abolition and its replacement with a very different animal. Reform of the House of Lords encompasses changes within the house, not least to enable it to fulfil its functions even more effectively than at present. There is, as this pamphlet clearly demonstrates, a case for reform of the House of Lords but not for its destruction. Replacing it with an elected chamber would be detrimental, not beneficial, to the British political system.

I therefore welcome this considered contribution to debate on the future of the House of Lords. It is refreshing to see the House of Lords examined within the context of Parliament and not as a body existing in isolation and amenable to replacement without impacting upon the rest of the British polity. Andrew Taggart and Samuel Emery make a powerful case for retaining an appointed second chamber and for reform of the House of Lords to enhance its existing contribution to the political process.

The House of Lords adds value to the political system. It complements the House of Commons, fulfilling tasks that MPs may not have the time or political will to carry out. However, there are reforms that can and should be made to the way it goes about making that contribution. The authors offer substantial and at times radical proposals for change. Towards an Effective Second Chamber delivers on its title. It constitutes a serious and valuable contribution to debate. It merits a wide readership.

Philip Norton
Professor The Lord Norton of Louth
May 2011
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**Introduction**

The House of Lords has often been subject to considerable criticism on a number of different grounds, and the sheer amount written on the subject of House of Lords reform illustrates that our upper house sits uneasily in our constitutional framework of a modern, democratic society. But despite the theoretical imperfections of the House of Lords, it is rarely criticised for what it does or the way it does it. Too little of the debate on House of Lords reform over the past decade or so has appreciated this simple and important fact.

Instead of ensuring that the House of Lords actually does its job, far too much attention has been focused on whether or not the House of Lords should be elected, appointed, or a bit of both. A lot of attention has been paid to the theoretical imperfections of the Lords, but very little attention has been paid to why the House of Lords is actually seen as in need of reform and what those reforms actually might be, or what effect the issue of composition will have on what it actually does or the way it does it.

This has, unfortunately, led to a situation where the leadership of our three main political parties have reached a consensus on the need for a fully or mainly elected House of Lords. It has not helped that many of our politicians have wrongly assumed that the fact that there are various problems with the House of Lords means that the logical solution is an elected House of Lords. Nothing could be further from the truth. The logical answer to the problem of still having 92 hereditary peers in the House of Lords is not to elect the House of Lords but to get rid of the 92 hereditary peers. The answer to the problem of peers not turning up to the House of Lords is not to introduce elections, but rather to give peers more to do by enacting measures such as creating more select committees and creating a system of voluntary retirement to give less active members of the Lords a dignified way of exiting the upper house. The answer to the problem of party cronies being appointed to the House of Lords is not to elect the Lords (indeed much the same problem would arise in an elected Lords, if not in a worse form). It is to strengthen the appointments system, by, for example, putting the independent House of Lords Appointments Commission on a statutory footing and giving it the power to appoint all Members of the Lords instead of the Prime Minister, to avoid accusations of patronage.

It does not have to be like this. While there are many who have campaigned for and argued for an elected House of Lords, there are also numerous advocates on the other side of the argument. In particular, the cross-party Campaign for an Effective Second Chamber, founded in 2006, has been actively campaigning for an appointed House of Lords and has the support of many MPs and peers. We think that the title of their campaign sums up what the debate on Lords reform should really be about – effectiveness. We are writing this paper because we believe the aim of any reform of the House of Lords should be to make our second chamber effective in fulfilling its tasks, particularly scrutinising government policy, and amending and revising legislation. We oppose an elected House of Lords primarily on the basis that we do not believe that it will be sufficiently effective.

So, in Part 1 of this paper, we argue that the House of Lords must be fully appointed. Or, if it is not fully appointed, there must be as high a proportion as possible of appointed members. We therefore set out a modern, yet Conservative case for why a fully appointed House of Lords is a good thing in the 21st century. We do this by reviewing some of the literature in this area, considering the merits of an appointed house and individually rebutting some of the key arguments in favour of an elected Lords.
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We believe that it is worth noting that it is unfortunate that such an analysis is necessary within the Conservative Party. There is a strong belief in the Conservative Party in the phrase, ‘if it’s not broken, don’t fix it’. Yet the Conservative-led government is trying to fix the House of Lords when it is patently not broken and when reform will probably lead to it becoming broken. We are strong supporters of the Prime Minister and the coalition. However, it seems a bit pointless to describe ourselves as conservatives if a Conservative-led government is to – in essence – abolish an institution which does its job perfectly well in its current form and does not need substantial fixing or reforming.

We are under no illusions that when the leaders of the three main political parties in this country share broad agreement on a policy, it will be no easy task to oppose or challenge that agreement. But we at least hope that, by expressly and unapologetically arguing for the merits of an appointed House of Lords, that we will be able to make a difference. We particularly hope to persuade MPs and peers to fight for as high a percentage of appointed peers as possible, if not to persuade the government to change their minds entirely and kick the upcoming proposals into the long grass. Indeed, since the coalition is proposing a mainly elected House of Lords, therefore recognising that it is a bad idea to leave the Lords with no appointed peers, it does beg the question of why this should not be the case for all of the membership of the House of Lords. In practice backbench Conservative MPs and peers may well be the only real barrier to an elected Lords, and we particularly hope that this report will assist them in persuading them to argue their case for and cast their vote for an appointed Lords, and to call for a free vote on the issue, just as the votes on Lords reform in 2003 and 2007 were free votes.

We do however recognise that the House of Lords is in need of important reforms. Therefore, in Part 2 of this paper, we argue for reforms to make the Lords more effective without altering its fundamental composition. This includes new proposals for the removal of the power to appoint peers from the Prime Minister, the removal of hereditary peers and bishops, and the introduction of term limits for peers, as well as significant expansion of the current select committee system in the House of Lords.

We believe that a paper like this is long overdue, and we hope that it will go some way towards preventing a fully or mainly elected House of Lords. We believe that reform of the Lords is needed, but any reforms must build on the strengths that the Lords currently has, for example, been better at using the talent already in the house. It should not move towards a system which would be very likely to lose the strength the House of Lords already has and which would be unable to do the very necessary work which our upper house currently does.

We hope that the Prime Minister will realise that it is in nobody’s interest to move towards a House of Lords which is more expensive, and more difficult to deal with and yet is at the same time less effective at its job.

Andrew Taggart and Samuel Emery
May 2011
Executive Summary

In Part 1 of this report, we advance arguments opposing a partly or fully elected House of Lords, and instead favour a fully appointed House of Lords. We do so for the following reasons:

1.1 The current House of Lords maintains a delicate balance between ensuring that a government can get its business through the house while at the same time ensuring that the government is effectively scrutinised. An elected House of Lords would upset this delicate balance and risks becoming either a lot more powerful and obstructing the House of Commons or becoming a supine rubber-stamp for government legislation.

1.2 The current appointed House of Lords plays a crucial role as a last line of defence, tidying up badly drafted legislation, forcing the government to rethink bad ideas and checking excesses of executive power. An elected House of Lords risks jeopardising and undermining this important function.

1.3 An elected Lords would inevitably lead to Members having far less time to devote to considering big issues of public policy and to conduct line-by-line scrutiny of legislation.

1.4 Contrary to the popular myth, it is not at all clear that the public support an elected House of Lords. The evidence suggests that there is limited public understanding of the House of Lords, but that the public seem to favour peers with independence, expertise and a non-political background. There is also some evidence to suggest that when the public hear both sides of the argument in detail they favour an appointed House of Lords.

1.5 An elected Lords would not improve our democracy. In particular, it would reduce the democratic quality that the current House of Lords brings to our country. An elected Lords also raises fundamental problems in terms of trying to discover a distinctive principle of representation on which an elected Lords can be based compared to that of the Commons.

1.6 The current House of Lords is a chamber of considerable expertise and experience compared to the House of Commons, which is becoming increasingly dominated by professional politicians. An elected Lords risks becoming similarly dominated by a narrow group of people and losing a lot of the considerable expertise available in the current House of Lords.

1.7 Under the current system well over a quarter of the House of Lords (28%) do not take a party whip and bring a calmer atmosphere and a more merit-based type of scrutiny to the Lords. Were the upper house to be elected, this number would be significantly reduced and there would be a higher proportion of party political peers.

1.8 Any advantage gained through the introduction of a hybrid (in other words part elected, part appointed) House of Lords would be undermined by issues relating to the impact of a two-tier House of Lords, particularly if – as is likely – appointed peers determine the outcome of important votes.

1.9 An elected House of Lords would inevitably cost a lot more money as Members of the Lords would – like MPs – need to be paid a proper salary, would have to receive a pension and would need their own members of staff.
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In Part 2, we do recognise that certain aspects of the House of Lords could be improved. With this in mind we recommend the following measures.

2.1 The House of Lords Appointments Commission should be put on a statutory basis and the power of the Prime Minister to appoint peers should be given to the Commission, making the process independent and ensuring that it is free of concerns about patronage. We recommend that Parliament’s ability to scrutinise the Commission is strengthened to take account of its extra responsibilities.

2.2 An entirely new, comprehensive system of cross-cutting select committees should be introduced to add to the work of the current select committees and make better use of the experience and expertise of peers.

2.3 Newly appointed peers should be subject to fixed terms of 10 years, renewable on up to two occasions for up to 10 years at the sole discretion of the Appointments Commission.

2.4 The size of the House of Lords should be capped. In the short term there should be a moratorium on appointments until the total number of members drops below a limit of 750 members. In the longer-term, there should be a statutory cap on the House of Lords becoming any bigger than the House of Commons, and this reduction to the size of the Commons should be achieved over a transition period of 10 years to avoid any compulsory retirements.

2.5 The rules on disciplining peers should be toughened up in line with those of the House of Commons so that peers can be removed if they receive a jail sentence of a year or more. This measure should be followed by the setting up of a Leader’s Group to consider further measures to improve discipline in the House of Lords.

2.6 The House of Lords should provide for Members to leave the upper house through a voluntary retirement system.

2.7 The powers of the Lord Speaker should be extended to give the position extra authority and to better regulate the conduct of the House of Lords, particularly at question time.

2.8 The automatic right for the remaining hereditary peers to sit in the House of Lords should be ended, as should the process of by-elections for them. The automatic right of the 26 Lords Spiritual to sit in the House of Lords should also be removed in favour of a system where religious leaders of all major Christian denominations and other major religions in the UK achieve fairer representation without having guaranteed seats.
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About the Authors

Andrew Taggart is a member of the Bow Group’s Home Affairs, Political Reform and Democracy Policy Committee. He has worked for an independent think-tank with a particular focus on reform of the Westminster Parliament, worked in Parliament and currently works as a Research Associate at a leading market research company. He holds a BA (Hons) in Law from the University of Oxford.

Samuel Emery is also a member of the Bow Group’s Home Affairs, Political Reform and Democracy Policy Committee. He has worked as a researcher to a Conservative MP and currently works at Cavendish Communications, a leading independent public affairs consultancy based in Westminster. He holds an LLB (Hons) in Law from the University of Nottingham and is a non-practising barrister.

Philip Norton is a Conservative life peer in the House of Lords and Professor of Government at the University of Hull, serving as head of the University’s Department of Politics and International Relations from 2002-2007. He was raised to the House of Lords with the title ‘Lord Norton of Louth’ in 1998. He has served as the Chairman of the Conservative Party’s Commission to Strengthen Parliament under William Hague’s leadership, served as Chairman of the House of Lords Constitution Committee from 2001-2004 and has authored or edited dozens of books. He is a world authority on constitutional issues and has been described as the UK’s “greatest living expert” on Parliament.
PART 1: WHY WE NEED A FULLY APPOINTED HOUSE OF LORDS

1.1 The current House of Lords maintains a delicate balance between ensuring that a government can get its business through the house while at the same time ensuring that the government is effectively scrutinised. An elected House of Lords would upset this delicate balance and risks becoming either a lot more powerful and obstructing the House of Commons or becoming a supine rubber-stamp for government legislation.

At the present time, the House of Lords maintains a delicate balance with regard to the way that it approaches legislation. On the one hand, for some decades now the House of Lords has, by and large, observed the so-called “Salisbury Convention”, which stipulates that the Lords does not vote against measures included in the governing party’s manifesto.¹ On the other hand, the upper chamber rightly has a role as a body which scrutinises legislation and often forces governments to think twice, if not to think again entirely. After the departure of most of the hereditary peers the House of Lords has become increasingly assertive, defeating the Labour government on a number of occasions during its period in office.²

This balance, especially in recent years, has meant that successive governments have been able, one way or the other, to get the bulk of their legislative programme through the House of Lords, while at the same time the Lords have tidied up many of these bills and forced the government to retreat from some of the very worst aspects, particularly in rejecting much of Labour’s programme to undermine our historic civil liberties.

We believe that this balance, founded primarily on the fact that no one party or government has a majority in the House of Lords, is one of the crucial aspects of our second chamber. It does not reject too much - paralysing governments, damaging legislative efficiency and forcing parties to negotiate through backroom deals. Nor does it reject too little, letting governments send badly-prepared, ill-thought out or even malevolent bills to them and rubber-stamping them without appropriate scrutiny, regardless of their merits. A move to an elected Lords risks upsetting this balance and making the Lords reject either too much, or too little, depending on how it is composed. We examine the two possible risks below.

1.1.1 An elected house risks becoming a supine copy of the Commons and letting too much legislation through with just a rubber-stamp.

The first risk is that the government of the day will – more or less – dominate an elected upper chamber – particularly if the upper house is elected under a system of proportional representation and if the result of the most recent General Election to the House of Commons has resulted in a coalition government. Some may argue that this argument has no weight, as hung parliaments and deals/coalitions are historically rare under first past the post, with majority government the usual outcome. Historically this may have been true. However, as elections expert Professor John Curtice observed shortly after the formation of the coalition, the hung parliament which resulted from the General Election was not in fact an aberration but a result of long-term changes in the electoral map of Britain which mean that first past the post can no longer guarantee single-party majority government.³ If this is correct, coalition governments not only will be more common in the future,

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¹ G. Dymond & H. Deadman, The Salisbury Doctrine, House of Lords library note (June 2006).
² See sections 1.2 and 1.5.
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but if we have an elected Lords a government may well have an overall majority in both the House of Commons and House of Lords.

Consider the current coalition government. In the last general election the Conservative and Liberal Democrat parties won a combined 59.1% of the popular vote. If we suppose that the House of Lords had been elected with a similar vote share under a system of proportional representation, the coalition would currently have an unassailable majority in the House of Lords as well as in the Commons. At the moment, however, no party has a majority in the House of Lords and the coalition control around 40% of the seats in the upper chamber. Yet in the Commons, the coalition has a total of 362 MPs out of a total of 650 (55.7% of the seats).

Under the current system, there is a clear standard of scrutiny even by government peers of government Bills, and a much greater tendency than in the Commons to vote on the basis of conscience rather than the party whip. But changing the Lords to an elected house risks diminishing its effectiveness in this regard, letting through most government legislation with nothing more than a rubber-stamp.

The composition and atmosphere of the Lords means that ministers are far more likely to reject concessions on a Bill in the Commons due to the party political atmosphere and to make them in the Lords instead. If that atmosphere is translated into the Lords, the question then arises of where those concessions are given and where those amendments are made? The risk is that the lack of a forum for mature reflection outside of the media spotlight will significantly reduce the number of concessions that the government in fact make – consequently making the upper chamber less effective than it is now, rather than more so. If the atmosphere of the Lords changes, so will the way governments of all parties approach it.

The reduced expertise and independence of an elected Lords and the lack of time that elected peers will have – all covered elsewhere – may also lead to problems. Peers will not only be less willing to scrutinise legislation but less able, due to reduced time or inferior expertise, to scrutinise legislation or government policy as forensically and carefully as the current upper chamber currently does. Indeed, the peers who would be elected to the Lords would be likely to be far less effective at scrutinising legislation than most of the regular attendees in the Lords, and possibly even less effective than many MPs.

Just as importantly, the power of the whips would increase. A larger proportion of the upper house would be ex-MPs or other people with backgrounds in politics and when added to the likelihood of more ministers being appointed from the Lords this would add up to a very different atmosphere in the house, and a much greater level of power being held by the whips in the Lords than at present. Election, particularly under a regional electoral system, would likely give candidates who toe the line a better chance of selection and/or reselection and more chance of the party focusing resources on their campaign. As Vernon Bogdanor rightly argues:

“the constraints of party discipline might even be stronger in a chamber elected by a regional list system of proportional representation in constituencies much larger than the House of Commons, in

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which personal contact between voter and member would inevitably be minimal, than it is under first-post-the-post elections for the House of Commons.⁸

1.1.2 An elected house however also faces the alternative risk, becoming a more obstructive, difficult chamber to deal with.

There is however another risk, which is that the second chamber will become far more obstructive than it is at the moment, particularly if there is an overall majority of opposition peers over government peers. Some might argue that the Lords currently reject considerable amounts of government legislation anyway and that an elected Lords would not be substantively different from an appointed Lords in the restrictions it puts upon the Commons. We agree entirely with the first part of that argument but utterly reject the second. The atmosphere in an elected Lords would be far harsher and more party political, giving peers an extra incentive to get one over on their rivals and far more subjected to the whims of the whips.

Most importantly, the elected second chamber would be able to claim that it has a mandate from the public to reject the government’s legislation, meaning it would be far more likely to do so due to its increased democratic legitimacy. One only needs to consider the increased levels of rejection of government policy since the House of Lords Act 1999. This removed most of the hereditary peers and made the Lords an upper chamber largely based on merit rather than largely based on the hereditary principle. Yet moving from being constituted on the basis of merit to being constituted on the basis of election is a wholly more radical step. This would especially be the case if one or more of the following scenarios happen:

a) Elections for the upper chamber occur during the middle of a government’s term and the Lords is able to claim that it has a more recent mandate from the public than the Commons;

b) The Lords is elected through a system of proportional representation – a scenario which we expect is almost certain to be proposed by the coalition;

c) A general election to the Commons yields a coalition government (as we have now) which requires parties to come up with compromises on policy which have not been technically endorsed in an election under the terms of the Salisbury Convention.

All the above also reckons without the strong possibility of an elected upper chamber wrangling extra powers for itself, as noted by King.⁹ The Salisbury Convention is already under a serious cloud even in the appointed Lords, and there is a very strong possibility that it would not survive the move to an elected Lords and the consequent inevitable push by peers with greater legitimacy for more powers to match that legitimacy. We only have to look at how few elected upper chambers abroad have powers as restricted as the House of Lords.¹⁰ Or to look even in the UK at how institutions like the Scottish Parliament and Welsh Assembly are obtaining more and more powers for themselves only a few years since coming into existence. It is consequently a very likely possibility that the Parliament Acts 1911 and 1949 would be revisited in the event of an elected house. Consider the preamble of the Parliament Act 1911:

“Whereas it is expedient that provision should be made for regulating the relations between the two Houses of Parliament:

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¹⁰ See M. Russell, Reforming the House of Lords: Lessons from Overseas (Oxford University Press, 2000); S. C. Patterson and A. Mughan (eds) Senates: Bicameralism in the Contemporary World (Columbus, Ohio State University Press, 1999).
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And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation:

And whereas provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this Act appears for restricting the existing powers of the House of Lords”¹¹

The above text seems to suggest that the Parliament Act 1911 flows from the fact that the Commons was elected while the Lords was not. The logical extension of this conclusion is surely that if this balance were to be altered, and the House of Lords elected, the Parliament Acts would be unlikely to survive to define the powers of an elected upper house – a conclusion accepted by experts such as Sir Roger Sands, the former Clerk of the House of Commons.¹² Indeed, as Bogdanor points out, in the modern world the powers of an upper chamber depend primarily on its democratic legitimacy (or, indeed, lack of it).¹³ Even if this does not threaten the primacy of the House of Commons an elected upper house will certainly be a much stronger body and be more likely to obstruct a government’s legislative programme, especially there were to be a reconsideration of the Parliament Acts and a new statutory definition of the powers of the House of Lords. Developing such a statutory definition would be a significant effort in itself.

From all this it is clear that the coalition – for want of a better phrase – risk opening a proverbial can of worms if they are to elect the upper house and create problems of their own making further down the line. We do not believe it is necessary to open the question of the powers of the Lords as the powers are more or less appropriate as they are – but an elected Lords will inevitably force open this question whether the government like it or not.

1.2 The current appointed House of Lords plays a crucial role as a last line of defence, tidying up badly drafted legislation, forcing the government to rethink bad ideas and checking excesses

¹¹ Parliament Act 1911, c.13
¹³ Ibid, p169
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of executive power. An elected House of Lords risks jeopardising and undermining this important function.

It is increasingly clear that deficient legislation is presented to Parliament by governments on a regular basis and, all too often, passed into law. This has been well-established by the Hansard Society’s recent book Making Better Law, which deals in considerable detail with the causes of deficient legislation. The phenomenon of “initiativitis” identified by the Hansard Society is crucial to this – Parliament is, to put it very simply, being deluged with ill-thought out, badly prepared laws because our political culture prioritises action over calm reflection.14

This is not something the coalition government is unaware of. Indeed, the current Leader of the House of Commons said this just last March:

“There is currently too much legislation, produced too often, with too little effect. And while the Government churns out Bills like press releases, there has been no effort to give the Commons the time and the tools it needs to examine them in detail.”

We do not intend to repeat the arguments on this in detail as they have been comprehensively set out in Making Better Law and elsewhere. What is important for the purposes of this report is the fact that the House of Lords plays a crucial role in mitigating or improving legislation which is ill-prepared, badly thought-out and sometimes just plainly wrong, but which is not effectively scrutinised by the House of Commons. As Anthony King puts it, there is almost universal agreement that much of the legislation which comes from the Commons is ill-considered and badly drafted, and that a second-thoughts chamber is needed to at least mitigate this problem if not to eliminate it completely.16

This thankfully seems to have been a much less pronounced problem during the first months of the coalition than it was under the last government. But the problem is still lurking beneath the surface. The controversy over the Public Bodies Bill is just one recent example which shows that even under the coalition there remains a tendency – even if much reduced – to attempt to legislate first and think of the consequences later. The Bill drew condemnation from judges, including the most senior judge in the country as well as numerous commentators and politicians, with particularly heavy criticism from peers on the influential House of Lords Select Committees17. This wave of criticism eventually led to a government climb-down on some of the most controversial provisions.18

The House of Lords has, particularly over the past 13 years, restricted not just poorly drafted legislation but has also generally provided a serious check on executive power as well. Lord Strathclyde, the Leader of the House of Lords, provides a very useful summary of some of the upper chamber’s key victories under Labour:

18 Lord Taylor of Holbeach; HL Deb, 28 February 2011, columns 798-800
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“Few give much thought to the Lords in the storms of politics, but it is worth remembering that had it not been for the Lords in 1997-2010, the right to trial by jury would have been restricted; you would not have been allowed a new passport to leave the country without signing up for electronic surveillance by the state through compulsory ID cards; churches would have had to ask regulators for permission to ring their bells; it would have been a crime for a comedian to make a joke about religion; habeas corpus would have been undermined and every citizen, not just terrorists, laid open to long-term detention without trial, and supercasinos would have sprung up all across Britain.”

As he rightly goes on to point out, all these measures and many more passed the House of Commons and were only blocked in the Lords. We applaud Nick Clegg and the Liberal Democrats for the way they have stood side by side with the Conservatives in opposing restrictions on our civil liberties under Labour, and the focus that the coalition Agreement had on restoring civil liberties and rolling back the database state. Yet we remain puzzled why the Deputy Prime Minister, such a strong supporter of civil liberties, is willing to in essence abolish the only chamber of Parliament which really stood up for civil liberties against continuous assaults by Labour, and managed to thwart the worst of the authoritarian measures they proposed. There are of course notable exceptions – the House of Commons did for example reject the proposal for 90 days detention without trial or charge, but it is difficult to come up with any other examples. Out of the Commons and Lords, it is the supposedly undemocratic, unelected, anachronistic Lords which has provided the best defence of civil liberties and acted as the most important restraint on government power compared to the elected, democratic House of Commons.

In addition to the specific examples above, there are a number of criteria that we can use to measure the impact of the House of Lords on legislation and government policy. The first is the number of times a government is defeated by the House of Lords in votes – during Labour’s 13 years in power they were defeated by the Lords on a total of 528 votes.

The second is the number of amendments made to government bills by the House of Lords. The upper House regularly tables and makes thousands of amendments to legislation. Consider the following statistics covering sessions of Parliament between the 2005 General Election and the 2010 General Election:

<table>
<thead>
<tr>
<th>Parliamentary session</th>
<th>Number of amendments tabled</th>
<th>Number of amendments passed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009-2010</td>
<td>2,031</td>
<td>565</td>
</tr>
<tr>
<td>2008-2009</td>
<td>6,363</td>
<td>1,824</td>
</tr>
<tr>
<td>2007-2008</td>
<td>7,259</td>
<td>2,625</td>
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<tr>
<td>2006-2007</td>
<td>5,559</td>
<td>1,911</td>
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<tr>
<td>2005-2006</td>
<td>10,143</td>
<td>3,249</td>
</tr>
</tbody>
</table>

Both of these measurements are useful, but are not enough on their own. A third level of analysis is required – namely the number of government defeats on divisions that are accepted by the Commons. One study by scholars from the Constitution Unit examined the ultimate policy impact of government defeats in the House of Lords from 1999-2006, which found that around 40% of such

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20 Ibid
23 This was a short Parliamentary session due to the 2010 General Election – the 2008-2009 session lasted from December 2008 to November 2009.
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defeats were largely or wholly accepted by the government. This is a very significant figure, showing that the last government did back down on a significant number of defeats and did not reverse them in the Commons – and not just on the high-profile, controversial issues.

Having said this, a final, fourth level of analysis is still required to further add to this picture. The 40% figure refers only to defeats on votes, which is clearly only one way in which the House of Lords influences legislation: defeats are usually a last resort. The evidence also suggests that the House of Lords also has a much wider influence than this. Many other amendments to Bills will either be accepted straightaway without the need for a division, or will be repackaged as government amendments. An in-depth analysis by the Hansard Society, which undertook detailed case studies of five Bills and their passage through Parliament under Labour, concluded that the most changes to Bills were made in the Lords rather than the Commons, and that the absence of a government majority and the prospect of repeated defeats both give the upper House considerable leverage over legislation. This means that governments do on some occasions back down after scrutiny by the Lords, during scrutiny by the Lords, or even in some cases before the Bill even reaches the Lords. Constitutional theorists such as Anthony King agree, pointing out that there are likely to be occasions when ministers back off before they are forced to back off, possibly without anyone outside the government’s ranks knowing that this is what has happened. A very good example is the pause over the Health and Social Care Bill – at least one inside source has suggested that this decision was made in part due to fears that the Bill would not pass the House of Lords without substantial changes.

Even under the coalition government the House of Lords has shown that it is willing to be independent. The Constitution Unit at University College London (UCL) maintains a record of government defeats in the House of Lords. At the time of writing, this record shows that in the current Parliamentary session the coalition has already been defeated on 16 votes by the upper House. Among other things, these defeats have already caused the government to pause and think again on a number of issues, ranging from amending the Public Bodies Bill to exempting the Isle of Wight from the rules applying to most other constituencies in the Parliamentary Voting System and Constituencies Bill, relating to equalisation of constituency boundaries.

We believe this record should be maintained and that an elected House of Lords – especially if the lamentable record of the elected House of Commons in recent years is anything to go by – would risk undoing all this good work.

1.3 An elected Lords would inevitably lead to Members having far less time to devote to considering big issues of public policy and to conduct line-by-line scrutiny of legislation.

27 N. Watt, ‘Kenneth Clarke accuses PM of treating Andrew Lansley badly’, The Guardian, 8 April 2011
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Back in March 2010, Sir George Young MP, now the Leader of the House of Commons, remarked that “*time is the oxygen of Parliament*.“ And yet Sir George had, only the year before he said these words, co-authored a paper with Andrew Tyrie MP for the Constitution Unit calling for a mostly elected House of Lords. We agree that time is indeed a crucial component of Parliament and is necessary for it to function effectively. But to say this and then argue for an elected House of Lords is illogical and inconsistent. An elected second chamber would almost certainly have much less time to consider legislation and scrutinise governments than the current House of Lords does at present.

This is important because there is a considerable problem at the moment in the House of Commons in terms of the amount of time spent on scrutinising legislation and government policy. Large parts of Bills are often not debated at all by the Commons. For example, at least 28 clauses of the Constitutional Reform and Governance Bill – around a third of the Bill – were not debated at all by the House of Commons due to how tightly programmed the proceedings were. The procedures of the House of Lords at present are very different – much more time is taken on Bills, they are gone through line by line and there are no programme motions like the Commons. This enables peers to tidy up legislation which the Commons has not had the time to consider in detail.

Moving towards an elected Lords would however lead us away from this situation, meaning there would be no upper chamber to check the Commons and provide more detailed scrutiny with less strict time limits. This is not a theoretical point. We need only look at the House of Commons and consider the reasons why MPs do not have sufficient time to debate Bills properly to understand that a similar thing could easily happen in an elected Lords, even if not to quite the same extent.

This does not mean we think that election of the House of Commons is at all a bad thing – indeed, it is crucial that the first chamber in any democracy with a bicameral system is elected. However, at the same time it is important to recognise that election is a double-edged sword. With democratic legitimacy comes the inescapable fact that MPs spend a lot of their time dealing with local issues in their constituency and constituency casework instead of debating and scrutinising legislation or government policy in the House of Commons. Back in 1994, Philip Norton called for greater resources for MPs to cope with constituency work and made the following warning:

“The more time that is consumed by constituency casework and projects, the less time there is to devote to other important work...If constituency work starts to crowd out Westminster work, producing a more parochial orientation, then the capacity of the House of Commons to subject government actions and public legislation to sustained scrutiny is diminished.”

Unfortunately, it is becoming increasingly clear that his warning was an apt one. It is now widely accepted that constituency work has in fact crowded out Westminster work and MPs are becoming glorified social workers. The statistical evidence appears to back up this concern, particularly the findings of a Hansard Society study which monitored the progress of Members of Parliament

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30 A. Tyrie and G. Young, An Elected Second Chamber: A Conservative View (Constitution Unit: 2009)
33 G. Rosenblatt (2006), A Year in the Life: From Member of Public to Member of Parliament (London: Hansard Society)
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elected at the 2005 General Election as they settled into their role and shaped their approach to the job. Many of the findings from the study are of great concern.

- By the end of their first year, the 2005 intake reported working an average of 71 hours per week, ranging between a low of 50 hours a week to a high of 100 hours a week.\textsuperscript{34}
- The 2005 MPs were asked in surveys in May 2005 and May 2006 to identify how much of their time was spent on constituency work, being in the Chamber of the House of Commons, committee work, and other work. When asked about this in May 2006, they reported spending, on average, half of their time (49\%) of their time on constituency work – some far more.\textsuperscript{35}
- Immediately after being elected, the 2005 intake thought that they would spend a quarter of their time in the chamber (24\%). Low as that figure is, the 2005 intake could not even manage that, revealing in May 2006 that they had only spent, on average, 14\% of their time in the chamber – one respondent only spending 2\% of his time there.\textsuperscript{36} This appears to tally with surveys with surveys undertaken during the 1997-2001 Parliament, which found that nearly 90 per cent of MPs spent fewer than 10 hours a week in the Chamber.\textsuperscript{37} Similarly, in their first year in Parliament, MPs spent only 14\% of their time, on average, on committee work.\textsuperscript{38}

How to deal with this problem is well beyond the scope of this paper. But even this brief consideration of the problems arising from the trend of MPs being dedicated to constituency work shows exactly why an appointed House of Lords is such an important feature of our democracy. Even if elected peers were given more office space and staff (necessary features of an elected Lords which are dealt with elsewhere in this paper) and were elected on, say, 15-year terms, we believe it is inevitable that elected peers would still spend a significantly greater amount of time on dealing with the public than they do at present – whether that involves going to constituency meetings or replying to the hugely increased amount of correspondence they would be likely to receive – and that the high standards of scrutiny in the House of Lords would suffer as a result.

1.4 Contrary to popular myth, it is not at all clear that the public support an elected House of Lords. The evidence suggests that there is limited public understanding of the House of Lords, but that the public seem to favour peers with independence, expertise and a non-political

\textsuperscript{34} Ibid, p30-31
\textsuperscript{35} Ibid, p32
\textsuperscript{36} Ibid, p32
\textsuperscript{38} G. Rosenblatt (2006), A Year in the Life: From Member of Public to Member of Parliament (London: Hansard Society), p33
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background. There is also some evidence to suggest that when the public hear both sides of the argument in detail they favour an appointed House of Lords.

One of the main arguments in favour of an elected House of Lords is that it is allegedly strongly supported by the public. The campaign group Unlock Democracy, for example, argues that “A clear majority of the public consistently state in opinion polls that they want a predominantly or wholly elected second chamber.” This is an argument which we intend to deal with some detail, as we do not feel that this argument has been sufficiently challenged elsewhere and it is an important one to rebut.

We will happily concede at the outset that there is some evidence of public support for an elected House of Lords. But we consider that it is important to recognise that the evidence is not as clear-cut or as one-sided as supporters of an elected Lords might wish. When we look at opinion polls as a whole, see them in their context and consider them in more detail instead of cherry-picking particular findings out of them, the overall picture becomes very different.

To do this we intend to look at the actual evidence in detail, covering a number of different surveys of public opinion over the past decade. We should however note that we are consciously discounting the two public consultations on this issue by the Labour government in 2002 and 2004. This is because in the first such called public consultation only 61% of the respondents could be classed as ordinary members of the public, and the second consultation asked only about the arrangements for how the Appointments Commission should work, rather than about the composition of the House of Lords itself.

We have observed three main trends in the surveys and other tests of public opinion that we have analysed.

1.4.1 Respondents often give contradictory answers, favouring an elected Lords while supporting characteristics of an appointed Lords in the same poll.

This is perhaps the most fascinating trend we have observed.

Consider, as a beginning, the submissions to the Royal Commission on Reform of the House of Lords, chaired by Lord Wakeham, which received a total of 1,734 pieces of written evidence, most of which were sent in response to their consultation paper but a number of which were also obtained through public meetings and wider media publicity. Members of the public were responsible for the vast majority of submissions, over 76% of the total. It is certainly true that the method of composition which achieved the most support (45%) supported a directly elected House of Lords. However, the second most popular option (39%) was a House of Lords consisting of life peers appointed by an independent appointments commission. Many respondents also either opted for a mixed chamber or chose more than one option of composition without directly specifying that the chamber should be mixed. When asked who should sit in the chamber, an overwhelming 67% of the respondents wanted to include members who were independent and/or experienced. The closest

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democratic option, being ‘representative of the nations and regions of the UK’, came in a full 20% lower than this.\textsuperscript{43}

These contradictions are further revealed by Professor Vernon Bogdanor in his recounting of the interaction between the Wakeham Commission and its witnesses. The Commission was told by many witnesses that the House of Lords should be elected, but, as Bogdanor goes on to point out; “The witnesses were then asked whether they wanted an upper house that replicated the Commons. Good heavens no, they replied in shocked tones, the last thing they wanted was another chamber dominated by confrontational politics and whipped majorities. They wanted an elected upper house without party politicians. It is not clear how this could be achieved. For, in every modern democracy, elections are organised by political parties and run by professional politicians.”\textsuperscript{44}

Wakeham, however, was only the start. A poll in 2003 showed that while the majority of the public favoured a fully or mainly elected House of Lords, only 10% of them agreed that a reformed Lords should consist mostly of representatives of the main political parties. This is despite the fact that such an outcome is the logical outcome of a fully or mostly elected Lords. More than three times as many (32%) say that it should consist mostly of non-party political peers, and half of the public (48%) believed that the Lords should consist of roughly equal numbers of those with party loyalties and those who do not.\textsuperscript{45}

An even more fascinating example is a poll undertaken by Populus for The Times in 2006. While 72% of the respondents believed that at least half the Lords should be elected to provide ‘democratic legitimacy’, a closer look at the poll also shows the following:

- 75% agreed that “The Lords should remain a mainly appointed house because this gives it a degree of independence from electoral politics & allows people with a broad range of experience & expertise to be involved”
- 78% agreed that “It is important to have a strong House of Lords as a check on the House of Commons & Government”.
- 56% agreed that “If both Houses of Parliament were elected it would become much harder for governments to get things done since both Houses could claim democratic legitimacy and neither would be willing to back down, bringing a risk of frequent stalemate”.\textsuperscript{46}

In another poll by YouGov for the Hansard Society, 42% of the respondents in this poll favoured a fully elected Lords and a further 40% favoured a mixture of elected and appointed members. But in the same poll, when asked which two qualities they thought it was most important for future members of the House of Lords to have, the two most popular options were, by an overwhelming majority, that they should be more independent of party politics than members of the House of Commons (57%) and should bring expertise and experience from science/business law and other areas (54%). Neither of these is, as dealt with elsewhere, compatible with a wholly or mainly elected Lords. By contrast, only 26% and 5% of respondents respectively named representing regions and nations of the UK or representing single constituencies as the most important qualities for peers to have.\textsuperscript{47} It is also worth noting that, when asked which two of the functions of the House of Lords

\textsuperscript{43} Ibid, p199
\textsuperscript{44} V. Bogdanor, ‘Why the Lords doesn’t need more politicians’, The Telegraph, 11 February 2007
\textsuperscript{45} YouGov (2003), The House of Lords, http://www.yougov.co.uk/extranets/ygarchives/content/pdf/RUS020101002.pdf
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were most important, the respondents named “holding the government to account for its policies and expenditure” (65%) and “revising legislation” (44%). Both of these, however, are areas in which the Lords risks being much less effective if it mainly or fully elected.

We believe it is also worth considering the findings of the Hansard Society’s Seventh Audit of Political Engagement, which had a special focus on public perceptions of MPs and Parliament in the light of the 2009 expenses scandal. The results are uncomfortable reading for our political class, let alone anyone who wants an elected House of Lords. In particular, they show that an overwhelming majority of the public (73%) do not trust politicians very much or at all. They also show that the public think that MPs spend most of their time furthering personal and career interests (50%), representing the views of their political party (37%) or presenting their views through the media (32%). Nearly a third of the public go so far as to agree that ‘personal gain’ is the most important factor in motivating people who try to become MPs or get involved in politics in general. While this polling evidence does not directly cover the House of Lords, it is clear that the public are very unlikely to support a House of Lords which involved more party politicians in the House of Lords who are more strongly regulated by party whips and who are on the same pay and perks as MPs.

1.4.2 Surveys consistently show that public understanding of the House of Lords and what it does is very low.

This trend is the second significant point we picked up when considering polling evidence. Indeed, a lack of understanding may in fact explain the first trend and the contradictory results that public surveys have shown. It seems that the public are too often agreeing with the sentiment of ‘elect the Lords’ in part because they do not really understand what that would mean in practice. Consider the following evidence:

- When given a ‘don’t know’ option, a very significant proportion of the public will choose this option when asked questions about the House of Lords. For example, in successive State of the Nation polls carried out by the Joseph Rowntree Reform Trust, around a quarter of respondents selected the ‘don’t know’ option when asked questions about House of Lords reform.
- In a 2007 YouGov poll, 56% of respondents claimed to understand how the House of Commons worked compared to 38% who did not. But with the House of Lords the response was completely the other way around – only 38% claimed to understand how the House of Lords worked, with 56% of the public not understanding how it worked. In 2008 a poll by

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48 Ibid
50 Ibid, p126
51 Ibid, p127
52 Ibid, p128-129
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ComRes showed that only 26% of the public felt they understood how the House of Lords worked compared to 42% who understood how the House of Commons worked.55

- In the Hansard Society’s fifth Audit of Political Engagement, only 26% of the public understood proposed reforms to membership of the House of Lords, compared to a massive 71% who did not understand the proposed reforms very well or had not even heard about them.56 More generally, successive Audits of Political Engagement have established that House of Lords reform is a topic which is very low on the public’s radar57 and that it is far less understood by the public than even many other constitutional issues.58

1.4.3 There is some evidence that when the public hear both sides of the argument they back an appointed House of Lords.

What is clear is that there is a growing sense that the public do back an appointed Lords when they have had an opportunity to hear both sides of the debate. Lord Bilmoria, for example, noted during a debate on Lords reform that, “Time and again, whenever I have conducted my own straw polls of members of the public, I have found that they initially say that they prefer an elected House of Lords, because it feels and sounds more democratic, but when you explain the role, function and composition of the House, they invariably change their minds and prefer for it to stay appointed.”59

There is unfortunately very limited evidence about what the view of the public is when the implications of an elected House of Lords are explained to them, and no opinion polls that we are aware of where respondents had the issues explained to them before they gave an opinion. However, two recent high-profile public debates on this issue at the end of last year came up with very interesting results on this point, both of which backed Lord Bilmoria. The first, a public debate initiated by the crossbench peers and the debating organisation Intelligence Squared on the motion ‘Would an elected House of Lords be bad for British democracy?’ found that some members of the public changed their minds after they had actually heard the arguments for and against an elected House of Lords. A vote was taken by a show of hands at the beginning and end of the debate which showed that support had shifted towards the motion (in other words opposing an elected Lords) after the debate had finished.60

The second, a debate in the main chamber of the House of Lords by school pupils from across the UK, had arguments being put by pupils for four options: an appointed Lords, a fully elected Lords, a ‘hybrid’ Lords, and abolition of the Lords entirely.61 All the pupils then voted on the four options at the end of the debate. The first option, an appointed House of Lords, received an overwhelming 81 votes out of a total of the 161 votes cast – an overall majority of 50.3%. Even more interestingly the second-placed option was not a fully elected House of Lords but a hybrid House including at least some appointed members, which received 46 votes. Abolition of the House of Lords obtained 26

59 HL Deb, 3 December 2010, columns 1701-1702
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votes, with a fully elected Lords obtaining a pathetic 8 votes – three times as many pupils wanted the House of Lords not to exist at all than to have it elected.62

It is of course unwise to read too much into these results or the comments by people like Lord Bilmoria about his ‘straw polls’ of the public, but even these few examples suggest that public support is far less assured for an elected Lords than its supporters might think. We would strongly welcome further evidence from polls and focus groups on this point.

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1.5 **An elected Lords would not improve our democracy.** In particular, it would reduce the democratic quality that the current House of Lords brings to our country. An elected Lords also raises fundamental problems in terms of trying to discover a distinctive principle of representation on which an elected Lords can be based compared to that of the Commons.

One of the main arguments put forward by supporters of an elected second chamber is that it would make the House of Lords more democratic. As the Deputy Prime Minister, Nick Clegg, recently argued:

“...a principle is at stake—that those who make the laws of the land should be accountable, as is common to bicameral systems across the democratic world, to the people who have to abide by those laws. That is a simple principle.”63

However, we believe that the Deputy Prime Minister is wrong for three main reasons. Firstly, as Professor Stein Ringen64 has argued, there is more to democracy than just elections:

“Obviously we should want our democracies to be more democratic, but the building of a good democracy is hardly a matter of just piling on democraticness. A better democracy must be a smarter democracy...The paradox that more democracy is not always necessarily better democracy can be illustrated in the case of the House of Lords”65

It is worth stating Ringen’s case at length. Even though he inclines towards the view that the Lords should be elected, he still has grave concerns about the idea. He argues that the Cabinet is the principal hub of decision-making in the British political system, and that their decision-making should be subject to scrutiny by Parliament, but that parliamentary scrutiny is currently weak due to a slide towards centralised political power. Ringen rightly notes that the House of Commons should be scrutinising the government, but argues that it currently acts as an extension of the Cabinet rather than critically analysing its decisions. The consequence is that the House of Lords has stepped into this vacuum and taken on some of the scrutiny role that the Commons has abdicated, meaning that the government currently has more to fear in the Lords than in the Commons.

He goes on:

“In this constellation, undemocratic as it is, we might do the thought experiment of abolishing the House of Lords on the argument that it is undemocratic. The result would be, under present political conditions in Britain, a parliament that would be more democratic but a chain of command that would be yet more weakened. Britain might arguably be more democratic but there would be less democratic quality in British political life”66

Professor Ringen effectively expresses one of the key arguments why we want to keep the House of Lords as it is. An appointed House of Lords is undemocratic in its current form – and we do not dispute this. But what the House of Lords does provide is what he describes as democratic quality, meaning that we have a smarter and consequently better democracy despite the fact that the Lords is not elected (and indeed because it is not elected).

63 HC Deb, 1 March 2011, column 149
64 Professor of Sociology and Social Policy at the University of Oxford.
66 Ibid, p25
67 Ibid, p25-26
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Nor is democracy just about scrutiny and expertise, it is also about – as Shami Chakrabarti recently argued in a debate on Lords reform - fundamental rights and freedoms and the rule of law, and the unelected House of Lords has proved very effective at defending those crucial principles despite its lack of elected peers, as we have considered elsewhere in this paper.

Secondly, the House of Lords is currently subordinate to the House of Commons and the Commons can, if it chooses to, overrule the House of Lords on almost any point by virtue of the Parliament Acts. The fact that the Commons does not always do so does not mean the Lords are making the laws of the land – we believe there is a strong argument for interpreting the role of the Lords as being a House which is suggesting possible laws of the land and the elected House, the House of Commons, is agreeing to them or not depending on each case. Accountability and democracy thus remains as the elected House has the final word under the current system.

Thirdly, despite the Deputy Prime Minister’s reference to bicameral systems across the democratic world, he completely ignores the fact that our system of government is very different to that of other countries and that an elected Lords simply would not suit our system of government. We intend to explore this third point in the most detail.

Comparative studies of legislative bodies around the world with more than one chamber have shown that second chambers are essentially contested institutions – few democracies are content with their second chambers. It is not just the UK that has been having difficulties working out exactly what form our second chamber should take. Many countries are, like us, presently engaged in seemingly never-ending debates on how to reform their second chambers.

We believe there is a key reason for this. As constitutional expert Professor Vernon Bogdanor notes:

“Making the House of Lords ‘more democratic and representative’ gives rise to a fundamental problem, which is to discover a principle of representation upon which a directly elected Lords can be based; a principle different from that of the representation of individuals; which is the basis of elections to the House of Commons. It is a problem which hardly any democracy, with the notable and untypical exception of the United States, has been able to resolve.”

We believe that he is correct in his analysis and hope the coalition will at least agree that there is limited point in having a House of Lords elected by individuals in the same way as the Commons. At the very least there would be numerous practical problems to deal with if it were elected in the same way such as clashes between MPs and Lords over representation of the same constituency and an even greater opportunity for the Lords to claim a clear mandate from the electorate to hold up or reject government bills from the Commons.

We do not intend to address the issue of a different basis of representation in further detail, as we hope that this will prove an uncontroversial point and we believe that the electoral system proposed in the upcoming draft Bill is likely to at least attempt to provide a different basis of representation.

69 S. C. Patterson and A. Mughan (eds) Senates: Bicameralism in the Contemporary World (Columbus, Ohio State University Press, 1999), p338
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for the Lords. But Bogdanor’s statement leads onto an important question which we do need to address in much more detail. It is this: ‘what is the alternative principle of representation to be?’

Perhaps the best starting point is to consider the words of Patterson and Mughan from their comparative study of second chambers:

“A powerful justification for a two-house parliament lies in demands for representation. According to the theory, one house is composed of popularly elected members representing the citizens directly. The other house, with a different basis of representation, may give voice to the interests of social classes, economic interests or territorial diversity. The most common basis upon which senates have been constitutionally anointed is to provide territorial representation.”

It is clearly not acceptable to create an upper house on the basis of economic interests or social classes in our modern, democratic nation. The choice is consequently – assuming the government do not elect the Lords on the basis of individual representation – between reforming the Lords so it is based on territorial representation or leaving it to be appointed and dodging the problem altogether.

In a federal state, as Patterson and Mughan point out, the problem of alternative representation for a second chamber is easier to solve than in a unitary state since an alternative principle of representation in a federal state is clearly apparent – namely the representation of territory, where senators are elected to represent states or provinces. In such a case the second chamber does, at least in theory, represent the population in a different way than the first. Probably the best example of this is the U.S. Senate (described by Patterson and Mughan as the “paradigmatic federal house”) whose one hundred members are distributed on the basis of two senators for each of the fifty states, disregarding the differences in the size of each state’s population.

The reason we are considering this area in such detail is that in the upcoming draft Bill we believe the government is likely to recommend electing at least some Members of the House of Lords on a territorial basis. We would argue, however, that while territorial representation would be preferable to individual representation, an elected second chamber with peers elected on a territorial basis is entirely unsuited to our system of government. Lord Norton neatly summarised the problem in his recent Stevenson Lecture at Glasgow University on House of Lords reform:

“Bicameral legislatures, with elected second chambers, are notable in federal nations. Citizens vote as citizens of the nation for members of the first chamber and as citizens of a state for the members of the second chamber. In short, they vote twice but in different capacities. In a unitary nation, citizens would be voting as citizens of the nation for members of the first chamber and of the second chamber. To vote in the same capacity for both injects an element of redundancy into the system.”

This is a crucial point – we believe that despite the introduction of devolution that the UK remains a unitary nation. We do recognise that some have argued that the House of Lords should include at least some element of regional representation in its membership. A number of possible models for

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72 S. C. Patterson and A. Mughan (eds) Senates: Bicameralism in the Contemporary World (Columbus, Ohio State University Press, 1999), p10
73 Ibid
74 Ibid
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this were put forward by the Wakeham Commission and influential commentators such as Dr Meg Russell have argued that “a failure to link House of Lords reform to the devolution settlement could be a missed opportunity” due to the growing tendency for second chambers around the world to be used to represent the territorial nature of the state.

However, we believe that there are numerous reasons why it is not a good idea to introduce election on any regional or territorial basis in the House of Lords:

a) While Scotland, Wales and Northern Ireland have devolved governments and legislatures, in England there are no directly elected bodies at national or regional level comparable to an English Parliament or Regional Assemblies. In short, the devolution system is incomplete, which means that one of the four parts of the UK, and the one which contains 85% of the UK’s population, does not match the analogy with a federal state where an intermediate body lies between central government and local government across the entire population. For 85% of the population the element of redundancy identified by Norton would consequently still remain, as none of the main political parties have plans to introduce measures to rectify this such as an English Parliament.

b) Even if England had its own Parliament the system would still be impractical to implement. As Anthony King notes: “Unless England were subdivided into regions, the federation would be hopelessly lopsided, with either England wholly dominant or else Scotland, Wales and Northern Ireland assigned an influence that was totally disproportionate to their size. Of course England could be subdivided into regions, but the subdivisions thus created would be largely artificial and...the appetite for regional government in England is virtually non-existent.”

c) The issues are also complicated by the fact that the powers of the devolved legislatures are different in relation to different parts of the UK.

d) Even if there was an English Parliament and an English Executive, the UK is still, and would still remain, a unitary state rather than a truly federal state. The devolution of power to Scotland, Wales and Northern Ireland is precisely that – devolution. Devolution is not the same as a federal system such as that in the USA, where power is entrenched at federal level. By contrast, Parliament could repeal all the legislation authorising devolution tomorrow and consequently remove all power from the devolved institutions in Scotland Wales and Northern Ireland from functioning. Obviously it will not – there are political constraints which prevent it from doing so. But it has, in theory at least, the legal power to do so, which ensures that it remains a devolved system rather than a federal system. The redundancy point does not thus entirely disappear even in the UK.

e) In a country with significant linguistic, religious, racial or territorial divisions, there may be a case for establishing a second chamber that reflects those divisions and ensures that each major grouping in that society can act as a check on the other group(s). This logic can however be applied to only a limited extent in the United Kingdom. As King rightly notes: “Divisions in a country may dictate the need to create a second chamber based on those

77 M. Russell, Reforming the House of Lords: Lessons from Overseas (Oxford University Press, 2000), p259
78 A. King, The British Constitution (Oxford University Press, 2007), p305
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divisions, but it would seem perverse to create divisions solely for the purpose of creating a second chamber based upon them. It would be like building a whole house for no other purpose than building a roof over it.\textsuperscript{80}

f) Having a directly elected upper house based on territory risks introducing the West Lothian Question into the House of Lords, just as it exists in the Commons. It would, Bogdanor argues, be asked why Scottish elected peers should be able to vote on English laws when English peers could not vote on Scottish laws on domestic matters, since these had been devolved to the Scottish Parliament. Far from holding the United Kingdom together he fears that a territorial upper house could give added momentum to those who wish to pull the Union apart.\textsuperscript{81}

g) Even where second chambers do exist, they often do not fulfil their purpose. As Bogdanor notes, “The prime lesson to be drawn from even a cursory glance at second chambers in federal states is that they recognize less the interests of territory than the interests of the political parties which are strong in a particular territory”. In the Australian Senate, for example, Senators generally vote in accordance with the party whip, acting as a party representative rather than a state representative.\textsuperscript{82} Russell further noted in her comparative study on second chambers that while the upper house in Canada is nominally territorial, connections between it and the provinces are weak, failing to protect against fragmentation and calls for secession by Quebec.\textsuperscript{83}

\textsuperscript{80} A. King, The British Constitution (Oxford University Press, 2007), p304
\textsuperscript{81} V. Bogdanor, The New British Constitution (Oxford University Press, 2009), p164
\textsuperscript{82} Ibid p161-162
\textsuperscript{83} M. Russell, Reforming the House of Lords: Lessons from Overseas (Oxford University Press, 2000), p284
1.6 The current House of Lords is a chamber of considerable expertise and experience compared to the House of Commons, which is becoming increasingly dominated by professional politicians. An elected Lords risks becoming similarly dominated by a narrow group of people and losing a lot of the considerable expertise available in the current House of Lords.

One of the great advantages of the House of Lords is that it largely acts as a “chamber of experts”\(^84\). As Donald Shell puts it:

“At a time when the House of Commons has become increasingly dominated by professional politicians and career politicians, the House of Lords retains some members who are definitely amateur politicians and others who are not politicians at all. These include some who have had highly successful careers elsewhere. There is a mingling of politicians with non-politicians which is unusual in contemporary parliamentary chambers.”\(^85\)

The expertise of the Lords can be illustrated in several ways. One is to look at the most recent report on the work of the House of Lords, which covered in detail the weight of expertise of members who took part in general debates on issues of public policy. Such debates typically account for nearly a third of the business which takes place in the House of Lords Chamber. Consider the following examples mentioned in the report on debates in the 2009-10 session:

- In debates on the economy the members taking part included business leaders, senior economists and former secretaries of state.
- In debates on education the speakers included former secretaries of state, former teachers and heads of a number of universities across the UK.
- A debate on climate change included a wide range of speakers with expertise on climate change, economics, science and the environment, including Lord Stern of Brentford, the author of the influential *Stern Review on the Economics of Climate Change*.
- Speakers contributing to a debate on agriculture included current and former farmers, a former chief of the Environment Agency, a lecturer in farm management, a former chair of the Countryside Agency, and a former president of the Royal Agricultural Society.\(^86\)

These examples are not of course the whole picture, and do not cover the expertise of members scrutinising legislation, or the expertise of the very distinguished members of House of Lords select committees, but even just these few examples provide an interesting snapshot of what the upper House has, and what it risks losing under the coalition’s plans.

We recognise that it is of course difficult to define exactly what an expert is, particularly as a peer who has spent 30 years as, say, a lawyer, may also have their own expertise in an area of policy entirely unrelated to the area of law they have worked in. Such a peer would be an expert in law due to their background and experience but perhaps also an expert in another area due to their political interest in, research in and knowledge of that area.

However, we can draw some useful conclusions. Last year the Constitution Unit at UCL published a report commissioned by the House of Lords Appointments Commission analysing the breadth of

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\(^84\) V. Bogdanor, *The New British Constitution* (Oxford University Press, 2009), p164

\(^85\) D Shell, “To Revise and Deliberate: The British House of Lords” in S. C. Patterson and A. Mughan (eds) *Senates: Bicameralism in the Contemporary World* (Columbus, Ohio State University Press, 1999), p208

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expertise among members of the House of Lords up to 1st October 2009\(^\text{87}\). It should however be noted at the outset that the data should not be treated as an entirely accurate or comprehensive analysis due to the inherent limitations in trying to measure expertise, and the authors of the report make that point in the report itself. Having said this, considering the findings of the report is still a useful exercise to undertake, as this report is the most complete picture that currently exists on this question.

When analysing peers' primary or secondary professional areas, the report showed that 22% of Members of the House of Lords listed 'representative politics' as their primary professional area (with a further 5% listing it as their secondary professional area). This is a significant proportion of the House, and the largest single grouping. There are also significant proportions of peers with backgrounds in the civil service or who have served as political staff or in 'local authority administration'.\(^\text{88}\)

We feel these statistics do have some benefits, not least because the upper house inevitably requires people who are involved in politics to ensure it runs effectively. In addition, those who are in the House of Lords having been involved in local government or having been MPs and/or ministers, are likely to be very effective legislators as they are older and have more experience by the time they enter the Lords. We believe it is particularly valuable for governments to hear from older peers who have served as ministers, especially those who have served in Cabinet. They can bring their extensive experience of government and expertise of the areas of policy they dealt with to bear on later governments. If nothing else, their contribution is valuable when they speak in debates on issues which they have experience of. For example, a former Defence Secretary or Foreign Secretary would be a valuable addition to any debate on an international crisis. Or a former Chancellor would be a valuable addition to any debate on economic policy. A thousand more examples could be suggested – but the point is that it is valuable that former ministers are able to stand up and say to their successors: 'this is what we tried to do, and it did not work', or vice versa. To a lesser extent the same sort of principle might also apply to an MP who has served as an influential chair of a Commons Select Committee.

Having said all this, the central point here is that the vast majority of the current House of Lords is composed of people drawn from all walks of life, most of them from outside politics and government. The figures show that there are a number of peers with expertise in areas such as transport; medicine and healthcare; education and training; higher education; journalism, media and publishing; the voluntary sector; the armed forces and many more.\(^\text{89}\) There are not enough of them by any means, particularly in some areas, but they are there and this can be built on by appointing more people from under-represented categories to address gaps in the House of Lords' capabilities and expertise. Such a diversity of expertise does not exist in the Commons and would not exist in an elected Lords to anywhere near the same extent – many experts would not stand, whereas those who selected the ‘representative politics’ option (such as former MPs) would be more likely to. As ConservativeHome Co-Editor Jonathan Isaby aptly put it; “Of course there will be party political appointees, but part of the beauty of the House of Lords as currently constituted is that many of its members are precisely the kind of people who would not stand for election but whose wise counsel, experience, expertise and knowledge add huge value to the legislative process.”\(^\text{90}\)

\(^{87}\) M. Russell and M. Benton (2010), *Analysis of existing data on the breadth of expertise and experience in the House of Lords – Report for the House of Lords Appointments Commission* (The Constitution Unit, University College London).

\(^{88}\) Ibid, p15

\(^{89}\) Ibid, p15

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We agree entirely. We should further note that even if such experts did stand, we expect that voters would be far more likely to choose an ex-MP with some knowledge across a range of issues and a record of representation rather than an academic expert with an unparalleled knowledge of the constitution or a former soldier or judge. We do not believe that our politicians should be in the business of spending time, effort and money reforming the House of Lords in order to duplicate the composition of the House of Commons.
1.7 Under the current system well over a quarter of the House of Lords (28.5%) do not take a party whip and bring a calmer atmosphere and a more merit-based type of scrutiny to the Lords. Were the upper House to be elected, this number would be significantly reduced and there would be a higher proportion of party political peers.

Coupled with the expertise of the Lords (covered in section 1.6) is the fact that there are a significant number of members of the upper House who do not take a party whip. As Donald Shell points out, the presence of this substantial number of independent peers moderates the impact of party politics on the House and some cross-bench peers are liable to swing opinion on subjects in the House of Lords on which they are acknowledged as being particular authorities.91

As of 3rd May 2011, the House of Lords had a total of 789 members, not including those disqualified or on leave of absence. These are the figures92:

<table>
<thead>
<tr>
<th>Political Party</th>
<th>Number of peers</th>
<th>Percentage of the Lords</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour</td>
<td>243</td>
<td>30.8%</td>
</tr>
<tr>
<td>Conservative</td>
<td>218</td>
<td>27.6%</td>
</tr>
<tr>
<td>Liberal Democrat</td>
<td>92</td>
<td>11.7%</td>
</tr>
<tr>
<td>Other party political peers</td>
<td>11</td>
<td>1.4%</td>
</tr>
<tr>
<td>None of the above</td>
<td>225</td>
<td>28.5%</td>
</tr>
</tbody>
</table>

These figures make it clear that no party has a majority in the House of Lords. Even the coalition government, combining the Conservatives and Liberal Democrats, can muster a total of only 310 peers out of a total of 789, or 39.3% of the upper chamber, far short of an overall majority. By contrast, in the Commons, the coalition has, at the latest count, 305 Conservative MPs and 57 Liberal Democrat MPs, a total of 362 MPs out of a total of 650 (55.7% of the seats in the Commons)93.

What this brief analysis shows is that the House of Lords at present has no government majority, compared to the House of Commons. This is largely down to the fact that the Lords has a very large number of independent peers, who do not take a party whip – 225, or 28.5% – which is well over a quarter of the whole upper chamber. This number is largely made up of the 182 ‘crossbench’ peers as well as the Lords Spiritual, but also includes 15 other peers who are not bishops and do not affiliate with political parties or the crossbenchers, as well as a further three peers in official positions – namely the Lord Speaker, the Chairman of Committees and the Principal Deputy Chairman of Committees.94 By contrast, the House of Commons currently has just one independent MP if we do not count the Speaker and three Deputy Speakers. Yet even this MP – Lady Sylvia Hermon – is not comparable to, say, the cross-bench peers, as she represented the Ulster Unionist Party in the House of Commons from 2001 until March 2010, when she resigned to sit as an independent (although she did hold her seat in the 2010 General Election).

If the Commons is anything to go by, it is very clear that it would be extremely difficult it would be to retain very many independent peers in an elected upper House, and the situation is no more encouraging abroad. In Meg Russell’s comparative study of second chambers in 2000, none of the

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91 D Shell, "To Revise and Deliberate: The British House of Lords" in S C Patterson and A Mughan (eds) Senates: Bicameralism in the Contemporary World (Columbus, Ohio State University Press, 1999), p211
seven upper chambers considered in Russell’s book had a significant number of independent members at the time she wrote it, and that does not appear to have changed since. As she goes on to point out:

“The first lesson, therefore, is that independent members are very difficult to obtain—particularly through election. In most Western democracies, all elections for political office will tend to be dominated by the parties...the most reliable means of ensuring independent members are retained in the chamber is through systems other than election”.

Russell indeed acknowledges that it would be difficult to design a directly elected chamber in which independent candidates would win many seats, but that there are very good reasons to keep independent peers in the House of Lords.

95 M. Russell, Reforming the House of Lords: Lessons from Overseas (Oxford University Press, 2000), p304
96 Ibid, p318
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1.8 Any advantage gained through the introduction of a hybrid (in other words part elected, part appointed) House of Lords would be undermined by issues relating to the impact of a two-tier House of Lords, particularly if – as is likely – appointed peers determine the outcome of important votes.

It seems that the draft Bill on House of Lords reform is likely to propose an 80% elected House of Lords for single terms of 15-year terms, with the other 20% of the upper House being appointed.\(^97\) If this is the case we welcome the fact that 20% of the House of Lords will still be appointed under these proposals. But it is nowhere near enough, and if the draft Bill does indeed propose a hybrid House of Lords, that system will have its own disadvantages which will to a great extent undermine the advantages the 20% of appointed peers will bring to an otherwise mostly elected upper House.

We do not intend to spend a long time covering this, as we have extensively outlined elsewhere the disadvantages of having any elected peers in the House of Lords at all. We would just make the point that any benefit obtained through having 20% of the Lords being appointed would be undermined by the numerous issues and questions which would arise as a result of the two-tier system this would create.

a) Chief among these is the difficulties which will occur in the relationship between appointed peers and elected peers. A particular critic of the idea of a hybrid House of Lords is Lord Steel, former Liberal Party leader and a former Presiding Officer of the Scottish Parliament. He has rightly argued that a hybrid House would destroy the present atmosphere of harmony in the Lords and pointed out that there is already serious disharmony in Scotland between MSPs elected through the regional list system and Scottish MPs and MSPs elected at constituency level. He also raises the point that elected members would be justifiably angry if the votes of appointed members determined any issue before the House of Lords.\(^98\)

b) Further to the above argument, the issues in the Scottish Parliament would likely be a lot different from the Lords because those elected by the regional list system are still elected.

c) There are numerous other practical questions, to which the answers are by no means clear and may not become clear even with the publication of the draft Bill. Would elected peers be paid but appointed peers paid only expenses, as under the current system? Would elected peers get better offices than appointed peers? Would the appointed peers all be crossbenchers? All these questions and more will have to be answered by the government to convince people that a hybrid House could work effectively.

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\(^97\) P. Hennessy, ‘Peers ‘to be elected by PR’ in sop to Nick Clegg’, *The Telegraph*, 16 April 2011.

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1.9 **An elected House of Lords would inevitably cost a lot more money as Members of the Lords would – like MPs – need to be paid a proper salary, would have to receive a pension and would need their own members of staff.**

While we do agree that cost should not be a prevailing factor in pursuit of constitutional reform, we suggest that, aside from making the upper House less effective, an elected upper House would also cost the taxpayer dearly. In these austere times, it is difficult to be sure that we would be able to find the money for it, let alone to be able to justify increased spending on Parliament at a time when people are losing their jobs and public services are being cut. This is particularly the case at a time when the coalition government are specifically extolling the virtues of cutting the cost of politics.99

To establish that an elected Lords would cost more than the current House, we need only compare the cost of the current House of Lords with the House of Commons. In the 2008-2009 session of Parliament, for example, the House of Commons cost, in total, £391.8 million, with the costs of salaries and pensions for MPs costing £157.2 million alone. The House of Lords, by contrast, cost only £106.5 million in total.100 In other words, the House of Commons costs nearly four times as much to run as the House of Lords, with salaries and pensions for MPs alone costing more than the entire cost of the Lords and with millions still to spare.

If the upper House were to take on elected rather than appointed roles, they would be very likely to require salaries, pensions, one or more members of staff and possibly more office space – all of which would significantly increase the cost of the upper House to the taxpayer. Even if there are only 300 members the salaries, pensions and other costs would, we suggest, more than make up for the reduction in the number of peers.

Given the pressures on our national finances and the coalition’s laudable attempts to cut the cost of politics, we suggest that an elected upper house is certainly not a price worth paying, particularly given the damage it would do to Parliament’s public image when the public realise that an elected Lords would cost far more than the current upper House.

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99 For example, part of the justification for cutting the number of MPs from 650 to 600 was that it would save £12 million every year. See, for example, Nick Clegg MP citing this figure at HC Deb, 18 January 2011, columns 681 and 685.

100 HL Deb, 5 October 2009, column 416
PART 2: HOW TO IMPROVE THE UPPER HOUSE IN ITS CURRENT FORM

Many commentators have noted, particularly in recent years, how the debate on Lords reform has too often been dwarfed by the issue of composition and theoretical purity rather than effectiveness. As the Hansard Society recently put it:

“As a revising chamber, detailed proposals for how a reformed House of Lords will deal with legislation should be a paramount concern and priority within the reform package, not a subsidiary issue as appears too often to be the case at present.”

We aim to build on the analysis undertaken in Part 1 with a series of measures to deal with many of the problems with the Lords as it currently stands, particularly those which most spur on people to support an elected House. This section is not, however, intended to be a comprehensive list of all the possible reforms that could be undertaken to improve the House of Lords and make it more effective, not least because many of them have been extensively discussed elsewhere.

We have tried to limit ourselves to discussing and proposing a combination of reforms which:

- Will make the most important contribution to making the House of Lords a more effective second chamber, such as an improved select committee system, introducing voluntary retirement provisions for peers, reducing the size of the House;

- Will most effectively increase public confidence in the House of Lords, for example, taking the power to appoint peers from the Prime Minister and giving it to a strengthened, independent Appointments Commission, toughening up discipline rules, removing the automatic right for bishops and hereditary peers to sit in the House of Lords;

- Will cover only the House of Lords – we have not dealt with numerous proposed reforms which would be extremely welcome, but which have been proposed for the Commons and Lords together – such as a Legislative Standards Committee, joint measures on post-legislative scrutiny, joint business liaison mechanisms and various other important measures. We do concede that it is possible that such measures could be introduced for the Lords alone, as the Leader’s Group on Working Practices proposes for the Legislative Standards Committee, for example. However, a Legislative Standards Committee would be far more useful to have for the House of Commons than the House of Lords, or for both together rather than the Lords alone, given that the Lords do a lot of work in tidying up deficient legislation anyway. Indeed, the Leader’s Group themselves concede that a Legislative Standards Committee would be most effective as a Joint Committee of both Houses.

103 See in particular R. Fox and M. Korris (2010), Making Better Law: Reform of the legislative process from policy to Act (London: Hansard Society), p124 and p156-161
105 Ibid, para 96
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2.1 The House of Lords Appointments Commission should be put on a statutory basis and the power of the Prime Minister to appoint peers should be given to the Commission, making the process independent and ensuring that it is free of concerns about patronage. We recommend that Parliament’s ability to scrutinise the Commission is strengthened to take account of its extra responsibilities.

In this section, the issues surrounding appointment of peers will be addressed in the hope of finding a suitable alternative to election. While this does not seek to undermine the fundamental principle already posited in this paper of an appointed upper House, it does seek to determine a fairer and more representative manner of doing so. This section will first address the current methods of selection and highlight the resulting flaws and secondly, will make suggestions towards building a suitable alternative.

At present there exist a number of routes to becoming a Member of the House of Lords. The first, and most common, is through some form of political appointment. Whether in the form of dissolutions, resignation honours, or political lists, most appointments to the House of Lords are made, in effect, by the Prime Minister. However, this system is open to abuse, as demonstrated by the ‘cash for honours’ scandal.

The second is on the recommendation of House of Lords Appointments Commission. The Government announced its intention to establish the House of Lords Appointments Commission in its White Paper: Modernising Parliament; Reforming the House of Lords (January 1999). The Commission is a non-statutory non-departmental advisory public body which has two main functions: to make recommendations to the Queen for non-political peers and to vet for propriety all nominations for peerages, including those from political parties. The Commission began its search for new Members in 2000 and has since appointed over 50 crossbench peers to the House of Lords. The Commission has also been active in vetting nominations for propriety – indeed, the cash for honours scandal arose only after the Commission raised questions about four potential appointments proposed by then Prime Minister Tony Blair for working peerages in the House of Lords and the Commission has also shown its willingness to stand up to the government more recently by opposing former Tory MP Douglas Hogg’s nomination for a peerage.

However, there have been significant calls over many years for the Commission to be far stronger than it is at the moment. The Wakeham Commission, for example, suggested that the role of the Appointments Commission should be much greater than that envisaged on its creation in 2000. The Wakeham Report advocated that the Appointments Commission should be the only avenue into the second chamber for appointed peers, whether such individuals reach this point through selection as a party member, or through selection by the Commission to become a crossbench peer. In other words, this would mean taking the right to appoint peers out of the hands of the Prime Minister and giving it to the Appointments Commission. This is a crucial point. We believe that

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109 C. Gammell, ‘Tory MP who claimed for moat cleaning is denied peerage’, The Telegraph, 6 March 2011
111 Ibid
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this reform is not only a good idea but also long overdue. It would lead not only to greater cohesion between peers but also would avoid the risk of abuse of the system and restore public confidence in the system of appointments to the House of Lords. Indeed, the Public Administration Committee called for the Prime Minister’s power to appoint peers to be removed after the cash for honours scandal in large part due to their concern about the need to prevent abuses and rebuild public confidence in the upper House. As they rightly noted, “Political patronage has been effectively removed from the honours system; its scope should also be greatly reduced in the awarding of peerages. This would, at a stroke, remove much of the room for abuse in the alleged link between donations and peerages”. Similar proposals have been made by many over the past decade, including by the last Labour government, arguing for an independent statutory Appointments Commission which is accountable to Parliament rather than the executive. Indeed, there is even a Bill waiting to be passed into law which would make these changes to the Commission, namely Lord Steel’s House of Lords Reform Bill.

There is however an outstanding issue relating to whether or not the parties should nominate peers or whether the Commission should nominate political peers as well as crossbench peers. We believe the simplest way to operate the system is to let the parties nominate their own candidates as before, putting them to the Commission for a final say. As to how to calculate the proportion of party political peers to appoint, a recent report by the UCL Constitution Unit suggested that the Appointments Commission should “determine the number of vacancies, divide these using a clear formula between the parties (and Crossbenchers), and invite the parties to nominate”, appointing each batch of new appointments in proportion to votes cast at the last general election for the House of Commons.

Wakeham goes further to suggest that the Appointments Commission should not only be independent of the political parties in practice, but should also be seen to be so. To facilitate this aim there is clearly as case that a number of safeguards should therefore be set in place to ensure the independence of the Commission. The most important of these safeguards relates to its legal status.

To preserve independence, it has been suggested the Commission could be grounded in statute, rely on a Royal Charter, or be entirely non-statutory as is the case for other constitutional bodies such as the NAO. However, placing the Appointments Commission on a non-statutory basis would mean that its internal operation could be altered or that it could even be abolished without reference to Parliament. Clearly this could not guarantee its independence and impartiality. Establishment on the basis of a Royal Charter, as is the case with the Bank of England, will certainly give greater independence and permanence, but it could not guarantee its immunity from Government interference. For these reasons, we agree with the recommendation made by Lord Wakeham that the Appointments Commission should be placed on a statutory footing. The other benefit is that if the Commission is established by primary legislation, any amendment of the legislation would require open debate in Parliament and the approval of the second chamber itself. This is not a new

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113 Department for Constitutional Affairs (2003), Constitutional Reform: Next steps for the House of Lords (London: The Stationery Office)
115 M. Russell (2011) House Full: Time to get a Grip on Lords Appointments (Constitution Unit, University College London), p14
117 Ibid, p136
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suggestion – indeed, as the Public Administration Committee has rightly noted, the intention was always to create a statutory Appointments Commission as part of the second stage of Lords reform.\textsuperscript{118}

In terms of supervision, the Appointments Commission is already subject to considerable scrutiny by Parliament. The current Chair, Lord Jay, was subjected to a pre-appointment hearing by the House of Commons Public Administration Select Committee\textsuperscript{119} and has appeared before that committee and the House of Lords Constitution Committee for further scrutiny.\textsuperscript{120} There are however ways in which this scrutiny could be strengthened in the event that the Commission is given extra responsibilities. The Wakeham Report proposed that the chair of the Committee should answer questions in the upper House once a year as well as producing an annual report. Wakeham envisaged that this report “\textit{will act as the vehicle by which the Appointments Commission will set out the characteristics required of members of the second chamber and its strategy for ensuring that there is an appropriate balance of members from all parts of society and among the political parties. This strategy might include setting out the types of nomination that would be particularly welcome over the coming year}”\textsuperscript{121}. To increase diversity into the Lords we would suggest that this included information on the party, gender, ethnicity, age and region or new entrants. If it was felt that a particular group is under-represented, the House could suggest to the Commission that they appoint the next set of peers while keeping the issue in mind.

Wakeham recommends that the Appointments Commission should include representatives of the three main political parties and a number of independents\textsuperscript{122}. It is submitted that the current Appointments Commission as it stands already satisfies this criteria. Indeed the Commission has seven members, including the Chair. Three members were appointed to represent the main political parties. The other three members and the Chair are non-political and independent of Government. The current membership includes, Lord Jay of Ewelme (Chair), Lord Hart of Chilton (Labour), Lord Howard of Lymnpe QC (Conservative), Baroness Scott of Needham Market (Liberal Democrat), as well as three other independents, The Baroness Campbell of Surbiton DBE, Dr John Low CBE and Professor Dame Joan Higgins. With this in mind, we would recommend that the current Appointments Commission remains in place for the duration of its term and future members of the Commission should continue to be selected on the same principles for the same period of tenure.

In terms of making appointments, the Commission is already on the right track. The Commission currently assesses nominations against its stated criteria and seeks nominations from people that can demonstrate, amongst other things, a record of significant achievement, an ability to make an outstanding contribution and a strong and personal commitment to the principles and highest standards of public life.\textsuperscript{123}

While we agree that the Appointments Commission should keep these criteria up to date, it is submitted that these, at present, certainly do set a benchmark for members of the second chamber, both individually and collectively. However, in line with Wakeham’s recommendations, it is crucial

\textsuperscript{118} House of Commons Public Administration Select Committee, Propriety and Peerages, 2\textsuperscript{nd} Report of Session 2007-08, p39
\textsuperscript{119} House of Commons Public Administration Select Committee, Selection of a new Chair of the House of Lords Appointments Commission, 13\textsuperscript{th} Report of Session 2007-08
\textsuperscript{120} See House of Lords Select Committee on the Constitution, Meeting with Lord Jay of Ewelme, Chairman, House of Lords Appointments Commission, 11\textsuperscript{th} Report of Session 2010-11
\textsuperscript{121} Royal Commission on Reform of the House of Lords (2000), A House for the Future (London: The Stationery Office), p137
\textsuperscript{122} ibid, p135
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that the Appointments Commission retains sufficient flexibility to determine the characteristics required in order for it to respond to changes in circumstances, or in society as appropriate\textsuperscript{124}.

To build upon the foundations already set in place, it is suggested that these criteria be applied to all appointments, whether entirely on the initiative of the Commission, or by nomination from a political party. If the Commission is not satisfied that a nominee meets the criteria, their nomination should be rejected, regardless of personal connections or status. It is hoped that this will help to restore faith in the House of Lords and provide a medium to make it more representative.

Under the current regime, the Commission simply invites nominations to be considered. However, to make the system truly representative it is recommended that the Commission takes a more pro-active role.\textsuperscript{125} We fully endorse the proposal made by Wakeham that “the Appointments Commission should systematically develop its knowledge of, and relationship with, the main individuals and organisations in a wide range of vocational areas and other sectors of society (business organisations, trades unions, voluntary groups, interest groups, cultural organisations, sporting organisations, faith communities, and so on) across the nations and regions of the United Kingdom.”\textsuperscript{126} This will enable the Commission to seek out those individuals who might ordinarily not seek out honours, but nevertheless would make a valuable contribution to the upper House.

It is accepted that political appointments will always pay an important role in the inner workings of the Lords, but, as already alluded to, we envisage that the Appointments Commission will have the final say in filling these places. In line with Wakeham’s recommendations, we propose that political parties should put nominees to the Commission and make a case for their appointment, which will in turn be considered by the Commission based on the criteria as set out above, as well as the overriding needs of the chamber at the particular time.\textsuperscript{127}

The final issue to consider is how the appointments process should work. As the Wakeham Report points out, although “it would be possible for the Appointments Commission to recommend a continuous trickle of appointments to the second chamber, such an approach would make its task of ensuring a balanced representation in the second chamber more difficult.”\textsuperscript{128} We would endorse the view that a regular, perhaps half-yearly cycle of appointments would be easier in administrative terms, as well as enabling the Commission to engage more effectively with a programme of thematic selection and in working towards a more representative chamber.

\textsuperscript{124} Royal Commission on Reform of the House of Lords (2000), A House for the Future (London: The Stationery Office), p139
\textsuperscript{125} Ibid
\textsuperscript{126} Ibid
\textsuperscript{127} Ibid
\textsuperscript{128} Ibid
2.2 An entirely new, comprehensive system of cross-cutting select committees should be introduced to add to the work of the current select committees and make better use of the experience and expertise of peers.

The Select Committee system in the Westminster Parliament has been widely seen as one of the strongest additions to Parliamentary scrutiny in the UK. House of Commons Speaker John Bercow recently described the select committee system as having become a “vital part” of Westminster life since it was first introduced in 1979.\(^\text{129}\) This system is most visible in the House of Commons, which currently has a total of 34 select committees, most of which shadow particular government departments, although there are some exceptions, for example, the Public Administration Committee. Indeed, there are also a number of committees which fall under the banner of House of Commons select committees even though they are very different from most of the other committees, such as the new Backbench Business Committee. These committees are becoming increasingly powerful and influential. In the Commons, recent reforms have led to the Chairman of each select committee being decided through direct election by MPs rather than by party whips – a reform recommended by the Wright Committee, among others.\(^\text{130}\)

The House of Lords also has some select committees, but unlike the Commons does not have a system of departmental select committees covering every government department. Instead, it has a smaller number of what are described as cross-cutting select committees. These focus on more specific areas of policy which cut across government departments. These committees are generally well-respected – particularly due to the expertise of their members – and have been set up largely on an ad-hoc basis, some only very recently. The earliest was the European Union Committee, first set up in its original form in 1974.\(^\text{131}\) Others have however been more recent – the Constitution Committee, for example, was only set up in 2001,\(^\text{132}\) in response to the Wakeham Commission’s recommendation of creating a new select committee in the Lords on constitutional issues.\(^\text{133}\)

The select committees in the Lords are highly respected for the expertise and experience of their members, which typically makes their reports very influential. As the most recent edition of ‘The Work of the House of Lords’ has noted, the Constitution Committee contains senior lawyers, former ministers and academic experts on the constitution; the Economic Affairs Committee has in recent years included former Chancellors, senior Treasury officials, academics and business leaders; the European Union Committee includes former ministers, EU commissioners, MEPs and ambassadors among its members; and the Science and Technology Committee draws heavily on the expertise and experience of a number of peers who are distinguished scientists.\(^\text{134}\) Yet, as has been has rightly noted by Lord Adonis, Director of the Institute for Government, vast areas of public policy are entirely absent from the remit of the current select committee system in the House of Lords:

“There is not a single report on any of the public services – nothing on education, health, law and order. There is also nothing on energy, transport or infrastructure; nothing on defence, nothing on


\(^{130}\) House of Commons Reform Committee, Rebuilding the House, 1st Report of Session 2008-09.


\(^{132}\) Ibid


\(^{134}\) House of Lords, The Work of the House of Lords – 2009-2010, p15-18
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Immigration, nothing on welfare. Yet in all these areas, Members of the Lords possess great expertise, largely untapped. In my entire five years as a minister in the education and transport departments, I was never once called to give evidence to a committee of the Lords on domestic policy.  

By comparison, it is widely acknowledged that the select committee system, particularly in the House of Commons, has limited capacity and is currently overstretched. We believe there are several reasons for this.

Firstly, the sheer amount of government activity and legislative proposals which they have to examine. This huge level of activity has been closely analysed by the Hansard Society, who have rightly pointed out that governments who bring forward fewer initiatives and propose less legislation to Parliament are seen, particularly within the prevailing media narrative, as weak, out of ideas or to have simply run out of steam. This culture means that select committees consequently have a great deal to consider, examine witnesses on and report on, picking up the pieces of rushed and ill-considered policy, often with insufficient time to do it in and insufficient resources to do it with. As John Bercow MP put it before he became Speaker:

“The scale and complexity of ministerial activity have increased but the time and resources to scrutinise it have not. In short, government is doing more, for better or worse, well or badly, but MPs are not doing correspondingly more to monitor, question or evaluate executive endeavour.”

Second, the strengthening of select committee powers. This is a very welcome trend which should not be reversed, but it would be wrong not to accept that this does not contribute to the problem. Scrutinising proposed appointees to various bodies, ranging from the Office of Budget Responsibility to the Judicial Appointments Commission, inevitably takes time and adds to the workload of select committees.

Third, there are early signs of a new trend towards spotting and attempting to head off future problems. One good example of this is the approach of the Public Accounts Committee, under the chairmanship of Margaret Hodge. Although very welcome, if this becomes a widespread trend it will cause a further problem for committees and their members in terms of workload.

Fourth, the increasing use of pre-legislative and post-legislative scrutiny of legislation. This is perhaps the most welcome trend of all - it is a well-documented fact that pre-legislative scrutiny has clear

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benefits and can immeasurably improve legislation.\footnote{A. Brazier, S. Kalitowski and G. Rosenblatt with M. Korris (2008), \textit{Law in the Making: Influence and Change in the Legislative Process} (London: Hansard Society), p138} As the Hansard Society’s research has found, numerous bills under Labour which were subject to pre-legislative scrutiny were all heavily influenced by it, and one – the Corruption Bill – was even killed off altogether as a result.\footnote{Ibid, p197} One needs only consider how much badly drafted legislation such as the Legislative and Regulatory Reform Bill could have been improved by pre-legislative scrutiny.\footnote{Ibid, p127} Post-legislative scrutiny is similarly important – it can only be a good thing to examine the effects of legislation once it has been passed to determine whether it has achieved its goals. However, spending time on pre-legislative and post-legislative scrutiny inevitably increases the pressure on the time and resources of select committees even further. As far as we are aware, no select committee has, to date, published a report on post-legislative scrutiny of legislation despite the fact that government departments have in the last year published a number of post-legislative assessments on various Acts of Parliament.

The answer to these problems is not to reverse the trends identified in points 2-4: they are very welcome trends and should be further encouraged. Nor is it to simply deal with point 1 – this is a very complex problem which will only be solved by an unprecedented cultural change among our political class and the media. How to achieve such a cultural change is beyond the scope of this paper. Even if it were possible for such a cultural change to occur, it would still not eliminate the need for committees to scrutinise government policy and legislation - only reduce it. Nor would it address the issues raised in points 2-4.

We believe the answer relies on developing a new, radical and expanded select committee system for the House of Lords, expanding the tools available to Parliament to scrutinise the government. Reform is, however, also a good thing for its own sake. As well as lightening the load on the Commons it will also significantly improve scrutiny of government and legislation, and it will give peers more incentive to turn up and contribute to the work of the upper House. As has been dealt with in part 1, the House of Lords has very many distinguished members, and it seems a shame to not use the full expertise of those figures to the greatest extent possible to assist in shaping public policy and the laws that affect our daily lives. If we are to have such experts in the Lords, we believe that we may as well make as much use of them as we can. As Lord Adonis aptly puts it: ‘\textit{I know of no institution which possesses so much talent, and makes so little use of it}’.\footnote{Lord Adonis, ‘Function before form’, \textit{The House Magazine}, 25 October 2010, p3}

One of the easiest ways to do that is to introduce more select committees, giving more peers more opportunities to get involved. Indeed, the Conservative Party’s Commission to Strengthen Parliament, set up when William Hague was Conservative leader and chaired by Lord Norton of Louth, recommended a decade ago that the House of Lords expand its existing complement of select committees. This report was a good start in the sense that it backed the Wakeham Commission’s call for a new Constitutional Committee and also envisaged committees on devolution, social policy (looking at social security, housing, health and tax policy) and macro-economic policy.\footnote{P. Norton (2000), \textit{Strengthening Parliament: The Report of the Commission to Strengthen Parliament} (London: Conservative Party), p22 and p40} Another system has been proposed by Lord Adonis, Director of the Institute for Government, in his submission to Lord Goodlad’s Leaders Group on Working Practices. Lord Adonis proposed the introduction of three new cross-cutting select committees on domestic policy, to cover public services, national infrastructure and welfare, on the basis that these committees would be able to undertake much broader enquiries than those of departmental select committees in the House of
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Commons. Most recently, the Leader’s Group on Working Practices chaired by Lord Goodlad itself proposed that any new select committees should make the best use of the expertise of peers; complement the work of departmental select committees in the Commons and address areas of policy that cross departmental boundaries. In the event, however, the Leader’s Group proposed creating only two extra permanent sessional select committees on cost grounds.  

We believe that all these proposals are a very good start, but that they need building on. Having just a few extra committees to cover the entire array of domestic policy is likely to be impractical. There is a very strong case for cross-cutting committees, but we do not believe, for example, that education and health can or should be rolled into one select committee on public services. Nor do we believe that the expertise of the Lords would be best utilised by having so few extra committees – there would inevitably be a limited number of peers that could become members of the new committees. A couple of extra select committees would also be quickly overwhelmed by the sheer amount of policy and legislation they are supposed to scrutinise, with only limited time to produce reports, to call ministers and other witnesses, examine them and so on. Lord Adonis even seems to concede this point in his letter to Lord Goodlad’s Leader’s Group, arguing that the need for effective scrutiny of government policy is in fact more than sufficient to justify a parallel system of departmental committees along the lines of those that exist in the House of Commons, with the relevant matching committees working together to avoid unnecessary duplication. To add to all this, domestic policy is not the only issue – foreign policy and international issues outside Europe are not covered at all by the current system.

In short, none of these proposals fit the criteria for new select committees set out by the Leader’s Group, not even the Group’s own proposals – they do not make the best use of the expertise of peers, do not effectively complement the work of departmental select committees in the Commons, nor effectively address areas of policy that cross departmental boundaries.

We do acknowledge the concerns that the Leader’s Group on Working Practices raised about the cost of new committees, but we believe that two or three extra committees are not going to make a significant difference to scrutiny and investigation of the vast majority of government policy which is not covered by the current committee system. At the moment we are able to afford to have a full departmental select committee system in the House of Commons, where MPs are less likely to be experts in the work of the committees and only spend roughly 14% of their time on committee work anyway. There is consequently no credible reason to oppose an increased number of select committees for the House of Lords based on cost, particularly given that Lords reports are more often evidence-based and consensual than those of the Commons, and the fact that peers not only have considerable expertise and experience but also a lot more time to devote to committee work. It is also important to remember that – as noted elsewhere in this report – the House of Lords currently costs a fraction of the total cost of the House of Commons. A dozen or so extra select committees are not going to add substantially to the current cost of the Lords, and other measures

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148 http://www.instituteforgovernment.org.uk/pdfs/letter_to_Lord_Goodlad_261010.pdf*


150 G Rosenblatt (2006), A Year in the Life: From Member of Public to Member of Parliament (London: Hansard Society), p33

151 See section 1.9.
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that we propose elsewhere in this report such as reducing the number of peers may well help to account for at least some of these extra costs anyway.

We believe there are two options. The first is to create a system of departmental select committees in the Lords to mirror those in the Commons. There would be a lot of merit to this system as it would help relieve the workload of all committees in the Commons, and there is no reason why committees which overlap in the Commons and Lords cannot work to avoid duplication – indeed, they already do this. The select committees of the Lords already overlap with departmental select committees in the Commons – the Science and Technology Committee overlaps with an exact namesake in the Commons and the Europe Committee overlaps with the European Scrutiny Committee, as well as the overlap between the Constitution Committee and the newly created Political and Constitutional Reform Committee. We do, however, accept that there is an outstanding issue: namely how this system would be reconciled with the current cross-cutting committee structures, particularly in relation to the well-respected Europe Committee, as well as cost issues raised by Lord Goodlad’s Leader’s Group.

The second is to keep the current select committee system of cross-cutting committees but to expand this system by creating a substantial number of extra cross-cutting committees. The list that follows gives examples of how we envisage these committees might be put together and might function in practice, in addition to those committees that already exist:

- A Devolution Committee to consider issues relating to the devolved institutions in Wales, Scotland and Northern Ireland (perhaps established as a sub-committee of the Constitution Committee, as proposed by Wakeham 152);
- An Education Committee covering all the current DfE portfolio and in addition areas such as Further and Higher Education currently covered by BIS;
- An Environment Committee bringing together a cross-government approach to environmental policy, covering DEFRA and climate change portfolio of DECC;
- An Equality and Social Justice Committee covering all issues relating to equality, discrimination, social justice and social mobility across government;
- A Home Affairs and Justice Committee, which would cover topics from the Home Office and MoJ such as immigration, policing, prison policy, and criminal justice;
- A Foreign Affairs and International Development Committee, which would bring together the work of the FCO and DFID that is not already covered by the European Union Committee;
- A National Infrastructure Committee, covering all areas of capital building and infrastructure, particularly those affecting departments such as the DfT, DECC, DoH, DfE and DCLG;
- A National Security Committee to cover issues relating to the security of the UK across government, particularly the work of the MoD and the counter-terrorism portfolio of the Home Office;
- A Culture, Tourism and National Heritage Committee to cover issues relating to DCMS which are not already dealt with by the Communications Committee;
- A Health and Well-Being Committee to scrutinise the work of the DoH as well as promoting the need for healthier lives and general wellbeing across government;
- A Welfare and Pensions Committee to scrutinise issues surrounding benefits and pensions policy across government, particularly in the DWP;
- A Business, Enterprise and Employment Committee to cover most of the work of BIS as well as the employment portfolio from the DWP;

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- A Local Government, Communities and Civil Society Committee to take a broad look at different elements of policies affecting local communities in DCLG including local authority administration, planning, housing, community cohesion, as well as the civil society portfolio of the Cabinet Office.
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2.3 Newly appointed peers should be subject to fixed terms of 10 years, renewable on up to two occasions for up to 10 years at the sole discretion of the Appointments Commission.

The suggestion of fixed terms of appointment has been a consistent feature in debates on reform of the House of Lords. The Wakeham Commission long ago argued for fixed 15-year terms for appointed members, with the possibility of a second term of appointment (at the discretion of the House of Lords Appointments Commission) and since then there have also been numerous other suggestions. The Joint Committee on House of Lords Reform, for example, proposed a single fixed-term of 12 years for appointed peers, and a cross-party group of MPs in 2005 backed non-renewable terms equivalent to three House of Commons terms, which would normally amount to 12-14 years. Conservative MPs Sir George Young and Andrew Tyrie made a similar call in 2009 for newly appointed peers to serve a fixed term of three House of Commons terms. Government white papers have also called for fixed terms, such as a 2007 white paper which called for a non-renewable 15-year fixed term for appointed peers as well as elected peers. Indeed, newspaper reports even suggest that the coalition government is considering 15-year fixed terms to be announced in its draft Bill on Lords reform.

We believe that while the current system of life membership has a lot to recommend it, there are certainly compelling arguments for the introduction of fixed terms. As Lord Goodhart puts it:

“First, I believe strongly that all future Members of your Lordships’ House, whether appointed or elected, should be here for a limited term of office... Peerages...are awarded, or are supposed to be awarded, to people who can and will make genuine contributions to the work of your Lordships’ House...However, expertise has a use-by date...Term limits would also help to reduce the excessive number of Members of your Lordships’ House at any one time.”

However, while a move from life appointments to the House of Lords to fixed-term appointments would be an obvious way of containing the second chamber’s growing size, there would be a need to take care in designing such a system to ensure that continuity and expertise in the upper House was not lost, probably by allowing at least some provision for reappointment. Taking into account the obvious benefits of this sort of reform, we do nonetheless recognise the importance of the conclusion of the Leader’s Group chaired by Lord Hunt of Wirral that “such a measure would deprive the House of some of its most active members, and could alter the capacity of the House to take the long view, so eroding one of the characteristics which most usefully distinguishes it from the House of Commons.”

We consequently think the best starting place when considering how to approach fixed terms is not to look at proposals along the lines of a single, non-renewable term of office of 10-15 years. Instead, it is to look at renewable terms so members can serve for a longer period if they wish. In particular, the Royal Commission chaired by Lord Wakeham suggested a fixed 15-year term, but then also

153 Joint Committee on House of Lords Reform, House of Lords Reform: First Report, 1st Report of Session 2002-03, p19
154 Constitution Unit (2005), Reforming the House of Lords: Breaking the Deadlock (Constitution Unit, University College London), p22
155 A. Tyrie and G. Young, An Elected Second Chamber: A Conservative View (Constitution Unit: 2009), p6
157 P. Hennessy, ‘Peers ‘to be elected by PR’ in sop to Nick Clegg’, The Telegraph, 16 April 2011.
158 HL Deb, 24 March 2010, column 1001
159 House of Lords Leader’s Group on Members Leaving the House, ‘Members Leaving the House’, Report of Session 2010-11, p15
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suggested that members at the end of their term could choose to apply for reappointment by the House of Lords Appointments Commission for a further term, up to a maximum of 15 years. Under their system, this would mean that while a large proportion of the Lords would serve only a 15 year term, those who wished to serve longer and were deemed by the Appointments Commission to be suitable for a second term could do so, up to a maximum of 30 years when the two terms are added up.

Given that Wakeham estimated that the length of service of life peers in the House of Lords is about 30 years on average anyway, we believe that 30 years would be a fair maximum limit on the length of a life peer’s service in the House of Lords. We would however prefer a system which had a bit more flexibility than the Wakeham system and which gave the Commission an extra opportunity to hold peers to account for low attendance rates or lack of contributions to the House of Lords.

We consequently recommend an adapted version of the Wakeham Commission’s proposals which would mean that peers are initially appointed for a single 10-year fixed term, but which is renewable twice for up to 10 years per term at the discretion of the House of Lords Appointments Commission, up to a maximum of 30 years of service.

However, we do recognise that, in practice, implementation of this recommendation may be challenging. In particular, what do we do with those currently sitting in the Lords who entered with the expectation of a peerage for life?

After some thought, we incline towards the view that term limits should not be introduced for current life peers. As the 2007 government White Paper pointed out; “The current members have entered the House in the expectation that they will stay for life. Some will have given up careers and other roles to do so. It would be unfair to require them to leave in these circumstances.”

At the same time, we also recognise that life peers being appointed while reforms such as term limits are being discussed will be well aware that the system might be changed and that they might end up being in the House of Lords for a fixed term rather than for life. We consequently recommend that system along the lines of that proposed by Sir George Young MP and Andrew Tyrie MP is followed. They suggest that those accepting new peerages after a certain point should be required to sign a commitment that if legislation was enacted to limit peers to fixed terms that they would transfer to that status, backdated to the date of their appointment. Such an agreement would, however, have to be a matter of cross-party consensus.

Once this step had been taken there would be no further creation of life peers for the House of Lords and this would also be a convenient point to cease the elections for hereditary peers and give existing hereditary peers the chance to become life peers. This would mean a gradual shift towards a House of Lords where term peerages eventually became the only form of membership of the upper House.

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162 Ibid, p117
164 A. Tyrie and G. Young, An Elected Second Chamber: A Conservative View (Constitution Unit: 2009), p25
165 Ibid
2.4 **The size of the House of Lords should be capped. In the short term there should be a moratorium on appointments until the total number of members drops below a limit of 750 members. In the longer-term, there should be a statutory cap on the House of Lords becoming any larger than the House of Commons, and this reduction to the size of the Commons should be achieved over a transition period of 10 years to avoid any compulsory retirements.**

It is very clear that, as it currently stands, the House of Lords has too many members. While there is disagreement amongst commentators as to what the exact number of peers should be, the House of Lords currently has 789 members, not counting those who are on leave of absence or who have been temporarily excluded from the House for one reason or another.\(^{166}\)

There is clear and growing unease at the growing size of the upper House. In particular, a recent report published by the Constitution Unit went so far as to warn that the House of Lords is full and strongly urged the Prime Minister to stop creating new members\(^{167}\). The report was backed by a cross-party group of senior peers, respected academics and constitutional experts.\(^{168}\)

One might wonder why a large number of peers is a bad thing. However, the recent Leader’s Group chaired by Lord Hunt of Wirral on Members Leaving the House noted that there were a number of important implications of a growing House:

- Firstly, having a large number of peers risks doing damage to the upper House’s reputation as a serious, respected second chamber, particularly at a time when the coalition government is reducing the number of members of the House of Commons.
- Secondly, the more members the upper House has, the more difficult it becomes to conduct business effectively. More members means a shortage of seats in the Chamber and increased competition to initiate debates, ask questions, join select committees and so on.
- Thirdly, increasing numbers of peers puts more pressure on resources such as ICT, office space, procedural, research and information services.\(^{169}\)

Having established that the House of Lords has too many members, the logical next question is how many members the Lords should have. There have been a wide range of suggested figures. For example, the Public Administration Committee suggested in 2002 that the House of Lords should have only 350 members.\(^{170}\) We would however argue that this would not be realistic without losing a vast body of expertise and significantly altering the way in which the House of Lords operates. It is also important to note that this recommendation was in the context of an elected rather than an appointed upper House. Given that it has been estimated that there are generally no more than this number of 350 members sitting on any given day (of course with a few notable exceptions), this type of approach seems unnecessary and heavy handed.

We feel a more considered and reasonable approach would be to aim to reduce the number of Lords to be the same size as the Commons. This currently stands at 650 but is itself being reduced to 600 by the coalition. The Wakeham Commission suggested that a reformed chamber would probably

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\(^{167}\) M. Russell (2011), *House Full: Time to get a Grip on Lords Appointments* (Constitution Unit, University College London)

\(^{168}\) Ibid, iii-iii

\(^{169}\) House of Lords Leader’s Group on Members Leaving the House, ‘Members Leaving the House’, Report of Session 2010-11, p8-9

\(^{170}\) See House of Commons Public Administration Select Committee, *The Second Chamber: Continuing the Reform*, 5\(^{th}\) Report of Session 2001-02
have around 550 members\textsuperscript{171}, and government white papers have suggested similar numbers\textsuperscript{172}, as did the Joint Committee on House of Lords Reform\textsuperscript{173}. However, it is clear that even taking into account removal of the hereditary peers, the introduction of voluntary retirement provisions and natural wastage, it may take some considerable time to reach these sorts of numbers.

We consequently endorse a two-stage approach to this process. As an immediate first step, we concur with the view of the Constitution Unit that there should be a moratorium on appointments until the number of peers falls below 750 and that pending further reform that this should be an absolute cap on the number of peers.\textsuperscript{174} However, even if the House is reduced to only 750 members, we are sceptical that this would dramatically increase the ability of the House to operate to its full capacity, especially since the current membership of the House, discounting those who are temporarily excluded, is currently 789. Indeed there would still be substantial constraints on resources and space. As a second, longer-term step we recommend a statutory cap on the size of the House of Lords to match the size of the House of Commons – which will soon be 600 – to come into force 10 years after the passage of the legislation introducing the cap. As it stands, the House of Lords is currently the only second chamber in the world in a bicameral legislature which is bigger than its respective lower chamber\textsuperscript{175}, and we believe that at the very least the House of Lords should be no larger in size than the House of Commons.

In other words, the House of Lords will, within a 10-year period, have to reduce its size from 750 (once the initial moratorium on appointments is introduced) to the size of the House of Commons (currently planned to be 600). We believe that a reduction of numbers on this level will herald a more manageable House of Lords, and that this is a perfectly reasonable amount of time in which to reduce the size of the House without taking measures such as compulsory retirement. We particularly draw inspiration from an early government White Paper which suggested a similar option:

\begin{quote}
\textit{The Government...proposes an eventual cap of 600, which would come into force 10 years from the coming into force of the Act. The maximum target size for the Appointments Commission during the transition would be as close as may be to 750. The Government would expect the size of the House gradually to decline to 600 during the period.}\textsuperscript{176}
\end{quote}

We think that this approach strikes a balance between the need to manage the size of the House in the short term, while also setting out a long-term approach to making the Lords a more manageable legislative chamber.

In line with our previous recommendation to place the Appointments Commission on a statutory footing, we envisage that the Commission would have the final say over appointments and would be able to prevent the House growing past its short-term limit of 750 members and then its longer-term limit of the size of the House of Commons.

\textsuperscript{171} Royal Commission on Reform of the House of Lords (2000), \textit{A House for the Future} (London: The Stationery Office), p137
\textsuperscript{172} See Cabinet Office (2001), \textit{The House of Lords: Completing the Reform} (London: The Stationery Office); Leader of the House of Commons (2007), \textit{The House of Lords: Reform} (London: The Stationery Office)
\textsuperscript{173} Joint Committee on House of Lords Reform, \textit{House of Lords Reform: First Report, 1st Report of Session 2002-03}
\textsuperscript{174} M. Russell (2011), \textit{House Full: Time to get a Grip on Lords Appointments} (Constitution Unit, University College London), p5
\textsuperscript{175} ibid, p9
\textsuperscript{176} Cabinet Office (2001), \textit{The House of Lords: Completing the Reform} (London: The Stationery Office)
2.5 **The rules on disciplining peers should be toughened up in line with those of the House of Commons so that peers can be removed if they receive a jail sentence of a year or more. This measure should be followed by the setting up of a Leader’s Group to consider further measures to improve discipline in the House of Lords.**

While the House of Lords is able to suspend members for a defined period (although not longer than the remainder of the current Parliament) it is, at present, almost impossible to expel a member permanently. In light of recent events, and given declining public confidence in the House of Lords, this is clearly an unsatisfactory situation.

A recent example of this in practice has been the light treatment of Lord Taylor of Warwick, who fraudulently filed for travel and overnight subsistence that he was not entitled to, at a cost of over £11,000 to the taxpayer. It is an interesting case and the facts are stark. He has been found guilty by a jury by a margin of 11-1, thereby bringing Parliament into disrepute by his actions. He is almost certain to receive a substantial prison sentence. Despite all of this, there currently exists no mechanism to remove him or others like him from the Lords. Nothing short of a specific Act of Parliament for each convicted peer can expel them from the House of Lords under the current system. Yet not a single Act of Parliament has yet been passed to expel a specific life peer from the upper House. Nor is the case of Lord Taylor of Warwick an isolated incident. There are a number of other peers who have been allowed to remain members of the House of Lords despite being convicted of serious criminal offences such as Jeffrey Archer (perjury), Conrad Black (business fraud) and former Labour MP Mike Watson (arson).

This situation is a stark contrast to the House of Commons. While very few serving MPs have been expelled from the Commons in the last century, there nevertheless remains a mechanism in place to do so. The Representation of the People Act 1981 states that any MP will be disqualified from sitting as an MP if they are “detained anywhere in the British Islands or the Republic of Ireland ... for more than a year for any offence”. In practice this expulsion mechanism is rarely necessary, as MPs expecting such a sentence will usually resign or not stand for re-election, as in the case of Eric Illsley. But the important point is that it at least exists in the House of Commons.

With such a disparity between the two Houses, there is clearly a case for reform. Indeed, both coalition leaders have given a clear indication that they feel that this is an entirely unjust situation. Speaking in 2009, the now Deputy Prime Minister, Nick Clegg MP noted that this type of case “exposes the extraordinary protection enjoyed by the political class. One rule for lawmakers and another for everyone else.” Similarly, in an interview with the BBC, David Cameron said; “What is completely wrong is that members of the House of Lords can behave badly, can break every code of ethics in the book and yet they cannot be suspended or expelled from that House of Parliament. So we would change the law.”

However, it appears that the Labour government’s efforts to place these sentiments onto the statute books were not fruitful. While the Constitutional Reform and Governance Bill, as initially introduced, included provisions which would have allowed for the suspension and expulsion of Peers from the House of Lords, these provisions were removed from the Bill during the wash-up period at the end of the 2009-2010 parliamentary session. So what is the way forward?

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177 'Lord Taylor found guilty of fiddling his parliamentary expenses', *The Daily Telegraph*, 25 January 2011
178 Representation of the People Act 1981 c.34, s1
179 P. Curtis, ‘Eric Illsley to quit as MP following expenses conviction’, *The Guardian*, 12 January 2011
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We believe that, as a first step, the House of Lords should be brought into line with the Commons by removing those convicted of offences that carry a sentence of more than one year in prison. Lord Steel’s House of Lords Reform Bill (which at the time of writing is at Committee stage in the Lords), provides a good example how this could be achieved in practice:

“A person found guilty of one or more offences (whether before or after the passing of this Act and whether in the United Kingdom or elsewhere), and sentenced or ordered to be imprisoned or detained indefinitely or for more than one year, shall cease to be a member of the House of Lords.”

This is however only a first step. If anything, we believe House of Lords procedures need to be tougher than those of the House of Commons because MPs are directly accountable to the public while peers are not. We have seen plenty of MPs convicted or about to be convicted, as well as those who have not been, resigning before they are pushed due in part to public pressure. No such pressure exists in the House of Lords. The other problem is that there are a number of peers in the House of Lords who would not be expelled under this rule as they have received no prison sentence, but who have nevertheless done great wrong and brought the House of Lords into disrepute. For example, last year the House of Lords Privileges and Conduct Committee concluded that three peers (Baroness Uddin, Lord Bhatia and Lord Paul) should repay nearly £200,000 of taxpayer’s money between them, and they subsequently received lengthy suspensions. However, suspensions aside, all remain members of the House of Lords.

We consequently recommend as a further step that a Leader’s Group should be set up to consider issues surrounding discipline and expulsion of peers and make further recommendations, in much the same way that the recent Leader’s Group chaired by Lord Hunt of Wirral considered options for peers retiring from the House on a voluntary basis.

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183 HL Deb, 21 October 2010, columns 893-903
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2.6 The House of Lords should provide for Members to leave the upper House through a voluntary retirement system.

At present, a life peerage cannot be alienated or surrendered and members are not able to resign or retire from the House of Lords. This has left us with a situation where there is "a broad consensus that the current House is too big and that the overall size of the House should be reduced" as soon as possible. With this in mind, we propose that members of the House of Lords should be able to resign or retire if they feel that they are no longer able to fulfill the requirements of their position.

Last year, the Leader of the House, Lord Strathclyde, announced that he was setting up a Leader’s Group chaired by Lord Hunt of Wirral to identify options for allowing members to leave the House of Lords permanently. In doing so he invited all members of the upper House to volunteer their views, and in January of this year the Leader’s Group published their final report. We have had close regard to the recommendations of the Leader’s Group and their very helpful recommendations when considering this area.

As well as strengthening the system of leave of absence for peers, the main recommendation of the Leader’s Group was that arrangements should be introduced to allow members to retire from the House of Lords permanently, and on a voluntary basis.

Some may argue that the decision to accept the honour of a peerage, and the Parliamentary duty which that involves, is not one which should subsequently be reversed because it was found to be an encumbrance or a liability. We believe, however, that there is a very strong case to be made for the introduction of voluntary retirement provisions. Aside from reducing the upper House’s current overly large size and relieving pressure on finances, accommodation, seats in the chamber and so on, it would protect the reputation of the House of Lords if peers who were no longer able to contribute constructively to the work of the House discontinued their membership. In the 2009-2010 session of Parliament, 79 members of the House of Lords were recorded as having ‘zero attendance’. It seems pointless for these peers to continue their membership if they are unable or unwilling to contribute to the House of Lords.

It must also be noted that there is a broad consensus for this type of change amongst peers. In particular, when the Leader of the House, Lord Strathclyde, initially indicated in June 2010 that he would appoint a group to consider the issue of retirement, many peers spoke in support of a system of voluntary retirement; suggesting that such a reform was not only desirable but also imperative.

While Lord Strathclyde, has been categorical in his refusal to offer a financial incentive to retirement,

185 L. Maer (2010), Resignation, suspension and expulsion from the House of Lords, Parliament and Constitution Centre note.
186 House of Lords Leader’s Group on Members Leaving the House, Members Leaving the House, Report of Session 2010-11, p4
187 Ibid, p11
188 House of Lords Leader’s Group on Members Leaving the House, Consultation on Members Leaving the House, Interim Report of session 2010-11, p5
189 As noted in House of Lords Leader’s Group on Members Leaving the House, ‘Members Leaving the House’, Report of Session 2010-11, p8-9; M. Russell (2011), House Full: Time to get a Grip on Lords Appointments (Constitution Unit, University College London)
190 House of Lords Leader’s Group on Members Leaving the House, Consultation on Members Leaving the House, Interim Report of session 2010-11, p11
191 House of Lords Leader’s Group on Members Leaving the House, Members Leaving the House, Report of Session 2010-11, p9-10
192 HL Deb, 29 June 2010, columns 1661-1785
arguing that any payment for retirement in the current climate would simply not be understood by the public\textsuperscript{193}, it should be recognised that members receive no proper remuneration for their work in the House and no pension. Since many members have forfeited the opportunity to for earnings and pensions elsewhere in order to undertake public service in Parliament, we would agree with the recommendation of the Leader’s Group that “the possibility of offering a modest pension on retirement, to those who have played an active part in the work of the House over a number of years” should be investigated. We also agree with the Leader’s Group that if this happens, any such payments should preferably come from within the existing budget for the House and should incur no additional public expenditure, and that any such payment should be available only to those who choose voluntary retirement within a limited period after its introduction.\textsuperscript{194}

Aside from voluntary retirement, the Leader’s Group also noticed a number of peers favored compulsory retirement\textsuperscript{195}. It has been suggested that, should voluntary retirement not yield enough volunteers, there are various options for building some form of compulsory retirement into the system, such as through a retirement age, term limits (our support for a certain type of term limits system is covered elsewhere\textsuperscript{196}), or removing peers on the basis of infrequent attendance.

We do however have serious concerns about any other measures of compulsory retirement besides term limits, particularly a retirement age. While a retirement age could be seen as an effective means of significantly shrinking the size of the House of Lords, it would also result in the loss of large numbers of members who are older than the retirement age but who would still have much to contribute. We do not feel that compulsory retirement based on age would add to the effectiveness of the upper House. If anything, it may well reduce its expertise significantly, particularly as many members of the Lords are far older than what would be regarded as a normal retirement age, or even the limit of 75 years of age which applies in the Canadian Senate.\textsuperscript{197}

The Leader’s Group noted that the criterion for compulsory retirement which commanded most widespread support was that of infrequent attendance.\textsuperscript{198} Indeed, key to our suggested reforms is the notion that the upper House is expected to be a working chamber of parliamentarians who are able – to a greater or lesser extent – to turn up to the House of Lords and contribute to its work. However, we should also recognise that some members attend only irregularly but nevertheless make a valuable contribution when they do attend. On this basis we would recommend that compulsory retirement is not introduced on the basis of infrequent attendance. However, we must add the caveat that not attending at all is a different matter altogether – something which 79 peers were guilty of doing in the 2009–2010 Parliament – and is wholly unacceptable for a member of the House of Lords. We consequently welcome sections 12-13 of Lord Steel’s House of Lords Reform Bill, which aims to address the issue of zero attendance. Section 12 states that:

“\textit{Any member of the House of Lords who fails to attend the House during the course of a session, where that session exceeds more than three months in duration, shall be deemed to have taken

\textsuperscript{193} HL Deb, 16 October 2010, column 675
\textsuperscript{194} House of Lords Leader’s Group on Members Leaving the House, \textit{Members Leaving the House}, Report of Session 2010-11, p14
\textsuperscript{195} ibid
\textsuperscript{196} See section 2.3.
\textsuperscript{197} See M. Russell and M. Benton (2010), \textit{Analysis of existing data on the breadth of expertise and experience in the House of Lords – Report for the House of Lords Appointments Commission} (The Constitution Unit, University College London).
\textsuperscript{198} House of Lords Leader’s Group on Members Leaving the House, \textit{Members Leaving the House}, Report of Session 2010-11, p14
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permanent leave of absence”.199

Under section 13 of the Bill, a member who is on permanent leave of absence will no longer be a member of the House of Lords.200 Section 12(2) does however contain an appeal mechanism in case a member has a good reason for failing to attend at all.201 We believe that using this approach will strike a fair balance – avoiding compulsory retirement on the basis of members who do attend, even if only infrequently, while still removing members who do not turn up at all unless they have a very good reason for not doing so.

In summary, we would endorse the use of voluntary retirement measures in the upper House, but we do not recommend the use of compulsory retirement mechanisms at this time apart from those proposed in Lord Steel’s House of Lords Reform Bill.

200 Ibid
201 Ibid
2.7 The powers of the Lord Speaker should be extended to give the position extra authority and to better regulate the conduct of the House of Lords, particularly at question time.

Following the Constitutional Reform Act 2005, the Lord Speaker, rather than the Lord Chancellor, has been the presiding officer in the House of Lords202, with Baroness Hayman being elected the first Lord Speaker in 2006.203 However, since the House of Lords is historically self-governing, the presiding officer in the Lords has traditionally taken a less active role in regulating the upper House than the Speaker in the House of Commons, even though both presiding officers receive the same salary.

The main differences between the Lord Speaker and the Speaker of the House of Commons are outlined by the Select Committee on the Speakership of the House, in a report in 2005.204 In summary, the Lord Speaker has no power to rule on points of order, call peers to speak or to select amendments. Neither does the Lord Speaker have the power to intervene if a member speaks for too long, or to adjudicate at question time when two or more members rise together and neither gives way. The committee did, however, also note that the overwhelming weight of evidence that they received was opposed to a House of Commons-type presiding officer, as well as being the view expressed by three Working Groups which have examined the concept of self-regulation since 1971.205

Despite this opposition to a House of Commons style presiding officer, we believe that there is an increasingly strong case for granting the Lord Speaker further powers. As Lord Adonis has argued, chaos ensues on a regular basis in the chamber – at oral questions in particular – because the Lord Speaker is not empowered to call speakers, despite the fact that virtually every presiding officer in virtually every legislative assembly in the world is able to do so. He consequently calls for the Lord Speaker to be given further powers, particularly to regulate the House during oral questions206. Nor is Lord Adonis is by any means the only peer to call for expanded powers for the Lord Speaker. In the Leader’s Group debate on working practices in the House, Lord Luce stated that, “there are arguments for extending the powers of the Lord Speaker, perhaps in certain, somewhat limited ways”207, and many other peers have echoed those arguments.208 Most recently, the Leader’s Group on Working Practices chaired by Lord Goodlad made the following comment:

“The conduct of oral questions is the topic which, to judge by the responses to our invitation for views, concerns Members of the House more than any other at present...When the political character of question time is combined with the larger size of the House, the result is an increasingly fractious and at times aggressive atmosphere at question time...The result is that many Members, from whom the House might wish to hear, and whose knowledge and experience would be particularly valuable in contributing to informed scrutiny of the Government, are discouraged from participating in

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202 Constitutional Reform Act 2005 c.4, s18 and Schedule 6.
205 Ibid. p6
207 HL Deb, 12 July 2010, column 522
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question time. The unique contribution of the Lords—the breadth of knowledge and experience of its Members—is wasted, and the Government is less effectively held to account.²⁰⁹

The other problem noted by the Leader’s Group is the fact that not only does the Lord Speaker have no power to preside over oral questions, there is a member of the House of Lords who does – and it is the Leader of the House. In effect, the government’s main representative in the House of Lords remains, to this day, the effective presiding officer of oral questions in the Lords. In particular, when two speakers stand up, with two or more Members competing to ask a supplementary question, and none willing to give way, the responsibility to select the questioner falls to the Leader of the House, or another minister in his absence.²¹⁰ We do not believe that it is any longer an appropriate system to have a member of the government exercising powers normally exercised by a presiding officer of a legislative chamber.

The Leader’s Group concludes that the Lord Speaker be granted the role currently performed during question time by the Leader of the House, for a one-year trial period beginning in September 2011. We wholeheartedly support this recommendation, and hope that it might also be a starting point which spurs the House of Lords to consider whether further reforms to strengthen the role of the Lord Speaker are appropriate.

²¹⁰ Ibid, para 32
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2.8 The automatic right for the remaining hereditary peers to sit in the House of Lords should be ended, as should the process of by-elections for them. The automatic right of the 26 Lords Spiritual to sit in the House of Lords should also be removed in favour of a system where religious leaders of all major Christian denominations and other major religions in the UK achieve fairer representation without having guaranteed seats.

We favour a House of Lords where – eventually – every member is selected on the same basis. To achieve this, we need to move away from the situation where two groups of people have an automatic and unfair right to a substantial number of the seats in the House of Lords.

2.8.1 Remove the remaining hereditary peers.

Under the last Labour government, all but 92 of the “hereditary peers” who were entitled to sit in the Lords by right of birth were removed by the House of Lords Act 1999 as part of a first stage of reform of the House of Lords.

The removal of the vast majority of the hereditary peers has been widely supported and is widely accepted to have helped in establishing a more assertive second chamber with higher attendance rates, the appointment of a great deal of worthy peers on merit to replace the hereditary peers, and the introduction of a new convention – that no single political party should have an overall majority in the House of Lords. But we believe it is time to go further and remove the remaining hereditary peers from the House of Lords. Conservative MP Andrew Tyrie puts it best when he explains why the hereditary peerage is wrong:

“In the 21st century, there should be no place in our Parliament for people who have inherited the right to make our laws.”

There are of course counter-arguments to this view, but it is very difficult to find defenders of hereditary peers who can defend the hereditary peerage on the basis of reasoned arguments. Many of the arguments look back to a previous golden age, but with no evidence that the pre-1999 settlement was any better – indeed, the evidence suggests that the House of Lords has been more assertive and effective post-1999 than pre-1999. As Alex Kelso puts it: “The idea that stage one would simply create a House of ‘Tony’s cronies’ which the Labour government would be happy to maintain, because the interim House was a pushover as far as legislation was concerned, was a compelling argument when it was made in 1999, but one which has not turned out to be accurate.”

Those who defend hereditary peers may also look to historical ties and connections to our past, but with no acknowledgement that the House of Lords (and Parliament as a whole), even after recent reforms, still has quite enough unnecessary tradition, pomp, ceremony and history as it is without needing to keep the hereditary peers.

Most importantly, in all these counter-arguments there is simply no credible defence which directly addresses the basic issue at stake – that reserving seats in our Parliament for people based on

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211 House of Lords Act 1999, c.34
213 HC Deb, 26 January 2010, column 723
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accident of birth rather than appointment on merit is unacceptable, undermines our attempts to ensure that our legislators are the best people possible to perform the role and ensures that our legislature remains completely out of touch with legislatures around the world. Even other comparable second chambers to the House of Lords like the Canadian Senate do not have a single Senator who has inherited a seat in the Canadian Senate through accident of birth – all Senators are appointed by the Canadian Prime Minister.

We do accept that there is however one strong argument for keeping the remaining hereditary peers – namely, that these peers are more active than most of those who were removed and have on the whole been diligent and hard-working, making a serious and meaningful contribution to the House of Lords. We do not dispute that this is the case, and this has been accepted by notable critics of the system like Andrew Tyrie MP.216 Having said this, we cannot accept this argument either as being strong enough to keep the hereditary peers in the Lords. There are several reasons for this.

- Firstly, the level of activity or expertise or hard work of the hereditary peers does not in any way override the simple, plain fact that hereditary peers sit in the House of Lords – by-elections aside – based on accidents of birth and death, rather than their appointment by the government or the House of Lords Appointments Commission.
- Secondly, there are plenty of other very active peers out there who have been appointed as life peers.
- Thirdly, removing the peers would not lead to any substantial loss of continuity or expertise in the upper house – a number of life peers have been in the House of Lords for many decades and continue to make a valuable contribution to its work. We can be less certain even among the remaining hereditary peers that they possess such a level of ability, experience or expertise exists among their ranks as the majority of life peers do. As Anthony King puts it, “if some hereditary peers turn out to be of above-average ability, some are bound by chance to be of below-average ability, some of them well below.”217 In contrast, the current body of life peers in the House of Lords is home to a wealth of experience, with ex-cabinet ministers, ex-heads of the armed services, senior lawyers and leading academics, among others.218

There is also a further point worth taking note of – namely that taking such a measure does not necessarily entail getting rid of all of the hereditary peers from the House itself. We believe that at least some of the remaining hereditary peers, particularly because they were and have remained more active and involved with the Lords than many of their predecessors, should have the opportunity to remain in the House of Lords as life peers if they so wish. We recommend that any hereditary peers who wish to remain members of the House of Lords should submit themselves to approval by the House of Lords Appointments Commission, which should consider them alongside the same criteria as it considers new appointments to the House before making a decision to appoint.

We do not believe that such a concession undermines the necessity of the removal of having peers sit in the Lords purely by virtue of their birthright. It is a practical concession designed to ensure that the Lords can retain a few of the most hard-working, active hereditary peers on the basis of merit, but with a much stronger mandate to remain there than before. It would ensure that no peers could be members of the legislature solely on a hereditary basis, but while at the same time being pragmatic and not throwing the baby out with the bath water.

216 HC Deb, 26 January 2010, column 724
218 See section 1.6 for further details.
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Nor would this be an entirely unprecedented step. After the removal of most of the hereditary peers from the House of Lords in 1999, several were made life peers and so stayed in the Lords, for example, former Leaders of the House of Lords such as Lord Carrington. There does not appear to have been any notable controversy or public outcry about those decisions, so there seems no reason why some hereditary peers could not remain in the House of Lords as life peers, provided they were approved by the House of Lords Appointments Commission. Lord Strathclyde, as the current Leader of the House of Lords, would be an obvious candidate, but there will be others too. We do not anticipate that many, or even most, of the hereditary peers would be appointed as life peers. However, it would be difficult to envisage a situation in which the Commission refused to appoint a small number of the most active and senior hereditary peers as life peers, and they would have a good case for doing so.

Even in isolation, removing the remaining hereditary peers also has a more practical argument in its favour: it is a necessary step in order to restore the House’s credibility and is one of the reforms that would be most likely to help to avoid the move to an elected Lords. The system of 92 hereditary peers remaining and being replaced through by-elections was put in place on the express understanding that it was to be a temporary system before the second stage of reform. Indeed, the Labour government committed on numerous occasions afterwards to removing the remaining hereditary peers. It is about time that we took that step.

2.8.2 Remove the Lords Spiritual

Too little discussion on House of Lords reform has included the role of the Lords Spiritual in the upper House – whereby 26 seats are reserved for serving bishops or archbishops of the Church of England. Bishops and Archbishops hold their place in the Lords by virtue of their position within the Church of England; they are not life peers. When bishops retire at the age of 70 they do not retain their place in the Lords, meaning that they are not technically peers in the traditional sense – although some do end up being appointed as life peers anyway.

We believe it is time to end this anachronism and open all places in the House of Lords to peers of all backgrounds, whether religious or not. We suspect that – as with hereditary peers – there will be some opposition to this move, with people arguing against the removal of the Lords Spiritual on the basis of the flawed assumption that removing the Lords Spiritual would be, for example, an attack on Christians, or, more specifically, the Church of England. But making such a change would not mean that Church of England peers would no longer be appointed: we would expect that a significant number of Church of England bishops would still be likely to be appointed as life peers by the Appointments Commission, particularly current or former Archbishops of Canterbury or York. Nor would it necessarily reduce the influence of the Church of England in the upper chamber. As Anglican bishops have other commitments they rarely turn up to the House of Lords in large numbers, relying on a rota system to ensure there is always at least one of them there. Under our system a substantial proportion of peers would continue to be appointed, and probably a larger number who have retired from their role as bishops. Such a change might even give the Church of England more influence as they might be able to muster a larger number of regular attendees than they currently do in debates, votes and so on.

The other issue is that the current system itself attacks Christians in its own way by unfairly allowing one denomination of Christianity to dominate the upper house. We believe it is right that the House of Lords should contain senior figures from other branches of the Christian faith such as the Baptist or Methodist churches and the Roman Catholic Church. There is also no reason not to have more

219 See Lord Irvine of Lairg at HL Deb, 11 May 1999, column 1092.
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peers appointed from other major UK religions such as Judaism, Hinduism, Sikhism, Islam or Buddhism. Indeed, even the Conservative Christian Fellowship have very laudably proposed a multi-faith House of Lords where there is better representation for Baptist, Catholic and Methodist leaders, some Pentecostal leaders and more peers from religions such as Judaism or Islam.221

Openning up the Lords to a wider range of faiths will assist in making our upper chamber a better reflection of our multi-faith society and ensure that religious groups are more fairly represented in it. As the Constitution Unit argued over a decade ago; “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”.222

Taking this step would also be supported by the vast majority of the public. A recent poll revealed that 74% cent of the population – including, significantly, 70% of Christians – believe it is wrong that Church of England bishops are given an automatic seat in the House of Lords.223

We do however recognise that, as with the hereditary peers, there are examples of coherent counter-arguments which we do need to address. Possibly the best example of this is a post by Archbishop Cranmer, a respected commentator who blogs particularly on religious issues. He noted in a post in April that there were a number of obstacles to the idea of removing the Lords Spiritual. For example, he suggests that removal of any Anglican bishops from the Lords would require “the repeal of the 1533 and 1534 Acts governing their appointment, the abolition of the homage oath, some alteration to the Coronation Oath Act and the repeal of the relevant parts of the various bishopric Acts limiting appointment maxima. Is there time for primary legislation to achieve all this?”224 Despite these obstacles, we would suggest that if the government can find time to debate a Bill on electing the House of Lords that they can find time to enact reforms such as these instead while ensuring that we maintain a fully appointed upper house.

We are the only Western democracy to have such an anachronistic system in place, giving religious leaders a seat by right in our legislature. It is not acceptable that we should remain one of the few countries in the world that grants seats in our national legislature to religious representatives by right. We would consequently like to end this section by pointing out that we strongly hope the Deputy Prime Minister will not keep some reserved seats for Church of England bishops as part of his reform plan, as some have speculated.225

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221 M. Kite, ‘David Cameron studies plans for a multi-faith Lords’, The Telegraph, 23 April 2011
222 J. Lewis Jones (1999), Reforming the Lords: The Role of the Bishops (Constitution Unit, University College London)
223 ICM Omnibus (2010), Lords Survey, http://www.ekklesia.co.uk/content/survey_on_bishops_icm.pdf
Acknowledgements

We are very grateful for the help we received in compiling this report. Three people deserve particular thanks. Firstly, we would like to thank Professor the Lord Norton of Louth for providing a foreword and for his valuable advice. Secondly, we would like to thank Craig Rimmer, Chair of the Bow Group’s Home Affairs, Political Reform and Democracy Policy Committee, for his effective oversight of the project and close scrutiny of the report as it developed. Finally, we would also like to thank Luke Powell for his assistance in getting this project off the ground.