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House of Lords Reform Bill 2012-13

Bill No 52 2012-13

RESEARCH PAPER 12/37 4 July 2012

Reform of the House of Lords was a manifesto commitment for the three main parties at the 2010 election, and was included in the Coalition Agreement between the Conservatives and Liberal Democrats. A draft Bill was published in May 2011, on which a Joint Committee reported in April 2012. The present Bill establishes a House of Lords which is mostly, though not wholly, elected. Most members will serve non-renewable 15 year terms. The Parliament Acts will still apply to the reformed House of Lords.

This Paper discusses the Bill, and places it in the context of the draft Bill and wider debates about reform.

Standard Note 3900, *House of Lords Statistics*, 4 July 2012, is also relevant.

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Research Paper 12/37

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Summary

This Bill is the first Government bill on reform of the House of Lords to be put before Parliament since the *House of Lords Act 1999*, which removed most of the hereditary peers from the second chamber. A draft bill was published in May 2011 and examined by a joint committee of both Houses, which reported in April 2012. The Bill has some significant changes from the draft bill. Its main provisions are:

- A three stage transition to a fully reformed House of Lords
- In the first phase of the transition, after the first election, 120 elected members and 30 appointed members, plus up to 21 Lords Spiritual, an unknown number of ministerial members, and two thirds of existing peers
- In the second phase, after the second election, 240 elected members, 60 appointed members, up to 16 Lords Spiritual, ministerial members, and one third of existing peers so long as they are transitional members from the first phase
- After this, 360 elected members, 90 appointed members, up to 12 Lords Spiritual and ministerial members
- Semi-open list elections for large regional seats ("electoral districts," based on European Parliament seats) in mainland Great Britain
- Single Transferable Vote system for Northern Ireland
- A statutory House of Lords Appointments Commission
- Elected, appointed and ministerial members serve three electoral terms (normally 15 years), and may not serve again
- Specific senior Bishops serve in the Lords during their term in office; other Bishops chosen as Lords Spiritual serve for one electoral term but may also serve further terms
- Members may resign, and they may be expelled or suspended
- Pay and allowances are to be set by IPSA, with pay being related to the participation of the member in the work of the House
- Members will be treated for tax purposes as resident, ordinarily resident and domiciled in the UK
- Peers may vote in elections to either House of Parliament and they may be members of either House of Parliament
- The Parliament Acts will apply to the reformed House of Lords

As a result of these changes, the size of the House would reduce significantly. It is not possible to give an exact figure, since the number of ministerial members is not capped. However, the membership may not become more consistent than at present. There will be elected and appointed members, a variety of existing members during the transition, Lords Spiritual and ministers. Transitional members will be paid according to the present system, with an untaxed attendance allowance, while other members will have a new system of pay and allowances to be set and paid by the Independent Parliamentary Standards Authority.

In addition to the content of the Bill, there has been much discussion of the timetabling and possible voting intentions on the programme motion. This is not considered in detail in this Paper, but there is further information on programming in general in Standard Note 6371, *Timetabling of constitutional bills since 1997*, June 2012.

1 Introduction

Reform of the House of Lords has been under debate for at least a century, from the run up to the passage of the *Parliament Act* in 1911. Supporters of reform have sought to change many aspects of the second chamber, but their primary aim has been to base membership on elections. While it is rare today among developed democracies to have hereditary members or wholly appointed second chambers, it has proved difficult to achieve root and branch reform of the UK House of Lords. Nevertheless, there have been many incremental changes, such that the House of Lords today is a very different institution from its predecessor a century ago.

At the same time, the House of Lords remains markedly different from the House of Commons. Its membership is much larger, it is uncapped, and it is not linked to geographical representation. There are reserved places for the leaders of the established Church; there is no salary, only an attendance allowance; there is no possibility of resignation nor, except through primary legislation, expulsion. Fundamentally, the House of Lords is not constituted on the basis of popular election.

Standard Note 3900, *House of Lords Statistics*, 4 July 2012, gives details on the composition of the Lords.

Lords Library Note *House of Lords Reform: Chronology 1900 – 2010*, sets out the key reform attempts. Information about more recent proposals for reform up to April 2010 is available in Commons Library Standard Note, SN/PC/5135, *Reform of the House of Lords: the 2008 White Paper and Developments to April 2010.*

The Libraries of the two Houses of Parliament have prepared many briefings that are relevant to the issues surrounding reform of the House of Lords and to those raised by the provisions of the Bill. Some of these are referenced in the text or in footnotes, but a fuller list is provided in the bibliography in Appendix 1 below.

1.1 Lords reform from May 2010

The Coalition Agreement, published by the Government on 20 May 2010, stated that:

> We will establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation. The committee will come forward with a draft motion by December 2010. It is likely that this will advocate single long terms of office. It is also likely that there will be a grandfathering system for current Peers. In the interim, Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election.[1]

The Conservative party 2010 manifesto had pledged to build a consensus for a 'mainly' elected second chamber.[2] In February 2009, David Cameron told *Total Politics* magazine that, "in terms of reform, having a more elected chamber, which is what I favour, to be frank it is not an urgent priority".

The Liberal Democrats' 2010 manifesto stated that they would, "replace the House of Lords with a fully-elected second chamber with considerably fewer members than the current House".[3]

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1 HM Government, *The Coalition: Our Programme for Government,* 20 May 2010
2 Conservative Party, *An Invitation to Join the Government of Britain,* 2010, p67
3 Liberal Democrat Party, *Liberal Democrat Manifesto 2010,* 2010, p88

The Labour party had pledged to hold a referendum on House of Lords reform on the same day as a referendum on the voting system for the House of Commons. It favoured a fully elected second chamber. [4]

A Leader's Group published a report on 13 January 2011, recommending an extension to the existing leave of absence scheme and a voluntary retirement scheme, with a cost-neutral pension or one-off payment being made available. They also recommended that future appointments made in the absence of wider reform should be for a limited term, renewable if necessary.

1.2 Cross-party committee on Lords reform

In June 2010 Nick Clegg, Deputy Prime Minister, announced the creation of a cross-party Committee on Lords Reform whose role would be to draft the relevant legislation. Its membership was announced to the House on 7 June 2010,[5] and was changed to reflect the elections to the Shadow Cabinet which took place in the autumn.[6] In response to the statement on 17 May 2011 on the publication of the draft Bill and White Paper on Lords reform, Baroness Royall, the Leader of the Labour Party in the Lords, stated that the cross-party Committee on Lords reform had not met since November 2010, and that the draft Bill had not been produced by the Committee but was a Government Bill.[7]

1.3 House of Lords Reform Draft Bill

The Government published a White Paper, the *House of Lords Reform Draft Bill*, on 17 May 2011.[8] This set out proposed reforms to the second chamber, which was still called the House of Lords for the purposes of the consultation, and it included the text of a draft bill to implement them.

The core of the proposals was as follows:

- 300 members in the reformed House of Lords, plus 12 bishops sitting ex officio and an unspecified number of government ministers during their period in office
- 240 elected members, 60 appointed members (an 80/20 split)
- 15 year terms, which would be non-renewable
- Elections for one third of seats at the same time as each general election
- Single transferable vote system for elections
- One third of appointed members to be nominated by a statutory Appointments Commission at each election time
- Link with peerage to be ended; peerages would simply be honours
- Three phase transition to the new arrangements
- Members would receive a salary and allowances set by IPSA, and be covered by a pension administered by IPSA
- For tax purposes Members would be regarded as resident, ordinarily resident and domiciled in the UK
- The electoral franchise for the House of Lords would mirror that for general elections; but Members of the reformed House of Lords would be able to vote in elections to the Commons
- A disqualification regime would be introduced, modelled on that for the Commons; Members could resign, and they could be suspended or expelled for misconduct

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4 The Labour Party, *The Labour Party Manifesto 2010: A Future Fair for All*, 2010, 9:3
5 HC Deb 7 June 2010 c48
6 HL Deb 9 November 2010 WA62c
7 HL Deb 17 May 2011 c1271
8 Cm 8077

The White Paper provided options to amend the Bill to achieve a wholly elected House. It also accepted that a case could be made for other proportional voting systems, such as an open list system.

The White Paper outlined plans for a transition period, in which some existing peers would remain as transitional members, in addition to the new elected and appointed members. These transitional members would be selected in a manner to be set out in standing orders. However, the White Paper also set out alternative transitional options. One option was for all existing Peers to remain in a reformed House until the time of the third election. Alternatively, 200 existing Peers would remain at the time of the first election, to be joined by 100 new members following the election. At the second election, the number of former members of the House of Lords would be reduced to 100, and another 100 new members would join. All remaining former members of the House of Lords would leave at the third election.

The Foreword to the White Paper, signed by Prime Minister David Cameron and Deputy Prime Minister Nick Clegg, stated:

> The Government believes that the discussion on the future of the upper House should now be taken forward to a debate on the detail. We are, therefore, publishing a draft Bill for pre-legislative scrutiny for an 80% elected House of Lords but, in line with the Coalition Agreement, a wholly elected House of Lords has not been ruled out. The draft Bill sets out elections using the Single Transferable Vote system (STV), but we recognise that a case can be made for other proportional systems too, such as the list system. We believe that our proposals will strengthen Parliament.[9]

The Prime Minister and Deputy Prime Minister described themselves as "fully committed" to holding the first elections to a reformed House of Lords in 2015.

House of Lords reform was the subject of a debate in the Commons on 27 June 2011.[10] The Political and Constitutional Reform Committee published its report of a seminar on House of Lords reform in April 2011, and this was tagged for the debate.[11]

1.4 Joint Committee report

A Joint Committee on the Draft House of Lords Reform Bill began its work in July 2011. Its report was published on 23 April 2012.[12] The Joint Committee's recommendations included the following in response to the provisions of the draft bill:

- There should be 450 members, plus government ministers. A majority agreed that 12 bishops should also sit
- A majority agreed that the reformed House of Lords should have an electoral mandate, provided it had commensurate powers
- A majority agreed that 80% of members should be elected and 20% appointed
- A majority agreed on single, non-renewable terms of 15 years
- A version of the single transferable vote system should be used for elections to a reformed House of Lords
- The House of Lords Appointments Commission should become a statutory body

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9 Cm 8077, pp5-6
10 HC Deb 27 June 2011 c646-726
11 Political and Constitutional Reform Committee 7th report 2010-12, *Seminar on Lords Reform: Outcomes*
12 Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill: Report*, HL 284, HC 1313, 2010-12

The Committee reached two other important recommendations. It agreed that clause 2 of the draft bill, which was designed to maintain the primacy of the House of Commons, would not be sufficient on its own to achieve this aim. It also drew attention to the possibility of judicial involvement in the relationship between the two Houses, and recommended that nothing should be included in the final legislation that would allow interference in contravention of Article 9 of the *Bill of Rights 1689*.

Secondly, the Committee recommended, by a majority of 13 to 8 on division, that there should be a referendum on House of Lords reform.

A minority of members of the Committee produced an "alternative report." It is not possible for a committee to publish a "minority report" as such. As the Committee's report mentions, according to Erskine May,

> A report from a committee embodies the conclusions agreed to by the majority of its members, and members who dissent from the report may not make minority reports to be appended to it.[13]

Usually, dissenting members would make their views known by proposing the text of an alternative report as an amendment, and dividing the committee on it. This ensures that the text is reproduced in the formal minutes appended to the report. On this occasion, the minority of members chose to release their Alternative Report on the internet instead.[14]

Broadly speaking, the dissenters were concerned that the primacy of the Commons would be challenged not just by what they saw as the inadequacy of clause 2, but by the very concept of an elected upper chamber, and that the implications of a popular mandate had not been explored fully. They supported the Committee's report in general (subject to divisions on particular paragraphs), but they wished to look at issues beyond the draft bill and accompanying White Paper, to which the Committee was restricted.

The report of the Joint Committee was debated in the House of Lords on 30 April and 1 May 2012.[15] The Government responded to the report at the same time as it published the Bill. In the Introduction to the response, the Government stated that it had "considered their report, and has accepted the majority of their conclusions and recommendations in preparing the Bill for introduction."[16]

2 The *House of Lords Reform Bill 2012-13*

The Queen's Speech on 9 May 2012 contained the following commitment:

> A Bill will be brought forward to reform the composition of the House of Lords.[17]

Before the Government Bill was introduced, two Private Members' Bills were published in the Lords.

Lord Steel of Aikwood introduced the *House of Lords (Cessation of Membership) Bill* on 17 May 2012, which had its second reading on 29 June 2012.[18] Lord Steel has introduced bills

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13 *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th edition, 2011, p901

14 *House of Lords Reform: an Alternative Way Forward*, a report by members of the Joint Committee of both Houses of Parliament on the Government's Draft House of Lords Reform Bill, April 2012, accessed 1 May 2012

15 HL Deb 30 April 2012, cc1937-2001 and 2013-80, 1 May 2012, 2081-2113

16 *Government response to the Report of the Joint Committee on the Draft House of Lords Reform Bill*, Cm 8391, June 2012, p4

17 The Queen's Speech 2012; Briefing Notes on the Queen's Speech are available from the no 10 website

18 HL Bill 21 of 2012-13. See HL Deb 29 June 2012, cc431-53

providing for limited reform in several previous sessions. He also set out his views on possible Lords reform in an article in the *Independent* on 25 June 2012.[19]

Lord Dubs introduced a bill to make provision for members of the House of Lords to vote at elections to the House of Commons. This is the *Extension of Franchise (House of Lords) Bill 2012-13.*[20]

The *House of Lords Reform Bill* was introduced to the Commons on 27 June 2012 as Bill 52 of the 2012-13 session. As well as the Explanatory Notes, the Government published an impact assessment and a detailed commentary on the costs of reform, *House of Lords Reform Bill – Cost Projections*.

Lord Strathclyde made a statement on the Bill in the House of Lords, in which he also announced the publication of the Government's response to the Joint Committee's report.[21]

The Deputy Prime Minister, Nick Clegg, was unable to state that the Bill was compatible with the European Convention on Human Rights. His statement is reproduced on the front page of the Bill, and includes the following explanation:

> This is only because of clause 6, which applies to House of Lords elections the laws on entitlement to vote at House of Commons elections, including the rules which prevent prisoners serving sentences from voting. The Government nevertheless wishes the House to proceed with the Bill.

This failure to certify is rare, but not unprecedented.

2.1 Main features of the Bill

Content

The *House of Lords Reform Bill 2012-13* creates a smaller House of Lords with a majority of elected members. It creates the possibility for members to resign or to be expelled, it passes responsibility for their pay and allowances to IPSA, and, with the exception of Lords Spiritual (bishops and archbishops), it limits their service to one 15 year term in normal circumstances.[22] It introduces transitional arrangements that are intended to last for the first two Parliaments, and it addresses the issue of the relationship between the two Houses of Parliament.

The main features are as follows:

- A three stage transition to a fully reformed House of Lords
- In the first phase of the transition, after the first election, 120 elected members and 30 appointed members, plus up to 21 Lords Spiritual, an unknown number of ministerial members, and two thirds of existing peers
- In the second phase, after the second election, 240 elected members, 60 appointed members, up to 16 Lords Spiritual, ministerial members, and one third of existing peers so long as they are transitional members from the first phase
- After this, 360 elected members, 90 appointed members, up to 12 Lords Spiritual and ministerial members

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19 "Most of my fellow peers accept the need to end the indefensible" 25 June 2012 *Independent*

20 HL Bill 16 of 2012-13

21 HL Deb 27 June 2011, cc235-52

22 15 years is shorthand for three electoral terms. If a general election is held within two years of the previous election to the Lords, then no new Lords election takes place, and this will elongate the period until another election to the Lords.

- Semi-open list elections for large regional seats ("electoral districts," based on European Parliament seats) in mainland Great Britain
- Single Transferable Vote system for Northern Ireland
- A statutory House of Lords Appointments Commission
- Elected, appointed and ministerial members serve three electoral terms (normally 15 years), and may not serve again
- Specific senior Bishops serve in the Lords during their term in office; other Bishops chosen as Lords Spiritual serve for one electoral term but may also serve further terms
- Members may resign, and they may be expelled or suspended
- Pay and allowances are to be set by IPSA, with pay being related to the participation of the member in the work of the House
- Members will be treated for tax purposes as resident, ordinarily resident and domiciled in the UK
- Peers may vote in elections to either House of Parliament and they may be members of either House of Parliament
- The Parliament Acts will apply to the reformed House of Lords

As a result of these changes, the size of the House would reduce significantly. It is not possible to give an exact figure, since the number of ministerial members is not capped. However, the membership may not become more consistent than at present. There will be elected and appointed members, a variety of existing members during the transition, Lords Spiritual and ministers. Transitional members will be paid according to the present system, with an untaxed attendance allowance, while other members will have a new system of pay and allowances. Even among the elected members there will be separate electoral systems for Great Britain and for Northern Ireland. This may lead to healthy variety, or it could lead to tension between different categories of members; some critics fear that the elected members may also impinge on the role of Members of the House of Commons insofar as constituents will have a representative in the Commons and multiple representatives in the Lords dealing with the same issues. There have been tensions in the past between the regional and constituency members of the devolved legislatures in Scotland and Wales.

One of the main concerns has been the impact of reform on the relationship between the two Houses of Parliament, and in particular on the primacy of the Commons. This is discussed in greater detail below: the Government has changed its approach between the draft Bill and the actual Bill, and now includes a clause stating openly that the Parliament Acts will apply despite the changes to the House of Lords. However, it has dropped any reference to other conventions governing the relationship. While it is impossible to predict what changes might develop in the culture of the House of Lords following reform, it seems likely that elected members, at least, will expect to play a fairly assertive role, and that voters may share this expectation.

Critics have also turned their attention to the costs of reform. The Government has published an impact assessment and a set of detailed cost projections, and Lord Lipsey has published his own alternative figures. The costs will vary according to the levels of salary and allowances, there will also be costs associated with running elections, and there may be pressure over time to develop more extensive House services.

The Government's intention in the Bill is to create a House with a membership that is refreshed in each new Parliament, but that also achieves some continuity by virtue of the fact that most of its members will sit for fifteen years in normal circumstances. There is also an effort to complement members who are subject to democratic accountability with a significant portion of appointed members, in an effort to offset the argument that peers currently bring a level of expertise and non-party political scrutiny to the work of the House of Lords.

Advocates of a reformed second chamber hope that a democratic element will help to build credibility among the public. Others argue that the issue is not a pressing concern for most voters. There is more information on public attitudes to reform in House of Lords Library Note *Public Attitudes towards the House of Lords and House of Lords Reform*, LLN 2012/028, July 2012.

Structure

Part 1 of the Bill, clauses 1 to 2, sets out the composition during the three phases of the transition, and, in clause 2, it gives continuing effect to the Parliament Acts.

Part 2, clauses 3 to 10, covers elected members. The polling day, electoral districts and voting system are set out in clauses 3 to 5.

Part 3, clauses 11 to 18, covers appointed members. The Appointments Commission is established in clause 11, the provision for appointed members is in clause 13, and the criteria for appointment are in clause 17.

Part 4, clauses 19 to 23, deals with Lords Spiritual.

Part 5, which contains only clause 24, covers ministerial members.

Part 6, containing clause 25, covers transitional members.

Part 7, clauses 26 to 41, concerns disqualification.

Part 8, clauses 42 to 48, is headed "General provision about membership". It includes provisions for expulsion, suspension and resignation in clauses 44 and 45, while pay, allowances and tax status are covered in clauses 46 to 48.

Part 9, clauses 49 to 60, contains miscellaneous and general provisions.

The Bill has 11 schedules.

2.2 Size of the new House

One of the major changes between the draft bill and the actual Bill is the increase in numbers for the reformed House from 300 to 450. The Government's response to the Joint Committee indicated that this larger number of members would no longer be expected to be full time participants. This was reflected in a different solution to remuneration of members as well.

Proposals in the draft bill

The draft bill provided for 240 elected and 60 appointed members, as well as 12 bishops sitting as *ex officio* members. The Joint Committee expressed concerns about a House of 300:

> 114. The Committee agrees that a House of 300 members is too small to provide an adequate pool to fulfil the demands of a revising chamber, for its current range of select committees, and for the increasingly common practice of sitting as two units: the main chamber and Grand Committee. In addition, we have recommended that appointed members should not have to attend as frequently as those who are elected. Accordingly, we favour a House of 450 members. [23]

[23] *Joint Committee on the House of Lords Reform Bill*, HL Paper 284/ HC 1313 2010-12, para 114

One of the most uncertain factors in the draft bill was the number of transitional members and the length of time they were to remain in the House. These are considered in detail below.

Earlier proposals for House of Lords reform, such as the Wakeham Commission, had recommended a larger chamber. Wakeham recommended 550 members.[24] The February 2007 White Paper proposed 540 members.[25]

Provisions in the House of Lords Reform Bill 2012-13

Under the Bill as introduced, a fully reformed House would have 360 elected members, 90 appointed members, up to 12 Lords Spiritual and an unspecified number of ministerial members, giving a chamber of over 460 members. The average daily attendance for session 2010-12 was 468.[26] Since this figure is an average, the actual number of peers participating in House proceedings is higher. The cost projections for the Bill note that the current average rate of attendance is 63 per cent, and calculate that the average attendance of members of the reformed House would be 75 per cent.[27]

2.3 Elected members

Proposals in the draft bill

The draft bill proposed:

- a Single Transferable Vote (STV) system of elections (but the Government indicated that an alternative would be an open list system)
- electoral districts returning between five and seven members each, with a floor of three seats in each district
- a third of the House (80 members) would be elected every five years
- elections would be held at the same time as elections to the Commons
- elected members would have a single non-renewable term of three parliaments (i.e. 15 years)

Provisions in the House of Lords Reform Bill 2012-13

The Bill provides for

- an semi-open list form of proportional representation in Great Britain, based on the regional list system used for European Parliament elections, and STV for Northern Ireland
- 120 members to be elected at each House of Lords election, usually every five years
- a single non-renewable term typically of 15 years (ie three parliaments)
- elections to be held at the same time as general elections to the Commons, using the same constituencies as in European Parliament elections

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24 *Modernising Parliament: Reforming the House of Lords*, Cm 4183 2000
25 *The House of Lords: Reform Cm 7027 2007*
26 Lords Library Note LLN 2012/009 Work of the House of Lords:Statistics March 2012
27 *House of Lords Reform Bill- Cost Projections*, para 13, Office of Deputy Prime Minister, June 2012

- vacancies would be replaced by a substitute member, rather than through by-elections

The details are explored below.

Electoral system

Schedule 3 sets out how the semi-open regional list system will operate. The *Explanatory Notes* give details:

> A vote may be given either for a registered party, or for a candidate named on the party list of candidates submitted by a registered party (a party candidate), or for an independent candidate (paragraph 3 of Schedule 3). Seats are to be allocated between parties and independent candidates using the d'Hondt formula (paragraph 4 of Schedule 3). For these purposes, a vote for a party candidate is counted as a vote for the candidate's party. Under the d'Hondt formula, the first seat is given to the party or independent candidate with the most votes. The next and subsequent seats are allocated in the same way, except that the votes given to any party are divided by the number of seats already allocated to that party plus one. Paragraph 5 makes provision for a tie-breaker in the event that there is an equality of votes at any stage.
>
> 64. Seats that are allocated to a party must then be allocated to the party candidates (paragraph 6 of Schedule 3). Seats are allocated first to any candidate who received five per cent or more of the votes given to the party as determined for the purposes of applying the d'Hondt formula as described in paragraph 4 (qualifying candidates). If there are more qualifying candidates than there are seats allocated to the party, the first seat is allocated to the qualifying candidate with the largest number of votes, the second to the qualifying candidate with the second largest number of votes, and so on. If there are more seats allocated to the party than there are qualifying candidates, the remaining seats are allocated to the party candidates in the order that the candidates appeared on the party's list of candidates at the election.

The Bill provides for STV to be used in Northern Ireland. Similar arrangements apply for the European Parliament, where a closed regional list system is used for Great Britain and STV for Northern Ireland. The question of introducing open lists featured prominently during the passage of the *European Parliamentary Elections Act 1999*. This electoral system will be different from any other in use in the UK. The use of STV in Northern Ireland reflects the fact that it has a small electorate, and this system tends to guarantee diversity of representation.

The semi-open list system in the Bill is not the STV version preferred by the Joint Committee, but does allow voters to choose either a party, a candidate on the party list, or an individual candidate. Where a candidate is sufficiently popular that their vote comprises five per cent of the party vote, that candidate would be elected to a seat won by that party ahead of candidates who achieved fewer preference votes, irrespective of their position on the party list.[28] Commentators have argued that, since it is semi-open, by voting for one candidate in a party list, that party is advantaged, even though a voter may have wished to vote for that candidate alone.[29]

Secondary legislation under **clause 7** would set out the details on ballot papers, party descriptions, election expenditure etc.

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[28] Government response to the Report of the Joint Committee on the Draft House of Lords Reform Bill Cm 8391 2012, p14

[29] "We must say not to this bad Lords reform" 29 June 2012 *Head of Legal blog*

The Joint Committee had preferred the version of STV used in New South Wales to the Government's version, set out in clause 7 of the draft bill, where as an alternative to ranking individual candidates by voting below-the-line, voters can rank the parties by voting above-the-line.[30] Under this system it is also possible for voters to control where their "excess" party votes are allocated (ie if all of a party's candidates were either elected or eliminated before the count was completed, voters would determine to which party they wished their excess votes to be transferred). This form of STV is known as the Optional Preference Proportional System. Further information on alternative forms of STV was provided to the Committee by Dr Alan Renwick and Professor Iain McLean and reproduced in Appendix 6 to its report.

The Alternative Report argued that, following the decisive no vote in the referendum on the introduction of the Alternative Vote for elections to the House of Commons in May 2011, alternative voting systems should be advanced only "with extreme care and caution"[31]. This report also expressed caution about introducing an electoral system which could be characterised as leading "to elected Members of the House of Lords being elected on a basis which could be seen as giving them greater legitimacy than Members of the House of Commons."[32] Thirdly, the Alternative Report characterised the form of STV favoured by the Joint Committee as "the Alternative Vote (AV) by another name".[33] Finally, the Alternative Report favoured the consideration of indirect elections, which it said were widely used in second chambers around the world.

Electoral districts and redistribution

The Bill provides for the division of the UK into a number of electoral districts, each returning several members. **Schedule 1** and **Schedule 2** give the details. The smallest in Great Britain in terms of members returned for the area is the North East at five, and the largest is 16 for the South East. Northern Ireland has three. The electoral districts are identical to the electoral regions used for European Parliamentary elections, except that Gibraltar is excluded from the South West electoral district in relation to Lords elections.[34]

Allocations of numbers of members to each region are based on the electoral register published on 1 December 2011. No electoral district may have fewer than three seats. The numbers of members would be reviewed periodically by the Electoral Commission, which undertakes a similar role in relation to European Parliament members. The Electoral Commission would consider whether the existing distribution of elected members across districts should change once the Sainte Lague formula was applied to the most recent electorate figures available at the start of the review period. Standard Note 6229, *Constituency Boundaries: the sixth general review in England*, explains how Sainte Lague is used to allocate seats to regions as part of the boundary review following the *Parliamentary Voting System and Constituencies Act 2011.* Once the Commission has made proposals, these are contained in a draft order subject to affirmative resolution.

This represents a major change from the White Paper, which proposed that smaller regions of 5 to 7 members be used, made up of groups of administrative counties within England and alternatives elsewhere. It noted that the initial boundaries had yet to be determined, but had expected the Electoral Commission to be responsible for redistribution exercises.

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30 Joint Committee on the Draft House of Lords Reform Bill HL Paper 282-I/HC1313-I, para 149-150

31 *House of Lords Reform: An alternative way forward* para 3.47

32 Ibid, para 3.48

33 Ibid para 3.49

34 Background on the development of the European election regions is given in Research Paper 02/78, *European Parliament (Representation) Bill [HL Bill 2002-3]*.

Substitutions

The draft bill proposed the filling of vacancies by substitution rather than by elections, and this approach is followed in the Bill. The *Explanatory Notes* summarise the position:

> Clauses 8 to 10 and Schedule 4 provide for the filling of vacancies when a member ceases to be an elected member, for whatever reason. In most cases a vacancy is to be filled temporarily by an interim replacement elected member until the next House of Lords election (unless the vacancy arises six months or less before that election). Where the vacancy occurs before the former member's final electoral period, an additional seat will be contested at the next House of Lords election to elect a replacement elected member who will serve for the remainder of what would have been the former member's term.[35]

The Joint Committee was largely supportive of this approach, which would mean that departed members would be replaced by substitutes only until the next set of elections, rather than the full term. However, the Government rejected the Joint Committee's preference for a seat to be held vacant for a year before the next due election, opting for six months instead.[36] The Committee considered a number of different options for the substitution of members, preferring on balance the option chosen by the Government.[37] Where there is a tight political balance within the reformed House, substitutions could be key in upholding the existing balance of seats between parties.

Franchise

The White Paper and draft bill proposed that the franchise would be identical to that for the Commons and that any remaining limitations on peers voting would be removed. Under the Commons franchise, overseas voters and qualifying Commonwealth and Irish may vote, but not other EU citizens. Members of each House of Parliament would be able to vote in elections to their own House and to the other House.[38]

The *House of Lords Reform Bill 2012-13* provides for this, but maintains in **clause 50** the bar on sitting peers from voting in parliamentary elections until polling day for the first House of Lords election. Clause 50 also enables peers living overseas to register as overseas parliamentary electors from the point the provisions are commenced.[39] In addition, since the franchise for the Lords elections is identical to that for the Commons, convicted prisoners do not have the vote. The Deputy Prime Minister therefore made a statement of incompatibility under section 19(1)(a) of the *Human Rights Act 1998.*[40]

The electoral cycle

The Bill, like the draft bill, provides for elections to be held simultaneously with the Commons. The justification in the White Paper was voter turnout:

> 26. The Government considers that elections to the reformed House of Lords should take place at the same time as elections to the House of Commons in order to

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35 House of Lords Reform Bill Explanatory Notes Bill 52-EN

36 *Government response to the Report of the Joint Committee on the Draft House of Lords Reform Bill*, Cm 8391 June 2012, p18

37 HL Paper 284-I/HC 1313-I

38 Cm 8077 Explanatory Notes para 8

39 A Lords Library Note, *Members of the House of Lords: Voting at Parliamentary Elections*, was produced to provide context to a Private Member's Bill in this session sponsored by Lord Dubs, which would provide Members of the Lords with the right to vote in parliamentary elections. See LLN 2012/022 7 June 2012

40 See *Explanatory Notes,* para 249. For background on prisoner voting, see Standard Note 1764, *Prisoners' voting rights*.

> maximise voter turnout and provide the least disruption to the work of Parliament and on grounds of efficiency...

The *Fixed Term Parliaments Act 2011* sets out five year terms for the Commons, but there is provision for early elections under specified circumstances. Therefore the Bill (like the draft bill) proposes that if there were a general election within two years of the previous election to the House of Commons, there would be no Lords election. Members' terms would simply be extended.[41] This is set out in **clause 3** of the Bill. The first election for the reformed House of Lords is to be on or after 7 May 2015.

Some witnesses to the Joint Committee were concerned that simultaneous elections might be dominated by those for the Commons. Many of these advocated synchronising with the European Parliamentary elections instead. Other witnesses supported the Government, and the Joint Committee agreed with the White Paper approach. The Electoral Commission did not express an opinion either way, arguing the need for further research.[42]

Non-renewable terms and length of term

The Bill provides that elected members can serve for a maximum of three terms. They may choose to resign before this. The draft bill proposed that elected members would serve a single non-renewable term of three normal parliaments. This was intended to ensure that elected members would have a more independent approach and would be less likely to take on constituency work.

Some witnesses to the Joint Committee considered that there was a lack of accountability to the electorate inherent in non-renewable terms. After reviewing the evidence received, the Committee noted that it was divided on the arguments (para 166).

Some witnesses to the Joint Committee also noted that a 15 year term was significantly longer than international norms. The Joint Committee itself noted that 15 years would mean that the transition would end in 2025, allowing for more members of the current House to remain for longer. A majority of the Committee preferred 15 year terms over 10 year terms (para 173).

Constituency work

Concern that members of the reformed House might take on a constituency role is reflected in the Bill by the allowances regime. The White Paper stated that it did not want elected members of a reformed House to affect the relationship between MPs and constituents.[43] The Joint Committee questioned the Minister for Political and Constitutional Reform, Mark Harper, as to likely scenarios:

> 210. The Minister acknowledged that elected Members would have some correspondence from constituents. He noted that unelected Members of the current House were lobbied already. He accepted that if somebody reached an unsatisfactory outcome with an MP they might approach a Member of the upper House and could write to the latter in relation to legislation and the scrutiny of government. He thought that Members might become involved in issues of a regional nature and he gave the example of the High Speed 2 rail link, where an elected Member of the upper Chamber could engage in debate as to whether such a policy delivered benefits to their part of the country or whether it delivered benefits to only certain parts of the region they were representing. He maintained that the primary focus of constituency case work (in the sense of constituents' personal problems) would be Members of the Commons and

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41 Cm 8077 paras 26 and 27.

42 *Joint Committee on the Draft House of Lords Reform Bill*, HL Paper 282 HC 1313 2010-12 paras 174-182

43 Cm 8077, page 12

> that the workload for Members of the upper House would not be of the same magnitude.

The Joint Committee considered it inappropriate for elected members to involve themselves in personal casework, and considered that the practical difficulties of large regional constituencies, together with a lack of resources, would make a substantial level of casework unlikely, but thought that some elected members might seek to carve out a constituency role. The Joint Committee could not see how this could be prevented.[44]

The Government response argued that larger regional districts of between 2 and 6.5 million would assist in inhibiting the development of a constituency role.[45] The Bill provides that the allowances scheme for members may not cover expenditure in respect of maintaining a constituency office in the relevant electoral district.[46]

Costs of elections

The cost of the conduct of a UK general election is in the area of £80 million according to the latest *Statement of Accounts for Returning Officers' Expenses 2010-11*; the costs of the candidates' free mailings have to be added to this figure. The Cost Projections for the *House of Lords Reform Bill* published by the Deputy Prime Minister's Office noted that the total cost of elections for the House of Lords is projected to be £85.7m every five years, including free mailings.[47] The figures given in this document assume a stand alone poll and are subject to a number of assumptions. There is likely to be some debate over the exact costs of elections, as the assumptions can be challenged.

2.4 Appointed members

The Bill sets up a statutory House of Lords Appointments Commission in **Clause 11** and **Schedule 5.** There have been some changes on appointed members since the draft bill:

- 30 appointed members following each House of Lords election rather than 20
- Extended criteria for selection by the Appointments Commission

Clause 13 sets out that the term of appointment would be for three Parliaments. Subsequent clauses allow for replacements, where the appointment is void, or an appointed member resigns. The clause provides for a window of 14 days from the day after polling day during which the appointments must be recommended to the Prime Minister. The Prime Minister does not have any discretion to change the names to be forwarded to Her Majesty for appointment. It appears that existing crossbenchers would be eligible to put their names forward to the Commission, should they leave the Lords as part of the transitional process.[48] In these aspects, there are no major changes from the draft bill, other than an increase from 20 to 30 appointed members.

Criteria for appointment

The Bill provides more detail on the criteria to be used by the Appointments Commission, following concern from the Joint Committee. Lord Jay of Ewelme, Chair of the current, non-statutory House of Lords Appointments Commission, gave evidence to the effect that it would be useful to have on the face of the Bill some criteria such as "political independence and the

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44 HL Paper 282-I/HCV 1313-I para 223

45 *Government Response to the Report of the Joint Committee on the Draft House of Lords Reform Bill*, p20 Cm 8391 June 2012

46 Under Clause 46, which inserts a section 7D into the *Parliamentary Standards Act 2009.*

47 House of Lords Bill Cost Projections 27 June 2012 Deputy Prime Minister's office

48 See Joint Committee on the House of Lords report, para 228

ability to make an effective contribution to the work of the House". The Joint Committee recommended:

> **248. We consider that the values set out above—independence, expertise and experience, and diversity—should form a core around which the Appointments Commission should construct its criteria for appointing members to the House of Lords. While we recognise that the Appointments Commission should apply its criteria independently, we believe that it is appropriate that Parliament should have the final say on the criteria devised by the Appointments Commission, and the guidance it produces on how it will apply those criteria.**
>
> **249. We consider that there would be merit in placing on the face of the Bill certain broad criteria to which the Appointments Commission "should have regard" when recommending individuals for appointment. We recommend that these should be:**
>
> **an absence of recent overt party political affiliation;**
>
> **the ability and willingness to contribute effectively to the work of the House;**
>
> **the diversity of the United Kingdom, in the broadest sense;**
>
> **inclusion of the major faiths; and,**
>
> **integrity and standards in public life.**
>
> **250. Variations of the Appointment Commission's criteria, or guidance produced under them, should be subject to parliamentary approval through the super-affirmative procedure. [49]**

The Bill does not fully reflect these recommendations. The draft Bill required the Commission to take account in its selection criteria of the fact that "although past or present party political activity or affiliation does not necessarily preclude selection, the role of an appointed member is to make a contribution to the work of the House of Lords which is not a party political contribution." **Clause 17** adds further criteria:

- diversity of the population of the UK at large
- a range of experience and expertise
- integrity and commitment to the principles of public life
- ability to contribute effectively to the work of the House of Lords

The Government response to the Joint Committee argued that it was unnecessary to make explicit reference to the inclusion of major faiths, as this would raise questions as to what constitutes such a faith.[50] Under the Bill, the Commission is to prepare a scheme setting out its criteria and procedures, and regularly review, publish and revise it. The Minister has power to change the criteria, but only on the recommendation of the Commission. The Government response accepted that where the criteria were set out in primary legislation,

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[49] HL Paper 282, para 248-9

[50] *Government Response to the Report of the Joint Committee on the Draft House of Lords Reform Bill*, Cm 8391, June 2012, p22

there would be a need for changes via the affirmative procedure, but not for the more detailed criteria established by the Commission.[51]

The Joint Committee argued for a differentiation of salary between appointed and elected members, since many crossbenchers would prefer to participate on an irregular basis, according to their interests. The Bill partially meets this point by moving to an attendance-based salary. The Joint Committee also thought that the initial term of appointment should be five years, so that those appointed members who subsequently failed to participate could be removed after the end of the first Parliament. This was not accepted by the Government.

Structure of the Appointments Commission

The Bill sets out in **clause 16** and **Schedule 4** a statutory Appointments Commission, with oversight from a new Speakers' Committee on the House of Lords Appointments Committee. There would be seven members of the Commission, including a Chair, appointed on merit for a single ten year term. MPs and Ministers would not be eligible for appointment. In contrast to the current non-statutory Commission, there are no places reserved for representatives of political parties. These proposals represented a re-jigging of the draft bill which had contained a Joint Committee on the House of Lords Appointments Commission.

The Speakers' Committee is to be composed of the Speakers of both Houses, a Minister with constitutional responsibilities, four members from the Commons and Lords respectively, and the chairs of the relevant constitutional committees. The Speakers' Committee is to determine the chair. Lords Members could be elected, appointed or transitional members. The model appears to be the Speaker's Committee on the Electoral Commission. This statutory committee, appointed under section 2 of the *Political Parties, Elections and Referendums Act 2000,* is composed solely of Members of the Commons.

This Committee is distinct from the Speakers' Committee which is to supervise the work of IPSA, which is itself remodelled to include a Lords element, following recommendations from the Joint Committee. Currently, the Speaker's Committee on IPSA has lay members as well as MPs in its membership. The remit of these two committees is similar, but not identical: to approve the accounts and strategic plan of the relevant body. The draft bill provided for a special sub-committee to ensure that Members of the Lords do not have a role in reviewing the estimate for the Appointments Commission.[52] The same provision is carried over to the current Bill in Schedule 6, para 3 (2). There is a new power in the Bill to allow the Speakers' Committee to comment on the annual report from the Appointments Commission before it is laid, at Schedule 5, para 20, enhancing oversight over governance.

The Commission's funding model would be similar to those applicable to other bodies supervised by Parliament, such as the Electoral Commission, the National Audit Office, IPSA and the Comptroller and Auditor General, that is that there would be a separate parliamentary vote, rather than being funded via a departmental vote.[53]

The Public Administration Select Committee recommended in its December 2007 report *Propriety and Peerages* that the House of Lords Appointments Commission members should not be appointed by Government, but by Parliament, to which they should be entirely accountable. However, the current Bill provides that appointments should be made by the Prime Minister on the basis of fair and open competition (Schedule 5, para 1).

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51 *Government response to the Report of the Joint Committee on the Draft House of Lords Reform Bill*, Cm 8391, June 2012, p23

52 Draft Bill, Schedule 5, para 3(2)

53 For further details see Standard Note 4720, *Officers of Parliament: recent developments.*

The existing Appointments Commission

The Appointments Commission was established in May 2000 as a Non Departmental Public Body (NDPB) with seven members: three representatives from the main political parties and four independent figures, one of whom chairs the Commission.

Its main functions are:

- to recommend people as non-party political peers; and
- to vet all nominations for membership of the House of Lords for propriety.

In May 2010, the Commission was asked by the Prime Minister to vet individuals who were to be appointed to the House of Lords as Ministers. As an advisory body, the Commission provides advice and reports to the Prime Minister, although it does provide an annual report to Parliament. The latest edition of its criteria for selection was published in February 2012.[54]

It should be noted that the Prime Minister continues to make a few individual appointments to the House, normally distinguished persons in public life. As of May 2012, the Appointments Commission has nominated 59 people for the peerage, listed in Annex 2 of Lords Library Note *House of Lords Appointments Commission*. A full list of these peers is available in Standard Note 5867, *Peerage Creations since 1997*, June 2012.

Proposals for a statutory Appointments Commission

A statutory Appointments Commission has been a feature of all government proposals for House of Lords reform since 1997. The Royal Commission on Reform of the House of Lords (the Wakeham Commission), recommended that a significant minority of members of the reformed House should be chosen by regional electorates; that approximately 20 per cent of the members should be independent and should be nominated by a "genuinely independent Appointments Commission"; and that the political balance of the remaining politically-affiliated appointees should be determined by the Appointments Commission, taking into account votes cast at the most recent general election. It also recommended that the Appointments Commission should vet nominations from political parties for propriety.[55] Subsequent white papers also recommended a statutory appointments commission.[56]

David Cameron, as leader of the Opposition, argued that the Commission should be put on a statutory basis.[57] This view was echoed by Andrew Tyrie and Sir George Young in their July 2009 report, *An Elected Second Chamber: A Conservative View.*[58] Lord Jay, Chair of the Appointments Commission, also stated that there would be merit in putting the Commission on a statutory basis.

Lord Steel of Aikwood's Bill 2010-12

Lord Steel introduced his *House of Lords (Amendment) Bill* on 26 May 2010. In its original form, the bill included proposals for a statutory Appointments Commission which would make all recommendations for life peerages. The Bill proposed that the Commission should consist of nine members, which would be jointly appointed by the Speaker of the House of

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54 *Criteria guiding the assessment of nominations for non-party political life peers*, House of Lords Appointments Commission, February 2012

55 Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534 January 2000, Executive Summary and chapter 11 (Recommendation 70), http://www.archive.official-documents.co.uk/document/cm45/4534/4534.htm

56 See Standard Note 2855, *House of Lords Appointments Commission*

57 See Andrew Tyrie MP and Sir George Young Bt MP, *An Elected Second Chamber: A Conservative View,* July 2009

58 *Ibid*

Commons and the Lord Speaker. In determining how many new Peers could be appointed each year, the provisions stipulated that:

- not less than 20 per cent of the members of the House of Lords should be independent of any political party
- no one party, nor a coalition of parties forming a Government should have a majority of members in the House of Lords
- the Government of the day (or the largest party in a coalition Government) should be entitled to have a larger number of members than the official Opposition, but that majority should normally be no greater than 3 per cent of the total membership of the House of Lords.

After discussion at committee and report stage, the clauses on the Appointments Commission were removed. Lord Steel considered that it would be "a waste of time to attempt in a Private Member's bill to do what the Government are planning to do anyway in a very different way later on".[59] For full details of the Bill see House of Lords Library Note 2012/17, *Lord Steel of Aikwood's Private Members bills on House of Lords reform*. A more limited bill has been introduced into the current session.

2.5 Ministers

There are some limits on ministerial appointments. The *House of Commons Disqualification Act 1975* provides that not more than 95 holders of Ministerial offices may sit and vote in the House of Commons at any one time. This limit does not depend on whether or not the office holders are paid. There are also statutory limits on the total number of paid ministers that can be appointed, set out in Schedule I, Part V of the *Ministerial and other Salaries Act 1975*, as amended. It has become common in recent years for unpaid ministers to be appointed, so that the statutory limit is not breached.[60]

The White Paper proposed that the Prime Minister should also be able to appoint a limited number of people to serve as Ministers, who would be members of the reformed Lords only for as long as their appointment lasted (para 68).The Joint Committee expressed some reservations about the power of the Prime Minister to appoint extra Ministers to the Lords, especially if this would affect the party political balance in the House. It considered that such appointees should either have no voting rights, or that their number should be limited in statute.

Clause 24 allows appointments by the Government as Ministers of the Crown only when there are fewer than eight such Ministers. This does not mean that there would only be eight ministerial members in the House. Once appointments are made, ministerial members remain in the House, since appointments are for three terms and they have full voting rights. However, if a Government wanted to bring in a new Minister from outside, it could ask an existing Minister of the Crown to resign.

There appears to be no limit on the total number of ministers which a Prime Minister can appoint over the course of his or her administration. This might mean that the House could be filled with a series of members who had served as Ministers of the Crown for only a brief period. Under the *Fixed-Term Parliaments Act 2011* it is possible for governments to change without a general election, thereby increasing the possibility of serial ministerial appointments in the Lords. For example, as Prime Minister Gordon Brown brought in 10 ministers as appointments to the Lords in his three years of office.[61]

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59 HL Deb 21 October 2011 c451-8

60 See Public Administration Select Committee report *Too Many Ministers*? HC 457 2009-10

61 House of Lords Reform A Briefing Paper Alan Renwick, Political Studies Association, 2011 See Box 1

There is no role for the statutory House of Lords Appointments Commission to vet ministerial members for propriety of appointment. The Government response to the Joint Committee proposed that it would consider whose role this was in the context of a reformed House.[62]

2.6 Religious representation

Background

At present, two Archbishops and 24 Bishops of the Church of England sit in the House of Lords as the "Lords Spiritual". The Archbishops of Canterbury and York receive a seat in the Lords as of right, together with the diocesan Bishops of Durham, London and Winchester.[63] The remainder are appointed on the basis of seniority from amongst the diocesan bishops.

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 age 70) they do not retain their place in the Lords. They are not technically peers in the traditional sense but Lords of Parliament. However, some former bishops and archbishops have been appointed as life peers. These are usually former Lords Spiritual or others who have made a large contribution to British society and usually sit as crossbenchers.

There has been a long-running debate as to whether Church of England bishops should continue to sit in a reformed House of Lords. The majority of proposals put forward by Governments in the past few decades to reform the Lords would have retained, in any reformed House that was not wholly elected, reserved places for Church of England bishops on an ex officio basis. Governments, at least since the 1968 White Paper, have also expressed the desirability that denominations and faiths other than the established Church of England should be represented in the second chamber.[64]

The Joint Committee, on a majority, agreed that 12 bishops should continue to retain *ex officio* seats in a reformed House. It thought that faith should be part of the diversity criterion recommended for the Appointments Commission, and that bishops should be subject to the disciplinary provisions, as requested by the Archbishops. It preferred greater flexibility for the transition arrangements so that any women bishops and the wider pool of diocesan bishops could be eligible for appointment in the second transitional parliament.[65] The Government response rejected this recommendation.

Provisions in the House of Lords Reform Bill 2012-13

The Bill provides that there will be up to 12 representatives for the Church of England. The Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester are to continue to sit in the reformed House under **clause 19**, as named Lords Spiritual. If an individual left one of these offices, their successor would take the seat. The other seven places are to be reserved for bishops of dioceses in England, selected by the Church of England under **clause 20** and known as ordinary Lords Spiritual. These provisions have some changes from the draft Bill proposals, in terms of maintaining permanently the five named offices. **Clause 20** deals with the transitional period: it enables the Church to select successively 16, 11 and then 7 bishops as transitional ordinary lords spiritual, while **clause 21** ensures that only bishops currently sitting in the House of Lords would be eligible. Where there is a vacancy, another person may be selected in their place for the expected term. There is no term limit for an individual Lord Spiritual, unlike for other types of members.[66]

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62 *Government Response to the Report of the Joint Committee on the Draft House of Lords Reform Bill*, Cm 8391, June 2012, p25

63 *Bishoprics Act 1878*

64 Commons Library Standard Note 5172 *Religious Representation in the House of Lords* gives further details.

65 Joint Committee on the House of Lords Bill, paras 288-294

66 Term limits for other members are set out in clause 55 of the House of Lords Reform Bill 2012-13

Lords Spiritual will not be entitled to a salary, but will be able to claim allowances under the new scheme in **clause 46**. At present, they can claim the usual per diem allowance.[67]

2.7 Transitional members

Background

The White Paper set out three options for the transition, which were summarised in the Joint Committee report as follows:

> 298. Option 1 is set out in the draft Bill. It would reduce the number of current members in parallel with the introduction of new elected and appointed members. In the first transitional period the maximum number of transitional members would be two thirds of the membership of the House as at the date the Bill was introduced in the House of Commons. In the second transitional period the maximum number of transitional members would be one third of the membership of the House as of the date the Bill was introduced in the House of Commons—i.e. half of the transitional members of the first transitional period. Only peers who were transitional members in the first transitional period would be able to be selected as transitional members in the second transitional period. After the third election¸ and subsequently, there would be no transitional members.
>
> 299. Option 2 would allow all the current membership of the House of Lords to continue until the third election. This would result a very large House, of nearly 1000 members in the second transition period. In addition, the current membership of the House would have a majority until the third election, at which point which they would all leave at once. The Government note that this option would ensure that the knowledge of existing members would be retained as new members joined (though the same could be said too of Option 1 and to a lesser extent Option 3).
>
> 300. Option 3 would see the House of Lords reduced to 300 members immediately, in the first transition period. The Government state that "this would mean that the advantages of a smaller House could be realised immediately and would make clear that the House of Lords had been reformed". In the first transition period 200 members from the current House would remain, joined by 100 new elected and appointed members. In the second transition period, only 100 members of the current House would remain, alongside 200 new elected and appointed members. As with the other options, all members of the current House would leave at the third election.[68]

The draft bill set out Option 1 for a House of 300 in legislative terms. The White Paper considered that it would the role of the House of Lords to determine how the transitional members would be chosen, but noted that there should be no reserved places for hereditary peers, who would be dealt with in the category of transitional members.[69]

The Joint Committee thought Option 2 would be unworkable, and although Option 3 was feasible, it was likely to be seen as unfair to current members. The Joint Committee was not satisfied with Option 1 as the only alternative and considered a fourth option, which could preserve the position of current regular attenders for longer:

> **317. Accordingly, the Committee recommends an alternative fourth option with three characteristics:**

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67 See Lords Library Note LLN 2011/039 *Financial Support for Members of the House of Lords*
68 Ibid paras 298-300
69 House of Lords Reform Draft Bill Cm 8077 para 298

> **a) a transitional membership in 2015 equal to a benchmark figure derived from the total number of members attending 66 per cent or more of sitting days in the financial year 2011-12. These transitional members will remain in place until the final tranche of elected members arrive in 2025, at which point they will all leave;**
>
> **b) an allocation of the transitional seats to parties and crossbench peers in proportion to their current membership; and**
>
> **c) parties and crossbench peers to determine for themselves the persons to serve as transitional members.**
>
> **318. The Committee further recommends that, if this option finds favour, parties and crossbench peers should have regard in particular to a member's attendance record over a designated period for determining who should remain as a transitional member.**

The Alternative Report expressed considerable concern about the conclusions of the Joint Committee on transition. In particular the Report thought the use of attendance records for the financial year 2011-12 for the selection of transitional members for Option 4 might be justiciable if on the face of the bill (para 3.73). It also considered that political parties had no role in relation to an individual's continued membership of the House of Lords and again any attempt by a Bill to give them a role would also be justiciable (para 3.81). The Report recommended that the Government should adopt the Lord Steel bill and move towards reducing the size of the Lords in a much shorter timeframe.

Provisions in the House of Lords Reform Bill 2012-13

A major change from the draft bill is an increase of membership from 300 to 450 elected and appointed members combined. This results in a change in the number of transitional members and the manner of their calculation.

Clause 25 and **Schedule 7** provide that in the first transitional period, the maximum number of transitional members is to be two thirds of the number of peers entitled to receive writs of summons to attend the House of Lords on the date of introduction of the bill. As at 27 June there are 816 members with a writ of summons, including the 13 peers under s137(5) of the *Appellate Jurisdiction Act 1876*, who retain rights to a writ under the *Constitutional Reform Act 2005,* but are disqualified as they hold judicial office. From this should be subtracted one MEP who is disqualified, and 26 bishops, who are not technically peers. This gives a total of 789. Two thirds of this figure is 526. The evidence base for the Impact Assessment for the *House of Lords Reform Bill* however gives the figure of 506 transitional peers.[70] This figure was intended to be illustrative. The Impact Assessment noted that it was not possible to model the exact number of transitional members ahead of the introduction of the Bill.

Combined with 120 elected members, 30 appointed members, 21 lords spiritual and ministerial members, this gives a total of at least 697 members for the first transitional period. At present the average daily attendance is 468 for the 2010-12 session.[71] There are 766 Members of the current House of Lords who are eligible to participate.

In the second transitional period, the maximum number of transitional members is one third of the number of peers with writs of summons on 27 June 2012. Therefore they are to be selected from the transitional members in the first period. This gives a figure of 263. The provisions are a change from the draft bill proposals, where in the second transitional phase, the maximum number of transitional members was determined by the starting date of that

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70 *Impact Assessment,* 26 June 2012, Deputy Prime Minister's Office, Table 1.1

71 Lords Library Note LLN 2012/009, *Work of the House of Lords:Statistics*, March 2012

phase. The Bill therefore removes the uncertainty of calculating the number of transitional members. However, uncertainty about the number of ministerial members remains, as explained above.

Since the number Lords members who are elected will increase over the transitional period, while the total number of members is cut, the proportion of members who are elected will increase significantly. This is illustrated in Table 1 below.

Table 1: The transitional House 2015-25: illustrative figures

	2015	2020	2015
Elected	120	240	360
Appointed	30	60	90
Transitional	526	263	0
Ministerial	?	?	?
Lords Spiritual	21	16	12
TOTAL	≥697	≥579	≥462

Schedule 7 requires the Lords Standing Orders to make provision for a person's eligibility for selection as a transitional member and provision for when a selection is void. In determining the maximum number of transitional members and whether a person has been selected as such, the Clerk of the Parliament's certificate is conclusive. The Clerk of the Parliament's certificate is also relevant for determining the remaining hereditary peers under the *House of Lords Act 1999.*

The Schedule specifies that the Standing Orders may "make provision for persons to be selected in any way (for example by election or by reference to decisions made by political parties or other groups of members)".[72] The Joint Committee had expressed some reservations about an earlier version of this provision in the draft bill, which it felt might have created the possibility of involvement by the courts. It preferred a simple reference to selection in accordance with Standing Orders. The Government response considered that concerns about involvement by the courts would be allayed by the general savings provision on parliamentary privilege in clause 49, discussed below.[73] At the same time, there has been concern that the parties could have a key role in determining future composition.[74]

Allowances for transitional members would continue to be paid by resolution of the House and transitional members are excluded from the new pay and allowances system in clause 46.[75]

The extended period for transitional members means that the culture of the House is likely to change more slowly than if transitional members had been excluded more quickly. The turnover after the first election is likely to be lower than at a normal general election for the Commons, as there would only be 150 new members (120 elected 30 appointed), plus any new Ministers of the Crown.

2.8 Disqualification

The draft bill made a distinction between the disqualification provisions for elected and appointed members, with the latter having a less restrictive regime. However the current Bill

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72 Para 3(2) of Schedule 7 to the *House of Lords Reform Bill 2012-13*

73 *Government response to the Report of the Joint Committee on the Draft House of Lords Reform Bill*, Cm 8931, June 2012, p31

74 "We must say not to this bad House of Lords reform bill" 29 June 2012 *Head of Legal Blog*

75 *Government Response to the Report of the Joint Committee on the Draft House of Lords Reform Bill,* Cm 8391, June 2012, p29

now provides for a single regime. The Government response argued that elected members should also be able to retain outside interests and occupations.[76] **Clauses 26 to 43** set out the provisions on disqualification. Worthy of note is:

- the introduction of a disqualification where the person is imprisoned or detained (or should be but is unlawfully at large) for more than a year.[77] This would apply even if the offence or imprisonment had taken place prior to the clause coming into effect. The retrospection is justified on public interest grounds[78]

- a new minimum age of 18, rather than the present 21 for membership of the Lords

- provision to disqualify elected, appointed and ministerial members from membership if they have been members of those descriptions previously; so an elected member cannot be an appointed member at the same time, and an appointed member or an elected member cannot also become a transitional member

- nationality provisions identical to those for the Commons; that is, qualifying Commonwealth citizen (this includes British citizens) and Irish citizens. Commonwealth citizens can be transitional members. The *Constitutional Reform and Governance Act 2010* had clarified the existing rights of peers with Commonwealth nationality to continue to sit in the House[79]

- Disqualification from being elected as an MP and a bar on standing for election to both Houses at the same time[80]

- A smaller list of disqualifying offices than for the Commons, to reflect the fact that these are not necessarily full time members[81]

- Former members of the Lords would not be able to be elected to the Commons for a period of 4 years and a month after leaving the House (apart from Lords Spiritual). This period is calculated as the earliest date for a scheduled election to fall after the general election following the person's last day of membership of the Lords

- Additionally, sitting peers would not be able to stand for election at a parliamentary election (including by elections) between commencement and the first qualifying election (in 2015)[82]

The White Paper also proposed that members of the reformed House of Lords would all be made subject to the requirement applying to current members in respect of domicile for taxation purposes. This means that they would need to be domiciled in the UK for tax purposes (paras 125-129). This is set out in **clause 48** of the Bill and applies the current provisions on being domiciled in the UK for tax in the *Constitutional Reform and Governance Act 2010* to the reformed House.

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76 *Government response to the Report of the Joint Committee on the Draft House of Lords Reform Bill*, Cm 8341, June 2012, p30

77 This is similar to the provision applicable to the Commons, set out in the *Representation of the People Act 1981*

78 See *Explanatory Notes,* para 134

79 Constitutional Reform and Governance Act 2010, section 3

80 Clauses 39 to 41 of *the House of Lords Reform Bill 2012-13*

81 See Part 2 of Schedule 8 to the *House of Lords Reform Bill 2012-13*

82 Clause 50 of the *House of Lords Reform Bill 2012-13*

2.9 Writs of summons

Clause 42 restricts writs of summons to those persons entitled to be members of the House of Lords in relation to each Parliament which meets when the person is a member. Where a person ceases to be a member, or whose appointment or election is void, the writ of summons has no further effect. **Clause 43** provides for the Clerk of the Parliaments to issue certificates of vacancies, copies of which are given to the Clerk of the Crown. The clause refers to Standing Orders which may govern the actual timing of the certificate. **Clause 55** sets out the meaning of "expected term" for each member.

2.10 Resignation, suspension and expulsion

Background

At present, a life peerage cannot be alienated or surrendered; members are not able to resign or retire from the House of Lords.[83] Although Lords of Appeal in Ordinary retire from their judicial office at 70, their peerages have enabled them to continue to sit in the Lords. The bishops who sit in the Lords are ex-officio members and are able to sit and vote in the Lords only by courtesy of the office they hold. Bishops retire from their sees at the age of seventy and hence leave the House of Lords unless appointed as life peers. Although peers are appointed for life, it is possible for a peer to obtain a leave of absence for the rest of the Parliament by applying in writing to the Clerk of the Parliaments.

The *Constitutional Reform and Governance Bill 2008-09,* as introduced, included provisions which would have allowed peers to resign. Provisions also allowed for suspension and expulsion from the House of Lords. The Bill was carried over into the 2009-10 Session. These clauses were, however, removed from the Bill during the 'wash-up' period at the end of the 2005-2010 Parliament.

On 29 June 2010 the Leader of the House of Lords, Lord Strathclyde, announced he would establish a Leader's Group, chaired by Lord Hunt of Wirral, to consider options for allowing Members of the House of Lords to retire. The Leader's Group published an interim report on 3 November 2010 in which it set out the responses to its consultation on proposals to allow members to leave the House.[84] The report was debated in the House of Lords on 16 November 2010. The Group published their final report on 13 January 2011.[85] This recommended that the existing Leave of Absence scheme should be extended and that a voluntary retirement scheme be introduced, with a cost-neutral pension or one-off payment made available. They also recommended that future appointments made in the absence of wider reform should be for a limited term, renewable if necessary. No system of allowing retirement has yet been introduced.

As a result of the expenses scandal, the question arose of whether peers could be suspended as part of a disciplinary process. Following advice from Lord Mackay of Clashfern, the former Lord Chancellor, the Committee for Privileges concluded in 2009 that the House did have the right to suspend members for the remainder of the Parliament, and this right has since been exercised against a number of peers.[86]

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83 Standard Note 5148, *Resignation, Suspension and Expulsion from the House of Lords*, provides background to this aspect of the Bill.

84 Leader's Group on Members Leaving the House, *Consultation on Members Leaving the House,* 3 November 2010, HL Paper 48

85 Leader's Group on Members Leaving the House, *Members Leaving the House,* 13 January 2011 HL Paper 83 2010-11

86 House of Lords Committee for Privileges, *The Powers of the House of Lords in respect of its Members,* 14 May 2009, HL Paper 87 2008-09,

The draft bill provided a power for the reformed House of Lords to make Standing Orders to suspend or expel any member (except the bishops). These powers were set out in **clause 56**. The power of suspension would enable the Lords to suspend a Member beyond one Parliament. The draft bill also proposed that all members of the reformed House would have the right to voluntarily relinquish their membership at any time by giving written notice to the Clerk of the Parliaments. Transitional members would not be replaced.

The Joint Committee had some concerns about potential encroachment by the courts on parliamentary privilege in clause 56. This clause required resolutions for suspension to contain specific time periods and implied that resolutions would only be valid if made by Standing Order. These were areas where the courts could potentially be asked to adjudicate, and so the Joint Committee recommended that the clause should simply state that the Lords could expel or suspend its members.[87] The Joint Committee also recommended the deletion of clause 58 on proceedings of the House and paras 3 and 5 of Schedule 9 which went beyond prescribing that selection would be made by Standing Orders and called for a specific clause which would ensure that parliamentary privilege was unaffected by provisions in the Bill.

Provisions in the House of Lords Reform Bill 2012-13

Clause 44 provides for Standing Orders to make provision for expulsion or suspension of members by resolution of the House. The clause specifies some of the terms of the resolution, in particular whether the conduct giving rise to the resolution occurred before or after the 'relevant time' ie the point at which the person became a member. The *Explanatory Notes* state that it would be for the Standing Orders to ensure that the process was fair, although the Government did not consider that Article 6 of the European Convention on Human Rights (right to a fair trial) was engaged.[88]

The clause is different from the equivalent in the draft bill (clause 56) in that the drafting is not so prescriptive. It no longer specifies that the resolution should specify the date or dates during which the matters giving rise to the resolution occurred.

Clause 49, a declaratory clause, states that nothing in the Bill affects the application of parliamentary privilege. This is to ensure that the current force of Article 9 of the *Bill of Rights 1688* is upheld, which prevents the questioning of parliamentary proceedings in the courts. It also protects exclusive cognisance, the right of the Lords to govern itself, particularly in terms of disciplinary procedures and rights to determine membership. A similar provision is in the *Parliamentary Standards Act 2009.*

Clause 45 allows members to resign by notifying the Clerk of the Parliaments, who will issue a certificate.

2.11 Recall

Recall is a term used to describe a process whereby the electorate can petition to trigger a vote between scheduled elections on the suitability of an existing elected representative to continue in office.[89] The Bill has no provisions for a recall scheme.

The Government published a draft recall bill on 13 December 2011, relating to the House of Commons. Under the proposals, there would be two circumstances under which recall would be triggered:

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87 Joint Committee on draft House of Lords reform bill, HL Paper 284/HC 1313, para 352

88 *Explanatory Notes*, para 311

89 Standard Note 5089, *Recall Elections*, gives further details, including the report from the Political and Constitutional Committee on the proposals for the Commons, published in June 2012.

- An MP is convicted in the United Kingdom of an offence and receives a custodial sentence of 12 months or less (the *Representation of the People Act 1981* only disqualifies MPs who receive custodial sentences of more than 12 months); or,
- The House of Commons resolves that an MP should face recall (this would be an additional disciplinary power for the House).

A bill on recall did not feature in the Queens' Speech for 2012. However, the White Paper stated that the Government was committed to bringing forward legislation on recall and the Government would consider whether a similar system would be appropriate for the reformed Lords.

2.12 Link to peerage

The draft bill proposed to end the link between the award of the peerage and membership of the reformed House of Lords. It would be possible for the Crown to continue to create peerages, but there would no longer be a right for such peers to sit in the House of Lords. One of the more complex areas of the draft bill was the impact on current legislation of breaking this link. Clause 62 enabled life peers to disclaim a life peerage. Schedule 8 set out a list of legislation dating from the *Act of Settlement 1701* where the term 'peer' or 'house of peers' needed to be replaced by the term House of Lords.

The terms of the Bill as introduced imply that a peerage will no longer be an entitlement to membership of the House of Lords. **Clause 50** of the Bill provides that holders of peerages will not be disqualified from voting or standing for election to either House of Parliament. This reverses the current position for peers other than those already excluded from the House of Lords (eg most hereditaries), and it reflects the end of the entitlement to a seat.

Clause 51 allows life peers to disclaim their peerage, while **clause 52** transfers the jurisdiction of the House of Lords over peerage claims to Her Majesty in Council.

Schedule 10 contains minor and consequential amendments necessary as a result of the changes to the House of Lords in the rest of the Bill. The schedule runs to 56 paragraphs. It is in two parts: Part 1 amends various pieces of election law to take account of the fact that the term "parliamentary election" now refers to an election either to the House of Commons or to the House of Lords. Part 2 makes other amendments.

2.13 Human rights of peers

When the House of Lords was reformed under the *House of Lords Act 1999*, some peers raised complaints that their human rights were being breached.[90] This involved arguments, for instance, that participation in the House constituted a civil right or obligation, or that the loss of future allowances was a breach of possession rights. The Government considers that the Bill does not breach any of these rights under the European Convention on Human Rights. Its arguments are set out at length in the explanatory notes to the Bill, and are based primarily on case law, suggesting that membership of the House of Lords is not a civil right or obligation, that future salary and allowances are unlikely to be regarded as possessions, and that their loss would in any case be a necessary effect of the legitimate aim of reforming the House of Lords.[91]

There were also arguments during the passage of the 1999 Act that it breached the Acts of Union between England and Scotland, which gave various continuing rights to Scottish

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90 See, eg, "Lords reform challenge fails," *BBC Online*, 19 October 1999, accessed 2 July 2012.
91 Bill 52-EN, 27 June 2012, pp37-9

peers, and provided that they enjoy the same privileges as peers of England. Paragraph 10 of Schedule 10 of the present Bill provides that the Acts of Union are subject to its provisions.

2.14 Relationship between the two Houses

Primacy and the Parliament Acts

An area of concern mainly expressed by opponents of reform is that an elected second chamber might expect to play a more assertive role than the current House of Lords, given its democratic mandate. This raises the question of whether the primacy of the House of Commons could survive reform of the Lords. In the draft bill this was addressed in clause 2, but this attracted adverse comment and was seen as inadequate by the Joint Committee.

Proposals in the draft bill

Clause 2 in the draft bill was as follows:

> **2 General saving**
>
> (1) Nothing in the provisions of this Act about the membership of the House of Lords, or in any other provision of this Act—
>
> (a) affects the status of the House of Lords as one of the two Houses of Parliament,
>
> (b) affects the primacy of the House of Commons, or
>
> (c) otherwise affects the powers, rights, privileges or jurisdiction of either House of Parliament, or the conventions governing the relationship between the two Houses.
>
> (2) Subsection (1)(c) is subject to—
>
> (a) sections 36(1)(a) and 38(1)(a) (minimum age for elected and appointed members);
>
> (b) sections 49 and 50 (resolutions that disqualification is to be disregarded);
>
> (c) section 56 (standing orders about expulsion and suspension);
>
> (d) paragraphs 3 and 5 of Schedule 6 (standing orders about selection of transitional members).
>
> (3) Nothing in the provisions of this Act affects the validity of anything begun before the provision comes into force (for any purpose) and completed afterwards.

The debate as to whether clause 2(1)(b) was adequate to achieve its aim of preserving the primacy of the Commons came to rest on whether the Parliament Acts would apply to a reformed second chamber.

In his oral evidence to the Joint Committee on the draft Bill, Mark Harper, Minister for Political and Constitutional Reform, argued that the Parliament Acts provided a legislative underpinning to the relationship between the two Houses, and that this would remain the case after passage of a reform act:

> Because of the way the system works at the moment, you are quite right that the House of Lords has often exercised a self-denying ordinance. But that is also the reason why the Commons has not needed to use the legislative underpinning very frequently. The whole reason why we do not have frequent use of the Parliament Act is exactly that the House of Lords and the House of Commons have a relationship which has developed. It seems to me that, if you change that relationship, the House of Commons may have to exercise the use of the Parliament Acts more frequently and

> you will have the Houses testing each other. That relationship will then settle down and a new set of conventions will develop, but legislative underpinning is still there.[92]

However, questions were raised as to whether the Parliament Acts would apply to a House of Lords that was composed differently from the House to which those Acts refer.

The Joint Committee's view was informed by evidence from former Attorney General Lord Goldsmith and from Lord Pannick, who was involved in the *Jackson* case over the validity of the *Hunting Act 2004*.[93] The Joint Committee provided the following review of their evidence:

> 363. A second question then arises, about whether the Parliament Acts would continue to apply to a largely elected second chamber. The Government clearly assumes that this would be the case, since the ability to use the Parliament Acts is one of the reasons given for continued Commons primacy.
>
> 364. Lord Goldsmith considered that the Parliament Acts might not apply once the House had been reformed. He gave a number of reasons for this. Parliament "did not intend that the provisions of the Act would apply to "a second Chamber constituted on a popular … basis." Further the Act clearly contemplated that when that came about it would be for the legislation at the time to make provisions "for limiting and defining the powers of the new second Chamber". In consequence, he thought the following difficulties might arise. First, it could provide a new and elected House of Lords moral justification for declining to give way to the House of Commons and put to rest any argument that failing to give way was unconstitutional; second, there could be a legal challenge, in accordance with the principle that legislation must be interpreted in the context of the conditions at the time of its enactment, so that the words "House of Lords" might be considered only to apply to a House in its unelected form. Lord Goldsmith said: "Whilst the application of this principle may be uncertain in the context of this Bill and the precise way the Parliament Acts operate this does at least give rise to doubt that the Parliament Acts, or at least all their provisions, would apply in the absence of clear Parliamentary enactment to that effect".
>
> 365. When we put this to Lord Pannick, he considered it a difficult question, but agreed with Lord Goldsmith:
>
> "My opinion is that the better view is that the 1911 Act would not apply in the event that the upper Chamber were wholly or mainly elected. I say that for these reasons. First, the Preamble to the 1911 Act makes it very clear indeed that Parliament's intention was to move in the future to a second Chamber that was popularly elected. Secondly, it is clear to my mind that the purpose of the Parliament Acts was to regulate the relations between the two Houses at a time when one House was elected and one was not. Thirdly, there is no material that I can see in the Hansard debates that suggests that the 1911 Act was intended to apply even when we moved at some time in the future to a position where both Houses would be elected".
>
> 366. Lord Goldsmith warned "whilst it would be open to Parliament to legislate now to make clear that the Parliament Acts should operate in the same way in relation to an elected House the vague and general provisions of the proposed Section 2 including Section 2(1)(b) do not seem to me adequate for that purpose". Lord Pannick concurred:

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92 Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill*, volume II, HL Paper 284-II, HC Paper 1313-II 2010-12, 23 April 2012, Ev 6

93 Lord Pannick's evidence is available in volume II of the report, Ev 397-405 and 425-30, while Lord Goldsmith's is available in volume III, Ev 73-6

> "it is absolutely vital, in my opinion, for the reform Bill to specify with clarity whether or not it is the intention that the Parliament Acts should continue to apply in the event of there being a substantially or wholly elected upper Chamber. It would be extremely undesirable to leave that fundamental question unclear for the future; the inevitable consequence is that the matter would end up in court rather than being decided by Parliament."
>
> He did not consider that Clause 2 of the Bill "adequately addresses that question".
>
> 367. **It is not for this Committee to give legal advice on the applicability of the Parliament Acts to a reform Bill. We leave the evidence of Lord Pannick and Lord Goldsmith to speak for itself.**[94]

Nick Clegg was questioned on these issues when he appeared before the Joint Committee. Baroness Symons asked him "Are you going to be able to rest on the Parliament Act when the House of Lords is elected, too? The whole raison d'etre in the preamble will be knocked away. How can you say that you can go on using the Parliament Act?"

Mr Clegg replied with a suggestion that the Government was considering the issue:

> I am keenly aware of the preamble. The preamble is just a small point. It does not have legal force. Lord Pannick made some very interesting observations on this point to this Joint Committee. He made a slight variant of your argument. In order to clarify the status of the Parliament Act, he advocates incorporating it into the final Act. It is a novel idea. He also confirmed in his evidence to you that this Government are entirely entitled to use the Parliament Act to see their business through. I am very keen to examine what Lord Pannick said on this point in order to pick up from where the 1911 preamble left off. Of course, I accept that there might be tying up of loose ends as we move towards direct election, but we need to look at it quite carefully. Is it possible, does it work legally and so on?[95]

Later he described the argument for an explicit reference to the Parliament Acts as "a powerful one":

> Notwithstanding that brusque response from the Attorney-General, I think Mark [Harper] and I have been very clear that the argument that Lord Pannick and Lord Goldsmith made is a powerful one. It is about the status of the Parliament Acts in a reformed House of Lords rather than rewriting the provisions of those two Acts. It is a legal issue, but we are very willing to look at the specific recommendation that we write the Acts into the Bill or refer to them in the Bill.[96]

The Joint Committee backed the call for clarity in statute over the applicability of the Parliament Acts:

> 368. In spite of the Government's confidence, distinguished lawyers have some doubts as to whether the Parliament Acts would continue to be effective once the second chamber was elected or largely elected. **If the Government wish to ensure that the Parliament Acts apply to a reformed House, they should make statutory provision for it**.[97]

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94 Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill*, HL Paper 284, HC Paper 1313 2010-12, 23 April 2012, paras 360 -367

95 Vol II, Ev 446

96 Vol II, Ev 455

97 Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill*, HL Paper 284, HC Paper 1313 2010-12, 23 April 2012, para 368

The alternative report by a minority of members of the Joint Committee concurred:

> While suggesting that this evidence from Lord Goldsmith and Lord Pannick can be left to speak for itself, the Joint Committee says it is not its role to give legal advice on the applicability of the Parliament Acts to a House of Lords reform bill. We agree, and it is not the role of a minority group of the Joint Committee to do so either. However, in our judgement, we believe that the view of Lord Goldsmith and Lord Pannick is correct on the point, and that the 1911 Parliament Act would not apply.[98]

Provisions in the House of Lords Reform Bill 2012-13

Clause 2 in the Bill proper is significantly different from clause 2 in the draft bill. There is now an explicit reference to the continuing operation of the Parliament Acts, but there is no longer a reference to the other conventions. Clause 2 is as follows:

> **2 Continued application of the Parliament Acts**
>
> (1) The Parliament Acts 1911 and 1949 continue to apply after the beginning of the first electoral period, despite the changes to the House of Lords made by this Act.
>
> (2) The preamble to the Parliament Act 1911 is repealed.

As mentioned above, the White Paper had given weight to the conventions governing the relationship between the two Houses, and presented the Parliament Acts as a "long stop" in the event of dispute:

> The relationship between the two Houses of Parliament is governed by statute and convention. The Parliament Acts of 1911 and 1949 provide the basic underpinning of that relationship and set out that the House of Lords is, ultimately, subordinate to the House of Commons. They provide that, in certain circumstances, legislation may be passed without the agreement of the House of Lords. The Government does not intend to amend the Parliament Acts or to alter the balance of power between the Houses of Parliament.[99]

The White Paper went on to place emphasis on the conventions which also govern the relationship, such as the financial privilege of the Commons and the fact that the Government must retain the confidence of the Commons. This supported the Government's conclusion that the simple approach taken in clause 2 of the draft Bill was sufficient, as it "does not attempt to codify the existing powers of the Houses in legislation but rather, as now, accepts that the position is a matter of convention."[100] This position has been reversed in the Bill proper.

During his statement on 27 June 2012, Lord Stratchclyde cast this as a response to the Joint Committee:

> On the recommendation of the Joint Committee, we have also significantly altered clause 2 of the Bill. It is no longer a declaratory statement that nothing in the Bill affects the primacy of the House of Commons, the powers of each House and the conventions. Instead, it now clarifies the continuing application of the Parliament Acts in the context of a reformed second Chamber.[101]

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98 Alternative report by 12 members of the Joint Committee on the Draft House of Lords Reform Bill, *House of Lords reform: an alternative way forward*, April 2012, para 2.28

99 House of Lords Reform Draft Bill, Cm 8077, May 2011, para 8

100 Cm 8077, para11

101 HL Deb 27 June 2012, c235

In response to a suggestion from Lord Richard, Lord Strathclyde agreed that it might be helpful for the two Houses of Parliament to pass resolutions that set out the conventions on their relationship, but he argued that this was not a matter of urgency in the current parliament.[102]

Conventions[103]

In 2006 a Joint Committee of both Houses was established to consider "the practicality of codifying the conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation". The main conventions considered by the Joint Committee were:

- the Salisbury-Addison Convention (regarding bills implementing manifesto commitments);
- the convention that the Lords does not usually object to secondary legislation;
- the convention that the government should get its business in "reasonable time";
- the financial privilege of the House of Commons; and
- the exchange of amendments between the Houses.

Salisbury-Addison Convention

House of Lords Library Note, *The Salisbury Doctrine,* provides the following summary of the Salisbury convention:

> The Salisbury doctrine, as generally understood today, means that the House of Lords should not reject at second or third reading Government Bills brought from the House of Commons for which the Government has a mandate from the nation.

It goes on to explain the origins of the doctrine:

> It had its origins in the doctrine of the mandate developed by the third Marquess of Salisbury, Prime Minister in 1885 and from 1886–1892 and 1895–1902, as part of his effort to perpetuate the influence of the House in an age of widening suffrage. Salisbury, a Conservative who sat in the Lords from 1868 until his death in 1903, developed a doctrine of the mandate over this period which argued that the will of the people and the views expressed by the House of Commons did not necessarily coincide, and that in consequence, the House of Lords had an obligation to reject, and hence refer back to the electorate, particularly contentious Bills, usually involving a revision of the constitutional settlement, which had been passed by the Commons.
>
> Since 1945, the Salisbury doctrine has been taken to apply to Bills passed by the Commons which the party forming the Government has foreshadowed in its General Election manifesto, being particularly associated with an understanding between Viscount Addison, the Leader of the House of Lords, and Viscount Cranborne (the fifth Marquess of Salisbury from 1947), Leader of the Opposition in the Lords, during the Labour Government of 1945–51; and thus is sometimes called the Salisbury/Addison doctrine. Lord Carrington later described the convention as extending to any wrecking

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[102] HL Deb 27 June 2012, cc245-6

[103] There is more information on this subject in Standard Note 5996, *Conventions on the relationship between the House of Commons and House of Lords*, 8 June 2011.

> amendment to a manifesto measure (Lord Carrington, *Reflect on Things Past: The Memoirs of Lord Carrington* (1988), pages 77–78).[104]

The continued validity of the convention after the *House of Lords Act 1999* removed all but 92 hereditary peers from the House of Lords was discussed by the Joint Committee on Conventions. It heard evidence from the Deputy Leader of the Liberal Democrats in the Lords, who argued that the convention was an historical agreement between the Labour Party in the Commons and the Conservative Party in the Lords, and was "therefore not relevant to current circumstances". The Joint Committee stated:

> the Salisbury-Addison Convention has changed since 1945, and particularly since 1999. Indeed, this was tacitly admitted by the Government which said in written evidence, "For a convention to work properly, however, there must be a shared understanding of what it means. A contested convention is not a convention at all". The continued validity of the original Salisbury-Addison Convention is clearly contested by the Liberal Democrats.
>
> The Convention now differs from the original Salisbury-Addison Convention in two important respects. It applies to a manifesto Bill introduced in the House of Lords as well as one introduced by the House of Commons. It is now recognised by the whole House, unlike the original Salisbury Addison Convention which existed only between parties.
>
> The convention which has evolved is that:
>
> > In the House of Lords
> >
> > a manifesto Bill is accorded a Second Reading
> >
> > a manifesto Bill is not subject to "wrecking amendments" which change the Government's manifesto intention as proposed in the Bill; and
> >
> > a manifesto Bill is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose.[105]

Since the 2010 General Election and the formation of a coalition government, there has been further discussion of the continued relevance of the Salisbury-Addison Convention. In particular, the application of the convention to bills included in the Coalition Agreement has been questioned. In a debate on the constitution on 20 January 2011, Baroness Royall of Blaisdon (the Leader of the Opposition in the House of Lords) asked:

> Does the Leader of the House accept, as we believe he must, that without a democratic mandate—without the direct and specific approval of the electorate for either the coalition or its programme—there can be no mandate for Bills; and that without a mandate for a Bill there can be no protection provided by the Salisbury/Addison convention?[106]

The Leader of the House of Lords, Lord Strathclyde, replied:

> The present Government are the first coalition Government since the Salisbury convention was formulated in its classic form. Inevitably, there are some stresses

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[104] House of Lords Library Note, *The Salisbury Doctrine,* June 2006, p1

[105] Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06, paras 97-99

[106] HL Deb 20 January 2011 c592

> within the system. The Salisbury convention applies to manifesto Bills, but this Government did not contest the election as a single party under a single manifesto. However, the Government, like all others, were formed and are sustained on the basis of the confidence of the House of Commons. This confidence has been secured on the basis of a programme set out in the coalition agreement. Like any Government, we have brought forward some measures that were in the manifesto and some that were not.
>
> So the Salisbury convention continues to apply, although perhaps it is not as often relevant as when a single party wins a majority. It is difficult now to determine what precisely constitutes a manifesto Bill but, then again, it was ever thus...[107]

Secondary legislation

Unlike most primary legislation, the House of Lords is able to exercise a veto over secondary legislation. The general powers of the House of Lords over delegated legislation are set out in the *Companion to Standing Orders* as follows:

> The Parliament Acts do not apply to delegated legislation. So delegated legislation rejected by the Lords cannot have effect even if the Commons have approved it. Neither House of Parliament has the power to amend delegated legislation. The House of Lords has only occasionally rejected delegated legislation. The House has resolved that "This House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration". Delegated legislation may be debated in Grand Committee, but must return to the floor of the House if a formal decision is required.[108]

The Joint Committee on Conventions considered the Lords role in scrutinising secondary legislation, and concluded that "the House of Lords should not regularly reject Statutory Instruments, but that in exceptional circumstances it may be appropriate for it to do so". It further explained:

> 228. The Government appear to consider that any defeat of an SI by the Lords is a breach of convention. We disagree. It is not incompatible with the role of a revising chamber to reject an SI, since (a) the Lords (rightly or wrongly) cannot exercise its revising role by amending the SI or in any other way, (b) the Government can bring the SI forward again immediately, with or without substantive amendment, as described by the Clerk of the Parliaments, and (c) the power to reject SIs gives purpose and leverage to scrutiny by the Joint Committee on SIs, and by the new Lords Committee on the Merits of SIs. The Government's argument that "it is for the Commons, as the source of Ministers' authority, to withhold or grant their endorsement of Ministers' actions" is an argument against having a second chamber at all, and we reject it.
>
> 229. For the Lords to defeat SIs frequently would be a breach of convention, and would create a serious problem. But this is not just a matter of frequency. **There are situations in which it is consistent both with the Lords' role in Parliament as a revising chamber, and with Parliament's role in relation to delegated legislation, for the Lords to threaten to defeat an SI.**[109]

The Joint Committee went on to give examples of circumstances in which it would be acceptable for the Lords to defeat an SI.

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[107] *Ibid,* c596-601

[108] House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords,* 2010, para 10.02

[109] Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06,

Lords consider government business "in reasonable time"

There is a convention that the House of Lords considers government business in "reasonable time". The Joint Committee on Conventions stated that:

> The convention "that Government business in the Lords should be considered in reasonable time" is set out in the Wakeham report, in the context of the Parliament Acts and linked with discussion of the Salisbury-Addison convention. "…The reformed second chamber should maintain the House of Lords convention that all Government business is considered within a reasonable time. Traditionally, the convention applies to all business, but it is particularly important that there should be no question of Government business being deliberately overlooked."[110]

The Joint Committee gave examples of when the convention had come under pressure, but concluded:

> Everyone agrees that the Lords should consider Government business in reasonable time, and in our view there is indeed such a convention. And no-one except the Government sees a problem in this area. The Lords do not filibuster, with the possible exceptions of the Industrial Relations Bill in 1971 and the first Hunting Bill in 2003. Self-regulation makes the reasonable time convention work, with difficulties being resolved through the usual channels. When a Bill runs slow, it is usually to suit the Government; it can often suit the Government to keep a Bill back in order, for instance, to expedite others.[111]

Financial Privilege

The House of Commons has a special role in financial matters. This is based on a resolution of 1671 which stated "That in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords".

Today, Bills of aid and supply such as the Finance Bill and the Consolidated Fund and Appropriation Bills originate in the Commons and are not amended by the Lords. Finance Bills are debated on second reading in the Lords, but other proceedings are only formal.

The *Parliament Act 1911* allows money bills (a bill whose only purpose is to authorise expenditure or taxation) that are so certified by the Speaker of the House of Commons to gain Royal Assent without having passed the House of Lords under certain circumstances, although no money bill has ever been presented for Royal Assent in this way.

It is possible for a bill that involves an increase in public expenditure to begin in the Lords if a minister takes charge of it for its Commons stages. For such bills, a subsection is added which states that "Nothing in this Act shall impose any charge on the people or on public funds" or vary any such charge. This is known as a 'privilege amendment'. The words are routinely removed when the bill is in Committee in the House of Commons. Lords amendments to a Commons bill that involve a charge upon the public revenue not sanctioned by the Commons money resolution in respect of that bill are deemed disagreed to upon the Speaker's declaration, 'by reason of privilege'.

Exchange of amendments between the Houses

The exchange of amendments between both Houses of Parliament, known as 'ping-pong', was considered by the Joint Committee on Conventions in 2006. It explained:

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[110] Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06, p120

[111] Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06, para 153

> 168. Once a Bill has passed through both Houses a list of Amendments made in the second House is compiled and the Bill is returned to the first House seeking its agreement to the Amendments. If the first House does not agree to the Amendments made by the second House it returns the Bill to the second House indicating its disagreement, or setting out alternative propositions. Exchanges between the two Houses continue until agreement is reached or a stalemate occurs. The point at which stalemate is deemed to have been reached is referred to as "double insistence". This is described in the House of Lords *Companion* as "if one House insists on an amendment to which the other has disagreed, and the other insists on its disagreement, and neither has offered alternatives, the bill is lost." However, as *Erskine May* acknowledges, "…there is no binding rule of order which governs these proceedings in either House, and, if there is a desire to save a bill, some variation in proceedings may be devised in order to effect this object".[112]

The Joint Committee concluded that the exchange of amendments was not a convention, but a framework for political negotiation. However, it acknowledged that there was a convention that in general, neither House should be asked to consider amendments without notice. It recommended:

> We believe that it would facilitate the exchange of Amendments between the two Houses if that convention was more rigorously observed, i.e. if reasonable notice was given of consideration of Amendments from the other House. We recognise that this convention may have to be breached at the end of a Session when pressure of time makes rapid exchanges of messages between the two Houses inevitable; but this should be the exception and not the rule.[113]

3 Costs

The costs of the reform process, and the possible costs of running the reformed House, are open to varying projections depending on what assumptions are made and exactly what is included. The Government has given its estimates in the impact assessment and cost projections published alongside the Bill. Lord Lipsey has published his own alternative estimates, giving a figure as high as £484 million in his calculation of June 2012.[114] Analysis is also given on the Full Fact website.[115] This Paper does not attempt a full analysis, but figures for elections and a possible referendum are given in the relevant sections. The remainder of this section deals with pay, allowances and pensions.

3.1 Salaries, allowances and pensions

Most members of the current House of Lords do not receive a salary. Since October 2010 members of the House of Lords have been able to claim a daily allowance of £300 (or £150 for a half day) for each qualifying day of attendance, and travel expenses.[116] Ministers in the House of Lords and certain office-holders receive a salary under the *Ministerial and other Salaries Act 1975*.

The salaries, allowances and pensions of Members of the House of Commons are determined by the Independent Parliamentary Standards Authority (IPSA), under the

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[112] Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06, para 168

[113] Joint Committee on Conventions, *Conventions of the UK Parliament,* HL Paper 265 HC 1212 2005-06, para 189

[114] David Lipsey, Press Release, 21 June 2012

[115] *Lords reform: would an elected House cost the taxpayer £500m?* 21 June 2012. Lord Lipsey is a trustee of Full Fact, but the organisation has criticised aspects of his previous work on this subject, and it claims independence in specific editorial decisions.

[116] House of Lords, *Guide to Financial Support for Members*, February 2012

Parliamentary Standards Act 2009. During its passage through Parliament, the House of Lords inserted what is now section 2 of the Act:

> (1) Nothing in this Act shall affect the House of Lords.
>
> (2) But that is subject to— [various provisions in the Act][117]

The Lords agreed this provision at Report Stage,[118] after Baroness Royall of Blaisdon, for the Government, accepted the principle at committee stage.[119]

In the White Paper, *House of Lords Reform Draft Bill*, the Government proposed that members of a reformed House of Lords "would be entitled to a taxable salary as they would be full time Parliamentarians". The Government also proposed that members of the reformed chamber would be entitled to receive a pension and allowances for expenses incurred in carrying out their parliamentary duties. The Government proposed that the responsibility for determining and paying salaries and expenses to members of the reformed Chamber would be given to IPSA.[120] The draft bill included provisions to amend the *Parliamentary Standards Act 2009* to extend IPSA's responsibilities to paying members of the House of Lords, including transitional members; determining their salaries; preparing an allowances scheme for the House of Lords, and dealing with claims for and paying allowances under it; reviewing rejected claims; and providing information and guidance for members of the House of Lords.[121]

Although it proposed that IPSA should set the level of salaries of members of the reformed House of Lords, the Government suggested what that level should be:

> ... The Government considers that the level of salary for a member of the reformed House of Lords should be lower than that of a member of the House of Commons but higher than those of members of the devolved legislatures and assemblies. This would recognise that they would have responsibilities for UK-wide legislation but would not have constituency duties. However, it will be for the IPSA to set the level of salaries.[122]

An MP's salary is currently £65,738 per annum and the salary of a Member of the Scottish Parliament (the highest salary of the three devolved legislatures) is £57,520.

In the White Paper, the Government proposed that "members of the reformed House of Lords should be entitled to claim allowances for costs incurred while conducting their parliamentary duties". The Government proposed that the allowances scheme would be "set and run by the IPSA", with reviews after every election to the reformed House of Lords and whenever IPSA considered it appropriate.[123]

In the White Paper, the Government proposed "to extend the IPSA's remit to include members of the reformed House of Lords who are not already paid a pension out of the PCPF [Parliamentary Contributory Pension Fund]". The administration of the PCPF is currently entrusted to 10 trustees under the *Parliamentary Standards Act 2009* (as amended). The Government said that it would consult the PCPF trustees about the transitional arrangements which would be necessary to ensure continuity and fair

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117 *Parliamentary Standards Act 2009* (chapter 13), section 2
118 HL Deb 20 July 2009 cc1415-1417
119 HL Deb 14 July 2009 cc1046-1061
120 HM Government, *House of Lords Reform Draft Bill*, May 2011, Cm 8077, para 107
121 *Draft House of Lords Reform Bill*, clause 59
122 HM Government, *House of Lords Reform Draft Bill*, May 2011, Cm 8077, para 111
123 HM Government, *House of Lords Reform Draft Bill*, May 2011, Cm 8077, paras114-116

representation on the board under its proposals. It also indicated that its proposals would conform to the outcome of the Independent Public Service Pension Commission.[124]

The Joint Committee on the draft bill considered two questions in relation to salary:

> Is it correct that all members should be full-time and paid a salary?
>
> What would be an appropriate level of salary?[125]

Having suggested that appointed members would not be expected to be full-time members of the reformed House of Lords, the Joint Committee considered whether it would be appropriate to pay different members different amounts. The Joint Committee concluded that:

> We recommend that transitional Members should receive a per diem allowance rather than a salary. We further recommend that IPSA should consider whether appointed members may elect to receive a per diem allowance if it better reflects their level of participation in the work of the House. The Bill should leave it to IPSA to set the level of those allowances.[126]

The Committee agreed that, as proposed in the draft bill, IPSA should determine the level of salary and allowances, adding that "the salary and allowances should be set at such a level as to enable people from all social backgrounds and all parts of the United Kingdom to serve in the second chamber".[127]

Salaries

Clause 46 of the *House of Lords Reform Bill* amends the *Parliamentary Standards Act 2009* to give IPSA responsibility for determining the salaries of and paying members of the House of Lords. Salaries are to be paid to elected, appointed and ministerial members not in receipt of a ministerial salary under the *Ministers and other Salaries Act 1975*. Lords Spiritual and transitional members will not receive a salary (the separate arrangements for transitional members are outlined below). The Bill specifies that in determining salaries IPSA needs to create a relationship between pay and levels of participation of members receiving salaries:

> A determination must ensure that there is a relationship between—
>
> (a) the amount of a member's pay for a month, and
>
> (b) the participation of the member in the work of the House of Lords in that month.[128]

In his statement to the House of Lords, following the publication of the Bill, Lord Strathclyde explained why the Government no longer proposed that all members should receive the same level of salary:

> The Joint Committee also recommended that the 90 appointed Members should not necessarily be expected to attend the reformed House every sitting day. The committee argued that allowing individuals to maintain relevant professional expertise

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124 HM Government, *House of Lords Reform Draft Bill*, May 2011, Cm 8077, paras118-124

125 Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill*, 23 April 2012, HC 1313-I, para 323

126 Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill*, 23 April 2012, HC 1313-I, para 327

127 Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill*, 23 April 2012, HC 1313-I, para 331

128 *House of Lords Reform Bill [Bill 52 of 2012-13]*, clause 46, 7B (2)

> would strengthen the reformed House, as it does the present House. The Government have accepted this recommendation, and consider that the same logic should apply to elected Members. To reflect this, the Bill provides that IPSA must pay Members according to their level of participation in the work of the House.[129]

In response to questions on his statement, Lord Strathclyde also said that:

> … As for pay, there is something inherently useful about the current arrangements whereby Peers have a daily allowance, and we wish to replicate that through a per diem salary that would be paid monthly in arrears but would be assessed on daily attendance in this House.[130]

IPSA would be required to review its determination on salaries after each election to the House of Lords (except the first) and whenever it considers it appropriate.

In its response to the Joint Committee on the draft bill, the Government reiterated its acceptance of the proposal that members of the House of Lords did not need to be full-time and that the pay structures would need to reflect this:

> As already stated, the Government believes that both appointed members and elected members should be able to vary their level of participation in the reformed House, so that they can maintain outside occupations and interests that can inform their contribution within the House. New section 7B(2) of the Parliamentary Standards Act requires that the pay system devised and administered by IPSA reflect the ability of members to do this. The Government notes the Committee's recommendation that IPSA consider whether a per diem allowance would be the most effective payment system in this context, but agrees that this is a decision for IPSA.[131]

In the *House of Lords Reform Bill – Costs Projections*, the Cabinet Office calculated that "a daily rate of £300 before tax … is equivalent to £43,950 if the member participated on every sitting day" (the annual average sitting days in the 2010-12 session was 146.5).[132]

Allowances

Clause 46 also gives IPSA responsibility for determining allowances in the reformed House of Lords. IPSA would be required to prepare and review an allowance scheme for all elected members, appointed members, Lords Spiritual and ministerial members of the House of Lords. Under the Bill, IPSA's allowances scheme would not apply to the transitional members of the reformed House of Lords. The Bill states that IPSA may not provide an allowance for the office costs in the electoral districts of elected members:

> The scheme may not provide for an allowance to be payable to an elected member in respect of expenditure incurred in connection with maintaining an office in the electoral district for which the member was returned.[133]

The Bill specifies how IPSA should deal with claims, and gives the Compliance Officer responsibility for reviewing IPSA's decisions in relation to claims made by members of the House of Lords. The Compliance Officer would be able to undertake investigations into

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[129] HL Deb 27 June 2012 c235
[130] HL Deb 27 June 2012 c241
[131] HM Government, *Government Response to the Report of the Joint Committee on the Draft House of Lords Reform Bill*, June 2012, Cm 8391, p29
[132] Cabinet Office, *House of Lords Reform Bill – Costs Projections*, June 2012, para 12
[133] *House of Lords Reform Bill [Bill 52 of 2012-13]*, clause 46, 7D (9)

allowances paid to members of the House of Lords and provide information connected with an investigation to the House of Lords Commissioner for Standards.[134].

The *Parliamentary Standards Act 2009* created an offence of providing false or misleading information for allowances claims, which applied to MPs. The Bill extends this provision to cover members of the House of Lords.[135]

In the *House of Lords Reform Bill – Costs Projections*, the Cabinet Office assumed that a staffing allowance would enable members to employ one full-time equivalent member of staff; that IPSA would provide similar accommodation allowances to those given to MPs; and that other allowances would cover a London Area Living Payment, an allowance for office administration, and travel and subsistence. The Cost Projection also allowed for staff training, disability allowance, security and contingencies.[136]

Arrangements for transitional members of the House of Lords

The *House of Lords Reform Bill* makes no provision for IPSA to pay salaries or allowances to the transitional members of the House of Lords. The Government expects the current arrangements to continue:

> … the cost associated with the transitional members of the House of Lords … have been calculated separately from the cost of new members as transitional members will continue to be paid under resolutions of the House. In practise the Government expects this to continue to amount to a daily attendance allowance and other expenses on the current basis. They will not be entitled to the new allowances being introduced to support new members of the reformed House. There are two components to this cost: the cost of their daily attendance allowance, and the costs of their travel and subsistence.[137]

Pensions

It has not been settled that members of the reformed House of Lords should be entitled to pensions. **Clause 47** requires IPSA to "prepare and publish a report on whether there should be a House of Lords pension scheme". However, IPSA's duty is subject to a Minister making an Order requiring IPSA to prepare the report.

3.2 Governance of IPSA

In the White Paper, the Government proposed that "the governance arrangements for the IPSA should be amended to take account of the fact that it would be dealing with the reformed House of Lords as well as the House of Commons".[138]

IPSA Board

Under the *Parliamentary Standards Act 2009*, the five members of the IPSA Board are appointed by the Queen on an address of the Commons, after being selected by the Speaker of the House of Commons.[139] The Act provides that there is to be a "Parliamentary member" of IPSA and that they "must be a person who has been (but is no longer) a member of the House of Commons".[140]

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134 Schedule 9 makes changes to sections 9, 9A and 9B, and Schedule 4 of the *Parliamentary Standards Act 2009.*

135 Schedule 9 makes changes to section 10 of the 2009 Act.

136 Cabinet Office, *House of Lords Reform Bill – Costs Projections*, June 2012, paras 18, 21 and 23

137 Cabinet Office, *House of Lords Reform Bill – Costs Projections*, June 2012, para 27

138 HM Government, *House of Lords Reform Draft Bill*, May 2011, Cm 8077, para 117

139 *Parliamentary Standards Act 2009*, Schedule 1, para 2

140 *Parliamentary Standards Act 2009*, Schedule 1, para 1

The *House of Lords Reform Bill* (Schedule 9) provides (as the draft Bill (Schedule 7) did) that both Houses and the Speakers of both Houses are to be involved in the process of appointing members of IPSA and that the Parliamentary member "must be a person who has been (but is no longer) a member of either House of Parliament".

Parliamentary oversight of IPSA

The *Parliamentary Standards Act 2009*, as amended by the *Constitutional Reform and Governance Act 2010*, specifies the membership of the Speaker's Committee for the Independent Parliamentary Standards Authority as:

> (a) the Speaker of the House of Commons,
>
> (b) the Leader of the House of Commons,
>
> (c) the person who chairs the House of Commons Committee on Standards and Privileges,
>
> (d) five members of the House of Commons who are not Ministers of the Crown, appointed by the House of Commons, and
>
> (e) three lay persons appointed by resolution of the House of Commons.

It leaves the Committee to determine its own procedure.[141] The Act gives the Committee the following duties, to:

- agree the Speaker's nominations for membership of the IPSA Board and for Commissioner for Parliamentary Investigations;[142]
- review the estimate and decide whether it is satisfied that the estimate is consistent with the efficient and cost-effective discharge by the IPSA of its functions. It has to consult the Treasury about the estimate. The Act makes the following provisions:

  > (5) Before deciding whether it is satisfied or making modifications, the Committee must consult the Treasury and have regard to any advice given.
  >
  > (6) After the Committee has reviewed the estimate and made any modifications, the Speaker must lay the estimate before the House of Commons.
  >
  > (7) If the Committee does not follow any advice given by the Treasury, or makes any modifications to the estimate, it must prepare a statement of its reasons and the Speaker must lay the statement before the House of Commons.
  >
  > (8) Any repayments received by the IPSA may be retained by the IPSA and applied by it for the purposes of its functions.[143]

The Secretary of State for Justice explained during Committee stage of the *Parliamentary Standards Bill 2009-10* that in drawing up this part of the legislation, Ministers took into consideration the experience of the Speaker's Committee on the Electoral Commission, established by the *Political Parties, Elections and Referendums Act 2000*.[144]

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141 *Parliamentary Standards Act 2009*, Schedule 3
142 *Ibid*, Schedule 1, para 5 and Schedule, para 1
143 *Ibid*, Schedule 1, para 22
144 HC Deb 30 June c 217*; Political Parties, Elections and Referendums Act 2000* (chapter 41), section 2

The draft bill included provisions to amend the composition of the Speaker's Committee on the Independent Parliamentary Standards Authority to include:

> (a) the Speaker of the House of Lords,
>
> (b) the Leader of the House of Lords,
>
> (c) the person who chairs the House of Lords Committee for Privileges and Conduct,
>
> (d) three members of the House of Lords who are not Ministers of the Crown, appointed by the House of Lords,

It proposed reducing the number of non-ministerial Members of the Commons to three; and provided that the three lay persons are to be "appointed by resolution of each House of Parliament". The Committee would be renamed to reflect the involvement of both Houses and both Speakers: it would become the Speakers' (in place of Speaker's) Committee on the Independent Parliamentary Standards Authority.

The draft bill included a provision to allow the Speakers' Committee to establish sub-committees and then specified that the functions of the committee relating to the review of IPSA's estimates "are to be exercised by a sub-committee of the Committee which does not include any member of the House of Lords", otherwise it leaves the Committee to determine its own procedure.[145]

The Joint Committee did not comment on these proposals.

The Bill does not alter the proposals in the draft bill. Members of both Houses would be involved in oversight of IPSA, but only the Commons members of the Committee would review IPSA's estimates.

4 Referendum?

One persistent consideration in recent years has been the question of holding a referendum on Lords reform. Referendums have become a more frequent device for settling constitutional questions since 1997. The Lords Constitution Committee report of April 2010 considered that the abolition of either House of Parliament would come within their definition of a fundamental constitutional issue for which a referendum might be appropriate.[146] The devolution proposals of the first Blair administration 1997-2001 were the subject of referendums, but the removal of most hereditary peers in the *House of Lords Act 1999* was not preceded by any such poll.

The Labour party manifesto for the May 2010 election called for a referendum on plans for an elected House. During the passage of the *Parliamentary Voting Systems and Constituencies Bill 2010-2012* several Members in both Houses referred to the way in which the Government were planning a referendum on AV, but would not commit to a referendum on Lords reform. The Joint Committee on the draft House of Lords reform bill noted that the Government cited the Lords Constitution Committee report as a reason for not holding a referendum:

> 372...The Government's view is that:
>
> "because all three parties were in favour of this, we did not think that a referendum was justified. When the House of Lords Constitution Committee looked at referendums, it

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[145] *Draft House of Lords Reform Bill*, Schedule 7, paragraph 15

[146] *Referendums in the United Kingdom*, House of Lords Constitution Committee, HL Paper 99 of 2009-10, April 2012, para 94

> said that it thought that abolition of the House of Lords would be a subject on which you would automatically want to have a referendum, but it did not say that changing the composition of the House of Lords would be such a proposition. So, no, we do not think that a referendum is necessary, and that is why we did not propose it in our draft Bill or White Paper".[147]

The Joint Committee argued that this approach would mean that the electorate would have no opportunity to express an opinion:

> 373. Despite the constitutional importance of the subject, the lack of a clear party division on the issue means that any opposition to the proposed reform cannot readily be tested at any future election by voting for one or other candidates seeking election to the House of Commons. If the Government has its way, the draft Bill will have become an Act before the next general election, at which the first tranche of elected Members of a reformed House of Lords would be seeking election. There is thus no opportunity for the electorate to provide a mandate for these proposals.[148]

The Committee recommended that there be an opportunity to debate the need or otherwise for a referendum on the bill's proposals, and expressed its opinion that in view of the constitutional significance, a referendum should be held.[149] The report did not investigate the timing of the referendum; that is whether it should be held before the passage of a reform bill or afterwards. Nor did it consider the potential application of the *Political Parties, Elections and Referendums Act 2000.* Standard Note 5142, *Regulation of Referendums*, sets out the legislation governing the funding and regulation of referendums in that Act, as amended.

The Alternative Report agreed with the conclusions of the Joint Committee on the need for a referendum.[150]

The Labour party indicated that it would expect a bill on House of Lords reform to contain a commitment to a referendum. In March 2012 Sadiq Khan, Shadow Justice Secretary was quoted as saying:

> "We are not playing games with any Tories over this issue, but in our manifesto we said a change as important as an elected second chamber should be put to the people in a referendum. That remains our position.
>
> "We held a referendum to decide a new voting system for the Commons, the first chamber, and the British people would not understand why we were not having a referendum for the second chamber if it is to be elected by a new proportional voting system, as is proposed.
>
> "Change of this kind of importance cannot be imposed by the political classes from on high without a referendum."[151]

Ed Miliband indicated that the Opposition would want to introduce a referendum.[152] In an interview for Politics UK following the publication of the bill, Sadiq Khan said:

> Issues of major constitutional significance should also be put to the people in a referendum. But the Bill doesn't propose to do this. It's not clear why the Government

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147 Joint Committee on draft House of Lords reform bill, *Report*, HL 284/ HC1313, 2010-12
148 Ibid
149 Ibid paras 384, 385
150 *House of Lords reform: an alternative way forward* April 2012 paras 229-235
151 "Labour to demand referendum on creation of elected House of Lords" 2 March 2012 *Guardian*
152 "Labour will support Bill to reform Lord, says Ed Miliband 27 June 2012 *Independent*

> believes that holding a referendum on the biggest constitutional change since universal franchise is not necessary. Labour, quite rightly, held referendums on devolution to Wales, Scotland and Northern Ireland, and on the creation of a Mayor and an Assembly in London. We even lost a vote on the establishment of a regional assembly in the North East of England. Despite having our fingers burnt, we still retain a belief in the role of referendums in major constitutional change. If a bill to reform radically the structure and composition of Parliament doesn't merit a referendum than what does? Even the Joint Committee - appointed by Nick Clegg to look into House of Lords Reform and on whose report the Deputy Prime Minister placed great store – unanimously said that there should be a referendum.[153]

There has been some speculation as to the possible timing of any referendum, given that a referendum on Scottish independence is expected. The Scottish Government has announced plans for a referendum in October 2014, but no definite date has yet been agreed with the UK Government.

The costs of a referendum have been estimated by the Government at about £80 million.[154] The costs of the AV referendum were given as £75.055 million in a recent Written Answer.[155]

5 Can the Parliament Acts be used on the House of Lords Reform Bill?

In evidence to the Joint Committee, following some of the comments made about the use of the Parliament Acts in the *Jackson* case, under which the validity of the *Hunting Act 2004* was challenged, Lord Morris of Aberavon expressed doubts that a Bill to reform the House of Lords could be presented for Royal Assent under the Parliament Acts.[156] The Joint Committee sought the advice of the Attorney General but he declined to provide that advice on the grounds that it was inappropriate for the Law Officers to advise Parliament on the Government's legislative programme.[157]

The Joint Committee did receive evidence from Lord Pannick, who was involved in the *Jackson* case, and Lord Goldsmith, a former Attorney General. The Committee reported that both Lord Pannick and Lord Goldsmith

> … considered that the Parliament Acts could properly be used to reform the House of Lords, and that the courts would uphold such a decision, despite the remarks by some of the judges in *Jackson*. In oral evidence, Lord Pannick set out the reasons why he considered the Parliament Acts could be used in such a way:
>
> > The first is that the 1911 Act makes very clear the circumstances in which it does not apply. It lists exceptions; constitutional reform—reform of the upper House—is not one of them. As Lord Bingham said in the Hunting Act case, the word used in Section 2 of the 1911 Act is "any", and any Bill means any Bill, subject to the defined exceptions. The second reason is that the whole point of the 1911 Act was to provide a mechanism by which disputes between the two Houses could be resolved without the appointment of a large number of new Peers. It would be very surprising if the courts were to interpret the 1911 Act so that it could not resolve a dispute between the two Houses. The third reason is that it is absolutely clear that the reason why the 1911 Act was passed in the first place was to

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153 "Sadiq Khan Labour wants Lords reform, but our support is not a blank cheque" 28 June 2012 ePolitix
154 HL Deb 27 June 2012, c241
155 HC Deb 20 June 2012, c998W
156 Lords Library Note LLN 2005/007, *Parliament Act 1949*, gives further details.
157 Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill*, HL Paper 284, HC Paper 1313 2010-12, 23 April 2012, para 361

> enable the House of Commons to have its way, if there were a dispute, on issues of major constitutional reform. ... The fourth reason, if one needs to go this far, is that there are ample statements in Hansard indicating that it was very much the intention of the Government to have the ability to use the 1911 Act to secure fundamental constitutional reform, in particular reform of the House of Lords.[158]

5.1 Parliament Acts: application and timescales

To be eligible for the Parliament Acts procedure, a bill (other than a money bill) must be passed[159] by the House of Commons "in two successive sessions … and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the second time by the House of Lords" be presented for Royal Assent, provided that "one year has elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the second of these sessions".[160]

The exact interpretation of "one year" and "one month" has never been tested. The safest assumption is likely to be to count "one year" from the day after the bill receives its second reading in the Commons in the first session (*i.e.*, one calendar year and one day). To allow for any unforeseen circumstances and guarantee that at least one month elapses before the end of the session, the Commons wait for one further month from the date of sending the bill to the Lords before presenting it for Royal Assent, even if the bill has clearly been rejected by the Lords before that time.[161] Again, in practice, this would mean one calendar month and one day. It is likely, therefore, that the minimum period of time that could elapse between the Commons second reading in the first session and the bill receiving Royal Assent is, in fact, thirteen months and two days (assuming there is no gap between the Commons passing the bill and the Lords receiving it).

5.2 Speaker's rulings on applying the Parliament Acts

The timing of the submission for Royal Assent of a bill that has been subjected to the *Parliament Acts* is affected by whether or not it is rejected outright in the House of Lords. In 1998, following the Lords rejection of the *European Parliamentary Elections Bill 1998-99*, the Speaker ruled:

> The rejection of the *European Parliamentary Elections Bill* for the second time by the other place now brings into play the provisions of the Parliament Acts. The House of Lords will be asked to return the Bill to this House, where it will be prepared for the Royal Assent. The Parliament Acts require that, before a Bill is presented for the Royal Assent under this procedure, it has been sent to the House of Lords at least one month before the end of the Session in which it was rejected for the second time. The Bill was sent to the Lords on 3 December. In order to comply strictly with the requirements of the Parliament Acts--and I certainly intend to interpret the Acts strictly--it cannot be submitted for Royal Assent until a month after that date.[162]

But, in the case of the *Sexual Offences (Amendment) Bill 1999-2000*, which the House of Lords amended in Committee, the Speaker made the following statement to the House of Commons, on the last day of the 1999-2000 session:

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158 Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill*, HL Paper 284, HC Paper 1313 2010-12, 23 April 2012, para 361

159 A bill is recorded in the *Journal* of the House as having been passed once it has been given a third reading.

160 *Parliament Act 1911* (chapter 13), section 2(1) (as amended)

161 See Speaker's ruling on *European Parliamentary Elections Bill1998-99*, HC Deb 16 Dec 1998 Vol 322 c984 http://pubs1.tso.parliament.uk/pa/cm199899/cmhansrd/vo981216/debtext/81216-23.htm#81216-23_spnew6

162 HC Deb 16 Dec 1998 Vol 322 c984

> It is now clear that the House of Lords will not pass the *Sexual Offences (Amendment) Bill* in the current Session. That will constitute rejection of the Bill for the purposes of the Parliament Acts. The House has not directed that the Bill should not be passed for Royal Assent. It is therefore my duty to follow the procedure laid down. Accordingly, the House of Lords was asked to return the Bill to this House. In strict compliance with the requirements of the Parliament Acts, I have certified the Bill and I will ensure that it is submitted for Royal Assent at the time of prorogation.[163]

5.3 Rejection of a bill

The *Parliament Acts* set out the procedures which are available should the House of Lords "reject" a bill; and section 2(3) of the 1911 Act states that for this purpose a bill is deemed to be rejected by the House of Lords "if it is not passed by that House either without amendment or with such amendments only as may be agreed to by both Houses". The clearest case is when the House of Lords declines to give a bill a second reading, (as with the *European Parliamentary Elections Bill 1998-99*). With the *War Crimes Bill 1990-91* (the Bill presented in the second session) the Lords agreed an amendment that delayed the bill being read a second time by six months (as it happened, beyond the prospective end of the session).[164] Amendments such as this are tantamount to rejection in both Houses, and a Speaker's statement was made the following day which indicated that what had been done in the Lords was regarded as rejection of the Bill.[165]

What if the Lords agree to second reading but amend the bill substantially during committee stage, as with the *Sexual Offences (Amendment) Bill 1999-2000*? The proceedings on this Bill further clarified the issue of how the *Parliament Acts* operate in circumstances where outright rejection has not taken place, but the Bill has simply not been received back in the Commons when the end of the second session approaches (see the Speaker's statement quoted above).

5.4 Timing of Royal Assent

If a bill is not rejected outright in the Lords, in the second session, Royal Assent could not be granted until it is clear that the House of Lords is not going to pass the Bill (in line with the Speaker's ruling on the *Sexual Offences (Amendment) Bill 1999-2000*).

However, if a bill is rejected, Royal Assent can be granted earlier: the timing of Royal Assent in these circumstances depends on the date the Bill received its second reading in the House of Commons in the first session that it was considered.[166]

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163 HC Deb 30 Nov 2000 Vol 357 c1137
164 HL Deb 30 April 1991 cc619-744
165 HC Deb 1 May 1991 cc315-317
166 See the Speaker's ruling on the *European Parliamentary Elections Bill 1998-99.*

Appendix 1: Bibliography of publications by the Libraries of the House of Lords and House of Commons

Lords Library Notes are listed below as "LLN"; Commons Library publications are "Standard Notes".

Facts and figures
- Standard Note 3900, *House of Lords Statistics*, 4 July 2012
- *Peerage creations since 1997*, LLN 2012/023, June 2012
- *Public Attitudes towards the House of Lords and House of Lords Reform*, LLN 2012/028, July 2012

Chronologies
- *House of Lords Reform: Chronology 1900 – 2010*, LLN 2011/025, July 2011
- Standard Note 5135, *Reform of the House of Lords: the 2008 White Paper and Developments to April 2010*, 11 May 2010
- Standard Note 5623, *Reform of the House of Lords: the Coalition Agreement and further developments*, 2 June 2011

Draft bill
- *House of Lords Reform Draft Bill*, LLN 2011/021, June 2011
- *Joint Committee Report on the Draft House of Lords Reform Bill: Reaction*, LLN 2012/015, 27 April 2012

Bibliography
- *Bibliography on Lords Reform*, LLN 2012/014, 26 April 2012

Procedure
- Standard Note 675,*The Parliament Acts*, June 2012
- Standard Note 6371, *Timetabling of constitutional bills since 1997*, June 2012

Other
- *Lord Steel of Aikwood's Private member's bills on House of Lords reform*, LLN 2012/017, May 2012
- Standard Note 5226, *Ministers in the House of Lords*, August 2010
- *Members of the House of Lords: Voting at parliamentary elections*, LLN 2012/022, May 2012
- Standard Note 5148, *Resignation, Suspension and Expulsion from the House of Lords*, November 2010
- Standard Note 2855, *The House of Lords Appointments Commission*, February 2011
- Standard Note 5996, *Conventions on the relationship between the House of Commons and the House of Lords*, June 2011