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BRIEFING PAPER

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Conventions on the relationship between the Commons and the Lords

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Summary

This Briefing Paper sets out the conventions on the relationship between the two Houses of Parliament and their origins, as well as the recommendations of Lord Strathclyde's December 2015 review of secondary legislation and the primacy of the House of Commons.

What are the main conventions?

There are a number of conventions and statutes which together, enshrine the primacy of the elected chamber, the House of Commons, over the House of Lords. The main conventions which relate to the relationship between the two chambers are considered to be:

- The Salisbury Convention - bills implementing manifesto commitments are not opposed by the Lords at Second Reading and are not subject to wrecking amendments;
- The Lords does not usually object to secondary legislation;
- The financial privilege of the House of Commons;
- Governments should get their business "in reasonable time".

These conventions were all subject to consideration by the Joint Committee on Conventions in 2006 which considered "the practicality of codifying the conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation". The Committee report favoured passing resolutions on the conventions rather than codifying them, but their formulation of the resolutions were not put to either House.

Tax credits defeats and Lord Strathclyde's "rapid review"

On 26 October 2015 the House of Lords twice amended a motion so as to decline to consider a statutory instrument that would have implemented the Government's policy on tax credits. This prompted some to question whether the House of Lords had acted properly in voting down a statutory instrument, and whether it had encroached on the financial privilege of the House of Commons. Others stated that the Lords had acted within its normal competence and no conventions had been broken. The incident drew attention to these conventions and how they operate when the Government lacks a majority of members in the House of Lords.

As a result, the Government launched a "rapid review" of the relationship between the two Houses of Parliament which was chaired by a former Leader of the House of Lords, Lord Strathclyde. Lord Strathclyde published his report on 17 December 2015.

Lord Strathclyde recommended that there should be a new procedure, set out in statute, which would allow the Lords to invite the Commons to "think again" when there is a disagreement on a statutory instrument between the two Houses. The Commons would then be able to insist on its primacy. He also suggested that a review should take place, with the involvement of the House of Commons Procedure Committee, into the circumstances in which statutory instruments should be subject to Commons-only procedures. Lastly, he suggested that it would be appropriate for the Government to take steps to ensure that "too much is not left for implementation by statutory instrument" in order to mitigate excessive use of the new process.

1. The Strathclyde review of the relationship between the two Houses

Summary

On 26 October 2015 the House of Lords passed two separate amendments to the Government's motions to approve a statutory instrument to implement their policy on tax credits. This led to questions as to whether the House of Lords acted according to conventions regarding statutory instruments and financial privilege. As a result, the Government appointed Lord Strathclyde to undertake a "rapid review" of the relationship between the two Houses.

Lord Strathclyde concluded that the convention regarding statutory instruments "is now so flexible it barely a convention at all". His report, published on 17 December 2015, recommended that the Lords power over statutory instruments should be limited to that of delay, with the Commons able to insist on an instrument following a Lords defeat. He also recommended that consideration should be given to circumstances in which a Commons-only procedure be used for statutory instruments.

1.1 The Tax Credit votes

On 26 October 2015 the House of Lords passed two separate amendments to the Government's motions to approve a statutory instrument to implement their policy on tax credits. The two amendments passed to the motion to approve the *Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015* were as follows:

- An amendment tabled by Baroness Meacher that the House declined to consider the draft regulations "until the Government lay a report before the House, detailing their response to the analysis of the draft regulations by the Institute for Fiscal Studies, and considering possible mitigating action" was passed by 307 to 277
- An amendment moved by Baroness Hollis of Heigham that the House declined to consider the draft Regulations unless transitional arrangements were put in place for three years and that a report was made in response to the IFS analysis was also passed by 289 to 272.

The *Tax Credits Act 2002* gives the Treasury the power to change Tax Credit rates. Section 41 requires the rates to be reviewed each year. Section 66 provides that changes to these rates must be approved by both Houses of Parliament.

There was some dispute as to whether these two amendments were "fatal" to the government motion. A "fatal" amendment to a statutory instrument is shorthand for an amendment which prevents the statutory instrument becoming law (or continuing as law). A "non-fatal" amendment allows the SI to pass into (or remain) law but puts on record a view about it. The two amendments which were passed could be considered as fatal as the House had a choice as to whether or not to approve the draft statutory instrument, and the effect of the amendments was to not approve it. However, it could also be argued

that they did not "kill" the statutory instrument - they would allow it to be passed in future if the conditions they set were met. This appears to have been the first time amendments have been passed to decline to consider an instrument.

Were the conventions put under pressure?

The Government defeats prompted debate over whether the House of Lords had in some way overridden constitutional conventions about appropriate use of its powers. The disagreements centred on two main questions:

- Did the House of Lords act improperly in declining to pass a statutory instrument?
- Was the statutory instrument a financial measure and if so, should financial privilege have applied?

Baroness Stowell of Beeston, the Leader of the House of Lords, argued for the Government that:

> …noble Lords have tabled amendments that would prevent this piece of secondary legislation leaving this House and being approved. If the House were to do that – if it were to completely reject it outright or to withhold it – we would be challenging the financial primacy of the other place.[1]

Baroness Hollis of Heigham, the Labour Peer and former minister in the Department for Work and Pensions argued that her amendment did not "trespass" on financial privilege:

> …The advice from the Clerk of the Parliaments – and he has seen and confirmed my words on the specific issue – is that Commons financial privilege is exercised in two ways. We can amend an education Bill, say, but the Commons can reject our amendment if the Speaker certifies that the Commons has financial privilege on the issue. Secondly, says the Clerk, the Commons can pass a supply or money Bill, which we cannot amend. He goes on: financial privilege does not extend to statutory instruments – it simply does not.[…]
>
> As has been said, if the Government wanted financial privilege, these cuts should be in a money Bill; they are not. If they wanted the right to overturn them on the grounds of financial privilege, they could be introduced in the welfare reform Bill on its way here; they did not. So why now should we be expected to treat this SI as financially privileged when the Government, who could have made it so, chose not to do so? It is not a constitutional crisis.[2]

At Treasury Questions the following day, George Osborne, the Chancellor of the Exchequer, noted that "unelected Labour and Liberal Democrat peers" had "voted down the financial measure on tax credits approved by this elected House of Commons". He continued: "That raises clear constitutional issues that we will deal with".[3]

In oral evidence to the Public Administration and Constitutional Affairs Select Committee on 27 October, Lord Lisvane (formerly Clerk of the

1 HL Deb 26 October 2015 c981
2 HL Deb 26 October 2015 c991
3 HC Deb 27 October 2015 c177

House of Commons) stated that talk of a crisis was "entirely hyperbolic":

> You need to look quite carefully at the meat of what took place. If the decisions of the House of Lords were taken on things that were absolutely and purely about taxation and finance, it is fair to ask why, in that case, the House of Lords had the regulations laid before it for approval. The answer is of course that under the 2002 Tax Credits Act, section 66, all the regulations made under that Act have to be approved by both Houses. If you look at the genesis of that Act, it was quite clearly, in 2002 and in the debate on the very first regulations, seen as being a social security measure, not a taxation and finance measure. Of course, there is finance; £4.5 billion, we are told. I am reluctant to accuse the Government of pilot error, but I think they could have decided—if it were seen to be hazardous—on a single purpose Bill, which would have been very easy to put together. I can see it being certifiable under section 1(2) of the Parliament Act 1911, and of course the Lords would have had no recourse in those circumstances. But it is still open to the Government to re-lay regulations….[4]

The nature of conventions

The nature of conventions is that they are not necessarily closely defined and change over time. The force of convention also relies on those involved observing the conventions, and for a common understanding of the nature of the conventions. It is not clear how any dispute about use of powers or the appropriate interpretation of conventions could be adjudicated or effectively enforced.

The 2006 Joint Committee on Conventions between the two Houses of Parliament stated that:

> …Conventions, by their very nature, are unenforceable. In this sense, therefore, codifying conventions is a contradiction in terms. It would raise issues of definition, reduce flexibility, and inhibit the capacity to evolve. It might create a need for adjudication, and the presence of an adjudicator, whether the courts or some new body, is incompatible with parliamentary sovereignty.
>
> Even if an adjudicator could be found, the possibility of adjudication would introduce uncertainty and delay into the business of Parliament. In these ways, far from reducing the risk of conflict, codification might actually damage the relationship between the two Houses, making it more confrontational and less capable of moderation through the usual channels. This would benefit neither the Government nor Parliament.[5]

The Joint Committee had put forward some draft resolutions for one or both Houses to adopt on Conventions. These resolutions were never put before either House, although the Committee's report was approved by both Houses of Parliament.[6]

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4 Public Administration and Constitutional Affairs Select Committee, *Oral Evidence: English Votes for English Laws,* 27 October 2015, Q109

5 Joint Committee on Conventions, *Conventions of the UK Parliament,* 3 November 2006, HL Paper 265 HC 1212 2005-06, para 279

6 In the House of Lords, on 16 January 2007, and in the House of Commons on 17 January 2007

Box 1: Extract from the Summary of the Report of the Joint Committee on Conventions 2006

As for the practicality of codification, we have found the word "codification" unhelpful. However we offer certain formulations for one or both Houses to adopt by resolution. Both the debates on such resolutions, and the resolutions themselves, would improve the shared understanding which the Government seek.

All recommendations for the formulation or codification of conventions are subject to the current understanding that conventions as such are flexible and unenforceable, particularly in the self-regulating environment of the House of Lords. Nothing in these recommendations would alter the present right of the House of Lords, in exceptional circumstances, to vote against the Second Reading or passing of any Bill, or to vote down any Statutory Instrument where the parent Act so provides.

Resolutions of this character would be of no value without the support of the frontbenches of the three main parties. In the Lords, the views of the Convenor of the Crossbench peers would also be important. Ideally, such resolutions would be carried unanimously, or with an overwhelming majority, in both Houses.

The formulations are as follows:

> 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.
>
> The House of Lords considers government business in reasonable time.
>
> Neither House of Parliament regularly rejects statutory instruments, but in exceptional circumstances it may be appropriate for either House to do so.

We do not recommend legislation, or any other form of codification which would turn conventions into rules, remove flexibility, exclude exceptions and inhibit evolution in Joint Committee on Conventions response to political circumstances. And, however the conventions may be formulated, the spirit in which they are operated will continue to matter at least as much as any form of words.[7]

1.2 The Strathclyde Review

Announcement of the review

On 27 October the Government announced that Lord Strathclyde, a former Leader of the House of Lords, would examine "how to protect the ability of elected governments to secure their business" and "how to secure the decisive role for the elected Commons in relation to its primacy on financial matters and secondary legislation".[8]

In response to an Urgent Question in the House of Commons on 28 October Chris Grayling, Leader of the House of Commons, stated that:

> The relationship between the Commons and Lords is extremely important. When conventions that govern that relationship are put in doubt, it is right that we review that. Clearly, the House will be updated when more details of the review have been agreed.[9]

He stated that, "it [was] a great shame that Labour and the Liberal Democrat peers clearly have no intention of respecting the conventions

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7 Joint Committee on Conventions, *Conventions of the UK Parliament,* 3 November 2006, HL Paper 265 HC 1212 2005-06,

8 HLWS285

9 HC Deb 28 October 2015 c349

and will cast them out of the window, which will fundamentally change the relationship between the two Houses".

In the House of Lords, Baroness Stowell of Beeston responded to a Private Notice Question with further details of the Review:

> It will examine how to protect the ability of elected Governments to secure their business in Parliament. In particular, it will consider how to secure the decisive role of the elected House of Commons in relation to its primacy on financial matters and secondary legislation. My noble friend will be supported in that work by a small panel of experts and we expect the review to conclude swiftly. The membership of the panel will be communicated to both Houses as soon as it is agreed.[10]

On 4 November 2015, Baroness Stowell made a statement announcing the terms of reference of the review.[11] She said that the review would consider, in particular "how to secure the decisive role of the elected House of Commons in relation to its primacy on financial matters, and secondary legislation". Lord Strathclyde would be supported in the review by a panel of experts – a former Clerk of the Parliaments, a former House of Commons Clerk of Legislation, and a former first Parliamentary Counsel. The Review was asked to report before the end of December 2015.

Box 2: Strathclyde Review: statement by Baroness Stowell, 4 November 2015

The Government has commissioned Lord Strathclyde to lead a review into how to secure the decisive role of the elected House of Commons in the passage of legislation.

By long-standing convention the House of Lords does not seek to challenge the primacy of the elected House on spending and taxation. It also does not reject statutory instruments, save in exceptional circumstances. Until last month, only five statutory instruments had been rejected by the House of Lords since World War II, none of which related only to a matter of public spending and taxation.

The purpose of the review is to examine how to protect the ability of elected governments to secure their business in Parliament in light of the operation of these conventions.

The review will consider in particular how to secure the decisive role of the elected House of Commons in relation to its primacy on financial matters, and secondary legislation.

Lord Strathclyde will be supported in his work by a small panel of experts:

Jacqy Sharpe, former Clerk of Legislation in the House of Commons and Clerk to the Joint Committee on Conventions in 2006

Sir Stephen Laws, former First Parliamentary Counsel

Sir Michael Pownall, former Clerk of the Parliaments

Lord Strathclyde and the panel of experts will not be paid a fee for their work on the review. Lord Strathclyde will aim to submit his recommendations to the Prime Minister by the end of the year.[12]

Proposal for a new procedure: the power of delay

Lord Strathclyde published his report on 17 December.[13] In it, he argued that the Lords power over statutory instruments should be

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10 HC Deb 28 October 2015 c1176

11 Strathclyde Review: statement by Baroness Stowell – see also HLWS285 4 November 2015

12 HLWS285, 4 November 2015

13 *Strathclyde Review: Secondary legislation and the primacy of the House of Commons*, Cm 9177,17 December 2015

limited to that of delay: the power to ask the Commons to think again rather than a power of veto. He stated that:

> The convention that the House of Lords should not, or should not regularly, reject SIs is longstanding but has been interpreted in different ways, has not been understood by all, and has never been accepted by all members of the House. Even after the Joint Committee in 2006 listed specific circumstances when it might be appropriate to reject SIs, nothing has been done to agree those circumstances or properly define the convention. The rejection of the Tax Credits Regulations broke new ground and the votes divided along conventional political lines. It suggests that the convention is now so flexible that it is barely a convention at all.
>
> The time has come to put in place new procedures to clarify the relationship between the two Houses on delegated legislation and to confirm the role of the House of Lords in respect of delegated legislation is to ask the House of Commons to think again, similar to how it is in the case of primary legislation.[14]

He provided more detail on how the procedure would work for instruments subject to the affirmative and negative resolution procedures for statutory instruments:

> The proposal in the case of affirmative resolution procedure is that, where the House of Lords does not approve a draft of an instrument, or (in the cases where the approval is required after the instrument has been made) the instrument itself, the House of Commons should be given the ability, by resolution of that House, to override the House of Lords decision and authorise the draft instrument to be made, or the instrument to come into force or continue in force, without Lords approval.
>
> The proposal in the case of negative resolution procedure is that where the House of Lords has resolved that an instrument should be annulled, that resolution should initially take effect in accordance with section 5(1) of the Statutory Instruments Act 1946 so that no further proceedings may be taken under the instrument, but that the operation of that section should amount only to an indefinite suspension of the operation of the order (which in a great many of the cases is unlikely to be in force yet). It should then be possible for the Commons by a resolution to lift the suspension. The Commons resolution, in lifting the suspension, would also cancel the power of Her Majesty in Council to revoke the instrument (which is triggered under section 5(1) of the 1946 Act by the Lords resolution).[15]

Lord Strathclyde argued that this would bring the procedure for statutory instruments more into line with the existing rule for statutes under the *Parliament Acts* 1911 and 1949 and the rules for the approval of international treaties under the *Constitutional Reform and Governance Act 2010.* He referred to a similar proposal made by the Royal Commission on Reform of the House of Lords (the Wakeham Commission) in 2000 (see box 3).[16]

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14 *Ibid,* p15
15 *Ibid,* p19
16 The Royal Commission on Reform of the House of Lords, *A House for the Future,* Chapter 7: Scrutinising Statutory Instruments, Cm 4534, January 2000

Primary legislation would be required to implement the proposal, by way of an amendment to the *Statutory Instruments Act 1946*.

In his concluding comments, Lord Strathclyde argued that in order to mitigate against excessive use of the new process, he believed that "It would be appropriate for the Government to take steps to ensure that Bills contain an appropriate level of detail and that not too much is left for implementation by statutory instrument".

Box 3: Extract from the Royal Commission on Reform of the House of Lords

7.36 We therefore recommend that changes be made by legislation, so that:

- where the second chamber votes against a draft instrument, the draft should nevertheless be deemed to be approved if the House of Commons subsequently gives (or, as the case may be, reaffirms) its approval within three months; and
- where the second chamber votes to annul an instrument, the annulment would not take effect for three months and could be overridden by a resolution of the House of Commons.

7.37 In both cases we envisage that the Minister concerned would be expected to publish an Explanatory Memorandum within a stated period. It would also be open to the Minister to withdraw a draft Statutory Instrument and substitute a replacement or, as appropriate, to make a new negative resolution instrument to supersede the previous one. In either case, the second chamber would have the opportunity to reconsider its position and, if appropriate, to lift its 'suspended sentence'. However, if it chose not to do so, the House of Commons should have the decisive voice and be able to determine on an affirmative vote that the Statutory Instrument should be approved or remain in force. In doing so, the members of the House of Commons would be fully aware of the second chamber's concerns, the Minister's response and any wider public and media reactions. The proposal is therefore entirely in line with our view of the second chamber's overall role. It would give it greater scope to challenge Government proposals for secondary legislation and draw the issues to the attention of the House of Commons, who would take the final decision.

Other options

Lord Strathclyde considered two other options before arguing in favour of legislation to restrict the Lords power over SIs to that of delay. These options were to remove the House of Lords from the SI procedure altogether or to codify the existing conventions:

- One option would be to remove the House of Lords from statutory instrument procedure all together. This has the benefit of simplicity and clarity. However, it would be controversial and would weaken parliamentary scrutiny of delegated legislation and could make the passage of some primary legislation more difficult.
- The second option would be to retain the present role of the House of Lords in relation to statutory instruments, but for that House, in a resolution or in standing orders, to set out and recognise, in a clear and unambiguous way, the restrictions on how its powers to withhold approval or to annul should be exercised in practice and to revert to a position where the veto is left unused. This option seeks to codify the convention. However, since a resolution of the House could be superseded, or standing orders could be suspended, by further decisions of the House, it would not provide certainty of application.[17]

[17] *Strathclyde Review: Secondary legislation and the primacy of the House of Commons*, Cm 9177,17 December 2015, p4

A Commons-only procedure for financial measures?

Lord Strathclyde also considered whether any additional provision was required for statutory instruments which are "of a sort to attract Commons financial privilege in the same way as a Lords amendment to a Bill or where, like the draft Tax Credits Regulations, their inclusion in a Bill would probably result in the Bill's certification as a Money Bill under section 1 of the Parliament Act 1911" (see section 5 on Financial Privilege below).[18]

Lord Strathclyde argued that there is some inconsistency in the way in which Commons-only procedures are provided for. He recommended that the Government should carry out a review of the principles on which it is appropriate for powers with financial implications to be made subject to Commons-only procedures. He suggested that it would then be possible, in consultation perhaps with the Procedure Committee in the House of Commons, to develop a "protocol to apply in the drafting of all Bills containing delegated powers".

The Chair of the Treasury Select Committee, Andrew Tyrie, wrote to Lord Strathclyde on the matter of financial privilege and statutory instruments.[19] Mr Tyrie argued that, "it seems to have become the default setting for Parliament that, where approval is required for a statutory instrument, the requirement for approval is given to both Houses. As a result, the Lords have acquired an effective veto in much important secondary legislation, including financial matters where the Commons has absolute primacy". He argued that the Government needed to ensure the financial primacy of the Commons is properly respected when deciding on the control regime for statutory instruments and that the House of Commons should be more rigorous in scrutinising legislation to ensure its privileges are respected. Mr Tyrie considered that for existing legislation, there could be a number of possible approaches:

> a process of certification triggering some sort of procedure or convention; partial or wholesale amendment of the regime of affirmative resolution by each House, and of negative resolution; or amendment of some or all parent Acts to reserve to the Commons exclusive control of financial instruments.[20]

He noted that his Committee would want to take evidence before coming to a firm view on any of these proposals, and suggested that the Committee "may well want to take evidence from [Lord Strathclyde] on [his] conclusions as far as they relate to financial privilege".[21]

1.3 Responses to the report

The Leader of the House of Commons, Chris Grayling, made an oral statement to the House of Commons on the publication of the report,

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18 *Ibid,* p21

19 Letter from Andrew Tyrie MP, Chair of the Treasury Select Committee, to the Rt Hon Lord Strathclyde CH regarding Commons Financial Privilege

20 *Ibid*

21 *Ibid*

promising to consider the review and it recommendations carefully and respond fully in the New Year:

> Clearly there will be views in both Houses as to the best way forward, and we will want to listen to those views as we decide on our preferred approach. We have begun doing so today by making oral statements in both Houses.
>
> We are very clear that all Governments require, and indeed benefit from, a strong Parliament holding them to account and providing scrutiny. As Lord Strathclyde's report highlights, the House of Lords has long played its scrutiny role effectively. It provides that scrutiny and challenge, but we also think it important that the elected House should be able to have the decisive say on secondary legislation as well as on primary legislation. Such a balance will allow the other House to deliver its core purpose more effectively.[22]

In his response, the Shadow Leader of the House, Chris Bryant, drew attention to the disputed nature of the convention regarding instruments:

> The Leader of the House says that the review was set up "after constitutional questions were raised about the primacy of this elected House of Commons". What utter tosh! The only people who were raising constitutional questions were the Prime Minister, the Chancellor and the Leader of the House himself, who were stamping their little feet because they had not got their way.[23]

In the House of Lords, Baroness Smith responded to the statement from Baroness Stowell. She argued that the Strathclyde Review had recommended a significant change, and that it was not usual for legislation to be used to address issues of this kind. Secondly, she noted that in terms of procedure, Statutory Instruments do not get sent from one House to another in the same way as legislation:

> In terms of statutory instruments, both Houses separately consider measures proposed by the Government. Either House can accept or reject, and rejection by either House is in effect a veto. That is why this House has so rarely rejected a statutory instrument. Since 1999, it has happened just four times in 16 years—approximately once a Parliament. The noble Baroness referred to this, but let us be clear that in this Parliament three attempts at a so-called fatal Motion to reject an SI have failed.
>
> The recommendation from the noble Lord, Lord Strathclyde, is that your Lordships' House could send an SI back to the Commons, but there is no guarantee that the Commons will have considered it first and there is no indication of the timescale. This proposal denies your Lordships' House the opportunity to ask the Government to reconsider. It instead sends it to the House of Commons. I know that other noble Lords share my concern about the degree of scrutiny for statutory instruments in the other place. We know that any Government with a majority would just ensure that a small committee will consider and pass the SI.[24]

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22 HC Deb 17 December 2015 c1741
23 *Ibid*
24 HL Deb 17 December 2015 c2191

Baroness Stowell told the House of Lords that there would be "a full debate on my noble friend's report in the new year before the Government respond in full".[25]

[25] HL Deb 17 December 2015 c2190

2. The Salisbury Convention

The Salisbury Convention is generally understood to mean 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.

The Cabinet Manual, published by the Government as a guide to the laws and conventions on the operation of government, defines the convention using the same text that the 2005-06 Joint Committee on Conventions used, namely that:

> The House of Lords should not reject at second reading any government legislation that has been passed by the House of Commons and that carries out a manifesto commitment. In the House of Lords, a manifesto bill:
>
> - is accorded a second reading;
> - is not subject to 'wrecking amendments' which change the Government's manifesto intention as proposed in the bill; and
> - 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 which the House of Lords may wish to propose.[26]

The origins of the doctrine date back to the late nineteenth and early twentieth centuries and the age of the widening suffrage for the Commons. The House of Lords Library note, *The Salisbury Doctrine,* explains:

> 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 Convention has been taken to apply to Bills passed in 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… Leader of the Opposition in the Lords, during the Labour Government of 1945-51; and thus is sometimes called the Salisbury/Addison doctrine.[27]

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 in 2006. The Committee heard evidence from the then Deputy Leader of the Liberal Democrats in the Lords who argued that the convention was a historical agreement between the Labour Party in the Commons and the

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26 Cabinet Manual, Glossary, p104
27 House of Lords Library Note, *The Salisbury Doctrine,* June 2006, p1

Conservative Party in the Lords and was "therefore not relevant to current circumstances".[28]

The application of the convention to bills included in the 2010 coalition agreement was also questioned. As the Government was not implementing a single party manifesto, but instead a Coalition Agreement put together after the election result returned a hung parliament, there were questions as to how the Salisbury Convention would apply. In 2011, Baroness Royall of Blaisdon (then leader of the Opposition in the House of Lords) asked Lord Strathclyde, then the Leader of the House of Lords:

> 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?[29]

The Leader of the House of Lords, Lord Strathclyde, replied that the first coalition government meant that "inevitably, there are some stresses within the system" but the convention continued to apply:

> 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... [30]

Lord Strathclyde continued by saying that the Salisbury Convention was just one manifestation of the relationship between the two Houses which was based on the primacy of the House of Commons:

> We in this House do not routinely oppose government legislation, whether or not it derives from a manifesto. That much was made clear by the Joint Committee in 2006, so it is not special pleading by a coalition Government. So many noble Lords on all sides of the House cling dearly to the idea that we are a revising House—a House of scrutiny, not of opposition—although you would be hard-pressed to believe that when looking at the antics in the House in the past few days. All of us on this side of the House are fond of reminding those opposite what the last Lord Chancellor, Jack Straw, said in 2006. He said that, "if any coalition or arrangement as in 1977 gains the support of the democratically elected House and endorsed by a motion of confidence then the programme for which they gain that endorsement should be respected by this House"- the House of Lords. That was the

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28 Joint Committee on Conventions, *Conventions of the UK Parliament,* 3 November 2006, HL Paper 265 HC 1212 2005-06, para 91

29 HC Deb 20 Jan 2011 c593

30 *Ibid,* c596-601

previous Government's understanding of the constitutional convention regarding coalitions.

3. Secondary legislation

3.1 The existing situation

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:*

> 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.[31]

Except in very limited circumstances, delegated legislation cannot be amended, so it must be rejected or approved. In many cases peers table motions that would be "fatal" to the statutory instrument but withdraw this after their concerns have been put on the record.[32]

3.2 Use of the power of veto by the House of Lords

The House of Lords uses its powers of veto over secondary legislation rarely. Until October 2015 there had been just four occasions on which the House of Lords had not approved instruments subject to the affirmative resolution procedure:

- ***Southern Rhodesia (United Nations Sanctions) Order 1968***
- **Defeats on *Greater London Authority Elections Orders 2000***: the draft Greater London Authority (Election Expenses) Order 2000 was defeated by 215 votes to 150.
- **Defeat on the *draft Gambling (Geographical Distribution of Casino Premises Licences) Order 2007*** Lord Clement-Jones (Liberal Democrat) moved a fatal amendment to the motion to approve the order which was carried by 123 votes to 120.
- **Defeat on the draft *Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012*.** Lord Bach (Labour) moved an amendment to the motion, declining to approve the draft Order which was carried by 201 votes to 191.

In October 2015 the House of Lords passed two amendments to a Government motion to approve the *Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015.* The

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31 House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2015, para 10.02

32 House of Lords Library, *Delegated Legislation in the House of Lords*, 22 October 2015

amendments meant the House of Lords resolved to decline to consider the motions until certain conditions were met (see section 1 above).

3.3 Report of the Joint Committee on Conventions

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".[33]

The Joint Committee then set out examples where it would be consistent with their role as a revising Chamber for the House of Lords to threaten to defeat a Statutory Instrument before stating that the Opposition parties "should not use their numbers in the House of Lords to defeat an SI simply because they disagree with it".

Box 4: Extract from the Report of the Joint Committee on Conventions, 2006

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. For example:

a) where special attention is drawn to the instrument by the Joint Committee on Statutory Instruments or the Lords Select Committee on the Merits of SIs

b) when the parent Act was a "skeleton Bill", and the provisions of the SI are of the sort more normally found in primary legislation

c) orders made under the Regulatory Reform Act 2001, remedial orders made under the Human Rights Act 1998, and any other orders which are explicitly of the nature of primary legislation, and are subject to special "super-affirmative" procedures for that reason

d) the special case of Northern Ireland Orders in Council which are of the nature of primary legislation, made by the Secretary of State in the absence of a functioning Assembly

e) orders to devolve primary legislative competence, such as those to be made under section 95 of the Government of Wales Act 2006 and 339 Ev 158-159. 340 Ev 152. 341 Ev 8, para 54. Joint Committee on Conventions 63

f) where Parliament was only persuaded to delegate the power in the first place on the express basis that SIs made under it could be rejected.

230. This list is not prescriptive. But if none of the above, nor any other special circumstance, applies, then opposition parties should not use their numbers in the House of Lords to defeat an SI simply because they disagree with it. This would be contrary to the fundamental conventions which govern the relationship between the Houses, as discussed above in the context of the primacy of the Commons. It would also defeat the purpose of delegating the power in the first place. The defeat of the GLA Orders

[33] Joint Committee on Conventions, *Conventions of the UK Parliament,* 3 November 2006, HL Paper 265 HC 1212 2005-06

in 2000 was probably not an abuse of this kind; on the other hand, the defeat of the Rhodesia Sanctions Order in 1968 probably was[34]

3.4 The Strathclyde Review

Lord Strathclyde's review of secondary legislation and the primacy of the House of Commons was published on 17 December 2015, following the Government defeats on Tax Credits earlier in the autumn (see section 1 above). Lord Strathclyde argued that the existing conventions had been under pressure for some time, but had not been followed n the Tax Credits case where the House of Lords had divided largely along party lines:

> The convention that the House of Lords should not, or should not regularly, reject SIs is longstanding but has been interpreted in different ways, has not been understood by all, and has never been accepted by some members of the House. Even after the Joint Committee in 2006 listed specific circumstances when it might be appropriate to reject SIs, nothing has been done to agree those circumstances or to properly define the convention. The rejection of the Tax Credits Regulations broke new ground and the votes divided along conventional political lines. It suggests that the convention is now so flexible that it is barely a convention at all.[35]

The review recommended that the Lords power over statutory instruments should be limited to that of delay, allowing the Commons to insist on the passing of an instrument. Full details, including responses to his recommendations, are set out in section 1 above.

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34 Joint Committee on Conventions, *Conventions of the UK Parliament,* 3 November 2006, HL Paper 265 HC 1212 2005-06

35 *Strathclyde Review: Secondary legislation and the primacy of the House of Commons,* December 2015, Cm 9177, p15

4. Financial Primacy of the House of Commons

4.1 The special role of the Commons in financial matters

The House of Commons has a special role in financial matters. Today, Bills of aids and supplies such as the Finance Bill and the Supply 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 taken formally.

The role of the Commons in financial matters 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". This was reinforced seven years later in a further resolution:

> all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit and appoint in such bills the ends, purposes, considerations, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords.

The House of Lords did not endorse these views and remained willing to reject tax measures. In 1860 the Lords rejected the *Paper Duty Repeal Bill* and in 1909 the *Finance Bill.* This latter case resulted in the passing of the *Parliament Act 1911*.[36]

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. Under the 1911 Act if such a Bill is sent to the Lords at least one month before the end of the session and is not agreed by the Lords within a month, it may be sent directly for Royal Assent. *How Parliament Works* states that although it remains possible in theory for the Lords to amend money bills, the Commons are not obliged to consider such amendments, and "it is now inconceivable that any amendment would be attempted".[37] No money bill has ever been presented for Royal Assent under the terms of the *Parliament Act 1911*.

It is possible for bills that involve 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.

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36 Robert Rogers and Rhodri Walters, *How Parliament Works,* 7th Edition, 2015, p235
37 Ibid

If the House of Lords passes 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, the Commons can agree the amendment, propose and alternative, or disagree to the amendment. In the latter case, the Commons informs the Lords that the reason for the rejection is the Commons' financial privilege. The Companion explains that:

> If the Commons disagree to a Lords amendment that infringes their financial privileges, the disagreement is made on the grounds of privilege alone, even if the Commons may have debated the merits.[38]

Meg Russell and Daniel Gover of the Constitution Unit, UCL, set out the options available to the Commons in their publication *Demystifying Financial Privilege* as follows:

- **Agree the amendment**. By virtue of accepting the amendment, the Commons is judged to have "waived" its financial privileges. A special entry is made in the Journals of the House of Commons to this effect.
- **Propose an alternative**. Rather than accepting or rejecting the amendment outright, the Commons may suggest an alternative proposal – most commonly by disagreeing to the Lords' proposal but at the same time suggesting an "amendment in lieu". In this case, the Lords Companion states that "the question whether the Lords amendment infringes privilege does not arise" (House of Lords, 2013: 165).
- **Disagree to the amendment**. Whenever the Commons disagrees to a Lords amendment without also proposing an alternative, it sends the Lords a short, formal "Reason" for its decision. The text of the Reason is agreed immediately after the debate by a committee of five MPs known as a Reasons Committee. Where the amendment engages financial privilege, the long-standing practice of the Commons is to always send a financial privilege Reason (or "privilege Reason"), which always ends with the words: "and the Commons do not offer any further Reason, trusting this Reason may be deemed sufficient". We refer to this as "invoking" financial privilege.[39]

When the bill is returned to the Lords, the Commons Reasons are printed on the bill next to any amendments that have been disagreed to. According to the Lords Companion, where a financial privilege Reason has been given, "the Lords do not insist on their amendment" but have on occasion proposed amendments in lieu.[40]

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38 House of Lords, *Companion to Standing Orders and Guide to the Proceedings in the House of Lords,* 2015, para 8.183

39 Meg Russell and Daniel Gover, *Demystifying financial privilege Does the Commons' claim of financial primacy on Lords amendments need reform?,* March 2014

40 House of Lords, *Companion to Standing Orders and Guide to the Proceedings in the House of Lords,* 2015, para 8.183

4.2 Recent commentary on the financial primacy of the Commons

There have been a number of occasions in recent years where the Commons special role in financial matters has provoked debate. For example, in November 2010 the *Savings Accounts and Health in Pregnancy Grant Bill 2010-12* was introduced to the House of Lords having been certified as a money bill. This gave rise to debate in the Lords on the definition of money bills and the process of certification.[41]

In 2011 the House of Lords Constitution Committee published a short report, *Money Bills and Financial Privilege.*[42] The report included a paper by the Clerk of the Parliaments (the most senior official in the House of Lords) which set out detailed information about the operation of financial privilege:

> Recent debates, in particular on the Planning Bill, have included negative comment on Commons practice of using privilege reasons, and there have been suggestions that privilege is being claimed as a way of avoiding debate on substantive issues. This claim is not new, and it is difficult to say whether the use of privilege reasons is increasing or whether they are being applied to amendments which would not previously have attracted a claim of privilege. It may also be the case that there has been an increase in the number of provisions relating to charges. The scope of financial privilege is a matter for the Commons, and it is clear from Erskine May that matters which are potentially regarded as privileged range very widely indeed.[43]

The note from the Clerk of the Parliaments concluded with the following points:

- First, until the Commons asserts its privilege, the Lords is fully entitled to debate and agree to amendments with privilege implications;
- Second, the critics of the Commons' claim of privilege may have misunderstood the extremely broad scope of the matters which the Commons has over a long period regarded as privileged.

> In the last analysis, the scope and application of financial privilege is for the Commons alone to determine.[44]

The Constitution Unit at UCL has studied how financial privilege operates in practice, drawing attention to debates about the scrutiny of the *Welfare Reform Bill 2010-12* in 2012. They explain that:

> Although not new to the coalition government, controversy about the use of financial privilege grew during the 2010-15 parliament. Most notably, the invocation of financial privilege on the Welfare Reform Bill in 2012 provoked claims from some that the Lords was being inappropriately prevented from scrutinising government legislation. Such concerns may well re-emerge in the

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41 HL Deb 23 November 2010 c1008; HL Deb 29 November 2010 cc1272-1280; HL Deb 7 December 2010 c128-173

42 House of Lords Constitution Committee, *Money Bills in the Last Ten Years,* 3 February 2011, HL Paper 97 2010-11

43 *Ibid,* para 16

44 *Ibid,* Appendix 2, paras 18-19

> future, particularly if peers seek to limit government spending cuts.[45]

Their research report recommended a number of changes to current practice including clearly published definitions and statements about why financial privilege applied to particular amendments.

[45] Meg Russell and Daniel Gover, *Demystifying financial procedure*, March 2014

5. Lords consider government business "in reasonable time"

5.1 Nature of the convention

The Government does not have the same levels of control over the business in the House of Lords as it does in the House of Commons and the progress of business is harder to predict. There is no selection by a chairman of amendments to be discussed in the Lords. All the amendments that have been tabled may be considered. There is no guillotine or programming procedure. In addition, amendments may be considered at third reading as well as report stage in the Lords.

There has traditionally, however, been 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."[46]

5.2 The convention under pressure?

The Joint Committee on Conventions drew attention to bills where there had been some delay:

- On 26 March 2002 the Lords voted to delay the committee stage of the Animal Health Bill until after a consultation and two inquiries. Committee stage began on 25 July, a 4-month delay to a Bill which the Government had wanted to enact by the summer.
- In September 2003 the Opposition threatened to disrupt the Government's legislative proposals to remove the remaining hereditary peers.
- On 8 March 2004 the Lords voted to refer the Constitutional Reform Bill to a Select Committee and to carry it over. On 18 March, the Government dropped its House of Lords Reform Bill, citing the vote on 8 March as the reason. The Select Committee sat for 3 months, and the Constitutional Reform Bill reached the Commons just before Christmas, 5-6 months after the Government might have hoped.

The Joint Committee quoted the Hunt report (a report to the Lords Labour Group by the Working Group on House of Lords chaired by Lord Hunt of Kings Heath):

> 127. The Hunt report noted these incidents, though without reference to the dropping of Lords reform. It commented, "The House has pushed at the limits of the convention that it must

[46] Joint Committee on Conventions, *Conventions of the UK Parliament,* 3 November 2006, HL Paper 265 HC 1212 2005-06, para 120

consider the Government's business without unreasonable delay". It went on to propose to turn the convention into a rule, as follows:

> "The Working Group proposes a time limit for the Second Chamber to consider a bill. The Lords must have enough time to consider a bill properly. Equally, it is wrong that a bill or legislative programme can potentially be in jeopardy because some peers within the rules of the House can threaten to spend endless time debating a particular bill. Debates and decisions in the Lords should be firmly centred on the principles and detailed scrutiny of the legislation under consideration, rather than be part of some wider political strategy.
>
> The question of a time limit is not new. Indeed, the 1968 White Paper on House of Lords Reform which received all-party support in the Lords, suggested that the Lords should have a period of 60 parliamentary days to consider a bill.
>
> A reasonable time limit for the Lords to scrutinise a bill would not in any way undermine the principle of the Parliament Acts. A time limit would impose a discipline on all sides of the House, including the Government, to deal with legislation in an efficient manner. Large bills or bills to which the Government proposed to add a considerable number of amendments would trigger a longer period for consideration in the Lords. Further detailed work will be required on the actual time limit, though the 60 parliamentary days limit which received considerable support in 1968 would be a good starting point for discussion. The aim would be to set a reasonable time limit which reflects current experience with bills in the Lords. In the light of our later recommendations on changing the legislative procedure, some of the current intervals between different stages should be revisited to allow more flexibility."[47]

The Labour Party had included a commitment in their 2005 manifesto to

> …legislate to place reasonable limits on the time bills spend in the second chamber – no longer than 60 sitting days for most bills.[48]

However, the Joint Committee found that such legislation was not required and the Government appeared to accept this conclusion. The Joint Committee explained:

> 153. 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. We would however draw attention to the figures above, which show an inexorable

47 Joint Committee on Conventions, *Conventions of the UK Parliament,* 3 November 2006, HL Paper 265 HC 1212 2005-06, para 127

48 Labour Party Manifesto, 2005, p110

> rise in the time Bills spend in the Lords. This must be having an impact on the management of business in both Houses.
>
> 154. There is no conventional definition of "reasonable", and we do not recommend that one be invented. The Government wants to define "reasonable" or set a time limit; but in our view there is no problem which would be solved by doing so. A target number of days could be counterproductive, by legitimising delay up to the target. It would reduce government business managers' room for manoeuvre in managing the legislative programme. If there were a target, it is not obvious which days should count towards it – e.g. Grand Committee days, general debate days. If the target had the effect of guillotining proceedings in the Lords, then it might leave parts of a Bill unscrutinised in either House. It could also tempt the Government to avoid proceedings on a difficult Bill and wait to be "saved by the bell". Both would be unacceptable. If on the other hand there were provision for negotiated exceptions, then the results of the new system would probably be little different from the outcomes achieved at present.[49]

The debate on "reasonable time" was reopened recently after accusations of opposition filibustering during the passage of the *Parliamentary Voting System and Constituencies Act 2011* through the House of Lords. However, the Bill was given Royal Assent by the deadline required for the referendum to be held on the required date.

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[49] Joint Committee on Conventions, *Conventions of the UK Parliament,* 3 November 2006, HL Paper 265 HC 1212 2005-06, para 153-4

6. 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. They explained:

> 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".

The Joint Committee concluded that the exchange of amendments was not a convention, but a framework for political negotiation. However, they acknowledged that there was a convention that in general, neither House should be asked to consider amendments without notice. They 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.[50]

[50] Joint Committee on Conventions, *Conventions of the UK Parliament,* 3 November 2006, HL Paper 265 HC 1212 2005-06, para 189

7. Lords reform and conventions

The nature of the relationship between the two Houses is in part predicated on its nature as an appointed rather than elected body. When proposals are made for reform of the House of Lords, the implications for the relationship between the Chambers, and how to ensure the primacy of the House of Commons, is always a matter of debate and discussion. The Joint Committee on Conventions report in 2006 had stated that:

> Our conclusions apply only to present circumstances. If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again. What could or should be done about this is outside our remit.[51]

The House of Lords Library Note, LLN 2010/014, Possible Implications of House of Lords Reform, sets out previous discussions on the impact of reform of the House of Lords on existing powers and conventions. It considers in detail the implications for conventions of an elected House of Lords.

[51] Joint Committee on Conventions, *Conventions of the UK Parliament,* 3 November 2006, HL Paper 265 HC 1212 2005-06, para 63

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