HOUSE OF LORDS
Library Note

Delegated Legislation in the House of Lords since 2000

This Library Note provides an overview of delegated legislation and the House of Lords since 2000. It does this through a chronology of some of the debates about the powers of the Lords in this area and discussion of the consequences of Lords reform. It concludes with appendices giving statistics on divisions on delegated legislation.

Nicola Newson and Matthew Purvis
25 October 2011
LLN 2011/031

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1. Introduction

The *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2010) summarises the general powers the House of Lords has in relation to delegated legislation:

> 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.
>
> (*Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2010, p 191)

It then refers to a resolution passed in 1994:

> The House has resolved "That this House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration".
>
> (ibid)

As the *Companion* notes, historically the Lords have rarely used the power to reject delegated legislation (once in 1968, and three times in the period covered by this Note). Some Peers have argued that there is a convention that the House of Lords does not vote down Statutory Instruments that have been, or would be, approved by the House of Commons. Others, however, have rejected the notion that such a convention exists. In recent years, procedure has been reformed in order to facilitate Members to debate delegated legislation through non-hostile, neutral motions (see section 3.4). In practice, the ability to reject such instruments remains.

This Library Note provides an overview of delegated legislation in the House of Lords since 2000. It does this through a chronology of some of the debates about the powers of the Lords in this area and the consequences of Lords reform. It concludes with appendices giving statistics on divisions on delegated legislation. The Note is intended to be read in conjunction with House of Lords Library Note, *Divisions on Delegated Legislation in the House of Lords 1950–1999* (25 January 2000, LLN 2000/001).

2. Delegated Legislation and the House of Lords since 2000

The tables in the appendices give details of the number of divisions on delegated legislation since 2000. Some of these have been attempts to reject the legislation (fatal), some have been merely placing on record concerns about it (non-fatal). Overall, there has been a rise in both the number of instruments and in defeats for the Government since House of Lords reform was enacted in 1999. Some commentators have suggested that the House has become more assertive because it has an enhanced sense of legitimacy (see the work of the UCL Constitution Unit on the Changing Role of the House of Lords, in particular *The House of Lords in 2005: A more Representative and Assertive Chamber*, February 2006).

2.1 Defeats on Greater London Authority Elections Orders (2000)

In 2000, following the House of Lords Act 1999, the Government was defeated on two pieces of delegated legislation: the Greater London Authority Elections Rules Order and the Greater London Authority (Election Expenses) Order. Lord Mackay of Ardbrecknish

(Conservative) moved an amendment to the election expenses order, declining approval of the order and calling upon the Government to lay another order giving candidates in the Greater London Authority (GLA) elections one freepost delivery per household for campaign materials. No provision had been made in the primary legislation for a freepost delivery. Lord Mackay also moved a prayer to annul the order that set out the rules for the conduct of the GLA elections, which could not go ahead unless the rules were approved.

With regard to its powers, Lord Mackay said the House was now more legitimately empowered to vote against the Orders:

> I want to examine the argument that somehow your Lordships' House has no right to deal with these matters. I refer first to the convention against voting on secondary legislation. It was not a convention, but an agreement between the Labour and Conservative Front Benches. It never included the Liberal Democrats, as no doubt they will tell us, and it never included the Cross Benches.
>
> Secondly, and much, much more important, is the fact that this is a new House. It is the House that Tony built. It is the House governed by the Jay doctrine. Perhaps I may remind your Lordships of what the noble Baroness the Lord Privy Seal said in the *House Magazine* on 27 September last. She said: "The House of Lords… will be more legitimate, because its members have earned their places, and therefore more effective". She went further in the *Parliamentary Monitor* in November of that year when she said: "A decision by the House not to support a proposal from the Government will carry more weight because it will have to include supporters from a range of political and independent opinion. So the Executive will be better held to account". If those words from the noble Baroness mean anything, I hope that we shall have no complaint from her if a combination of Conservative, Liberal Democrats, Cross-Benchers, and I even hope a few Labour Peers, combine to hold the executive to account. That is what the noble Baroness wants of her new House and I venture to suggest that is what she will get later this afternoon. Is it too much to ask the Government to listen to what your Lordships are saying?
>
> (HL *Hansard*, 22 February 2000, col 143)

This garnered support from across the House. Lord Goodhart (Liberal Democrat) noted that:

> The power to reject secondary legislation must be exercised extremely cautiously. But it is a power that can and should be exercised when it is really needed. Your Lordships' House was once described as "Mr Balfour's poodle". Since the House of Lords Act last year, the present House is no one's poodle. In defence of democracy, your Lordships' House should be not a poodle, but a Rottweiler.
>
> (ibid, col 147)

Lord Borrie (Labour) raised the wider issue of conventions on delegated legislation. Referring to the Southern Rhodesia (United Nations Sanctions) Order rejected in 1968, he said that it was not appropriate to reject the Order on the basis of what it did not do. He told the House: "On grounds of constitutionality it is not appropriate for this chamber to turn down the nuts and bolts detail of the election rules simply as a device to bring something new on to the agenda" (ibid, col 153). Lord Simon of Glaisdale (Crossbench),

who moved the resolution agreed to by the Lords in 1994, contended that there was no convention that the Lords did not reject delegated legislation (ibid, cols 153–6).

Lord Whitty, for the Government, said that while the Government did not dispute the House of Lords' right to vote on delegated legislation, it did dispute accepting a motion which called upon the Government to do something that it was not empowered to do by the relevant primary legislation:

> This is not the House of Lords behaving like the watchdog of the constitution. The noble Lord, Lord Goodhart, put it better when he said that we are behaving like a Rottweiler, an undisciplined and undisciplinable animal. That is not the role of the House of Lords in any of our views of the future; and it should not be a role advocated by the Front Bench of the Liberal Democrats. I am rather surprised that the noble Lord did so.
>
> What is to stop my noble friend Lord Stoddart of Swindon, for example—I see that he is not in his place—from moving to vote down secondary legislation on matters of education on the grounds, for example, that he objects to the common agricultural policy? Once we get into that territory, your Lordships are using one area of law, of regulation, to vote down another. It amounts to an abuse of the proceedings of this House and, I would say, leads us not only into very difficult territory but also territory which—if the noble Earl, Lord Russell, were not about to jump to his feet and accuse me of asperity of speech—I would suggest was close to a serious criminal offence.
>
> (ibid, col 174)

The Greater London Authority (Election Expenses) Order was defeated 215 votes to 150. The Greater London Authority Elections Rules Order was defeated 206 votes to 143.

The following month, Lord Dean of Harptree (Conservative) introduced a debate "for a power of delay on statutory instruments". Lord Dean introduced the subject by setting the wider framework:

> On 22 February of this year your Lordships decided by a substantial majority to reject an affirmative order. In so doing, the House exercised its undoubted right. As the noble and learned Lord, Lord Simon of Glaisdale, frequently reminds us, this power is rarely used. I suggest to noble Lords that that vote was one of enormous parliamentary significance and importance. It showed us clearly that the interim House had confidence in its legitimacy.
>
> (HL *Hansard*, 29 March 2000, col 809)

In winding up the debate, Lord Falconer of Thoroton (Labour), then Minister of State, Cabinet Office, stated that "The Government believe that there is, and should be, a convention that this House does not reject secondary legislation" (col 838). Although he admitted that "procedurally ... noble Lords have the power to do so", he went on to argue that:

> The unelected chamber should not be able to prevent the elected Government and chamber from doing, as a matter of principle, what the other place decided to do.

> This unelected chamber is not the equal of the elected chamber. Noble Lords opposite are rather given to claiming that, now that the House is more legitimate than it previously was, it has somehow acquired that right. That is nonsense. This House is indeed more legitimate than it was because all of its Members have in one way or another earned their place. But in democratic terms it is still not as legitimate as the other place. Therefore, it is not right that it should exercise a power which actually sets aside and makes of no effect the wishes of the other place on important issues of policy, which decision cannot be reversed by the other place. This chamber is a scrutinising chamber. That is accepted. It is not one where important matters of principle are to be resolved as a matter of finality.
>
> (HL *Hansard*, 29 March 2000, cols 840–1)

He added that he thought the fact that the House had developed non-fatal means of flagging concerns on delegated legislation showed that the House recognised it does not reject statutory instruments (ibid, cols 840–1).

2.2 Defeat on Regional Casinos (2007)

In March 2007, the House of Lords rejected the Gambling (Geographical Distribution of Casino Premises Licences) Order, which had been approved by the House of Commons earlier the same day. The Gambling Act 2005 provided for three new types of casino, and the order specified their locations—eight small, eight large and one regional (or 'super') casino. While most of the sites were uncontroversial, there were many objections to the choice of location for the regional casino and the process by which it had been selected. Lord Clement-Jones (Liberal Democrat) moved a fatal amendment to the motion to approve the order. Several Peers—including some who did not support the Order's contents—expressed the view that this was against the conventions of the House:

> Lord Mancroft (Conservative): The amendment of the noble Lord, Lord Clement-Jones, is of course fatal and, as such, it pushes the conventions of your Lordships' House to, and possibly beyond, its limits. Indeed, it may well remind the Government and another place exactly what would happen on a regular basis if this House were to flex the muscles given to it by democratic election.
>
> (HL *Hansard*, 28 March 2007, col 1671)
>
> Lord Lipsey (Labour): ... the time for the anti-gamblers to make their case was when [the Gambling Bill] was before Parliament and they were trying to convince the Government not to go ahead with it. What is not acceptable is that when an order under it comes forward—as it was always envisaged one would come forward to name the casinos—the issue of principle is re-opened. That is against the conventions of this House. That has been, as has been pointed out, broken on only two occasions since the 1970s, and it is not the right way to carry forward that argument.
>
> (ibid, col 1675)

Speaking in support of a non-fatal compromise amendment tabled by the Labour Peer Baroness Golding, Lord Howard of Rising (Conservative) said:

> It does not break the normal conventions of this House, as the amendment in the name of the noble Lord, Lord Clement-Jones, would have. With another place due to vote on the issue shortly, and in the light of what the Minister has said, I do

> not think it appropriate that your Lordships should overturn the Order outright. That would pre-empt the other place and allow a decision on the issue to be clouded by questions about the legitimacy of this House's actions.
>
> (ibid, col 1687)

Lord Davies of Oldham, speaking for the Labour Government, echoed Lord Howard of Rising's point that the Lords should not overturn an order that the Commons would approve:

> ... this House has its proper responsibilities as a revising chamber... we must be careful not to override the conventions of this House. We must recognise that the other House is debating the Order, and while it is right and proper that the Government are subject to scrutiny, it would be unfortunate if it were suggested that the Order should be repudiated.
>
> (ibid, col 1688)

The Liberal Democrats, however, rejected the notion that Lord Clement-Jones' amendment was breaking any convention. Lord McNally, Leader of the Liberal Democrats in the House of Lords, argued that:

> One time when we have the right to say no is when a committee of our House, which is a whistle-blowing committee and is supposed to look at these issues for us, actually blows the whistle. I pay tribute to the noble Lord, Lord Filkin, and his colleagues [on the Merits of Statutory Instruments Committee—see section 3.2]. It is not the most thrilling or exciting of committees, but boy did it do its job this time—and I pay tribute to it for that. We set up a committee like that and ask it to go through the painstaking task of going through piece after piece of secondary legislation, then it suddenly brings forward a stunner such as the report that the committee has made. To say that the conventions of this House mean that we cannot do anything about it would make me think hard about the worth of the Merits Committee. It is there to do a job and, by gum, it has done it.
>
> (ibid, col 1682)

Lord Clement-Jones' amendment was carried by 123 votes to 120. Shortly after the Order had been approved in the House of Commons, Tessa Jowell, the Secretary of State for Culture, Media and Sport, was notified on a point of order that the Government had been defeated in the Lords. She emphasised that it was the wishes of the elected House which would dictate the Government's response to the defeat:

> The Order has been carried in this elected House, but we understand that it has been lost by a small majority in the other place. Obviously Ministers will want to reflect on the outcome of that vote and to come back to this elected House in due course for proposals taking this policy forward and ensuring that the important objectives of the legislation are considered.
>
> (HC *Hansard*, 28 March 2007, col 1601)

2.3 Non-Fatal Defeats

As the statistics show (see appendices), since 2000 the House has sought to utilise the non-fatal procedures available to it to place on record problems with an instrument, whilst stopping short of rejecting it altogether. For example, before the General Election

in May 2010 the House considered two Orders. These proposed the restructuring of local authorities in Norfolk and Devon. In addition to consideration of the Orders (motion to approve) Baroness Butler-Sloss (Crossbench) and Lord Tope (Liberal Democrat) tabled additional motions. Lady Butler-Sloss introduced her non-fatal motion by saying:

> "I shall, in due course, ask the House to support me if the amendments moved by the noble Lord, Lord Tope, do not meet with the approval of the House. I feel the wording of my amendments perhaps more appropriately reflects the spirit of this House than the fatal amendments, about which you have just heard, and I propose therefore to abstain on the amendments tabled by the noble Lord, Lord Tope. I hope very much that the House will support me in due course on the amendments to which I am about to speak.
>
> (HL *Hansard*, 22 March 2010, col 794)

Lord Tope recognised the reluctance of the House to reject such orders but concluded:

> I want to make my other point as strongly as I can. It is often said that the Conservative Opposition—or the opposition party, which for the time being is the Conservative Party—do not vote on fatal motions. Since the last General Election, there have been 13 fatal motions. Substantial numbers of Conservative Peers have voted for those fatal motions on eight occasions. I have the details here and shall read them out because I do not mind how long we take. By substantial, I mean 66 Conservative Peers on one occasion, 62 on another, then 38 and 36 and so on. Those are substantial numbers of Conservative Peers who felt able to vote in support of fatal motions. If Conservative Peers feel so strongly that these Orders are wrong, there is no reason why they should not support my amendment tonight. Of course, that applies even more so to the Cross-Bench Peers.
>
> (ibid, col 830)

The House divided on both motions, approving Lady Butler-Sloss' 'regret' motion 169 votes to 110. Lord Tope's motions were rejected 118 votes to 54 and 110 votes to 53.

3. Proposals and Debates about Lords Reform

Since 1997, Lords reform has largely centred around the issue of composition, rather than powers. The Labour Party fought the 1997 General Election on a manifesto that said it would propose no changes to the powers of the House of Lords. A common thread through the various reform documents published by the Labour Government was that reforming the powers of the second chamber was unnecessary. This was because there was enough legislation and convention to regulate the relationship between the House of Commons and a reformed House of Lords. For example, the 2007 white paper praised the conventions that helped regulate the relationship between the two Houses. This included the convention that the second chamber does not usually reject secondary legislation. It noted: "We make clear that we are proceeding on the basis that we would wish to see the current conventions survive into a new House" (HM Government, *The House of Lords: Reform*, February 2007, Cm 7027, para 4.16).

The 2008 white paper went further: "The current powers of the House of Lords and the conventions that underpin them have worked well. The second chamber is likely to be more assertive, given its electoral mandate. The Government and members of the Cross-Party Group welcome this. Increased assertiveness is compatible with the continued primacy of the House of Commons, which does not rest solely or mainly in the

fact that the House of Commons is an elected chamber whilst the House of Lords is not. Instead it rests in the mechanisms identified above. There is therefore no persuasive case for reducing the powers of the second chamber" (*An Elected Second Chamber: Further reform of the House of Lords*, July 2008, Cm 7438, para 5.1). However, the paper struck a note of caution with regard to delegated legislation: "The cross-party discussions raised a number of issues in relation to the arrangements for secondary legislation that the group considered could be taken forward as part of the process of Parliamentary reform more generally" (ibid, para 5.13). This represented a change from the Government's position in 2001, where it had agreed with the recommendations of the Wakeham Commission to weaken the delegated legislation powers of the House (see section 3.1).

There is broad continuity in the current Government's approach. In answer to a written question from Lord Stoddart of Swindon about the Government's plans to reform the second chamber's powers, Lord McNally said: "The Government believe that the basic relationship between the two Houses, as set out in the Parliament Acts 1911 and 1949, should continue when the House of Lords is reformed" (HL *Hansard*, 24 June 2010, col WA206). The publication of the white paper and the Draft Bill in May 2011 (Cm 8077) confirmed this view (see section 3.7).

Over the last ten years successive Governments have made it clear that a reformed second chamber would maintain its powers as currently exercised, making no real assessment of the future House's delegated legislation powers. However, in this period there have been a number of developments, including the publication of reports that examined these powers, which have considered the powers the interim House could exercise and those that a reformed House should exercise. These are described below.

3.1 Wakeham Commission (2000)

The Royal Commission on Reform of the House of Lords chaired by Lord Wakeham reported its recommendations in January 2000 (*A House for the Future*, Cm 4534). In its chapter on delegated legislation, the Commission noted that "the powers of the present House of Lords in respect of Statutory Instruments are more absolute than those it has in respect of primary legislation". Published before the two defeats in February 2000 (see section 2.1), it added however that "there has since 1968 been no serious challenge to the convention that the House of Lords does not reject Statutory Instruments. Its influence over secondary legislation is therefore paradoxically less than its influence over primary legislation" (para 7.31). The report gave the following assessment of the Lords' powers:

> On the face of it the present arrangements give the second chamber some powerful weapons. It can refuse to approve draft instruments (under the affirmative procedure) or strike down instruments already made (under the negative procedure).These powers should enable the second chamber to bring irresistible pressure to bear on the Government. But they are too drastic. That is the reason why they are not in practice used now and we would not suggest that a reformed second chamber should be more willing than the present House of Lords to persist in blocking an instrument altogether.
>
> (ibid, para 7.33)

The report concluded that "The absolute nature of the House of Lords' powers in relation to secondary legislation is more apparent than real". The Commission made several recommendations for changing the second chamber's powers over delegated legislation:

> Recommendation 41: 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.
>
> Recommendation 42: Where the second chamber votes to annul an instrument, the annulment should not take effect for three months and could be overridden by a resolution of the House of Commons.
>
> Recommendation 43: In both cases the relevant Minister should publish an Explanatory Memorandum, giving the second chamber an opportunity to reconsider its position and ensuring that the House of Commons is fully aware of all the issues if it has to take the final decision.
>
> (ibid, para 7.37)

In the debate on the report that followed in the House of Lords, Lord Goodhart criticised the proposal to weaken the powers and allow the House of Commons to override the proposed delay:

> I accept that it is illogical that your Lordships' House can block secondary legislation permanently, but can only delay primary legislation for a year. Perhaps there should be a restriction on our powers over secondary legislation to the imposition of a one-year delay to conform with our powers over primary legislation. But the delaying power measured in hours, which would be the result of Recommendations 41 and 42, would be futile.
>
> (HL *Hansard*, 7 March 2000, col 925)

In the 2001 white paper, *House of Lords Reform—Completing the Reform* (Cm 5291), the Government concurred with the Wakeham Commission's recommendation. It said:

> While a reduction in the nominal power to reject Statutory Instruments absolutely, this change will in practice render the Lords more effective in assuring the quality of secondary legislation, since the House will be able to point out flaws and urge some recasting of the terms of a Statutory Instrument, without rejecting it outright. This provides a parallel power to that in main legislation enabling the Lords to ask, through delay, the Government to reflect again, but ultimately not to frustrate a legislative proposal endorsed by the Commons.
>
> (para 33)

3.2 Merits of Statutory Instruments Committee (2003)

In light of the growing volume and importance of Statutory Instruments, the Wakeham Commission also recommended that a sifting mechanism (either a joint committee of both Houses, or a mechanism in the second chamber) should be established to look at the significance of every instrument subject to parliamentary scrutiny and to draw attention to those which merited further debate or consideration (Recommendations 37 and 38). Following this, in April 2002, a group established by the Leader of the House to consider how the working practices of the House of Lords could be improved recommended that "a new Lords select committee should be established to examine the merits of every Statutory Instrument subject to parliamentary scrutiny" (HL Paper 111 of session 2001-02, para 31(d)). The House agreed the terms of reference for a new Merits

of Statutory Instruments Committee in June 2003 (HL *Hansard*, 16 June 2003, cols 527–9).

The Merits Committee considers each instrument (with a few specific exceptions) and draws to the attention of the House those that:

(a) are politically or legally important, or give rise to issues of public policy likely to be of interest to the House;

(b) may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) may inappropriately implement European Union legislation;

(d) may imperfectly achieve their policy objectives.

(Merits of Statutory Instruments Committee terms of reference)

When he moved his fatal amendment to the Gambling (Geographical Distribution of Casino Premises Licences) Order 2007, Lord Clement-Jones paid tribute to the Merits Committee for what it had "uncovered in its brief but very effective inquiry" (HL *Hansard*, 28 March 2007, col 1666). The Committee's role in the process of scrutinising the Order was also praised by Peers who did not support Lord Clement-Jones' amendment. Lord Howard of Rising, who supported a non-fatal compromise amendment tabled by the Labour Peer Baroness Golding, argued that "It would have been a travesty of the purposes of the Merits Committee if the Government had ignored its report pointing out difficulties to them" (ibid, col 1686), and urged that "The force of the Merits Committee's arguments should be listened to" (ibid, col 1687).

3.3 Joint Committee on Conventions (2006)

The Joint Committee was set up in May 2006, chaired by Lord Cunningham of Felling, to consider "the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation", including conventions on delegated legislation (Joint Committee on Conventions, *Conventions of the UK Parliament*, 6 November 2006, HL Paper 265-I, p 3). The Committee was asked to accept the primacy of the House of Commons in doing so. Chapter 6 laid out the Committee's examination of the conventions on delegated legislation. The Joint Committee concluded this assessment by stating 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. This is consistent with past practice, and represents a convention recognised by the opposition parties" (para 227). It added: "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" (para 229). They listed these as:

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

- 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

- Orders to devolve primary legislative competence, such as those to be made under section 95 of the Government of Wales Act 2006; and

- 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.

The Committee concluded that: "The problem with the present situation is that the Lords' power in relation to SIs is too drastic. The picture would be very different if Parliament had power to amend SIs" (para 229).

In the debate that followed, Lord Cunningham noted the limits to the application of the report. He said its conclusion could only apply to the interim House of Lords. He argued:

> ... the reality [is] that a substantially changed House—particularly one with an electoral mandate—would, of necessity, want to re-examine its working practices. It would feel, given the backing those elections would give it, that it would have every right to do so. Speaking as a politician, I would never want to be elected to any institution, at any level, where I could not have some say in how that institution behaved and conducted its business. I do not suppose that even the ingenuity of party lists can come up with clones from all the political parties who would simply come here to accept the status quo. That is not the reality of political life. Sadly, we would also see the demise of the Cross Benches, to say nothing of the Bishops. Consideration of those powers and responsibilities would inevitably be on the agenda.
>
> (HL *Hansard*, 16 Jan 2007, cols 581–2)

The Government's response to the report accepted the Committee's recommendations and conclusions (December 2006, Cm 6997). With regard to delegated legislation the Government agreed with the Committee's opinion that "the Lords should only threaten to reject Statutory Instruments (SIs) in exceptional circumstances", adding that:

> The Government welcomes the Committee's conclusion that the opposition parties should not reject an SI simply because they disagree with it. It is important to remember that the power to create SIs, and the principles behind the primary legislation will already have been debated and considered by both Houses of Parliament. It goes without saying that it is at any time open to Parliament to change the primary legislation. The Government believes this principle should apply even in relation to the types of SI referred to in the Committee's conclusion 17. Simply because a special procedure is required for particular SIs should not mean that the Lords can feel free to reject the Order on the grounds it dislikes the policy, if the Order has in fact been properly made under the procedure set out.
>
> (ibid, para 39)

The Government said it hoped to see the conventions carry on in a reformed second chamber. However, it stated: "The Government will consider carefully whether any

legislative changes in relation to secondary legislation are necessary, but hopes that they are not" (ibid, para 47).

3.4 New Procedure (2009)

In 2009, the House approved a report by the Procedure Committee to amend the Standing Orders to provide Members with a mechanism to enable there to be 'neutral' debates on negative instruments. The report said:

> We have considered a proposal by Baroness Thomas of Winchester for a new procedure to enable negative instruments to be debated on a neutral "take note" motion. At present such instruments are normally debated on overtly hostile motions, either "fatal" (i.e. a "prayer" to annul the instrument) or "non-fatal" (i.e. a critical motion or a motion calling upon Her Majesty's Government to revoke the instrument). Baroness Thomas of Winchester suggests that a "take note" motion should, where appropriate, include a reference to the relevant report of the Merits of Statutory Instruments Committee.
>
> We support this proposal, which reflects the fact that Members of the House may well wish on occasion to debate the issues raised by a negative instrument, and to scrutinise Government policy, without wishing to appear to oppose the instrument itself.
>
> (House of Lords Procedure Committee, *Rotation Rule, Debating Negative Instruments, Select Committee Powers*, HL Paper 39 of session 2008-09, para 4)

The Committee noted that this procedure was "not intended to replace the existing procedures whereby a prayer to annul a negative instrument may be tabled, or the House may be invited to agree some other substantive motion, such as a resolution calling on Her Majesty's Government to revoke the instrument". The Committee explained:

> Instead we recommend that where a neutral "take note" motion has been tabled with regard to an instrument, but another Member then tables a prayer or some other substantive motion on the same instrument, the motion inviting a decision of the House should take precedence. The Member tabling the second motion should, as a matter of courtesy, consult the Member who has previously tabled the "take note" motion, but we are clear that the House should under no circumstances be deprived of its right to consider a substantive motion on secondary legislation.
>
> (ibid, para 10)

3.5 Lord Strathclyde-Lord Scott Correspondence (2010)

In a letter to Lord Strathclyde, the Leader of the House, on 20 July 2010, Lord Scott of Foscote (Crossbench) enquired about Lord Strathclyde's recent assertion at a Crossbench meeting that "it had become an important convention of the House that the House would not vote down a statutory instrument". In addition Lord Scott also asked whether it was possible for the House to have the power to suggest revisions to, and be able to delay, delegated legislation.

In reply, on 29 July 2010, Lord Strathclyde suggested this idea should be forwarded to the review of working practices. He also confirmed in his letter it was the Government's view that a convention not to reject delegated legislation existed. He accepted the House

has a power to reject such legislation but reiterated the Government's belief that a convention existed that limited its use. He added:

> The reasons why this convention has developed are manifold. The Parliament Acts do not apply to delegated legislation. Accordingly, delegated legislation rejected by the House of Lords cannot have effect even if the House of Commons has approved it. By contrast to procedures for primary legislation, there is no mechanism for a dialogue between the two Houses in relation to Statutory Instruments, nor is there much scope for such dialogue as each House only has the power to veto the instrument (save for the very small number of cases where the Parent Act specifically provides for amendment).
>
> The rejection of secondary legislation would, moreover, jar with the House of Lords' role as a revising chamber: outright defeat of a Statutory Instrument cannot be classed as revision.
>
> (Merits of Statutory Instruments Committee Eighth Report: *Correspondence: Local Land Charges (Amendment) Rules 2010*, 21 October 2010, HL Paper 40, Appendix 5)

In reply Lord Scott wrote on 23 September 2010:

> I agree with you that the rejection by the House of secondary legislation that the Commons has approved might, as you say, jar with the House's role as a revising chamber. But that would surely only be so if the ground of rejection were on an issue of policy. If the rejection had been on a drafting point, giving rise to a question whether the instrument would achieve its intended purpose, or whether it would have an effect that was not intended, it seems to me that the rejection would be entirely consistent with the House's role as a revising chamber. The instrument in question would have to go back to the sponsoring Department, which would have to consider the points raised in the Lords and either relay the instrument in a suitably amended form or explain why the questions raised in the Lords were thought to be misconceived and relay the instrument in its original form. I am sure it is necessary to have some form of procedure that would enable the Lords, or the Merits Committee, to revise secondary legislation as it can revise primary legislation.
>
> (ibid)

On 20 October 2010, Lord Goodlad (Conservative), in his capacity as Chair of the Merits Committee, wrote to Lord Strathclyde to ask for formal confirmation of the Government's position. Lord Strathclyde answered on 30 October 2010 that the Government accepted the conclusions of the Joint Committee on Conventions but added:

> It is right that the House has the power to defeat SIs. It is a potential constitutional safeguard. But the House has a number of powers that it rarely exercises. It may reject a supply Bill that is not certified as a money Bill, but has long stayed its hand. I propose no change in that.
>
> On SIs, as I observed to Lord Scott, the House normally chooses to support a non-fatal motion. That is in my personal view tantamount to a convention; this was illustrated in the case of the recent Royal Parks Regulations, when the House opposed a fatal motion, but supported a non-fatal one on the same subject. It was also illustrated on 22 March in the case of the Norwich and Norfolk and Exeter and Devon Structural Changes Orders, when the House rejected fatal

> amendments to the approval motions for the two Orders, but supported non-fatal amendments to the same motions. Where the House has departed from this custom, the episodes were clearly not the norm. Indeed, their rarity suggests the convention to which I referred has proved highly robust over the decades, and the House has rightly exercised—as both Labour and Conservative parties chose to in opposition—the utmost restraint in using its power to reject.
>
> (Merits of Statutory Instruments Committee 11th Report: *Conventions of the House Relating to Secondary Legislation*, 11 November 2010, HL Paper 52, Appendix 1)

3.6 Working Practices Report (2011)

A Leader's Group, chaired by Lord Goodlad, was appointed in July 2010 to "consider the working practices of the House and the operation of self-regulation; and to make recommendations". The Group identified scrutiny of legislation, including delegated legislation, as one of the House of Lords' core functions, and noted that both the volume and importance of delegated legislation has continued to grow. It judged that: "The House of Lords has good reason to be proud of the quality of its scrutiny of delegated legislation" (*Report of the Leader's Group on Working Practices*, HL Paper 136 of session 2010–12, April 2011, Chapter 3, para 142). However, the group questioned Lord Strathclyde's assertion about the existence of a convention that the House of Lords does not reject Statutory Instruments that the House of Commons has, or would have, approved. Pointing out that the Commons last rejected a Statutory Instrument in 1979, and that this may even have been by mistake, the Leader's Group argued that:

> ... such a convention, linked as it is to the decisions of the House of Commons, which has not rejected a SI in over 30 years, would be tantamount to a convention that Parliament as a whole does not reject Statutory Instruments. This would defeat the purpose of subjecting SIs to parliamentary control in the first place.
>
> (ibid, para 147)

Although the House of Lords has typically exercised self-restraint in rejecting delegated legislation, the Leader's Group believed that the power to vote against a Statutory Instrument, and force the Government to think again, was "an efficient and valuable form of scrutiny" (para 150). The Group endorsed the spirit of the proposal made by the Wakeham Commission in 2000 that a reformed second chamber should possess a non-fatal, delaying power in respect of SIs, noting that:

> If the House's powers over secondary legislation were less draconian, the House might be encouraged to use them more often, forcing the Government to rethink its policy and possibly to amend the proposed legislation. An apparent sacrifice of the House's powers might lead to more effective scrutiny. We also consider that such an approach would be more consistent with the House's role as a revising chamber ultimately respecting the primacy of the House of Commons.
>
> (ibid, para 152)

However, primary legislation would be required to implement such a change. The Leader's Group therefore recommended that the House should adopt a resolution setting out a new convention:

> We recommend that the House should adopt a resolution asserting its freedom to vote on delegated legislation, and affirming its intention to use such votes to delay, rather than finally to defeat, such legislation. Such a resolution would establish the House's role as a revising chamber in respect of delegated as well as primary legislation.
>
> We recommend that the resolution should contain the following elements:
>
> - That the House asserts its freedom to decline to approve any draft affirmative instrument, or to pass a prayer to annul any negative instrument, laid before it by the Government;
> - That the purpose of the House's use of this power is to enable the Government of the day to reconsider the policy set out in the instrument;
> - That in the event that the House has declined to approve an affirmative instrument, and the Government has laid a substantially similar draft instrument, and this instrument has been approved by the House of Commons, the House will agree to the approval motion without amendment;
> - That in the event that the House has passed a prayer to annul a negative instrument, and the Government has laid a substantially similar instrument, the House will not vote on a prayer to annul the second instrument.
>
> (ibid, Chapter 6, para 28)

During the subsequent debate on the Leader's Group report, several Peers welcomed these proposals. In particular, Baroness Thomas of Winchester (Liberal Democrat) observed that: "The whole purpose of that part of the report is to encourage the House to be bolder if it really does not approve of a particular Instrument". She said that the Lords were "perhaps understandably squeamish" about voting instruments down and had found "all kinds of ingenious ways" to express disapprobation of an Instrument short of inflicting a fatal defeat. However, the Leader's Group report was a reminder that voting down a particular Instrument "does not mean that the door is slammed in the Government's face for that particular policy", as a redrafted instrument could be introduced following a period of reflection. She felt that an agreement by the House not to vote down a substantially similar Instrument for the second time would not be giving too much power away, because in practice the Lords had never turned down a second Instrument. Nor, she argued, would adoption of the Leader's Group's recommendations result in "the Order Paper being littered with lots of 'decline to approve' Motions" since "there is usually inbuilt caution before an Opposition decide to take such a drastic course of action, because they know that it could be used against them sooner or later" (HL *Hansard*, 27 June 2011, col 1574).

3.7 Reaction to House of Lords Reform Draft Bill (2011)

In May 2011, the Government published its House of Lords Reform Draft Bill (Cm 8077). Neither the Draft Bill nor the accompanying white paper specified any changes to the

second chamber's role in scrutinising or passing secondary legislation, but in the subsequent debate on the Draft Bill, several Peers brought up points relating to delegated legislation.

The white paper states that: "The Government believes that the powers of the second chamber and, in particular, the way in which they are exercised should not be extended and the primacy of the House of Commons should be preserved" (ibid, p 11). This was questioned during the debate, as some Peers argued that, when it comes to secondary legislation, the House of Commons does not have primacy - Baroness Thomas of Winchester noted the Lords' "unfettered power over most delegated legislation" (HL *Hansard*, 21 June 2011, col 1207), and Lord Hunt of Kings Heath (Labour) said that the Lords formally had "equal status in approving delegated legislation" (HL *Hansard*, 22 June 2011, col 1371). While Lord Hunt accepted that in reality "the formal position has come to be moderated by conventions reflecting the primacy of the Commons", he believed that "the moment that elected Members walk into this Chamber, those conventions will evaporate". Lord Williamson of Horton (Crossbench) and Lord Brooke of Alverthorpe (Labour) agreed with him that an elected second chamber would be more assertive about challenging the Government on Statutory Instruments than the House of Lords as currently composed:

> Lord Williamson of Horton: Our references—oh so discrete references—to ping-pong would need to be changed to kung-fu, or all-in wrestling, or some other phrase that would better describe the relationship between the two Houses, at least on primary legislation.
>
> I think that that would extend also to subsidiary, secondary legislation ... What do we do? We pass Motions of regret, and I vote for them—but what [impact] do they have? They have the impact of a feather duster. If the new House of Lords were largely elected, some at least of those SIs would be challenged or, more probably, simply deleted.
>
> (HL *Hansard*, 22 June 2011, cols 1284-5)
>
> Lord Brooke of Alverthorpe: The noble Lord, Lord McNally, knows himself what you can [do] with an SI in this House: you can have a fatal vote on an SI and you can change completely a government policy—as indeed Members in this House did on the Gambling Bill when they threw out the SI. When you have elected people in the chamber, can you leave the freedom for them to do that? In no time you will be in trouble.
>
> (HL *Hansard*, 22 June 2011, col 1352)

3.8 New Procedure (2011)

The procedure for rejecting delegated legislation in the Lords was updated again in July 2011. A Procedure Committee report (8 July 2011, HL Paper 170) recommended a facility for reasons to be added to prayers to annul negative instruments. The Committee said:

> We believe that it would be helpful to Members and to the Government if reasons could be appended to prayers to annul negative instruments. However, we emphasise that it is for ministers to decide how to exercise powers delegated to them by Parliament, subject to whatever form of parliamentary control is set out in the primary legislation. A prayer to annul a negative instrument, if agreed to, is final and irreversible. The reasons added to such a motion should be just that—

> reasons explaining why it has been tabled. It would be undesirable, and indeed constitutionally inappropriate, for further conditions or requirements to be added to the motion, for instance calls that the Government should take certain steps before re-laying the instrument.
>
> (ibid, p 3)

The report was agreed on 19 July 2011.

4. Possible Implications of an Elected House on Delegated Legislation

Lords reform debates have become focused again on the relationship between the House of Commons and an (mainly/wholly) elected second chamber. This debate usually takes in issues both of theory, such as the effect of such reforms on the primacy of the Commons, and of practical problems, such as the overlapping of representation at constituency level. The primacy issue, as already discussed, is usually answered with reference to the Parliament Acts, the financial resolutions and conventions. Others have pointed out that in the proposals to maintain the current powers and relations between the two Houses, the power of the Lords to reject delegated legislation is also maintained. Notwithstanding the conventions and practices discussed above, the Lords presently has an equal power to reject delegated legislation with the Commons. The Commons last rejected a piece of delegated legislation in 1979, whereas the Lords has done so three times in the last ten years. However, some observers have centred on the issue of the increased assertiveness that it is argued would come with having elected members. The House of Lords as currently composed tends to back down from protracted confrontation with the Commons. Some contend that an elected House will not do this, including a number of former MPs. In the two-day debate on the Conventions Committee report, Lord Trimble (then Ulster Unionist), asserted:

> If there is an elected body, the points that came out from the excellent report of the Conventions Committee apply. As the noble Lord, Lord Cunningham of Felling, has said, that report was careful to say that it was dealing only with the present situation, and that if an elected element comes into the House the conventions will be reconsidered. That is true. Elected persons will want to exercise their mandate. The theoretical powers of this House are enormous; they will want to exercise those theoretical powers and they will not regard themselves as limited by conventions which are based on the fact that this House is not elected. One simply has to state that to see that that is the case.
>
> The noble and learned Lord the Lord Chancellor seemed to be arguing that the only way of restraining the tendency of elected members to exercise the theoretical powers is by legislating in some way. If one were to legislate on that, inevitably one would be drawn towards what appears to be the position of the Chancellor of the Exchequer—that we should move towards adopting a formal, comprehensive written constitution. That is an enormous undertaking and it would result in bringing the courts and the judges into Parliament to arbitrate, which is not our tradition and would not be welcome to everyone here.
>
> (HL *Hansard*, 12 March 2007, col 498)

This was reflected in the speech made by Lord Fowler (Conservative):

> I heard much yesterday about the primacy of the Commons, but precious little about more strength for the Lords. The Government's proposition is that the powers of this House, even if elected, should stay the same. I simply say that that

> will not work. It is a central flaw in their proposals. Whether Governments like it or not, an elected House or a substantially elected House will try to use its muscle. If I came to this House as an elected Peer, my attitude would change. I would not accept the conventions of the old appointed House. I would say, "My vote is as good as yours down the Corridor". I would also say, "I have a duty to represent my voters". I do not see how that position of potential deadlock is in anyone's interest. Unless this question of powers is addressed, all one is doing by going ahead with an elected House is building in an institutional conflict, which is not in the public's interest.
>
> (HL *Hansard*, 13 March 2007, cols 600–2)

More recently, Lord Rooker (Labour Independent) reiterated this view:

> If I came in here elected, I would not be interested in conventions, because I would have been elected. Where is the book of powers for the Lords? People have talked about our having fewer powers, but we do not; we have very substantial powers, but we choose not to use them because we are not elected. That is what the conventions report was all about. The refusal to give a Second Reading, the time delay, how we treat secondary legislation and the challenge on financial privilege will all go by the board by elected Members of this House. Why should they obey the conventions?
>
> (HL *Hansard*, 29 June 2010, cols 1709–10)

In a survey carried out by the UCL Constitution Unit in 2007, Peers were asked about their attitudes to a number of statements about the House. In total 361 Peers (representative in terms of political party, length of time in the House and hereditary or life Peers) responded. The results showed 23% of respondents agreed with the statement that 'the House of Lords should not block delegated legislation'. Of the parties 54% of Labour Peers agreed with this, 12% of Conservative Peers and 5% of Liberal Democrat Peers (Meg Russell, 'A Stronger Second Chamber? Assessing the Impact of House of Lords Reform in 1999 and the Lessons for Bicameralism', *Political Studies*, 2010, Vol 58, p 876).

In written evidence to the Joint Committee on Conventions, Paul Hayter, the then Clerk of the Parliaments, noted the issue of the legitimacy of elected members and its implications for conventions. Although written in reference to the Salibury/Addison Convention, Mr Hayter's memorandum has wider implications for the power to reject delegated legislation:

> If the members of the House of Lords continue to be appointed and in a way which continues to ensure that no government of whatever political colour will enjoy a majority, the convention can be maintained because the argument of the supremacy of the popular mandate will still apply. The introduction of an elected element would undermine this as the House could begin to claim an electoral mandate. It can be argued that the greater the proportion of elected members the stronger the mandate. If the Lords were elected by a proportional system they might even claim a superior mandate.
>
> (Joint Committee on Conventions, *Conventions of the UK Parliament: Minutes of evidence and appendices*, 6 November 2006, HL Paper 265-II, Ev 84)

In an oral evidence session with the Joint Committee, Sir Roger Sands, the then Clerk of the House of Commons, said he believed that it was not "contrary to the concept of a

revising chamber that the House of Lords should not occasionally throw out a Statutory Instrument as long as in doing so it is not breaching the Salisbury Convention by another route". He continued:

> There are some Statutory Instruments which are so fundamental to the implementation of the bill that to throw them out would effectively be to throw out the Act at the same time; but there are many which do not come into that category. If we can take Australia—you have had a memorandum from the Clerk of the Australian Senate—there was a time when the Australian Senate would routinely reject any Statutory Instrument which their equivalent of the Joint Committee on Statutory Instruments had criticised and the Government had not responded. So the Senate was underpinning the work of their joint committee on Statutory Instruments, and I think that was entirely appropriate for a revising chamber. If the Government was not listening to reasoned criticism, that a Statutory Instrument perhaps looked ultra vires or was an unusual use of powers, then why not? The difficulty with it, however, is that you are looking at the motive and effect in each case and that is always a difficult thing to do.
>
> (ibid, Ev 109)

Appendix 1 – Statistical Information, 1950–2011

Table 1: Number of divisions on delegated legislation, 1950–2011
(up to 6 October 2011)

	Fatal Motion	Non-Fatal Motion	Total
1950			
1951			
1952			
1953			
1954			
1955	1		1
1956			
1957			
1958	1		1
1959			
1960			
1961			
1962			
1963	1	1	2
1964			
1965	2		2
1966	2		2
1967	2		2
1968	1		1
1969	1		1
1970			
1971			
1972	1		1
1973	2	2	4
1974			
1975			
1976			
1977	1	2	3
1978	1	1	2
1979	3		3
1980	6		6
1981	1		1
1982	2		2
1983		1	1
1984		1	1
1985		2	2
1986		2	2
1987			
1988			
1989			
1990		1	1
1991		1	1
1992	1	1	2
1993		3	3
1994	2	3	5
1995	3	4	7
1996	6	3	9
1997	1		1
1998	1	1	2
1999			
2000	2		2
2001	5	3	8
2002		1	1
2003	2	7	9
2004	2	3	5
2005		2	2
2006	3	3	6
2007	5	4	9
2008	1	3	4
2009	2	5	7
2010	5	5	10
2011		5	5
Total 1950–2011	69	70	139

This table excludes one division in 1967 where there was no quorum in the Chamber (a second division on the order was held two days later), and a prayer to annul a set of regulations in 1999 which was negatived on question with no division.

Figure 1: Divisions on delegated legislation, 1950-2011*

*up to 6 October 2011

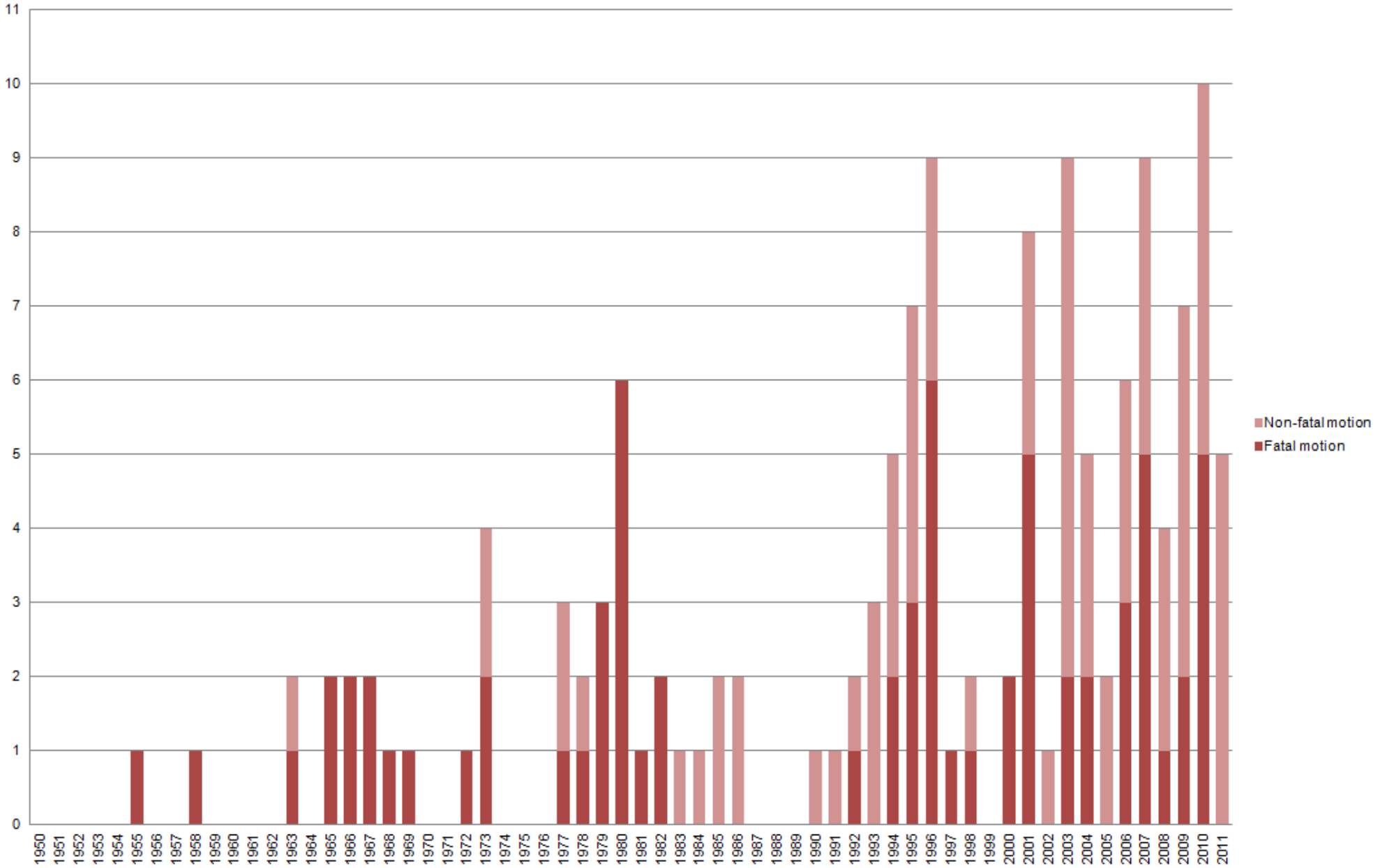


Table 2: Number of government defeats on delegated legislation, 1950–2011
(up to 6 October 2011)

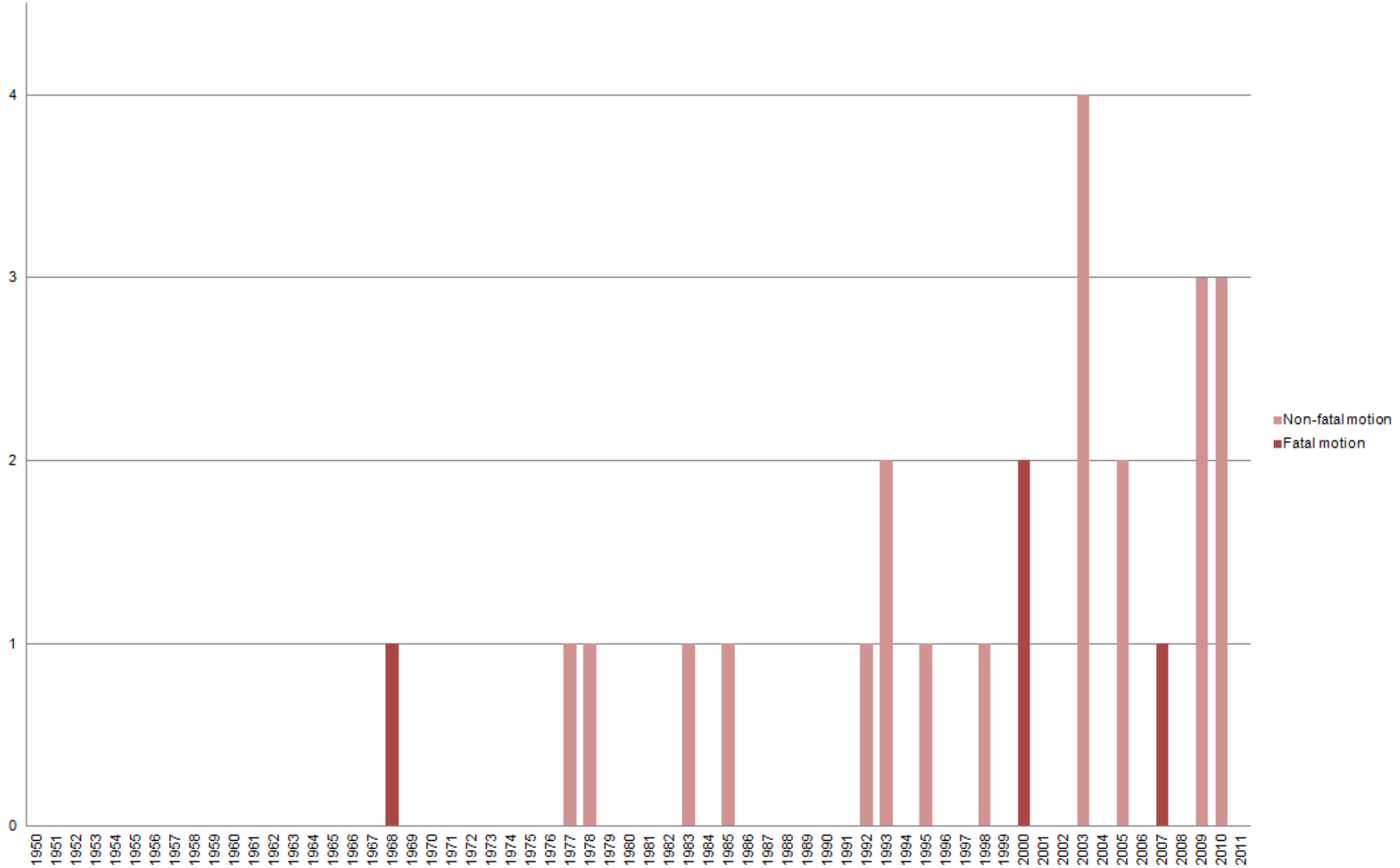
	Fatal Motion	Non-Fatal Motion	Total
1950			
1951			
1952			
1953			
1954			
1955			
1956			
1957			
1958			
1959			
1960			
1961			
1962			
1963			
1964			
1965			
1966			
1967			
1968	1		1
1969			
1970			
1971			
1972			
1973			
1974			
1975			
1976			
1977		1	1
1978		1	1
1979			
1980			

	Fatal Motion	Non-Fatal Motion	Total
1981			
1982			
1983		1	1
1984			
1985		1	1
1986			
1987			
1988			
1989			
1990			
1991			
1992		1	1
1993		2	2
1994			
1995		1	1
1996			
1997			
1998		1	1
1999			
2000	2		2
2001			
2002			
2003		4	4
2004			
2005		2	2
2006			
2007	1		1
2008			
2009		3	3
2010		3	3
2011			

Total 1950–2011	4	21	25

Figure 2: Government defeats on delegated legislation, 1950-2011*

*up to 6 October 2011



Appendix 2 – Details of Divisions on Delegated Legislation, 2000–2011
(up to 6 October 2011)

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	22 February 2000 Lord Mackay of Ardbrecknish (Conservative)	Greater London Authority (Election Expenses) Order 2000 Amendment to motion of approval, to decline	Contents 215 Not Contents 150 **Government defeat**	
Labour	22 February 2000 Lord Mackay of Ardbrecknish (Conservative)	Greater London Authority Elections Rules 2000 Motion to annul	Contents 206 Not Contents 143 **Government defeat**	
Labour	22 January 2001 Lord Alton of Liverpool (Crossbench)	Human Fertilisation and Embryology (Research Purposes) Regulations 2000 Amendment to motion of approval, to decline	Contents 92 Not Contents 212	
Labour	29 January 2001 Baroness Young (Conservative)	Prescription only Medicines (Human Use) Amendment (No. 3) Order 2000 Prayer to annul	Contents 95 Not Contents 177	

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	8 February 2001 Lord Dixon-Smith (Conservative)	Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Prayer to annul	Contents 63 Not Contents 116	
Labour	15 February 2001 Lord Cope of Berkeley (Conservative)	Political Parties, Elections and Referendums Act 2000 (Disapplication of Part IV for Northern Ireland Parties, etc.) Order 2001 Amendment to motion of approval, to regret		Contents 112 Not Contents 154
Labour	20 March 2001 Baroness Miller of Hendon (Conservative)	Weights and Measures (Metrication Amendments) Regulations 2001 Prayer to annul	Contents 76 Not Contents 115	
Labour	23 October 2001 Lord Kingsland (Conservative)	Financial Services and Markets Tribunal Rules 2001 Motion to withdraw rules		Contents 129 Not Contents 140
Labour	19 November 2001 Lord McNally (Liberal Democrat)	Human Rights Act 1998 (Designated Derogation) Order 2001 Amendment to motion of approval, to decline	Contents 69 Not Contents 148	

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	29 November 2001 Lord Kingsland (Conservative)	Damages (Personal Injury) Order 2001 Motion to revoke		Contents 43 Not Contents 106
Labour	15 May 2002 Countess of Mar (Crossbench)	TSE (England) Regulations 2002 Prayer to annul and amendment[1]		Contents 95 Not Contents 16
Labour	27 January 2003 Baroness Blatch (Conservative)	Education Act 2002 (Modification of Provisions) (No. 2) (England) Regulations 2002 Prayer to annul	Contents 70 Not Contents 130	
Labour	11 February 2003 Lord Smith of Clifton (Liberal Democrat)	Strategic Investment and Regeneration of Sites (Northern Ireland) Order 2003 Amendment to motion of approval, to regret		Contents 50 Not Contents 134
Labour	17 June 2003 Lord Lester of Herne Hill (Liberal Democrat)	Employment Equality (Sexual Orientation) Regulations 2003 Motion to withdraw moved *before* motion to approve	Contents 50 Not Contents 85	

[1] The Countess of Mar (Crossbench) moved a prayer to annul. Lord Livsey of Talgarth (Liberal Democrat) moved an amendment to make it non-fatal. Lord Whitty (Minister) moved a technical amendment to the amendment. The House agreed the amendment to amendment on division, then agreed to the motion as amended.

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	30 June 2003 Earl Howe (Conservative)	Food Supplements (England) Regulations 2003 Motion to revoke		Contents 132 Not Contents 79 **Government defeat**
Labour	12 November 2003 Lord Hodgson of Astley Abbotts (Conservative)	Misuse of Drugs Act 1971 (Modification) (No. 2) Order 2003 Amendment to motion for approval, to regret		Contents 78 Not Contents 61 **Government defeat**
Labour	13 November 2003 Earl of Northesk (Conservative)	Regulation of Investigatory Powers (Communications Data) Order 2003 Amendment to motion for approval		Contents 92 Not Contents 108
Labour	13 November 2003 Lord Phillips of Sudbury (Liberal Democrat)	Regulation of Investigatory Powers (Communications Data) Order 2003 Amendment to motion for approval		Contents 126 Not Contents 99 **Government defeat**
Labour	13 November 2003 Baroness Blatch (Conservative)	Regulation of Investigatory Powers (Communications Data) Order 2003 Amendment to motion for approval		Contents 120 Not Contents 98 **Government defeat**

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	16 December 2003 Lord Goodhart (Liberal Democrat)	Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 Motion to withdraw moved *after* motion to approve		Contents 50 Not Contents 120
Labour	11 March 2004 Lord Holme of Cheltenham (Liberal Democrat)	Anti-terrorism, Crime and Security Act 2001 (Continuance in Force of Section 21 to 23) Order 2004 Amendment to motion for approval		Contents 44 Not Contents 106
Labour	11 March 2004 Lord Laird (Crossbench)	Police (Northern Ireland) Act 2000 (Renewal of Temporary Provisions) Order 2004 Amendment to motion of approval, to decline	Contents 45 Not Contents 134	

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	8 June 2004 Lord Redesdale (Liberal Democrat)	Guidance issued under Section 182 of the Licensing Act 2003 and Guidance to Police Officers on the Operation of Closure Powers in Part 8 of the Licensing Act 2003 Motion of regret *after* motion to approve		Contents 56 Not Contents 71
Labour	7 July 2004 Viscount Astor (Conservative)	Horse Passport (England) Regulations 2004 Prayer to annul	Contents 13 Not Contents 40	
Labour	14 December 2004 Lord Thomas of Gresford (Liberal Democrat)	Criminal Justice Act 2003 (Categories of Offences) Order 2004 Amendment to motion, to reconsider		Contents 42 Not Contents 90
Labour	22 March 2005 Lord Glentoran (Conservative)	Higher Education (Northern Ireland) Order 2005 Amendment to motion, to regret		Contents 168 Not Contents 150 **Government defeat**
Labour	14 November 2005 Viscount Astor (Conservative)	Licensing Act 2003 (Second Appointed Day) Order 2005 Motion to withdraw and replace		Contents 130 Not Contents 97 **Government defeat**

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	15 February 2006 Lord Thomas of Gresford (Liberal Democrat)	Prevention of Terrorism Act 2005 (Continuance in Force of Sections 1 to 9) Order 2006 Amendment to motion of approval, to regret		Contents 34 Not Contents 81
Labour	26 April 2006 Lord Smith of Clifton (Liberal Democrat)	Local Government (Boundaries) (Northern Ireland) Order 2006 Amendment to motion of approval, to regret		Contents 57 Not Contents 83
Labour	3 May 2006 Lord Hunt of Wirral (Conservative)	Transfer of Undertakings (Protection of Employment) Regulations 2006 Motion to revoke		Contents 77 Not Contents 79
Labour	10 July 2006 Lord Rogan (Non-Affiliated)	Education (Northern Ireland) Order 2006 Amendment to motion of approval, to decline to approve	Contents 97 Not contents 172	
Labour	7 November 2006 Lord Smith of Clifton (Liberal Democrat)	Rates (Amendment) (Northern Ireland) Order 2006 Amendment to motion, to decline to approve	Contents 62 Not contents 124	

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	11 December 2006 Lord Trimble (Conservative)	Water and Sewerage Services (Northern Ireland) Order 2006 Amendment to motion, to decline to approve	Contents 83 Not contents 158	
Labour	9 January 2007 Lord Morrow (Non-Affiliated)	Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 Motion to annul	Contents 68 Not contents 199	
Labour	5 March 2007 Lord Dholakia (Liberal Democrat)	Prevention of Terrorism Act 2005 (Continuance in force of Sections 1-9) Order 2007 Amendment to motion, to regret		Contents 96 Not contents 141
Labour	21 March 2007 Baroness O'Cathain (Conservative)	Equality Act (Sexual Orientation) Regulations 2007 Amendment to motion, to decline to approve	Contents 122 Not contents 168	

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	27 March 2007 Lord Trimble (Conservative)	Police (Northern Ireland) Act 2000 (Renewal of Temporary Provisions) Order 2007 Amendment to motion, to decline to approve	Contents 97 Not contents 141	
Labour	28 March 2007 Lord Clement-Jones (Liberal Democrat)	Gambling (Geographical Distribution of Casino Premises Licences) Order 2007 Amendment to motion, to decline to approve	Contents 123 Not contents 120 **Government defeat**	
Labour	19 June 2007 Lord Bradshaw (Liberal Democrat)	Community Drivers' Hours and Recording Equipment Regulations 2007 Amendment to motion, to decline to approve	Contents 57 Not contents 111	

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	18 July 2007 Baroness Morris of Bolton (Conservative)	Children Act 2004 Information Database (England) Regulations 2007 Amendment to motion, to regret		Contents 46 Not contents 79
Labour	18 July 2007 Baroness Walmsley (Liberal Democrat)	Children Act 2004 Information Database (England) Regulations 2007 Amendment to motion, to regret		Contents 38[2] Not contents 77
Labour	18 July 2007 Baroness Hanham (Conservative)	Home Information Pack (No 2) Regulations 2007 and Housing Act 2004 (Commencement No 8) (England and Wales) Order 2007 Motion to revoke		Contents 186 Not contents 160
Labour	4 March 2008 Lord Wade of Chorlton (Conservative)	Cheshire (Structural Changes) Order 2008 Amendment to motion, to not proceed without consultation		Contents 72 Not contents 83
Labour	30 June 2008 Lord Morrow (Non Affiliated)	Sexual Offences (Northern Ireland) Order 2008 Amendment to motion, to decline to approve	Contents 66 Not contents 146	

[2] The Tellers for the Contents reported 38 votes; the Clerks recorded 39 names.

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	10 November 2008 Baroness Thomas of Winchester (Liberal Democrat)	Social Security (Miscellaneous Amendments) (No. 4) Regulations 2008 Motion to revoke		Contents 54 Not contents 84
Labour	25 November 2008 Baroness Meacher (Crossbench)	Misuse of Drugs Act 1971 (Amendment) Order 2008 Amendment to motion, to delay implementation		Contents 64 Not contents 116
Labour	5 March 2009 Baroness Miller of Chilthorne Domer (Liberal Democrat)	Prevention of Terrorism Act 2005 (Continuance in force of Sections 1-9) Order 2009 Amendment to motion for approval, to decline	Contents 48 Not contents 135	
Labour	16 March 2009 Lord Tyler (Liberal Democrat)	Parliamentary Constituencies (England) (Amendment) Order 2009 Amendment to motion for approval, to decline	Contents 45 Not contents 185	
Labour	18 March 2009 Earl Attlee (Conservative)	Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2009 Motion to regret		Contents 77 Not contents 69 **Government defeat**

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	24 March 2009 Baroness Neville-Jones (Conservative)	Data Retention (EC Directive) Regulations 2009 Amendment to motion, to regret		Contents 89 Not contents 93
Labour	11 May 2009 Baroness Thomas of Winchester (Liberal Democrat)	Housing Benefit (Amendment) Regulations 2009 Motion to regret		Contents 27 Not contents 58
Labour	14 October 2009 Lord Bates (Conservative)	Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2009 Motion to regret		Contents 72 Not contents 66 **Government defeat**
Labour	7 December 2009 Earl of Onslow (Conservative)	Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2009 Motion to note with concern		Contents 182 Not contents 118 **Government defeat**
Labour	1 February 2010 Lord Scott of Foscote (Crossbench)	Pharmacy Order 2010 Amendment to motion, to regret		Contents 21 Not contents 44

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	3 March 2010 Baroness Hamwee (Liberal Democrat)	Prevention of Terrorism Act 2005 (Continuance in force of Sections 1-9) Order 2006 Amendment to motion of approval, to decline	Contents 49 Not contents 57	
Labour	3 March 2010 Lord Lloyd of Berwick (Crossbench)	Prevention of Terrorism Act 2005 (Continuance in force of Sections 1-9) Order 2006 Amendment to motion, to regret		Contents 50 Not contents 43 **Government defeat**
Labour	10 March 2010 Baroness Tonge (Liberal Democrat)	Royal Parks and Other Open Spaces (Amendment) etc Regulations 2010 Motion that the draft regulations not be made	Contents 48 Not contents 71	
Labour	10 March 2010 Lord Howard of Rising (Conservative)	Royal Parks and Other Open Spaces (Amendment) etc Regulations 2010 Amendment to motion, to regret		Contents 136 Not contents 71 **Government defeat**

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Labour	22 March 2010 Lord Tope (Liberal Democrat)	Norwich and Norfolk (Structural Changes) Order 2010 Amendment to motion for approval, to decline	Contents 54 Not contents 118	
Labour	22 March 2010 Baroness Butler-Sloss (Crossbench)	Norwich and Norfolk (Structural Changes) Order 2010 Amendment to motion, to regret		Contents 169 Not contents 110 **Government defeat**
Labour	22 March 2010 Lord Tope (Liberal Democrat)	Exeter and Devon (Structural Changes) Order 2010 Amendment to motion for approval, to decline	Contents 53 Not contents 110	
Conservative/ Liberal Democrat	19 July 2010 Lord Davies of Oldham (Labour)	Child Trust Funds (Amendment No 3) Regulations 2010 Amendment to motion, to regret		Contents 154 Not contents 189
Conservative/ Liberal Democrat	14 December 2010 Lord Triesman (Labour)	Higher Education (Basic Amount) (England) Regulations 2010 Amendment to motion, to replace motion to approve with motion to regret	Contents 215 Not contents 283	

Party in office	Date and Peer moving motion	Title of instrument and nature of division	Divisions	
			Fatal motion	Non-fatal motion
Conservative/ Liberal Democrat	7 March 2011 Lord Touhig (Labour)	Social Fund Maternity Grant Amendment Regulations 2011 Motion to regret and to note with concern		Contents 112 Not contents 149
Conservative/ Liberal Democrat	15 March 2011 Lord Hunt of Kings Heath (Labour)	Transfer of Functions (Dormant Accounts) Order 2010 Motion to regret		Contents 102 Not contents 159
Conservative/ Liberal Democrat	10 May 2011 Countess of Mar (Crossbench)	Jobseeker's Allowance (Mandatory Work Activity Scheme) Regulations 2011 Motion to regret		Contents 122 Not contents 155
Conservative/ Liberal Democrat	6 September 2011 Lord Waddington (Conservative)	Equality Act 2010 (Specific Duties) Regulations Amendment to motion, to regret		Contents 126 Not contents 258
Conservative/ Liberal Democrat	6 September 2011 Lord Low of Dalston (Crossbench)	Equality Act 2010 (Specific Duties) Regulations Amendment to motion, to regret and to call upon government to withdraw		Contents 166 Not contents 178

For details of divisions prior to 2000, please see Table 2 in House of Lords Library Note, *Divisions on Delegated Legislation in the House of Lords 1950–1999*, LLN 2000/001.

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