



HOUSE OF LORDS

# Library Note

## House of Lords Appointments Commission

This Library Note provides background information about the House of Lords Appointments Commission. It outlines the establishment of the Commission in 2000 and examines proposals for its reform, particularly those relating to placing the Commission on a statutory footing. The Note also details proposals made in the Government's House of Lords Reform Draft Bill, published in May 2011, and examines written and oral submissions to the Joint Committee on the Draft House of Lords Reform Bill. Finally, the Note examines the recommendations made by the Joint Committee in its April 2012 [report](#).

Heather Evennett  
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## 1. Introduction

The House of Lords Appointments Commission was established by the Prime Minister, Tony Blair, in May 2000 and is an independent, advisory, non-departmental public body.<sup>1</sup>

The Commission's main functions are to recommend individuals for appointment as non-party political life Peers and to vet all nominations for life Peerages to ensure the highest standards of propriety.

The Commission was originally established for what was seen as the transitional phase of House of Lords reform. This followed the removal of the majority of hereditary peers by the House of Lords Act 1999 but preceeded any further long-term reform of the House. The Commission was announced in the Labour Government's publication *Modernising Parliament—Reforming the House of Lords* (December 1998, [Cm 4183](#)). More recently, the current Government has published the *House of Lords Reform Draft Bill* (May 2011, [Cm 8077](#)), which includes provisions for a statutory Appointments Commission, should an 80 percent elected and 20 percent appointed House be decided upon.<sup>2</sup>

Clause 16 provides for a House of Lords Appointments Commission on a statutory basis, replacing the existing Commission with the same name, while Schedule 4 outlines the proposed governance arrangements of the new Commission. Clause 17 and Schedule 5 make provision for the Joint Committee on the House of Lords Appointments Commission, which would oversee the running and work of the Commission and report to both Houses of Parliament on its work. Clauses 18 to 24 deal with the number of appointments and issues such as terms of office, filling vacancies and the criteria for the selection and recommendation process.

The idea of placing the Appointments Commission on a statutory basis is not a new one and has appeared in several proposals since 2000. For example, when examining further Lords reform following the House of Lords Act 1999, the Royal Commission on Reform of the House of Lords, chaired by Lord Wakeham, recommended establishing the Appointments Commission by primary legislation and giving it greater powers for deciding the size of the Chamber and the number of appointments. More recently Lord Steel of Aikwood's Private Member's Bill in 2010 initially included clauses to reform the Commission, although these were later dropped at report stage in the Lords.

This Note examines the background to the current Appointments Commission and details proposals for its reform. It looks at the arrangements suggested by the present Government in the *House of Lords Reform Draft Bill* (May 2011, [Cm 8077](#)) and evidence received from the Joint Committee on the Draft House of Lords Reform Bill. It concludes by reviewing what the Joint Committee on the Draft House of Lords Reform Bill says about an Appointments Commission in its April 2012 [report](#).

This Note should be read in conjunction with the House of Commons Library Standard Note, *House of Lords Appointments Commission* (28 February 2011, [SN02855](#)), which provides background information about the establishment of the Commission and its functions.

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<sup>1</sup> More information about the current House of Lords Appointments Commission can be found at: <http://lordsappointments.independent.gov.uk/>.

<sup>2</sup> The Government has also stated that it will consider other options, including a wholly elected House, which would preclude the need for an Appointments Commission.

## 2. Background

The 1997 Labour Manifesto included pledges to reform the House of Lords and to review the system of appointments for life Peers. This was expanded upon following the 1997 general election and the Government publication *Modernising Parliament—Reforming the House of Lords* (December 1998, [Cm 4183](#)) included details of an independent Appointments Commission to recommend non-party political appointments to the 'transitional' House of Lords. The 'transitional' House would exist without, or with significantly reduced numbers of, hereditary peers and would exist until the issue of long-term reform of the Lords could be resolved:

Legislation being introduced in this Parliamentary session will create a transitional House of Lords... In fulfilment of the second part of our manifesto pledge, the Government will ensure that no one party can dominate the transitional House.

At present, a Prime Minister has sole power of patronage in nominating to The Queen those to be appointed to life peerages. The Prime Minister has made it clear that he is prepared for the first time ever to take steps to reduce this unfettered power of patronage in this area. The Government will establish an independent Appointments Commission to recommend non-political appointments to the transitional House. The Prime Minister will undertake not to veto either its recommendations or those of other party leaders which have received the Commission's vetting clearance.

(HM Government, *Modernising Parliament—Reforming the House of Lords*, December 1998, [Cm 4183](#), p 3)

The House of Lords Appointments Commission was established by the Prime Minister in May 2000.

The Commission is an independent, advisory, non-departmental public body, with the key functions of recommending non-party political appointments to the Prime Minister and vetting all nominations of individuals to sit in the House of Lords. In February 2005, its remit was extended to take on the functions of the Honours Scrutiny Committee to scrutinise for propriety individuals added to the Honours List by the Prime Minister. In May 2010, the Commission was asked by the Prime Minister to vet individuals who were to be appointed to the House of Lords as Ministers.

As an advisory body, the Commission provides advice and reports to the Prime Minister, although it does provide an annual report to Parliament. In addition, the current Chairman of the Commission, Lord Jay of Ewelme, has undertaken to appear before the House of Lords Select Committee on the Constitution and the House of Commons Public Administration Select Committee on a yearly basis to talk about the work of the Commission.

The Commission has seven members, including the Chair. Three members are appointed to represent the main political parties. The other three members and the Chair are non-party political and independent of Government. The current Commission began its five year tenure in October 2008.

At present, the Prime Minister retains the power to decide the overall number of Peers created and the balance between the parties. The system for non-party political

appointments was recently outlined in answer to a written question from Lord Barnett:

In line with the practice under previous administrations, the House of Lords Appointments Commission recommends Crossbench Peers to the Prime Minister against an overall approach on numbers agreed by the Prime Minister. In line with the approach of his predecessor, the Prime Minister has said that only in exceptional circumstances will he decline to pass on a recommendation to Her Majesty the Queen.

(HL *Hansard*, 18 January 2012, col [WA133](#))

Regarding the numbers of non-party political Peers created, in a recent meeting with the Select Committee on the Constitution, Lord Jay stated:

The decision on how many to appoint rests with the Prime Minister, to whom we are accountable. The decision that he has reached is to follow the precedent of his predecessors, which is that roughly four or five appointments per year to the crossbenches should be made through our Commission. I think that at the moment we are working on the basis of about four over the past year or so.

(House of Lords Select Committee on the Constitution, [Unrevised transcript of evidence taken in meeting with Lord Jay of Ewelme, Chairman of the House of Lords Appointments Commission](#), 25 January 2012, p 4)

The Commission considers a nomination form, either a self-nomination or a nomination from another person or organisation, against set criteria (included in Annex 1 of this Note). Following further checks and a sifting process a small number of individuals are asked for interview. Asked about the Commission's criteria, Lord Jay commented:

The main criterion that we have is one of merit... If there are particular professions or areas that we feel are not sufficiently represented, or which Members of this House or others represent to us as not being sufficiently represented, then that is a factor—a factor, not the determining factor—in the process of nominations. On diversity, the important thing is that, although the main criterion is merit, we are obliged by our terms of reference to ensure that the diversity of Britain as a whole is appropriately represented in the appointments that we make. That means that, during our processes, we make sure that we have shortlists that are sufficiently diverse so that we are able to ensure in our decisions that we have a reasonable balance of gender and ethnicity, and also, very importantly, of disability, which is another important element of diversity for us.

(*ibid*, p 11)

Further information regarding the selection process can be found on the Commission's [website](#).

Since its establishment in May 2000, the Commission has recommended a total of 59 non-party political peerages to the Prime Minister, drawn from around 4,700 nominations. On a yearly basis the Commission receives approximately

100 nominations, interviews approximately 14 to 15 individuals and recommends around 4 or 5 appointments.<sup>3</sup>

A list of the non-party political peerages that the Commission has recommended to the Prime Minister can be found in Annex 2 of this Note.

The Commission is also responsible for vetting party political nominations for propriety, but has no role in assessing the suitability of those nominated. In defining propriety, the Commission takes the view that in this context propriety means:

The individual should be in good standing in the community in general and with the public regulatory authorities in particular; and

The past conduct of the nominee would not reasonably be regarded as bringing the House of Lords into disrepute.

(House of Lords Appointments Commission [website](#), accessed 1 May 2012)

The Commission provides advice to the Prime Minister on propriety and in some cases identifies where appointments should not be recommended. The advice is confidential and the Commission has chosen not to provide to Parliament the numbers of those it has not recommended.<sup>4</sup>

Reviewing its Annual Report in January 2012, the Commission noted that:

The most significant work by the Commission during the reporting period [April 2010 to September 2011] was its vetting of two lists of party political nominees; a list which was announced shortly after the general election in May 2010 and a further list which was announced in November 2010. The Commission vetted 113 party political Peers between April and November 2010.

(House of Lords Appointments Commission press release, '[House of Lords Appointments Commission—Annual Report](#)', 23 January 2012)

Elaborating further on the work of the Commission during his meeting with the Select Committee on the Constitution in January 2012, Lord Jay stated:

The only formal position that we have taken is that, when I gave my advice on the Commission's behalf to the Prime Minister, I included in the letter our view that the addition of a large number of new Peers may give rise to adverse comment. To that extent, we made our position clear... I think that if there is to be a further list and we are asked to vet for propriety further party-political appointees and nominations, then the Commission—and I cannot speak for what it would say—will clearly need to consider what we said about that in the letter to the Prime Minister. We are not a statutory body. I have argued that it would be better if we were a statutory body. If we were a statutory body reporting formally to the House, then, in a sense, we could make these points to the House. However, we

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<sup>3</sup> House of Lords Select Committee on the Constitution, *Unrevised transcript of evidence taken in meeting with Lord Jay of Ewelme, Chairman of the House of Lords Appointments Commission*, 25 January 2012, pp 4–6.

<sup>4</sup> Minutes of evidence taken before the Joint Committee on the Draft House of Lords Reform Bill, 21 November 2011, p 57.

are not; we are an advisory committee and we report to the Prime Minister. I think that that slightly affects the way in which we offer advice.

(House of Lords Select Committee on the Constitution, [Unrevised Transcript of Evidence taken in Meeting with Lord Jay of Ewelme, Chairman of the House of Lords Appointments Commission](#), 25 January 2012, pp 16–17)

### 3. Proposals for Reform

The way in which the Appointments Commission is constituted, principally the fact that it is not a statutory body, and debate regarding the powers the Commission should exercise, has interested commentators since the Commission was established.

In 2000 the report *A House for the Future* (January 2000, [Cm 4534](#)) by the Royal Commission on Reform of the House of Lords recommended that, like the National Audit Office and the Electoral Commission, the Appointments Commission should be established by statute:

Establishment of the Appointments Commission on a non-statutory basis would mean that its internal operation could be altered or it could even be abolished without reference to Parliament... While establishment on a non-statutory basis may be appropriate for wholly advisory non-departmental public bodies... it would not offer the level of independence and entrenchment required for the Appointments Commission.

(Royal Commission on Reform of the House of Lords, *A House for the Future*, January 2000, [Cm 4534](#), p 132)

The report envisaged a more powerful, statutory Appointments Commission with responsibility for deciding the overall size of the Chamber.

Since the Royal Commission's report, Government proposals to place the House of Lords Appointments Commission on a statutory basis have been expressed on several occasions. However, different views have been expressed about the powers of the Commission to appoint either party political or non-party political Peers, reflecting different views about how the House should ultimately be constituted.

A more detailed chronology of reform proposals since 1997 can be found in the House of Commons Library Standard Note, *House of Lords Appointments Commission* (28 February 2011, [SN02855](#)). The next section of this Note outlines more recent proposals for reform seen in the 2010 House of Lords (Amendment) Bill, a Private Member's Bill introduced by Lord Steel of Aikwood and in the Government's *House of Lords Reform Draft Bill* (May 2011, [Cm 8077](#)).

#### 3.1 Lord Steel of Aikwood's House of Lords (Amendment) Bill 2010

On 26 May 2010, Lord Steel introduced the House of Lords (Amendment) Bill, and on 3 December 2010 it received its second reading (HL *Hansard*, cols [1688–742](#)). It was considered in one sitting at committee stage on 21 October 2011 (HL *Hansard*, cols [460–534](#)), subject to a one day report stage on 10 February 2012 (HL *Hansard*, cols [521–44](#)) and completed its passage through the House of Lords with its third reading on 1 March 2012 (HL *Hansard*, cols [1542–8](#)). The Bill did not progress in the House of Commons.

The Bill was the fourth attempt by Lord Steel to introduce a Private Member's Bill on the subject of House of Lords reform. The Bill was interpreted by many as providing modest reforms or measures to address anomalies arising from the current, part-reformed nature of the House of Lords, that were less contentious and could be enacted more quickly than wholesale changes to the membership or powers of the House.

In its original form the Bill provided for an end to by-elections for hereditary Peers and the expulsion of members of the Lords who were convicted of offences that carry a sentence of more than one year. Members could apply to take permanent leave of absence, which would be the equivalent of retiring from the House of Lords. Members who failed to attend the House of Lords would be viewed as having taken permanent leave of absence. All recommendations for life Peerages would be made by a statutory Appointments Commission. The proposals in the Bill detailed the composition of the statutory Commission and the principles under which it would operate, including the provision that the Government should not have a majority in the House of Lords.

In place of the current arrangements whereby there are seven members of the Commission, the Bill proposed that the Commission should consist of nine members, which would be jointly appointed by the Speaker of the House of Commons and the Lord Speaker. In determining how many new Peers could be appointed each year, the provisions stipulated that: not less than 20 percent of the members of the House of Lords should be independent of any political party; no one party, nor a coalition of parties forming a Government should have a majority of members in the House of Lords; and the Government of the day (or the largest party in a coalition Government) should be entitled to have a larger number of members than the official Opposition, but that majority should normally be no greater than 3 percent of the total membership of the House of Lords ([House of Lords \(Amendment\) Bill 2010–12](#)).

The Government response to the Bill noted that, while recognising the strong arguments for putting the Appointments Commission on a statutory footing, the provisions would apply to a fully appointed House and the Government's House of Lords Reform Draft Bill already included provisions for a statutory Commission.<sup>5</sup>

At committee stage Lord Steel explained his intention to withdraw the clauses of the Bill dealing with the Appointments Commission, due both to provisions which existed in the Government's draft Bill, and the number of amendments which those clauses of his Bill had attracted.<sup>6</sup>

After some discussion, it was agreed that the amendments would not be moved and the Bill should go to report, where it could be further discussed. Nevertheless, at report stage Lord Steel reiterated his desire to remove this part of the Bill, arguing it would be a "waste of time to attempt in a Private Member's Bill to do what the Government are planning to do anyway in a very different way later on".<sup>7</sup> The clauses were removed at the end of report stage.<sup>8</sup>

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<sup>5</sup> HL *Hansard*, 3 December 2010, col [1737](#).

<sup>6</sup> HL *Hansard*, 21 October 2011, cols [451–8](#).

<sup>7</sup> HL *Hansard*, 10 February 2012, col [522](#).

<sup>8</sup> *ibid*, col [541](#).

### 3.2 House of Lords Reform Draft Bill

The Coalition Agreement, published in May 2010, stated:

We will establish a committee to bring forward proposals for a wholly or mainly elected upper Chamber on the basis of proportional representation. The committee will come forward with a draft motion by December 2010.

(HM Government, [The Coalition: Our Programme for Government](#), 20 May 2010, p 27)

On 17 May 2011, the Government published a white paper and draft Bill on reforming the House of Lords which included proposals for a reformed House of 300 members, of whom 80 percent would be elected using the single transferable vote. The remaining 20 percent would be appointed by a new statutory Appointments Commission.<sup>9</sup>

The white paper notes:

If the reformed House of Lords is to contain appointed members, the Government proposes to establish an Appointments Commission on a statutory basis which would recommend 20 people for appointment at the same time as elected members are returned and people to replace appointed members who leave the Chamber during their term. The Commission would be accountable to Parliament as its work would be overseen by the Joint Committee on the House of Lords Appointments Commission.

The Commission would be a body corporate and all its powers would be set in statute. It would set its own criteria and process of appointment but it would be under a statutory duty to publish the criteria of appointment and the details of the appointment process.

It is expected that appointed members would bring a non-party political perspective to the work carried out by the reformed House of Lords.

The Government proposes that the current arrangement on recommendations is to remain unchanged. The Commission would make nominations to the Prime Minister. Appointments would be made by The Queen on the recommendation of the Prime Minister.

(Cabinet Office, *House of Lords Reform Draft Bill*, 17 May 2011, [Cm 8077](#), p 18)

The white paper goes on to provide further detail regarding how Commissioners would be chosen, who would be eligible to become a Commissioner and how the Joint Committee on the House of Lords Appointments Commission would work:

#### Commissioners

The Queen would appoint seven commissioners, including a Chair, to the statutory Appointments Commission. Appointments to the Commission would be based on merit.

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<sup>9</sup> More information about reaction to the [House of Lords Reform Draft Bill](#) can be found in the House of Lords Library Note, *House of Lords Reform Draft Bill*, 16 June 2011, [LLN 2011/021](#).

The Government proposes that members of the House of Commons and Ministers should not be eligible for appointment as Commissioners. This would follow the long-held principle that it is not right for members of one House of Parliament to be involved in the business of the other (exclusive cognisance).

However, the Government considers that it is important that the Commission should have access to firsthand knowledge of how the second Chamber works. We propose that there should be no ban on former and current members of the House of Lords or the reformed House of Lords serving as Commissioners.

The Commissioners would be appointed for a single non-renewable ten year term. A long term for Commissioners with no prospect of renewal would enable a high degree of independence in the exercise of their functions.

Following Addresses from both Houses of Parliament, it would also be possible for Commissioners to be removed from their role by The Queen on certain grounds.

The Joint Committee on the House of Lords Appointments Commission

The Joint Committee on the House of Lords Appointments Commission would oversee the work carried out by the Commission. The Committee would be composed of members of both Houses, in the case of the reformed House of Lords, members could be elected, appointed or transitional members. Although the Joint Committee would consist of members of both Houses, its appointment by statute means that it would not be a committee of Parliament.

In particular the Joint Committee would approve the Commission's income and expenditure; it would lay the Commission's annual report before Parliament, review and consequently approve the Code of Conduct of the Appointments Commission. It would be modelled on the Speaker's Committee for the Electoral Commission.

(ibid, pp 18–19)

Provisions to enact these measures are included in the draft Bill. Clause 16 provides for a House of Lords Appointments Commission on a statutory basis, replacing the existing Commission with the same name, while Schedule 4 outlines the proposed governance arrangements of the new Commission. Clause 17 and Schedule 5 make provision for the Joint Committee on the House of Lords Appointments Commission which would oversee the running and work of the Commission and report to both Houses of Parliament on its progress. Clauses 18 to 24 deal with the number of appointments and issues such as terms of office, filling vacancies and the criteria for the selection and recommendation process.

#### **4. Joint Committee on the Draft House of Lords Reform Bill**

While outlining the draft Bill's proposals in a statement to the House of Commons, the Deputy Prime Minister, Nick Clegg, announced the creation of a Joint Committee to conduct pre-legislative scrutiny:

The draft Bill and white paper will now be scrutinised by a Joint Committee composed of 13 Peers and 13 Members of this House. The Committee will report early next year, and a Government Bill will then be introduced.

The Prime Minister and I are clear that we want the first elections to the reformed upper Chamber to take place in 2015.

(HC *Hansard*, 17 May 2011, col [155](#))

The Joint Committee on the Draft House of Lords Reform Bill was appointed in June and July 2011 from both the House of Commons and the House of Lords. Between July and October 2011 it took written evidence about the draft Bill, including specific views on the proposed statutory Appointments Commission. This was followed by oral evidence sessions with a range of individuals and organisations between October 2011 and February 2012.

For those giving evidence, any views expressed on the Appointments Commission reflected views on the more fundamental question of whether one preferred an all-elected House, which would preclude the need for an Appointments Commission, or whether one preferred a part-elected, part-appointed House that would see a continued role for an Appointments Commission.

From those who discussed appointments evidence focussed on issues of perceived expertise of Members, diversity in the Chamber, and independence from political parties, in addition to the more limited question of whether an Appointments Commission should be statutory.

#### **4.1 A Statutory Appointments Commission**

Where written submissions mentioned an Appointments Commission, there appeared to be a general acceptance that it should be placed on a statutory footing. Professors Simon Hix and Iain McLean, for instance, argued that: “If the House is 80 percent elected, we support the proposals in the white paper for a statutory Appointments Commission”.<sup>10</sup> Several submissions, such as that of Peter Riddell, saw a statutory Appointments Commission as an important interim step towards reforming the Lords.<sup>11</sup> Lord Cormack (Campaign for an Effective Second Chamber) argued against an elected Lords but agreed with the provisions included in Lord Steel of Aikwood’s House of Lords (Amendment) Bill, which included provisions for a statutory Appointments Commission.<sup>12</sup> The Archbishops of Canterbury and York were sceptical about the merits of an elected Lords, but welcomed proposals to establish a statutory Appointments Commission to appoint non-party political members.<sup>13</sup>

Support for a statutory Appointments Commission was also expressed in oral submissions. Meg Russell from the Constitution Unit, UCL, noted:

... some of the things that need doing to the House of Lords in my view can be done without any Bill at all. The Appointments Commission, which I think most people accept is doing a reasonably good and professional job of picking Members, is, of course, completely non-statutory. The Prime Minister could give

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<sup>10</sup> Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2012–12, p 331.

<sup>11</sup> *ibid*, p 86.

<sup>12</sup> *ibid*, p 376.

<sup>13</sup> *ibid*, p 272.

more of his patronage powers to the Appointments Commission at any point simply by writing it a letter.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 95)

Baroness Hayman, former Lord Speaker, also supported the idea of a statutory Appointments Commission, seeing it as a less contentious issue upon which agreement could be reached before larger issues of democratic legitimacy were dealt with.<sup>14</sup> These sentiments were echoed by Lord Cunningham of Felling, who felt that a wholly elected Chamber was a ‘leap in the dark’ and supported Lord Steel’s Bill.<sup>15</sup>

The Green Party, Unlock Democracy and the Electoral Reform Society did not see an Appointments Commission as relevant as they supported a fully elected Lords.

However, Unlock Democracy acknowledged that if an appointed element were to be retained it should be managed by an Appointments Commission.<sup>16</sup>

A number of submissions outlined the reasons for supporting a statutory Appointments Commission. Democratic Audit argued that it would be a move towards better democracy:

Assuming that some members will be appointed in a reformed second Chamber (and will certainly be part of an unreformed second Chamber), arguably it is desirable from a democratic perspective, and from the point of view of clarity, that the existence of the appointments commission is placed on a statutory basis.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume III: Other Written Evidence*, 23 April 2012, session 2010–12, p 44)

## 4.2 Membership and Governance of the Appointments Commission

The House of Lords Reform Draft Bill included provision for Commissioners in the Appointments Commission to be appointed by the Queen on recommendation from the Prime Minister. Candidates should be selected “on merit on the basis of fair and open competition” and could not include Members of the House of Commons or Ministers.<sup>17</sup>

A small number of written submissions commented on the membership and terms of reference for the statutory Appointments Commission. The Law Society of Scotland maintained that the membership of the Appointments Commission “should reflect the nations and regions of the UK” and that “a former member of the Commission should not be appointed and should not seek election to the House of Lords until five years have elapsed”.<sup>18</sup>

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<sup>14</sup> Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 355.

<sup>15</sup> *ibid*, p 414.

<sup>16</sup> *ibid*, p 232.

<sup>17</sup> Cabinet Office, *House of Lords Reform Draft Bill*, 17 May 2011, Cm 8077, Schedule 4, Part 1.

<sup>18</sup> Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume III: Other Written Evidence*, 23 April 2012, session 2010–12, p 112.

In his evidence Mark Harper, Minister for Political and Constitutional Reform, elaborated on the appointment process for Commissioners:

There is already a process for making public appointments... under the existing public appointment process, there are processes where names are given to Ministers—Ministers formally do the appointing but they do not play an active part in choosing names. For example, the Government have recently appointed members of the Boundary Commission for Wales, but Ministers did not choose those; they were given names by an independent appointments process. They formally appointed them but they did not select them, in that sense of the word—there was an independent appointments process.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 36)

Looking at the oversight of the Appointments Commission, Lord Howarth of Newport suggested that the draft Bill was “too vague” about the proposed parliamentary Joint Committee which would oversee it.<sup>19</sup> Mark Ryan, a Senior Lecturer in Constitutional and Administrative Law, believed that parliament should hold it to account.<sup>20</sup> However, parliamentary oversight was questioned by Democratic Audit:

There seems to be a potential conflict of interest if parliament provides the legal authority for and holds to account a commission which regulates entry into parliament. In countries with a codified constitution—which the UK lacks—it would be possible to provide for an appointments commission in the constitution, rather than in regular parliamentary legislation, perhaps avoiding this particular problem.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume III: Other Written Evidence*, 23 April 2012, session 2010–12, p 44)

Asked about this in his evidence, Sir Christopher Kelly, Chair of the Committee on Standards in Public Life, stated:

At first sight, the model suggested in the Bill seems as appropriate as any that I can think of.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 314)

### **4.3 Number of Appointed Peers**

The draft Bill envisaged that 20 appointed members would be selected by the statutory Appointments Commission at the same time as the elections for the House of Lords, which would take place in tranches every five years. This would result in 60 appointed members in a House of 300 and is similar to the amount of non-party political nominations that the Appointments Commission currently deals with. As Lord Jay of

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<sup>19</sup> *ibid*, p 101.

<sup>20</sup> *ibid*, p 174.

Ewelme, the current Chairman of the Commission, noted:

In the past 12 to 18 months, it [the number of appointments] has been more a rhythm of around four appointments a year. I should say that four to five appointments a year is not far off what would, I understand, be required under the Bill that you are considering.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 213)

While under some scenarios transitional arrangements could potentially involve the removal of the Crossbenchers, Lord Jay confirmed that Crossbenchers could apply to the Appointments Commission to be considered alongside other applicants.<sup>21</sup>

#### 4.4 Criteria for Selecting Appointees

The House of Lords Reform Draft Bill includes provisions for the Appointments Commission to select people “on merit on the basis of fair and open competition” and to “take account of the principle that, although past or present party political activity or affiliation does not necessarily preclude selection, the role of an appointed member is to make a contribution to the work of the House of Lords which is not a party political competition”.<sup>22</sup> It states that the Appointments Commission itself should devise and set out criteria and methods for selection.

Several written and oral submissions referred to the criteria that the Appointments Commission might want to consider. As noted previously, both written and oral evidence submitted to the Joint Committee included concerns about the possible removal of expertise which it was claimed would follow from the removal of appointed members.

In his written submission Sir Stuart Bell (MP for Middlesbrough) stated that, in relation to the present House: “The Lords is able at present in any debate on legislation, or in any general debate, to call upon an array of expert knowledge that is perhaps unique in any second Chamber anywhere in the world”.<sup>23</sup> Other commentators were more sceptical. Professor Hugh Bochel stated that in the current House of Lords expertise was “patchy, may be deficient in a number of key policy areas, and as members are appointed for life, is in some cases a diminishing resource”.<sup>24</sup> Giving evidence to the Joint Committee, Mark Harper, Minister for Political and Constitutional Reform, stated:

I do not agree with the proposition that people who are elected do not come with any expertise... in our House, we have people who are medical doctors, general practitioners... and people who are nurses or who have worked in the social care sector, so we have a lot of expertise in the House of Commons... I do not hold

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<sup>21</sup> Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 223.

<sup>22</sup> Cabinet Office, *House of Lords Reform Draft Bill*, 17 May 2011, Cm 8077, Clause 24, Criteria and Procedure for selection.

<sup>23</sup> Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume III: Other Written Evidence*, 23 April 2012, session 2010–12, p 18.

<sup>24</sup> *ibid*, p 22.

that people who are willing to get elected do not come with any experience from their life beforehand and do not bring anything to the table.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 8)

Concern was also expressed regarding diversity. The current appointments process was credited with creating greater diversity in the House of Lords than that found in the House of Commons. Lord Jay noted:

Of the 59 appointments made to the House of Lords by the Appointments Commission since it was instituted some 10 years ago, 21 have been women and 13 have come from black or ethnic minority backgrounds.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 214)

Several written submissions also referred to diversity. Jesse Norman (MP for Hereford and South Herefordshire) argued that the current House of Lords “has been more representative of women, ethnic minorities and disabled people than the Commons” and was concerned that a reformed House might undermine this.<sup>25</sup> The Fawcett Society and Counting Women In thought that a statutory Appointments Commission in a hybrid House could ensure a more equitable gender balance.<sup>26</sup>

The role of the statutory Appointments Commission in representing religion was also discussed, both regarding the Church of England and with regard to other faiths. In his oral evidence the Archbishop of Canterbury noted:

It is certainly a good idea for any appointments mechanism to take into consideration the representation of minority faiths in some way in the second Chamber.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 255)

The broad range of criteria that a statutory Appointments Commission might incorporate in its selection was encapsulated in the oral evidence of David Blunkett (MP for Sheffield, Brightside and Hillsborough), who stated:

I should like to see a slimmed down House of about 450 to 500 Members who were drawn from experience throughout their lives, including people who had spent their lives in the political arena... I should like it done in a way that reflects a greater geographic spread and an element of diversity in all its guises. A better means of selection and monitoring would be able to achieve that.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 421)

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<sup>25</sup> *ibid*, p 152.

<sup>26</sup> *ibid*, p 63 and p 36. For further discussion on the issue see House of Lords Library Note, *Women in the House of Lords*, 14 March 2012, [LLN 2012/005](https://www.parliament.uk/resources/hlln/2012/005).

Discussing this issue, the Minister for Political and Constitutional Reform, Mark Harper, stated:

The role of the Appointments Commission should be to appoint those who effectively are Crossbenchers, to use the current parlance. We did not think it helpful to try to come up with a range of criteria that you would set down in legislation and would then be set in stone. We thought it more sensible to have the Appointments Commission set out the criteria—to publish them and no doubt to consult on them—for the basis on which it would make those appointments.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 36)

In his evidence to the Joint Committee, Lord Jay of Ewelme noted:

I think that there are certain criteria which will be useful to have on the face of the Bill. I think that political independence and the ability to make an effective contribution to the work of the House are things which it would be good to have on the face of the Bill. There are other aspects of our criteria which I think will not change but which could, and might or might not be on the face of the Bill. I am talking here about diversity, integrity and high standards in public life.

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill Volume II: Oral and Associated Written Evidence*, 23 April 2012, session 2010–12, p 214)

## **5. Report of the Joint Committee on the Draft House of Lords Reform Bill**

On 23 April 2012, the Joint Committee on the Draft House of Lords Reform Bill published their response to the Government's House of Lords Reform draft Bill.<sup>27</sup> Their conclusions regarding the Appointments Commission were as follows:

We agree that the Appointments Commission should be placed on a statutory footing. (Paragraph 231)

We support the establishment of a statutory Joint Committee of members of the two Houses to oversee the Appointments Commission, as proposed in the draft Bill. This Joint Committee should oversee the governance of the Commission in addition to the responsibilities set out for it in the draft Bill. (Paragraph 232)

We support the Government's proposal that the Appointments Commission could appropriately include former and current members of the House of Lords, but not serving MPs or Ministers. (Paragraph 233)

We consider that independence, expertise and experience, and diversity should form the core values around which the Appointments Commission should construct its criteria for appointing members to the House of Lords. While we recognise that the Appointments Commission should apply its criteria independently, we believe that it is appropriate that Parliament should have the

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<sup>27</sup> Further information on reaction to the Joint Committee's report can be found in the House of Lords Library Note, *Joint Committee Report on the Draft House of Lords Reform Bill: Reaction*, 27 April 2012, [LLN 2012/015](#).

final say on the criteria devised by the Appointments Commission, and the guidance it produces on how it will apply those criteria. (Paragraph 248)

We consider that there would be merit in placing on the face of the Bill certain broad criteria to which the Appointments Commission “should have regard” when recommending individuals for appointment. We recommend that these should be:

- an absence of recent overt party political affiliation;
- the ability and willingness to contribute effectively to the work of the House;
- the diversity of the United Kingdom, in the broadest sense;
- inclusion of the major faiths; and,
- integrity and standards in public life. (Paragraph 249)

Variations of the Appointments Commission’s criteria, or guidance produced under them, should be subject to parliamentary approval through the super-affirmative procedure. (Paragraph 250)

We consider that the advantages of having part-time appointed members (the maintenance of professional expertise and the ability to attract individuals who would not want to commit to a full-time role) outweigh the possible disadvantage (that it might result in a two-tier House). We recommend therefore that appointed members should not have to commit to the same level of activity as elected members of the reformed House of Lords. (Paragraph 255)

To ensure that there is a mechanism to remove appointed members who fail to contribute to the work of the House as expected, we recommend that appointments made by the Commission should be for an initial term of five years, with the expectation of reappointment up to the maximum limit of an elected term. (Paragraph 257)

The Committee expect that the Appointments Commission will use its discretion to decide what they consider to be an appropriate “contribution to the work of the House”, and that such a definition will be published. (Paragraph 258)

Finally, the Committee note that appointed members wishing to leave the House at the end of a five-year period could do so by giving notice to the Appointments Commission that they did not wish to be reappointed. (Paragraph 259)

(Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill*, 23 April 2012, [HL Paper 284-1](#) of session 2010–12, pp 103–4)

On the same day as the Joint Committee’s report was published, a cross-party group of three MPs and nine Peers who sat on the Joint Committee published [House of Lords Reform: An Alternative Way Forward](#) (April 2012).<sup>28</sup>

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<sup>28</sup> The members of the Joint Committee who wrote *House of Lords Reform: An Alternative Way Forward* were: Baroness Andrews, Rt Hon Tom Clarke MP, Oliver Heald MP, Lord Hennessy of Nympsfield, Eleanor Laing MP, Rt Rev Bishop of Leicester, Lord Norton of Louth, Rt Hon Lord Rooker, Rt Hon Baroness Shephard of Northwold, Rt Hon Baroness Symons of Vernham Dean, Rt Hon Lord Trefgarne and Rt Hon Lord Trimble.

The report recommended that the “Government should adopt, take over and bring to the statute book the House of Lords (Amendment) Bill which has been promulgated principally by Lord Steel of Aikwood”.<sup>29</sup> As noted previously, at the end of its third reading in the House of Lords, the House of Lords (Amendment) Bill included provisions concerning the retirement and expulsion of members of the House of Lords, although clauses regarding a statutory Appointments Commission had been removed. The ‘alternative’ report also noted:

Baroness Hayman put forward ideas which she said would, if agreed, “clear away the undergrowth” of issues in the House of Lords ahead of larger-scale reform. Her evidence sets out her views, but in summary her proposals focused on reducing the size of the House of Lords from what she said was its current “unsustainable” position, and included reaching agreement on:

Reducing the size of the House in a much shorter timeframe than that proposed by the Government—a period of 5–10 years, rather than the 15 envisaged in the Government’s draft Bill and White Paper

A moratorium on new Peers

In future, appointing Peers for fixed terms

The balance between the proportion of party political Peers and independent Peers in the House of Lords

The hereditary principle playing no part in future membership of the House of Lords

Ending the link between the honours system and membership of the House of Lords

The establishment and remit of a statutory appointments commission

Provisions for the retirement and exclusion of members of the House of Lords

We recommend that as part of the process of reform, the Government should also consider including further proposals for immediate reform, including those put forward by Baroness Hayman, the former Lord Speaker, and those contained in the Leader’s Group report of working practices in the House of Lords, chaired by Lord Goodlad.

(A Report by Members of the Joint Committee of both Houses of Parliament, *House of Lords Reform: An Alternative Way Forward*, April 2012, pp 78–9)

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<sup>29</sup> A Report by Members of the Joint Committee of both Houses of Parliament, *House of Lords Reform: An Alternative Way Forward*, April 2012, p 78.

## Annex 1

Criteria Guiding the Assessment of Nominations for Non-Party Political Life Peers by the House of Lords Appointments Commission in deciding who will be nominated

The Commission will be seeking to recommend nominees:

- with the ability to make an effective and significant contribution to the work of the House of Lords, not only in their areas of particular interest and special expertise, but the wide range of other issues coming before the House;
- with a record of significant achievement within their chosen way of life that demonstrates a range of experience, skills and competencies;
- who are willing to commit the time necessary to make an effective contribution to the work of the House of Lords. The Commission recognises that many active members continue with their professional and other working interests and this can help maintain expertise and experience;
- with some understanding of the constitutional framework, including the place of the House of Lords, and the skills and qualities needed to be an effective member of the House—for example, nominees should be able to speak with independence and authority;
- who are able to demonstrate outstanding personal qualities, in particular, integrity and independence;
- with a strong and personal commitment to the principles and highest standards of public life;
- who are and intend to remain independent of any political party. Nominees and the Commission will need to feel confident of their ability to be independent of party-political considerations whatever their past party-political involvement. For this reason, all nominees are asked to respond to the questions on political involvement and activities which are similar to those used for most public appointments;
- who are resident in the UK for tax purposes and accept the requirement to remain so.

(House of Lords Appointments Commission [website](#), accessed May 2012)

## Annex 2

List of non-party political Peers recommended by the House of Lords Appointments Commission

Date	Appointments
March 2001	Victor Adebowale (Lord Adebowale) Richard Best (Lord Best) Amir Bhatia (Lord Bhatia) John Browne (Lord Browne of Madingley) Michael Chan (Lord Chan) Paul Condon (Lord Condon) Ilora Finlay (Baroness Finlay of Llandaff) Susan Greenfield (Baroness Greenfield) David Hannay (Lord Hannay of Chiswick) Valerie Howarth (Baroness Howarth of Breckland) Elspeth Howe (Baroness Howe of Idlicote) Robert May (Lord May of Oxford) Claus Moser (Lord Moser) Herman Ouseley (Lord Ouseley) Stewart Sutherland (Lord Sutherland of Houndwood)
May 2004	Alec Broers (Lord Broers) Ewen Cameron (Lord Cameron of Dillington) Nicola Chapman (Baroness Chapman) Frances D'Souza (Baroness D'Souza) Elaine Murphy (Baroness Murphy) Diljit Rana (Lord Rana) Lola Young (Baroness Young of Hornsey)
March 2005	Rennie Fritchie (Baroness Fritchie) David Ramsbotham (Lord Ramsbotham)
July 2005	Ruth Deech (Baroness Deech) Michael Hastings (Lord Hastings of Scarisbrick) Martin Rees (Lord Rees of Ludlow) Adair Turner (Lord Turner of Ecchinswell) Jo Valentine (Baroness Valentine)
May 2006	Karan Bilimoria (Lord Bilimoria) Elizabeth Butler-Sloss (Baroness Butler-Sloss) Geoffrey Dear (Lord Dear) Colin Low (Lord Low of Dalston) Molly Meacher (Baroness Meacher) Kamlesh Patel (Lord Patel of Bradford) [since taken the Labour whip] David Rowe-Beddoe (Lord Rowe-Beddoe)

February 2007	Paul Bew (Lord Bew) Jane Campbell (Baroness Campbell of Surbiton) Jean Coussins (Baroness Coussins) Khalid Hameed (Lord Hameed) John Krebs (Lord Krebs) Andrew Mawson (Lord Mawson)
October 2007	Haleh Afshar (Baroness Afshar) Nicholas Stern (Lord Stern of Brentford)
April 2008	Elizabeth Manningham-Buller (Baroness Manningham-Buller) John Mogg (Lord Mogg) Robert Smith (Lord Smith of Kelvin)
September 2008	Susan Campbell (Baroness Campbell of Loughborough) David Pannick (Lord Pannick)
July 2009	Nuala O'Loan (Baroness O'Loan) Jonathan Sacks (Chief Rabbi Lord Sacks)
February 2010	Michael Bichard (Lord Bichard) Tanni Grey-Thompson (Baroness Grey-Thompson) Tony Hall (Lord Hall of Birkenhead) Ajay Kakkar (Lord Kakkar)
October 2010	Peter Hennessy (Lord Hennessy of Nympsfield) Sheila Hollins (Baroness Hollins)
September 2011	Donald Curry (Lord Curry of Kirkharle) Indarjit Singh (Lord Singh of Wimbledon)

(House of Lords Appointments Commission [website](#), accessed May 2012)

