



HOUSE OF LORDS

# Library Note

## House of Lords: Ministers

This Note examines the role of Ministers in the House of Lords, including recent periods when departmental Secretaries sat in the upper House, and associated issues of accountability. It then considers the prospective future role of Ministers in the House in the context of the *Draft Bill on the Reform of the House of Lords*, including potential issues raised by the proposed ongoing presence of Ministers in a principally elected House and their method of appointment. Finally, the Note summarises the recent recommendations on the issue of Ministers in a reformed second chamber by the Joint Committee on the Draft House of Lords Reform Bill.

For a more detailed examination of the history of Ministers in the House of Lords, and comparisons between the role of Ministers in the Lords and other international parliamentary systems, see the House of Commons Library Standard Note, [Ministers in the House of Lords](#), (9 August 2010).

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14 May 2012  
LLN 2012/018

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## 1. Ministers in Parliament

There is no requirement for a Minister to be a member of either House of Parliament. However, in practice and by strong convention, Ministers have been, and remain, required to be a member of either the House of Commons or the House of Lords—not least so that they are directly accountable to Parliament. Ministers in the House of Lords can be either selected from the membership of the House, or, as exemplified by both the current and previous Governments, individuals can be appointed by the Prime Minister to the House of Lords in order to serve as members of the Government.<sup>1</sup>

There are currently 26 Ministers in the House of Lords.<sup>2</sup> This has risen by only 6 since 1979, whilst the number of Ministers in the House of Commons has risen by 11 in the same time period. These trends are illustrated in the table below, which shows the size of the ‘payroll vote’ over the past 30 years:

### Size of the Payroll Vote (not including Parliamentary Private Secretaries)

	1979 May	1983 June	1987 June	1992 April	1997 May	2001 Oct	2005 Oct	2010 May	2012 April
Cabinet Ministers (MPs)	19	18	18	20	20	21	21	21	21
Cabinet Ministers (Peers)	3	3	3	2	2	2	2	2	2
<b>Cabinet Ministers (Total)<sup>1</sup></b>	<b>22</b>	<b>21</b>	<b>21</b>	<b>22</b>	<b>22</b>	<b>23</b>	<b>23</b>	<b>23</b>	<b>23</b>
<b>Non-Cabinet Ministers</b>									
Non-Cabinet Ministers (MPs)	25	25	25	26	27	25	26	28	29
Non-Cabinet Ministers (Peers)	8	7	6	6	7	6	5	4	5
<b>Non-Cabinet Ministers (Total)<sup>2</sup></b>	<b>33</b>	<b>32</b>	<b>31</b>	<b>32</b>	<b>34</b>	<b>31</b>	<b>31</b>	<b>32</b>	<b>34</b>
<b>Junior Ministers</b>									
Junior Ministers (MPs)	28	25	27	25	27	27	28	28	29
Junior Ministers (Peers)	3	4	5	8	7	9	8	8	9
<b>Junior Ministers (Total)</b>	<b>31</b>	<b>29</b>	<b>32</b>	<b>33</b>	<b>34</b>	<b>36</b>	<b>36</b>	<b>36</b>	<b>38</b>
<b>Whips</b>									
Whips (MPs) <sup>3</sup>	13	13	13	13	15	15	15	17	17
Whips (Peers)	7	7	7	7	7	7	8	10	10
<b>Whips (Total)</b>	<b>20</b>	<b>20</b>	<b>20</b>	<b>20</b>	<b>22</b>	<b>22</b>	<b>23</b>	<b>27</b>	<b>27</b>
<b>MPs and Peers in Government Posts</b>									
MPs in Government Posts	85	81	83	84	89	88	90	94	96
Peers in Government Posts	20	21	21	23	23	24	23	24	26
<b>Total Government Posts</b>	<b>106</b>	<b>102</b>	<b>104</b>	<b>107</b>	<b>112</b>	<b>109</b>	<b>113</b>	<b>118</b>	<b>122</b>

<sup>1</sup> This includes some occasions when the Conservative Party Chairman was a member of the Cabinet, but paid by the Party, not the Government.

<sup>2</sup> This figure includes Law Officers.

<sup>1</sup> Limits exist on the number of ministerial appointments which can be made in total across both Houses of Parliament. In the House of Commons, the House of Commons Disqualifications Act 1975 provides that not more than 95 holders of ministerial offices may sit and vote there at any one time. (This limit does not depend on whether the office holders are paid.) There are also statutory limits on the total number of *paid* Ministers that can be appointed (across both Houses), as provided for in Schedule 1, Part V of the ministerial and other Salaries Act 1975 (as amended).

<sup>2</sup> Including Lords and Baronesses in Waiting. There are in fact 28 ministerial posts being held by members of the House of Lords, but Lord McNally and Lord Green of Hurstpierpoint are holders of dual office.

<sup>3</sup> Includes all whips except the Chief Whip (Parliamentary Secretary to the Treasury) who is listed with non-Cabinet Ministers from 1979 to 1997, and with Cabinet Ministers in 2001. In 2010 and 2012, the Chief Whip is listed under Whips.

Sources:

May 1979	<i>Dod's Parliamentary Companion 1980</i> , pp 499–503 and <i>Hansard</i> (May 1979).
June 1983	<i>Hansard</i> (June 1983)
June 1987	<i>Dod's Parliamentary Companion 1988</i> , pp 50–3 and <i>Hansard</i> (June 1987)
April 1992	<i>Dod's Parliamentary Companion 1993</i> , pp 798–802 and <i>Hansard</i> (April 1992) <i>House of Commons Information Office Information Lists</i> (for PPSs 1983–92)
May 1997	<i>Dod's Parliamentary Companion 1998</i> , pp 921–931
Oct 2001	<i>Dod's Parliamentary Companion 2002</i> , pp 3–7, 33–4
Oct 2005	<i>Dod's Parliamentary Companion 2006</i> , pp 3–7, 25–6
Oct 2008	No.10 Downing Street press notice, 6 October 2008 <i>House of Commons Information Office Information Lists</i> (for PPSs 1983–92)
May 2010	House of Commons <i>Hansard</i> , 25 May 2010, pp i-iv.
April 2012	No. 10 Downing Street press notice, accessed 4 April 2012.

Note: This table is adapted from House of Commons Standard Library Note *Ministers in the House of Lords*, published in 2010. All sources listed prior to 2009 are from the original document. Figures for 2010 and 2012 have been calculated by the House of Lords Library.

## 2. Role of Ministers in the House of Lords

### 2.1 Ministers at Sub-Cabinet Level

Government Ministers in the House of Lords play an often wide and varied role. At a sub-Cabinet level—as Ministers or Parliamentary Under-Secretaries of State, or Government Whips/Lords or Baronesses in Waiting—they are variously responsible for guiding Government legislation through the House and for speaking on behalf of the Government at the despatch box. Unlike their House of Commons counterparts, however, who will predominately answer questions on their own portfolio area during set question sessions, Ministers in the House of Lords who field questions do so upon all matters which fall within the remit of their department (in response to questions addressed to “Her Majesty’s Government”).

It has been contended that this broad role potentially puts Ministers in the House of Lords at a disadvantage in comparison with their Commons counterparts. The recent report by Dr Ben Young and Professor Robert Hazell *Putting Goats Amongst the Wolves: Appointing Ministers from Outside Parliament* suggests that an individual Minister in the House of Lords can be required to do the work of a number of their Government colleagues in the House of Commons, and often as a junior member of a ministerial team:

[T]he role of Peer Ministers has usually been that of departmental spokesperson, answering questions on all matters which fall within their department, and taking Bills through the House. Thus, in practice, a Peer Minister may end up doing the equivalent parliamentary work of three to four Commons Ministers. Moreover, within a ministerial team, a Peer Minister is often at a disadvantage, because of her unelected status, and almost always being a junior Minister. The relatively low status and role of Peer Ministers are a function of the generally low respect with which the House of Lords has been held by successive governments.<sup>3</sup>

The majority of Ministers in the House of Lords have, and continue to be, selected from the existing ranks of Peers within the House. However, there have been numerous examples of individuals being appointed to the House of Lords in order to serve as Ministers. Such appointments have been made in the current Parliament, including Lord Hill of Oareford (Parliamentary Under-Secretary of State for Education), Lord Sassoon (Commercial Secretary to the Treasury), and Lord Green of Hurstpierpoint (Minister of State for Trade and Investment<sup>4</sup>).

It was during Gordon Brown’s time as Prime Minister that the issue of appointments drew particular attention however. In his inaugural speech outside Downing Street in June 2007, Mr Brown announced that he wanted to “reach out beyond narrow party interests... and build a government that uses all the talents”.<sup>5</sup> To that end he appointed a number of individuals directly to the House of Lords so that they could assume ministerial office. He was far from the first Prime Minister to do so. Tony Blair, Harold Wilson, Edward Heath and Margaret Thatcher all attempted to bring in such ‘outside expertise’ during their time in Downing Street, though as noted by the Public Administration Committee in 2010 the volume of appointments made by Mr Brown represented an increase in comparison with

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<sup>3</sup> Dr Ben Young and Professor Robert Hazell, *Putting Goats Amongst the Wolves: Appointing Ministers from Outside Parliament*, Constitution Unit, UCL, January 2011, p 36.

<sup>4</sup> Jointly with the Department of Business, Innovation and Skills and the Foreign and Commonwealth Office.

<sup>5</sup> BBC News, [‘Gordon Brown speech outside Downing Street’](#), 27 June 2007.

previous administrations.<sup>6</sup> However, it was Mr Brown's decision to appoint two departmental Secretaries from the House of Lords—one who had previously been a Member of the House of Lords before his appointment, and one whose peerage was created so that he could become a Minister—which arguably provoked the most significant discussion and debate. It also led to changes to the working practices of the House of Lords so that such Ministers might be made more accountable.

## 2.2 Secretaries of State (and Cabinet Members Without Portfolio)<sup>7</sup>

Historically, senior Cabinet Ministers, and indeed Prime Ministers, have been Members of the House of Lords, rather than the House of Commons. However, this has become an increasingly rare occurrence.<sup>8</sup> As highlighted by Young and Hazell, the sentiment that a Prime Minister or Senior Minister should be members of the House of Commons has become progressively more prevalent:

In the past, it was not uncommon for a Prime Minister to appoint a number of Peers to major offices of state. But with the widening of the franchise it gradually became accepted that the Prime Minister and the holders of the great offices of state should be members of the House of Commons. Although a number of outsider appointments continued to be made, particularly during wartime, generally speaking ministerial appointments without a democratic mandate became rare.<sup>9</sup>

The appointments under Gordon Brown of Lord Adonis as Secretary of State for Transport (2009–2010) and Lord Mandelson as First Secretary of State and Secretary of State for Business, Innovation and Skills (2008–2010) arguably challenged this status quo.

As Secretaries of State in the upper Chamber, Lords Adonis and Mandelson had the same kind of departmental responsibilities as their Cabinet colleagues. Yet they had a notably differing role within the Legislature. For example, as Lord Adonis highlighted in his evidence to the Joint Committee on the Draft House of Lords Reform Bill, Secretaries of State in the House of Lords can be personally responsible for a large volume of legislation and/or questions, as they are not often able to defer such tasks to other Ministers in the team. Therefore, business which might be taken by a junior Minister in the House of Commons can fall instead within the potentially crowded remit of a Secretary of State in the House of Lords. Yet Lord Adonis did balance these remarks by adding that the lack of constituency duties which come with a seat in the House of Commons did allow him to undertake a number of ministerial visits (on Fridays for

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<sup>6</sup> Dr Ben Young and Professor Robert Hazell, Constitution Unit, UCL, *Putting Goats Amongst the Wolves: Appointing Ministers from Outside Parliament*, January 2011, p 10; House of Commons Public Administration Select Committee, [Goats and Tsars: Ministerial and other Appointments from Outside Parliament](#), 11 March 2010, HC 330 of session 2009–10.

<sup>7</sup> There are also additional categories of Minister at Cabinet level in the House of Lords, including the Leader of the House. Given that the role of the Leader of the House is very much distinct from other Government Ministers, however, it is not explored here in detail. Also present, as currently exemplified by Baroness Warsi, are Cabinet Ministers without specific departmental responsibilities (Ministers without Portfolio). However, as Baroness Warsi, or other Ministers without Portfolio, have not customarily had responsibilities in the House notably distinct from sub-Cabinet Government Ministers, again this Note does not examine the role of Ministers without Portfolio in detail.

<sup>8</sup> The Cabinet level Ministers appointed in the House of Lords since 1979 are detailed in Appendix 1 of this Note.

<sup>9</sup> Dr Ben Young and Professor Robert Hazell, Constitution Unit, UCL, *Putting Goats Amongst the Wolves: Appointing Ministers from Outside Parliament*, January 2011, p 20.

example, which many MPs spend in their constituencies), which otherwise might not have been possible.<sup>10</sup>

Lords Mandelson and Adonis were also subject to significantly different forms of accountability in comparison with departmental Secretaries in the House of Commons, as explored below.

### 2.2.1 Accountability to the House of Commons

In the House of Commons, departmental Secretaries of State are required to attend regularly scheduled sessions to answer questions on the work of their department.<sup>11</sup> MPs, however, do not possess the same opportunity to question Secretaries of State sitting in the House of Lords. This led to considerable debate during the tenure of Lords Mandelson and Adonis regarding if such a mechanism of accountability should be introduced, and if so, how best to do so.

Members of the House of Lords are disqualified from sitting in the House of Commons. However, under longstanding convention Members of the House of Lords can be present at debates and be requested to appear before the lower House.<sup>12</sup> During their time in office neither Lord Adonis nor Lord Mandelson received such a request, or attended a Commons debate, in their capacity as departmental Secretaries. Instead, proposed mechanisms of improving accountability focused on enabling Secretaries of State from the House of Lords to answer questions either in the Commons Chamber (in the same way as their Commons counterparts), or in specially convened sessions in Westminster Hall. Lord Mandelson raised the possibility of such a mechanism himself during the enquiry of the Business and Enterprise Select Committee into the work of his department in 2008. The Select Committee took up the point in its recommendations, but ultimately concluded that it would represent an unwelcome constitutional development:

The time has come to look again at whether or not there is a mechanism by which Members of the House of Commons could, at least, put oral questions to the Secretary of State for Business, Enterprise and Regulatory Reform in the same way as they can to Secretaries of State in this House.

The obvious solution, and the neatest, would be to amend Standing Orders to allow the Secretary of State to answer questions at the Despatch Box. But this may encourage governments to appoint more members of the House of Lords as heads of department, and that would be an unwelcome and significant constitutional change.<sup>13</sup>

Similar thoughts were voiced in the examination of this issue by the Public Administration Committee in 2010 during its inquiry into ministerial appointments, particularly regarding the fear of setting a precedent should departmental Ministers in the House of Lords be allocated regular question sessions in the House of Commons.<sup>14</sup> Some of those interviewed by the Committee were in favour of enabling Lords departmental Secretaries

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<sup>10</sup> Joint Committee on the Draft House of Lords Reform Bill, *Minutes of (Uncorrected) Oral Evidence*, 5 December 2011, pp 28–9.

<sup>11</sup> In addition to their responsibility to reply to written parliamentary questions.

<sup>12</sup> House of Commons Library Standard Note, [Ministers in the House of Lords](#), 9 August 2010, SN05226, p 10.

<sup>13</sup> House of Commons Business and Enterprise Select Committee, [Departmental Annual Report and Scrutiny of the Department for Business, Enterprise and Regulatory Reform](#), 25 November 2008, HC 1116 of session 2007–08, p 7.

<sup>14</sup> Whether in Westminster Hall or at the Despatch Box in the Commons Chamber.

to answer questions in the Commons, including Lord Adonis:

I think it is right that Ministers in the Lords should be as accountable to the House of Commons as the House of Commons wishes to make them. Since I became Secretary of State on this particular issue—to have a head of department in the House of Lords—I have made it very clear that I would be willing to answer questions in the Commons in any way that they wish to make that possible.<sup>15</sup>

Former Prime Minister Sir John Major went further, suggesting that Ministers (from either House) could be summoned to answer questions in both Houses:

... why we should not change Standing Orders in the Lords and Standing Orders in the Commons so that senior Ministers may appear in both Houses, speak in both Houses, answer questions in both Houses, but only vote in the House to which they are a member. If you did that you would automatically diminish the number of duplicated Ministers which are at present necessary to make sure that both Houses have a proper representation.<sup>16</sup>

However, others including the current Lord Chancellor and Secretary of State for Justice, Kenneth Clarke, voiced concerns at that time that Ministers being able to appear in a House other than the one to which they belonged risked giving greater legitimacy to Ministers who do not have a personal electoral mandate.<sup>17</sup> The Public Administration Committee also recorded that such a proposal might encourage the Government of the day to appoint more Ministers to the House of Lords.<sup>18</sup> Consequently, in its final recommendations on ministerial appointments the Committee concluded:

So long as there is an unelected second Chamber, there is a strong argument of principle that senior Ministers should be directly accountable to the democratically elected Chamber as a whole. However, there is a debate to be had about how this can be achieved... Such a move should not be used as a justification for appointing more senior Ministers via the House of Lords. The purpose of such a change would be to assert the primacy of the Commons, not to undermine it.

The Committee added:

Allowing Ministers to present their policies and answer questions in both Chambers could have benefits for both government and Parliament. It would allow government to ensure that their policies were being presented in the most effective way by the person best placed to debate them. It would ensure that Ministers based in the House of Lords were fully accountable to the primary, elected House and expose Secretaries of State from the Commons to the very different style of scrutiny practised in the House of Lords. It would also remove

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<sup>15</sup> House of Commons Public Administration Select Committee, *Uncorrected Oral Evidence given by: Rt Hon Lord Adonis, a Member of the House of Lords and Secretary of State for Transport, Professor Lord Darzi of Denham KBE, a Member of the House of Lords, former Parliamentary Under Secretary of State, Department of Health, and Admiral Lord West of Spithead, GCB, DSC, a Member of the House of Lords, Parliamentary Under Secretary of State, Home Office*, 22 October 2009, HC 994-ii, Q133.

<sup>16</sup> House of Commons Public Administration Select Committee, *Uncorrected Transcript of Oral Evidence given by Sir John Major KG CH ACIB*, 10 November 2009, HC 994-iii, Q155.

<sup>17</sup> *Times*, 'Better a Labour win than an impasse, says Clarke', 11 November 2009.

<sup>18</sup> House of Commons Public Administration Select Committee, [\*Goats and Tsars: Ministerial and other Appointments from Outside Parliament\*](#), 12 October 2010, HC 330 of session 2009–10, pp 18–19.

the need to appoint Members of the Lords as Ministers to ensure departmental representation in both Houses.

In March 2010, a few weeks after the publication of the Public Administration Committee report, the House of Commons Procedure Committee published its own short report, *Accountability to the House of Commons of Secretaries of State in the House of Lords*. Like the Public Administration Committee, the Procedure Committee also saw some merit in the idea that departmental Secretaries should take questions from Members of the House of Commons. However, the Procedure Committee suggested that this should take place in Westminster Hall, rather than in the main Commons Chamber. The Committee also set a number of parameters within which such a question session might work, and recommended that such question sessions be established on an 'experimental basis' for one parliamentary session in order to ascertain how effective they proved to be.<sup>19</sup> However, no changes were made to the existing accountability arrangements prior to the 2010 General Election. Since that time there have been no Secretaries of State who have been members of the House of Lords.

### **2.2.2 Select Committees**

Members of the House of Lords, including Ministers and Secretaries of State, cannot be formally summoned to appear in front of House of Commons Select Committees. However, in practice Ministers in the Lords have and do regularly give evidence in front of such Committees. Indeed, during the tenure of both Lord Mandelson and Lord Adonis as departmental Secretaries, both made frequent appearances in front of the committees which covered their portfolios.

### **2.2.3 Accountability to the House of Lords**

Following recommendations from the Lords Procedure Committee in 2009, the House of Lords established new procedures for oral questions to departmental Ministers in the Chamber. The Committee said in its recommendations:

1. We have considered a proposal by the Leader of the House that, in addition to normal oral questions, time should be allotted for oral questions specifically addressed to Secretaries of State sitting in the House of Lords. We support this proposal, which will enhance parliamentary scrutiny of the departments concerned. There are currently two Secretaries of State sitting in this House: Lord Mandelson (Secretary of State for Business, Innovation and Skills) and Lord Adonis (Secretary of State for Transport).
2. We therefore recommend that, on one Thursday each month when the House is sitting, 15 minutes should be set aside for three oral questions addressed to the Secretary of State, immediately following the existing 30 minutes for oral questions. Where there is more than one Secretary of State in the House of Lords, as at present, they would answer questions on different Thursdays within any given month. Only the Secretary of State would answer the questions—there would be no substitution by another Government Minister or Whip.<sup>20</sup>

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<sup>19</sup> House of Commons Procedure Committee, [Accountability to the House of Commons of Secretaries of State in the House of Lords](#), 17 March 2010, HC 496 of session 2009–10, p 6.

<sup>20</sup> House of Lords Procedure of the House Committee, [Oral Questions to Secretaries of State Committee for Privileges and Standing Order 78 Personal Bills Committee](#), 7 December 2009, HL Paper 13 of session 2009–10.

This arrangement was first used in January 2010, and continued for the duration of Lord Adonis' and Mandelson's tenure as departmental Secretaries until the 2010 General Election. Its usage was made permanent on 8 November 2011, during consideration of the 8th Report of the Procedure Committee.<sup>21</sup>

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<sup>21</sup> HL *Hansard*, 8 November 2011, col 151.

### 3. House of Lords Reform

#### 3.1 Plans Outlined in the Draft Bill

The Government published its plans to reform the House of Lords in May 2011. The House of Lords Reform Draft Bill provides for an either wholly or predominately elected second Chamber, which would replace the current House. In the Bill and accompanying white paper the Government proposes that Ministers may be drawn from elected members of the reformed House of Lords and, in the transitional period, both elected members and transitional members. This would ensure, in the words of the Bill, “that Government business in the reformed House of Lords would be managed by members belonging to the same political party that had formed the Government”.<sup>22</sup> The Bill also provides for the Prime Minister to be able to make a ‘limited number’ of ministerial appointments. Those who were appointed in such a way would be members of a reformed second Chamber only for the duration of their appointment.

Clause 34 of the Draft Bill sets out these provisions in full:

#### PART 5

#### MINISTERIAL MEMBERS

#### 34 Ministerial members

- (1) Persons may be appointed as ministerial members of the House of Lords (referred to in this Act as “ministerial members”) in connection with their appointment as Ministers of the Crown.
- (2) Appointments under this section are to be made by Her Majesty on the recommendation of the Prime Minister.
- (3) A person (“M”) who is appointed as a ministerial member under this section is a ministerial member for the period which—(a) begins with the day of M’s appointment as a ministerial member, and (b) ends with the day on which M ceases to be a Minister of the Crown.
- (4) M is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament which meets during the period for which M is a ministerial member.
- (5) Subsections (3) and (4) are subject to—
  - (a) any provision of this Act or another enactment relating to M’s membership of the House of Lords or M’s entitlement to receive writs of summons to attend the House of Lords, and
  - (b) any inherent power of the House of Lords to suspend M from its service.
- (6) If M ceases to be a ministerial member any writ of summons previously issued to M because of this section has no further effect.

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<sup>22</sup> HM Government, [House of Lords Reform Draft Bill](#), Cm 8077, p 19.

- (7) The Prime Minister may by order make provision as to—
- (a) the appointment of ministerial members (subject to subsection (2)),
  - (b) the number of ministerial members,
  - (c) circumstances in which a person ceases to be a ministerial member,
  - (d) the disqualification of persons from being ministerial members,
  - (e) the disqualification of persons who are or have been ministerial members from being members of the House of Lords of another description,
  - (f) the payment of salaries and allowances to ministerial members under the Parliamentary Standards Act 2009.
- (8) An order under subsection (7) may modify any enactment (including this Act).

The Bill (as currently drafted) therefore leaves almost all other powers with regard to Ministers—including the number of such ‘limited’ appointments, and forms of accountability—to be made by Order. This has led to considerable discussion, both within the evidence taken by the Joint Committee on the Draft House of Lords Reform Bill, and by external observers, of the potential implications of these measures for ministerial representation within a revised second Chamber, and indeed whether Ministers should be present in a reformed second Chamber at all.

## **3.2 Potential Issues**

### **3.2.1 Constitutional Questions—The Presence of Ministers in a Reformed Upper Chamber, the Right to Vote, and Methods of Accountability**

Given that there is no constitutional requirement for the presence of Ministers in the House of Lords, previous proposals for the reform of the House of Lords have examined whether Ministers should be retained in the upper House in the event of reform. *Breaking the Deadlock*, for example, published by Paul Tyler MP et al in 2007, said it was possible that ending the practice of having ministerial members of the House of Lords could increase both the distinction between the two Houses of Parliament, and strengthen the independence of the upper House:

There is a strong argument that the distinction between the two Chambers could be emphasised, and the independence of the second Chamber reinforced, if it ceased to include Ministers amongst its members. This would not mean that Ministers were always absent from the second Chamber. As in many other countries’ parliaments, Ministers who were not members of the Chamber could still attend in order to present Bills, answer questions, and appear in front of select committees. But their exclusion from membership would emphasise the separation between the second Chamber and the Executive.<sup>23</sup>

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<sup>23</sup> Paul Tyler MP, Rt. Hon. Kenneth Clarke MP, Rt. Hon. Robin Cook MP, Dr Tony Wright MP, Rt. Hon. Sir George Young MP, *Breaking the Deadlock*, 2007, p 23.

However, the report also saw disadvantages to removing Ministers from the House of Lords, and ultimately recommended their retention in the second Chamber:

At the moment Ministers in the Lords are familiar with its ethos and ways of working. This can help improve understanding between the Chamber and Government as a whole. By the time they rise to the rank of Minister most members are already known personally to others in the House. They also continue to be present on a regular basis after they have been appointed to Government, including in the division lobbies. This again helps to facilitate good communication with other members in the House. We therefore believe that, whilst there might be a case for removing Ministers from the Chamber as part of a future reform, the arguments are not sufficiently strong for doing this at the present time.<sup>24</sup>

A number of the submissions to the Joint Committee on the Draft House of Lords Reform Bill also addressed the question of whether Government Ministers should continue to sit in a reformed upper Chamber, and, if they did continue to do so, whether those individuals should retain the right to vote. In his evidence to the Committee, Peter Facey of Unlock Democracy argued for example:

We say that Government Ministers should be able to speak in the House of Lords; they should be allowed to be present in the House of Lords but they should not be members of it. We think that convention should be removed. You can effectively have a Member of the House of Commons who can present Bills in the House of Lords.<sup>25</sup>

When questioned about the ability of Ministers to guide Bills through the House, including moving amendments, Mr Facey added:

[T]here are plenty of Members who could move amendments on behalf of the Government; you do not have to be a Minister to do that. If you are looking to have distinct roles for the two Houses, one of them is that you want [the reformed upper Chamber] to be freer, to a degree, from the power of the Executive. One way of doing that, which we have suggested, is to remove Ministers.<sup>26</sup>

Dr Alan Renwick of the University of Reading voiced a similar view:

Why should we insist that we should have a very, very pure system in which everyone who is in Government also has a vote in the Legislature? I think it is desirable that they have a connection with the Legislature and that they should go there and speak in the Legislature and hear from it, but why should it be necessary for them to have a vote as well? It is not clear to me that there is a reason for that.<sup>27</sup>

In his evidence, Lord Adonis said that making it possible for Ministers to have a position in Parliament through membership of the second Chamber was 'a plus' in the existing constitutional arrangements, not least given the nature of his own appointment.

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<sup>24</sup> Paul Tyler MP, Rt. Hon. Kenneth Clarke MP, Rt. Hon. Robin Cook MP, Dr Tony Wright MP, Rt. Hon. Sir George Young MP, *Breaking the Deadlock*, 2007, p 23.

<sup>25</sup> Joint Committee on the Draft House of Lords Reform Bill, *Minutes of (Uncorrected) Oral Evidence*, 21 November 2011, pp 12–13.

<sup>26</sup> *ibid*, pp 12–13.

<sup>27</sup> Joint Committee on the Draft House of Lords Reform Bill, *Minutes of Corrected Oral Evidence*, 31 October 2011, p 54.

However, he also added that a greater separation between the Executive and the Legislature could add significantly to Parliament's ability to hold the Government to account:

Parliament is a legislative body. It holds the Executive to account. The Executive is a separate body. It is a matter of constitutional development that we have located the members of the Executive in Parliament in this country, but that is not a common international phenomenon. Commonly, members of an Executive are separate from members of a Parliament and that enhances the capacity of a Parliament to hold the Executive to account and to make the law on an independent basis. My view of the matter is that the independence of Parliament, and its capacity to hold the Executive to account, would be very significantly enhanced if there were a greater separation between the Executive and the Legislature. At the moment, the fact is that the Government controls the House of Commons, not only by virtue of being the majority party.<sup>28</sup>

The Minister for Political and Constitutional Reform, Mark Harper, stated in his evidence to the Joint Committee that it was the Government's intention to retain Ministers in the House of Lords expressly to aid the accountability of the Executive to Parliament:

We have made provision in our proposals for the House of Lords to continue to have Ministers in it and for those Ministers to be held to account by Members of the House of Lords. There is an alternative model, where you would not have Ministers there and you would have Commons Ministers appearing and being held to account, but holding Ministers to account, which I mentioned briefly in my answer to the Lord Chairman, is a very important part of what the House of Lords does today through Questions and Statements, as well as the legislative process. That is a role that we absolutely see continuing in the future, as well as debates other than those on pieces of legislation.<sup>29</sup>

Mr Harper was also clear that the Government envisaged all ministerial members—whether selected from the existing membership, or appointed to the House by the Prime Minister to serve as a member of the Government—would retain the right to vote in a reformed upper chamber.<sup>30</sup>

### **3.2.2 The Power to Appoint—A Necessary Provision?**

If Ministers are present in a reformed second Chamber, then there also remains considerable debate over whether a mechanism is needed for a Prime Minister to be able to appoint individuals to the upper House to serve as Ministers, rather than choose solely from those already present in either Chamber. Historically, as the Public Administration Committee highlighted in its 2010 report, the reasons why current and previous Prime Ministers have chosen to exercise such powers of appointment are often complex. They can range from a desire to bring in 'outside expertise', to a perceived lack of qualified candidates among the existing membership of Parliament—particularly during the latter stages of a Government.<sup>31</sup>

<sup>28</sup> Joint Committee on the Draft House of Lords Reform Bill, *Minutes of (Uncorrected) Oral Evidence*, 5 December 2011, pp 28–9.

<sup>29</sup> Joint Committee on the Draft House of Lords Reform Bill, *Minutes of Corrected Oral Evidence*, 17 October 2011, p 39.

<sup>30</sup> Joint Committee on the Draft House of Lords Reform Bill, *Minutes of (Uncorrected) Oral Evidence*, 27 February 2012, p 43.

<sup>31</sup> House of Commons Public Administration Select Committee, [Goats and Tsars: Ministerial and Other Appointments from Outside Parliament](#), 12 October 2010, HC 330 of session 2009–10, p 30.

The Public Administration Committee's own views of such appointments were mixed. On one hand, it suggested that such appointments were one route to a Government of broad experience and background, and that outside appointees may have 'particular experience, skills or expertise' which are not readily available within Parliament (and in particular the House of Commons, in the context of an unreformed second Chamber).<sup>32</sup> However, the Committee was also clear in its view that outside appointments should not be a substitute for efforts to make Parliament (and again, particularly the House of Commons) more diverse and representative, or for using the 'untapped talent' that already exists within the existing membership.<sup>33</sup> The Committee added that the powers of the Prime Minister to make such appointments to the House of Lords presented key problems of accountability and should remain restricted, with ministerial appointments focusing on the existing membership of Parliament:

The use of the House of Lords to appoint Ministers from outside Parliament gives Prime Ministers potentially presidential powers of appointment, without the checks and balances that would apply in a presidential system. Such appointments can be justified if they bring clear benefits to government, but they should be exceptional.<sup>34</sup>

In his evidence to the Joint Committee on the Draft House of Lords Reform Bill, Lord Carter of Barnes (a former Parliamentary Under-Secretary of State for Communications, Technology and Broadcasting) outlined his view that it was sensible to retain powers of appointment with regard to a reformed second Chamber, precisely because of the expertise that such appointments (including his own) could bring:

To have a mechanism to allow a Prime Minister to appoint Ministers to the second Chamber can bring a level of knowledge and expertise in an area that the electoral system may not necessarily throw up, so one hopes that it augments the skills set in the Government.<sup>35</sup>

### 3.2.3 Number of Appointments

Allowing the Prime Minister or Government of the day to retain the right to appoint a small number of Ministers to a revised second Chamber—in addition to those which he or she may select from the existing Membership of the House—has been a feature of a number of previous proposals for reform. The white paper published on reform by Lord Irvine of Lairg in 2001 first proposed such a measure, stating:

... the Government believes it right to retain the discretionary right for the Prime Minister to appoint a small number of people—four or five a parliament—directly as Ministers in the Lords.<sup>36</sup>

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<sup>32</sup> House of Commons Public Administration Select Committee, [Goats and Tsars: Ministerial and Other Appointments from Outside Parliament](#), 12 October 2010, HC 330 of session 2009–10, p 32.

<sup>33</sup> *ibid*, p 32.

<sup>34</sup> *ibid*, p 32.

<sup>35</sup> Joint Committee on the Draft House of Lords Reform Bill, *Minutes of (Uncorrected) Oral Evidence*, 5 December 2011, pp 7–8.

<sup>36</sup> Lord Chancellor's Department, *Reform of the House of Lords: Completing the Reform*, Cm 5291, Nov 2001, para 66.2.

The same proposal was also put forward again in the consultation paper published by the Department for Constitutional Affairs in 2003, *Constitutional Reform: next steps for the House of Lords*:

[T]he Government believes there is a good case to retain the discretionary right for the Prime Minister to appoint up to five people per Parliament directly as Ministers in the Lords.<sup>37</sup>

However, the lack of a numerical cap or limit on such ministerial appointments in the current Draft Bill, in contrast with those proposals highlighted above, has been the focus of concern among some observers. In his evidence to the Joint Committee on the Draft House of Lords Reform Bill, Dr Alan Renwick said:

I think there is a problem in the draft Bill with the proposals for the Prime Minister to be able to appoint Ministers. There should be either a cap on the number or a restriction such that these people cannot vote in the Chamber. Previous suggestions to have ministerial appointments have tended to favour a cap. For example, the *Breaking the Deadlock* document that Lord Tyler produced, with others, in 2005 proposed, if I remember, four such appointees per Parliament. Something like four or five serving at any one time would seem like a sensible limitation. There are currently more than 20 Ministers in the House of Lords. If all of those were people who had been appointed by the Prime Minister, that makes a material difference to the overall composition of the Chamber. That strikes me as undesirable.<sup>38</sup>

... I think it is perfectly fair to have some people who are appointed by the Prime Minister in order to serve as Ministers, but if the Prime Minister can appoint 20 extra people, that makes quite a big difference to the overall composition of the Chamber.<sup>39</sup>

Dr Meg Russell of University College London's Constitution Unit agreed with this perspective, adding her fear that a Prime Minister could use such powers of appointment to alter the political balance in a revised second Chamber:

I am concerned that the power of the Prime Minister to appoint Ministers directly to the reformed House is ill defined. Despite what Mark Harper said when he spoke to you, all the good intentions may be there but if the numbers are tight between the parties in the upper House, any Prime Minister is going to be very tempted to use that power to stack the numbers for his party.<sup>40</sup>

The Minister for Political and Constitutional Reform, Mark Harper, did not share these concerns however. His view was that the Bill was clear that this power would be for a small number of appointments only, which in turn would have a minimal impact on the balance of the House:

There is no limit in the draft Bill on ministerial Members but in the thinking that we set out in the White Paper we very much envisaged this as a limited number. We are not looking at this as a mechanism for the Prime Minister to appoint a

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<sup>37</sup> Department for Constitutional Affairs, *Constitutional Reform: Next Steps for the House of Lords*, September 2003, p 5.

<sup>38</sup> Joint Committee on the Draft House of Lords Reform Bill, *Minutes of Corrected Oral Evidence*, 31 October 2011, p 48.

<sup>39</sup> *ibid*, p 49.

<sup>40</sup> *ibid*, p 27.

significantly large number of Ministers, either to have a very large number of Ministers per se or to do exactly what I think you are alluding to, which is to change the balance in the House. Our proposal is that they would be full Members with a vote, but it would be a limited number. It was mainly to give the Prime Minister the opportunity to bring people in to serve as Ministers who have a particular range of skills, as has already happened in the past, but with the important proviso that they remain Members of the House only for the period of time that they are a Minister.<sup>41</sup>

Lord Adonis concurred with Mr Harper that there was a clear case for Ministers appointed by the Prime Minister (as opposed to those selected from the existing membership of the House) to relinquish their seat upon the end of their time in ministerial office. For Lord Adonis, the legitimacy of such individuals' membership would be expressly linked to their ministerial role, and thus would cease once that role ended:

If the second Chamber were wholly elected or 80 percent elected, with the non-elected Members as the Cross-Benchers, the sole legitimacy of that person being in the Lords would be their possession of ministerial office, so the argument for their membership ceasing when their ministerial office ceases is logically and democratically very strong. That of course would mean a discontinuity of membership. I do not think that anyone has a right to continue as a member of the second Chamber for any longer than Parliament judges it to be in the general interest that they should.<sup>42</sup>

### 3.2.4 Pre-appointment Scrutiny

In its 2010 report, the Public Administration Committee also stated its belief—should a Prime Minister retain the ability to appoint Ministers in the future—that there should be more prior scrutiny of such appointments. The Committee envisaged that this could take the form of a Prime Minister submitting their reasons for selecting an individual to Parliament:

When making such an appointment a Prime Minister should set out clearly to the House of Commons why the appointment has been made from outside, under what terms and what he or she expects the Minister to achieve during their time in Government. Moreover, the appointment should be subject to scrutiny by the House of Commons. This could involve a select committee hearing and report. If the Committee was not satisfied with the appointment it could recommend a debate and vote on the floor of the House.<sup>43</sup>

The UCL report *Putting Goats Amongst the Wolves* endorsed such pre-appointment scrutiny for such 'outsider Ministers', though the report's authors Hazell and Young did add in their recommendations that such scrutiny may be only truly necessary in the case of Ministers who were not expected to join either House of Parliament upon their appointment.<sup>44</sup> Lord Adonis endorsed a similar view in his evidence to the Joint

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<sup>41</sup> Joint Committee on the Draft House of Lords Reform Bill, *Minutes of Corrected Oral Evidence*, 17 October 2011, pp 61–2.

<sup>42</sup> Joint Committee on the Draft House of Lords Reform Bill, *Minutes of (Uncorrected) Oral Evidence*, 5 December 2011, pp 4–5.

<sup>43</sup> House of Commons Public Administration Select Committee, [Goats and Tsars: Ministerial and Other Appointments from Outside Parliament](#), 12 October 2010, HC 330 of session 2009–10, p 32.

<sup>44</sup> Dr Ben Young and Professor Robert Hazell, Constitution Unit, UCL, *Putting Goats Amongst the Wolves: Appointing Ministers from Outside Parliament*, January 2011, p 82.

Committee on the Draft House of Lords Reform Bill, saying that a mechanism of pre-appointment scrutiny—such as those appointments being referred to the Appointments Commission—would not be necessary if Ministers were appointed to the House of Lords, as they would then be accountable via that membership:

Should ministerial appointments be subject to the Appointments Commission? I do not think so. I think that that would be a fundamental breach of the principle that the Prime Minister decides whom he or she wishes to appoint to the Government. Of course, those individuals are then fully accountable to Parliament by virtue of being Ministers.<sup>45</sup>

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

The Joint Committee on the Draft House of Lords Reform Bill reported its findings on 23 April 2012. It recommended the following with regard to appointed Ministers in a reformed upper House:

##### ***Appointed Ministers***

57. We recommend that a reformed House of Lords should continue to contain Ministers of the Crown to represent the Government. In a fully-elected House, there should be no power to appoint additional members to carry out ministerial roles. (Paragraph 266)

58. We agree that the Prime Minister should be able to appoint a small number of additional members to a hybrid (part-elected, part-appointed) House as Ministers of the Crown. We believe that these members should have the right to sit, but not to vote, in a reformed House. (Paragraph 267)

59. We acknowledge that the appointment of Ministers to the Lords is a significant power of patronage. We have recommended that such appointees should not vote. Were the Government not to accept this recommendation, however, we would recommend that the number of additional ministerial appointments should be limited, to no more than five at any one time. This limit should be on the face of the Bill. (Paragraph 268)

60. We also agree that members appointed to the House of Lords specifically as Ministers of the Crown should cease to be members on the termination of their ministerial appointment. This reflects the special circumstances under which they come to be members. (Paragraph 269)

61. The House of Lords Appointments Commission should vet the individuals appointed as Ministers of the Crown for probity. In this capacity, it should act only as an advisory body to the Prime Minister. It should not have the power of veto over ministerial appointments. (Paragraph 270)<sup>46</sup>

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<sup>45</sup> Joint Committee on the Draft House of Lords Reform Bill, *Minutes of (Uncorrected) Oral Evidence*, 5 December 2011, p 28.

<sup>46</sup> Joint Committee on the Draft House of Lords Reform Bill, [Draft House of Lords Reform Bill](#), 23 April 2012, HL Paper 284-I, HC 1313-I of session 2010–12, p 105.

On the same day that the Committee's report was issued, a cross party group of three MPs and nine Peers who sat on the Committee published [House of Lords Reform: An Alternative Way Forward](#) (April 2012). It offered no comment on the provision in the draft Bill to retain the appointment of individuals to a reformed second Chamber in order to assume ministerial office, or that those individuals' membership of the House should cease when their ministerial tenure is over. However, it did disagree with the conclusion of the Joint Committee that such Ministers should have the right to sit in the House but not to vote, stating:

In our view, this is both unconstitutional and absurd. Unconstitutional, because in our view it runs against the responsibilities of a member of the House of Lords as set out in their Writ of Summons from the Crown, and absurd because it would create the spectacle of a Government Minister arguing the case for a particular policy or provision in the House of Lords, seeking to persuade members from across the House, as well as from their own political party, to support the case being made, and support it in the division lobbies, but then be prevented from voting for it themselves.<sup>47</sup>

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<sup>47</sup> [House of Lords Reform: An Alternative Way Forward](#), 23 April 2012, p 54.

**Appendix 1—Cabinet Ministers in the House of Lords since 1979 (Excluding Leader of the House and Lord Chancellor<sup>48</sup>)**

<b>Margaret Thatcher's Government (1979–1990)</b>		
Lord Carrington	Foreign Secretary	May 1979–Apr 1982
Lord Cockfield	Trade Secretary	Apr 1982–June 1983
	Chancellor of the Duchy of Lancaster	June 1983–Sept 1984
Earl of Gowrie	Chancellor of the Duchy of Lancaster	Sept 1984–Sept 1985
Lady Young	Chancellor of the Duchy of Lancaster	Oct 1981–April 1982
Lord Young of Graffham	Minister without Portfolio	Sept 1984–Sept 1985
	Employment Secretary	Sept 1985–June 1987
	Trade and Industry Secretary	June 1987–July 1989
<b>John Major's Government (1990–1997)</b>		
None		
<b>Tony Blair's Government (1997–2007)</b>		
Lord Falconer of Thoroton	Lord Chancellor and Secretary of State for Constitutional Affairs (note: from the passing of the <i>Constitutional Reform Act 2005</i> the Lord Chancellor no longer had to sit in the House of Lords)	June 2003–May 2007
	Lord Chancellor and Secretary of State for Justice	May–June 2007
Baroness Amos	International Development Secretary	May–October 2003
<b>Gordon Brown's Government (2007–2010)</b>		
Lord Adonis	Transport Secretary	June 2009–May 2010
Lord Mandelson	First Secretary of State and Secretary of State for Business, Innovation and Skills	October 2008–May 2010
<b>Coalition Government (2010–)</b>		
Baroness Warsi	Minister without Portfolio	May 2010–

Source: Adapted from House of Commons Library Standard Note, *Ministers in the House of Lords* (9 August 2010, SN/05226).

<sup>48</sup> Prior to the establishment of the Department of Constitutional Affairs in 2003 (now replaced by the Ministry of Justice), and the creation of the dual role of Lord Chancellor and Secretary of State for Constitutional Affairs (now the Lord Chancellor and Secretary of State for Justice).

