HOUSE OF LORDS

Library Note

Delegated Legislation in the House of Lords since 1997

The *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2015) summarises the general powers the House of Lords has in relation to delegated legislation:

> The Parliament Acts do not apply to delegated legislation. So delegated legislation rejected by the Lords cannot have effect even if the Commons have approved it. Neither House of Parliament has the power to amend delegated legislation. The House of Lords has only occasionally rejected delegated legislation.

It then refers to a resolution passed in 1994: "That this House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration".

Some Members have argued that there is a convention that the House of Lords does not vote down statutory instruments (SIs) that have been, or would be, approved by the House of Commons. Others, however, have rejected the notion that such a convention exists. In recent years, procedure has been reformed in order to facilitate Members to debate delegated legislation through non-hostile, neutral motions. In practice, the ability to reject such instruments remains.

As the *Companion* notes, historically the Lords has rarely used the power to reject delegated legislation (once in 1968, and four times in the period covered by this Note). In addition, on 26 October 2015, the Government was defeated in the House of Lords after Members voted to support two amendments to an approval motion, both of which sought to delay consideration of the Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 until specific conditions had been met. Following these votes, on 27 October 2015, the Government announced a rapid review to examine "how to protect the ability of elected governments to secure their business". The review, led by Lord Strathclyde, was published in December 2015. He recommended a new procedure whereby the Lords could "invite the Commons to think again when a disagreement exists and insist on its primacy". The procedure would be set out in statute. The House of Lords is to debate the Strathclyde Review on 13 January 2016.

This Library Note provides an overview of delegated legislation in the House of Lords since 1997. It does this through a chronology of some of the notable debates in the House about the powers of the Lords in this area and provides a summary of the key developments and reform proposals during this period. It concludes with appendices giving statistics on divisions on delegated legislation.

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1. Background

1.1 What is Delegated Legislation?

In their book *How Parliament Works*, Robert Rogers (now Lord Lisvane) and Rhodri Walters provide the following overview of delegated legislation:

> Delegated legislation is law made by ministers or certain public bodies under powers given to them by Act of Parliament but it is just as much part of the law of the land as are those Acts. The volume of delegated legislation is huge, and this presents particular challenges for parliamentary scrutiny.
>
> Individual pieces of delegated legislation, often called *secondary legislation* to distinguish them from primary legislation contained in Acts of Parliament, or *subordinate legislation*, are found under many different names. They can be *orders, regulations, Orders in Council, schemes, rules, codes of practice* and *statutes* (of certain colleges rather than in the sense of Acts). Even the Highway Code is a form of secondary legislation.[1]

There are a number of different ways in which delegated legislation can be scrutinised by Parliament. The parent Act, the Act of Parliament to which the secondary legislation relates, will determine whether it is subject to parliamentary scrutiny and the form which that scrutiny will take; some secondary legislation is not laid before Parliament and is not subject to any parliamentary procedure, whilst some secondary legislation is subject to Commons-only procedure and is not considered in the House of Lords.[2]

Where parliamentary scrutiny does occur an instrument is laid before Parliament, either in draft form or after the instrument has been made. Scrutiny usually takes one of three main forms, outlined in the House of Commons Library Standard Note, *House of Commons Background Paper: Statutory Instruments*:

Instruments subject to negative resolution procedure Such instruments become law unless there is an objection from either the House of Commons or Lords	
(i)	The instrument is laid in draft and cannot be made if the draft is disapproved within 40 days (draft instruments subject to the negative resolution are few and far between).
(ii)	The instrument is laid after making, subject to annulment if a motion to annul (known as a 'prayer') is passed within 40 days.
Instruments subject to affirmative resolution procedure These instruments cannot become law unless they are approved by both Houses.	
(i)	The instrument is laid in draft but cannot be made unless the draft is approved by both Houses (the Commons alone for financial SIs).
(ii)	The instrument is laid after making but cannot come into force unless and until it is approved

[1] Robert Rogers and Rhodri Walters, *How Parliament Works*, March 2015, p 223.
[2] In the case of instruments dealing with financial matters the instrument will be laid only before the Commons (House of Commons Library, *House of Commons Background Paper: Statutory Instruments*, 18 December 2012, p 5).

(iii)	The instrument is laid after making and will come into effect immediately but cannot remain in force unless approved within a statutory period (usually 28 or 40 days).
Other Procedures	
(i)	The instrument is required to be laid before Parliament after being made but does not require parliamentary scrutiny.
(ii)	The instrument is not required to be laid (and is therefore not subject to parliamentary procedure).

There are also some order-making powers which are, in the parent Act, made subject to 'special parliamentary procedure'. Not all of these are classified as statutory instruments.

It is important to note that SIs cannot, except in extremely rare instances where the parent Act provides otherwise (such as the Census Act 1920), be amended or adapted by either House. Each House simply expresses its wish for them to be annulled or approved, as the case may be. The Civil Contingencies Act 2004 also provides for emergency regulations to be amended by Parliament, but these regulations are not statutory instruments.[3]

In its 2014 report, *The Devil is in the Detail: Parliament and Delegated Legislation*, the Hansard Society was critical of what it viewed as the complexity of parliamentary scrutiny procedures for delegated legislation, noting: "There are no fewer than 16 variations on these procedures, including 11 forms of strengthened procedure alone", it concluded "the procedures are complex and often illogical, and many parliamentarians willingly admit they don't understand them".[4]

1.2 Scrutiny of Delegated Legislation in the House of Lords

The House of Lords has several committees which are charged with examining delegated legislation.[5]

The Delegated Powers and Regulatory Reform Committee (DPRRC) examines primary legislation, a bill, before it becomes an Act to check "whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny".[6]

The Secondary Legislation Scrutiny Committee (SLSC) is the successor to the Merits of Statutory Instruments Committee, which was established in 2003 and existed until the end of the 2010–12 session. The SLSC considers the policy merits of regulations and other types of secondary legislation subject to parliamentary procedure; the Committee will consider all statutory instruments which are subject to parliamentary procedure (negative and affirmative).

[3] House of Commons Library, *House of Commons Background Paper: Statutory Instruments*, 18 December 2012, pp 5–6.
[4] Hansard Society, *The Devil is in the Detail: Parliament and Delegated Legislation*, November 2014, pp 3 and 5. For more information see section 3.12.
[5] For more information on scrutiny processes in the House of Commons please see: House of Commons Library, *House of Commons Background Paper: Statutory Instruments*, 18 December 2012.
[6] The Committee's Terms of Reference are summarised on the Parliament UK website, 'Delegated Powers and Regulatory Reform Committee: Role of the Committee', accessed 23 December 2015.

Figure 1 below shows the number of statutory instruments considered by the SLSC by calendar year.

Figure 1: Statutory Instruments considered by the SLSC by calendar year

Calendar Year	Instruments considered by the SLSC
2006	1112
2007	1168
2008	1102
2009	1129
2010	923
2011	728
2012	874
2013	945
2014	1087

The Committee reports on an SI within 12–16 days of it being laid before Parliament, to allow time for any Member of the House to pursue the issues raised by asking a question or tabling a motion for debate within the 40 day 'prayer' period for negative instruments. Affirmative instruments have to be considered by the SLSC before they can be debated in House of Lords. The Committee meets weekly when the House is in session and aims to publish reports of its activities by the following week.[7] Reports indicate statutory instruments that the Committee has determined should be drawn to the attention of the House, including the reasons for that decision—examples may be instruments are poorly drafted or inadequately explained; statutory instruments which the Committee considers may be of special interest to the House, and instruments which the Committee has considered and has determined that the special attention of the House need not be drawn.[8]

In addition, members from the House of Lords also sit on the Joint Committee on Statutory Instruments (JCSI) which considers legal drafting of statutory instruments after being laid in Parliament. It has a 'scrutiny reserve': an affirmative SI cannot be debated in the House of Lords until it has been cleared by the JCSI. The Committee meets most weeks that the Houses are in session and issues reports on statutory instruments that the special attention of both Houses should be drawn to, as well as those statutory instruments (both affirmative and negative) which the Committee considered were not required to be reported to both Houses. JCSI reports also list secondary legislation that is not subject to parliamentary procedure.[9]

Except in very limited circumstances, delegated legislation cannot be amended, and is usually rejected or approved. In the period from 1997 there have been four government defeats on motions in the House of Lords, which led to delegated legislation being rejected; these are discussed in more detail in the section below. The 2006 report by the Joint Committee on Conventions provided the following detail on what happens to rejected legislation:

> The Clerk of the Parliaments explains what happens if an SI is defeated. If it is affirmative, it may be re-laid, though it must be at least slightly different. If it is negative,

[7] Parliament UK website, 'Secondary Legislation Scrutiny Committee', accessed 23 December 2015.
[8] In 2014, the Procedure Committee recommended two new grounds on which the Committee could draw the special attention of the House to a statutory instrument (see: *5th Report of session 2013–14*, 10 April 2014, HL Paper 167 of session 2013–14, paras 1–2).
[9] Parliament UK website, 'Joint Committee on Statutory Instruments: Role', accessed 16 June 2015.

> it may be re-laid with a new title. If the Lords rejected it again (which has never happened), the Government could in the last resort embody it in a Bill.[10]

In the example of the Government defeat on the amendment to the approval motion for the draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012 there was some discussion regarding the appropriate Government response to that defeat. This is discussed further in section 2.3.

2. Delegated Legislation: Divisions and Defeats in the House of Lords since 1997

This section provides details of the divisions on delegated legislation in the House of Lords since 1997 which have resulted in Government defeats. As noted earlier, the Parliament Acts do not apply to delegated legislation and the House has "unfettered freedom" to vote on any subordinate legislation submitted for its consideration. In practice, however, the House of Lords has only occasionally rejected delegated legislation. As well as providing information about the circumstances of each defeat, this section also details the more general points raised in these debates concerning the appropriate role of the House of Lords in considering delegated legislation.

2.1 Categorising Amendments

Some of the divisions on delegated legislation in the Lords since 1997 have been attempts to reject the legislation. These are often called 'fatal' amendments in that they have the effect of withholding the House's agreement. Other divisions have taken place on amendments that have sought to place on record an objection to an SI, whilst stopping short of rejecting it altogether. These are often called 'non-fatal' amendments. Both terms are informal and do not feature in the *Companion to the Standing Orders*. Some of the different ways in which the Lords can express opposition or concern about affirmative and negative instruments are detailed in paragraphs 10.14 and 10.09 of the *Companion,* although this is not an exhaustive list.

On 26 October 2015 the House agreed to two amendments to the motion to approve the Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015. Both amendments to the approval motion sought to delay consideration of the regulations until certain conditions were met. The first amendment, moved by Baroness Meacher (Crossbench), stated:

> This House declines to consider the draft regulations laid before the House on 7 September until the Government lay a report before the House, detailing their response to the analysis of the draft regulations by the Institute for Fiscal Studies, and considering possible mitigating action.[11]

The amendment was agreed to by 307 votes to 277.

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[10] Joint Committee on Conventions, *Conventions of the UK Parliament*, November 2006, HL Paper 265-1 of session 2005–06, p 60, para 2.18.
[11] HL *Hansard*, 26 October 2015, cols 1033–4.

The second amendment, moved by Baroness Hollis of Heigham (Labour), stated:

> This House declines to consider the draft Regulations laid before the House on 7 September until the Government, (1) following consultation have reported to Parliament a scheme for full transitional protection for a minimum of three years for all low-income families and individuals currently receiving tax credits before 5 April 2016, such transitional protection to be renewable after three years with parliamentary approval, and (2) have laid a report before the House, detailing their response to the analysis of the draft Regulations by the Institute for Fiscal Studies, and considering possible mitigating action.[12]

The amendment was agreed to by 289 votes to 272.

There was some discussion regarding whether the two amendments could be accurately defined as either fatal, in that they did not approve the regulations, or non-fatal, as they delayed, or declined to consider, the regulations until certain conditions had been met, rather than rejecting them outright. As noted by the House of Commons Library:

> This appears to have been the first time amendments have been passed to decline to consider an instrument. [13]

Tables in the appendices provide a breakdown of both divisions and defeats by parliamentary session and calendar year and categorise them as being on either fatal or non-fatal motions; the two defeats on the Tax Credits (Income thresholds and Determination of Rates) (Amendment) Regulations 2015 have been categorised as delaying motions. In addition, Appendix 2 details each division on delegated legislation in the House of Lords in the period 1997–2015.[14]

Defeats and divisions on delegated legislation should be considered in the context of its volume. The Secondary Legislation Scrutiny Committee considers the policy merits of all statutory instruments and other types of secondary legislation subject to parliamentary procedure. Between the 2003–04 and 2014–15 sessions the Committee considered over 11,000 statutory instruments. During this period there were divisions on 21 fatal motions, which led to two Government defeats and a further 42 divisions on non-fatal motions, of which twelve were Government defeats.[15]

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[12] HL *Hansard*, 26 October 2015, col 1038.
[13] House of Commons Library, *Conventions on the Relationship between the Commons and the Lords*, 4 November 2015, p 4.
[14] Up to 31 December 2015.
[15] For information about the volume of delegated legislation in the House of Commons see: House of Commons Library, *Acts and Statutory Instruments: The Volume of UK Legislation 1950–2015*, 22 December 2015.

Figure 2: Defeats and Divisions on Delegated Legislation by Session since 2003–4

Session	Instruments considered by SLSC	Divisions		Government Defeats	
		Fatal	Non-Fatal	Fatal	Non-Fatal
2003–04[16]	657	2	3	0	0
2004–05	620	0	2	0	1
2005–06	1731	2	4	0	1
2006–07	1179	6	4	1	1
2007–08	1154	1	3	0	0
2008–09	1111	2	4	0	2
2009–10	660	4	5	0	4
2010–12 Double session	1147	1	7	0	0
2012–13	893	2	7	1	3
2013–14	998	0	2	0	0
2014–15	1153	1	1	0	0
Total	**11,303**	**21**	**42**	**2**	**12**

In the period from 1950–1999 there were 71 divisions on delegated legislation, resulting in ten Government defeats, one of them fatal. This rate has increased since 1999 and there have been 91 divisions on delegated legislation, leading to 24 Government defeats, four of them fatal.

Professor Meg Russell, from the UCL's Constitution Unit, has found some support for the hypothesis that an enhanced sense of legitimacy created by the reforms of the House of Lords Act 1999 has made the House of Lords more assertive.[17] She notes, however, that assessing legislative influence is "complex and multi-layered",[18] and should include an examination of both the ability and willingness of the House of Lords to assert itself, and the way in which the Government responds. Writing in 2010, she argued:

> There were signs immediately after the 1999 reform that this would happen, when the Conservative Leader in the Lords, Lord Strathclyde (1999), declared the convention on secondary legislation 'dead'. But this was not, as might have been expected, followed through with a string of defeats. There was one defeat on secondary legislation in 2000, on arrangements for the London Mayoral elections, and another in 2007, on the siting of the Manchester 'supercasino'. Visible change has therefore been limited. But it has been enough to encourage government caution. At least once, over a measure to restrict trial by jury in 2005, the government has withdrawn a piece of secondary legislation (in this case already tabled) in anticipation of defeat.[19]

[16] The House appointed the Select Committee on the Merits of Statutory Instruments on 17 December 2003, which commenced formally reporting on statutory instruments at the beginning of April 2004. For more information see: House of Lords Merits of Statutory Instruments Committee, *Special Report of Session 2003-04: Review of the Work of the Committee*, 29 November 2004, HL Paper 206 of session 2003–04.
[17] Meg Russell, 'A Stronger Second Chamber? Assessing the Impact of House of Lords Reform in 1999 and the Lessons for Bicameralism', *Political Studies*, 2010, vol 58, pp 866–85.
[18] ibid, p 880.
[19] ibid, pp 874–5.

2.2 Government Defeats on 'Fatal' Amendments

As Tables 1 and 2 in Appendix 1 show, there have been 35 divisions on fatal amendments since 1997, on issues as diverse as the Human Fertilisation and Embryology (Mitochondrial Donation) Regulations in February 2015 to the Norwich and Norfolk (Structural Changes) Order in March 2010.

Since 1997 four of those 35 divisions have resulted in a Government defeat;[20] two defeats on the Greater London Authority Elections Orders (2000); a defeat on the Gambling (Geographical Distribution of Casino Premises Licences) Order (2007); and a defeat on the draft Legal Aid, Sentencing and Punishment of Offenders Act 2012.
The Government defeats on fatal amendments are discussed below.

Defeats on Greater London Authority Elections Orders (2000)

In 2000, following the House of Lords Act 1999, the Government was defeated on two pieces of delegated legislation: the Greater London Authority Elections Rules Order and the Greater London Authority (Election Expenses) Order. Lord Mackay of Ardbrecknish (Conservative) moved an amendment to the election expenses order, declining approval of the Order and calling upon the Government to lay another order giving candidates in the Greater London Authority (GLA) elections one freepost delivery per household for campaign materials. No provision had been made in the primary legislation for a freepost delivery. Lord Mackay also moved a prayer to annul the order that set out the rules for the conduct of the GLA elections, which could not go ahead unless the rules were approved.

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

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

[20] As at 31 December 2015.

> get later this afternoon. Is it too much to ask the Government to listen to what your Lordships are saying?[21]

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

> The power to reject secondary legislation must be exercised extremely cautiously. But it is a power that can and should be exercised when it is really needed. Your Lordships' House was once described as "Mr Balfour's poodle". Since the House of Lords Act last year, the present House is no one's poodle. In defence of democracy, your Lordships' House should be not a poodle, but a Rottweiler.[22]

Lord Borrie (Labour) raised the wider issue of conventions on delegated legislation. Referring to the Southern Rhodesia (United Nations Sanctions) Order rejected in 1968, he said that it was not appropriate to reject the Order on the basis of what it did not do. He told the House: "On grounds of constitutionality it is not appropriate for this chamber to turn down the nuts and bolts detail of the election rules simply as a device to bring something new on to the agenda".[23] Lord Simon of Glaisdale (Crossbench), who moved the resolution agreed to by the Lords in 1994, "That this House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration", contended that there was no convention that the Lords did not reject delegated legislation.[24]

Lord Whitty, the then Parliamentary Under-Secretary of State, Department of the Environment, Transport and the Regions, said that while the Government did not dispute the House of Lords' right to vote on delegated legislation, it did dispute accepting a motion which called upon the Government to do something that it was not empowered to do by the relevant primary legislation:

> This is not the House of Lords behaving like the watchdog of the constitution. The noble Lord, Lord Goodhart, put it better when he said that we are behaving like a Rottweiler, an undisciplined and undisciplinable animal. That is not the role of the House of Lords in any of our views of the future; and it should not be a role advocated by the Front Bench of the Liberal Democrats. I am rather surprised that the noble Lord did so.
>
> What is to stop my noble friend Lord Stoddart of Swindon, for example—I see that he is not in his place—from moving to vote down secondary legislation on matters of education on the grounds, for example, that he objects to the common agricultural policy? Once we get into that territory, your Lordships are using one area of law, of regulation, to vote down another. It amounts to an abuse of the proceedings of this House and, I would say, leads us not only into very difficult territory but also territory which—if the noble Earl, Lord Russell, were not about to jump to his feet and accuse me of asperity of speech—I would suggest was close to a serious criminal offence.[25]

The amendment to the motion declining to approve the Greater London Authority (Election Expenses) Order was agreed by 215 votes to 150. The motion to annul the Greater London Authority Elections Rules Order was agreed by 206 votes to 143.

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[21] HL *Hansard*, 22 February 2000, col 143.
[22] ibid, col 147.
[23] ibid, col 153.
[24] ibid, cols 153–6.
[25] ibid, col 174.

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

> On 22 February of this year your Lordships decided by a substantial majority to reject an affirmative order. In so doing, the House exercised its undoubted right. As the noble and learned Lord, Lord Simon of Glaisdale, frequently reminds us, this power is rarely used. I suggest to noble Lords that that vote was one of enormous parliamentary significance and importance. It showed us clearly that the interim House had confidence in its legitimacy.[26]

In winding up the debate, Lord Falconer of Thoroton, the then Minister of State, Cabinet Office, stated that "the Government believe that there is, and should be, a convention that this House does not reject secondary legislation".[27] Although he admitted that "procedurally […] noble Lords have the power to do so", he went on to argue that:

> The unelected chamber should not be able to prevent the elected Government and chamber from doing, as a matter of principle, what the other place decided to do.
>
> This unelected chamber is not the equal of the elected chamber. Noble Lords opposite are rather given to claiming that, now that the House is more legitimate than it previously was, it has somehow acquired that right. That is nonsense. This House is indeed more legitimate than it was because all of its Members have in one way or another earned their place. But in democratic terms it is still not as legitimate as the other place. Therefore, it is not right that it should exercise a power which actually sets aside and makes of no effect the wishes of the other place on important issues of policy, which decision cannot be reversed by the other place. This chamber is a scrutinising chamber. That is accepted. It is not one where important matters of principle are to be resolved as a matter of finality. [28]

He added that he thought the fact that the House had developed non-fatal means of flagging concerns on delegated legislation showed that the House recognised it does not reject statutory instruments.[29]

Defeat on Regional Casinos (2007)

In March 2007, the House of Lords rejected the Gambling (Geographical Distribution of Casino Premises Licences) Order; on the same day, almost simultaneously, the Order was approved by the House of Commons.[30] The Gambling Act 2005 provided for three new types of casino, and the order specified their locations—eight small, eight large and one regional (or 'super') casino. While most of the sites were uncontroversial, there were many objections to the choice of location for the regional casino and the process by which it had been selected. Lord Clement-Jones (Liberal Democrat) moved an amendment to the motion declining to approve the order.

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[26] HL *Hansard*, 29 March 2000, col 809.
[27] ibid, col 838.
[28] ibid, cols 840–1.
[29] ibid, cols 840–1.
[30] *Hansard* records that the House of Commons division approving the Order occurred at 6.41pm (HC *Hansard*, 28 March 2007, col 1598), the House of Lords division at 6.37pm (HL *Hansard*, 28 March 2007, col 1693).

Several Members—including some who did not support the Order's contents—expressed the view that this was against the conventions of the House, Lord Mancroft (Conservative) stated:

> The amendment of the noble Lord, Lord Clement-Jones, is of course fatal and, as such, it pushes the conventions of your Lordships' House to, and possibly beyond, its limits. Indeed, it may well remind the Government and another place exactly what would happen on a regular basis if this House were to flex the muscles given to it by democratic election.[31]

While Lord Lispey (Labour) commented:

> The time for the anti-gamblers to make their case was when [the Gambling Bill] was before Parliament and they were trying to convince the Government not to go ahead with it. What is not acceptable is that when an order under it comes forward—as it was always envisaged one would come forward to name the casinos—the issue of principle is re-opened. That is against the conventions of this House. That has been, as has been pointed out, broken on only two occasions since the 1970s, and it is not the right way to carry forward that argument.[32]

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

> It does not break the normal conventions of this House, as the amendment in the name of the noble Lord, Lord Clement-Jones, would have. With another place due to vote on the issue shortly, and in the light of what the Minister has said, I do not think it appropriate that your Lordships should overturn the Order outright. That would pre-empt the other place and allow a decision on the issue to be clouded by questions about the legitimacy of this House's actions. [33]

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

> […] this House has its proper responsibilities as a revising chamber […] we must be careful not to override the conventions of this House. We must recognise that the other House is debating the Order, and while it is right and proper that the Government are subject to scrutiny, it would be unfortunate if it were suggested that the Order should be repudiated.[34]

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

> One time when we have the right to say no is when a committee of our House, which is a whistle-blowing committee and is supposed to look at these issues for us, actually

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[31] HL *Hansard*, 28 March 2007, col 1671.
[32] ibid, col 1675.
[33] ibid, col 1687.
[34] ibid, col 1688.

> blows the whistle. I pay tribute to the noble Lord, Lord Filkin, and his colleagues.[35] It is not the most thrilling or exciting of committees, but boy did it do its job this time—and I pay tribute to it for that. We set up a committee like that and ask it to go through the painstaking task of going through piece after piece of secondary legislation, then it suddenly brings forward a stunner such as the report that the committee has made. To say that the conventions of this House mean that we cannot do anything about it would make me think hard about the worth of the Merits Committee. It is there to do a job and, by gum, it has done it.[36]

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

> The Order has been carried in this elected House, but we understand that it has been lost by a small majority in the other place. Obviously Ministers will want to reflect on the outcome of that vote and to come back to this elected House in due course for proposals taking this policy forward and ensuring that the important objectives of the legislation are considered.[37]

Defeat on Legal Aid, Sentencing and Punishment of Offenders Act (2012)

In the House of Lords, on 3 December 2012, the draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012 was not approved. Lord Bach (Labour) moved an amendment to the motion, declining to approve the draft Order on the basis that:

> It does not fulfil the undertaking given by Her Majesty's Government on 17 April; and will mean claimants, including a disproportionate number of disabled people, will not receive legal help on a point of law in first-tier tribunals relating to welfare benefits thus denying them a fair hearing on point of law cases.[38]

Speaking to his amendment, Lord Bach noted:

> What I am doing with my Motion is to ask the Minister to withdraw the order that I have prayed against—namely the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012—so that it can be reconsidered as a fresh order when it is laid again. I am not seeking to go behind the Act of Parliament. I still believe that many parts of it are entirely wrong and an enormous mistake, but

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[35] Lord Filkin chaired the then Merits of Statutory Instruments Committee, which was replaced by the Secondary Legislation Scrutiny Committee in 2012. For more information about the Committee see sections 3.2 and 3.9 of this Note.

[36] HL *Hansard*, 28 March 2007, col 1682.

[37] HC *Hansard*, 28 March 2007, col 1601.

[38] HL *Hansard*, 3 December 2012, col 489. Lord Bach was referring a Government concession made in the House of Commons on 17 April 2012 during the passage of the Legal Aid, Sentencing and Punishment of Offenders Bill (HC *Hansard*, 17 April 2012, cols 200–90). Lord Bach did not feel that the draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment to Schedule 1) Order 2012 reflected that concession, stating "They [the Government] have come up with something much more vague; something that will happen in very, very few cases".

> whether I like it or not, Parliament has passed it. It will come into force on 1 April 2013 and we will have to see what the consequences are, but that is not the point today.
>
> There are two main grounds for my request for the order to be withdrawn and they are linked together. If the order is not withdrawn, I will ask the House to decline to support it. That is why my amendment can be described as fatal, although in my view it is rather too emotive a term and is a somewhat misleading description because the Government can always come back with something that is acceptable to the House. So-called fatal amendments may be rare, but they are not that rare in this House. We have had 27 since 2000 instigated by Peers of all parties and of none. Indeed, I am in good company today in moving a fatal Motion because no one less than the Minister himself moved one—some time ago, let it be said—and pressed it to a vote. I also feel more content about moving a fatal Motion as I happen to have discovered that the Leader of the House, who is not in his place at present, has also been known to support such Motions in the past.[39]

Lord McNally, Minister of State for Justice, spoke against the amendment, noting "we have argued our case through both Houses of Parliament and put an Act on to the statute book. This is about implementing that Act".[40] He cautioned against the idea that by rejecting the Order, the House could expect a "better offer":

> It is not a threat. I just do not want the House to make a decision on such an idea. This is not the Committee stage of a Bill. The order relates to what is already an Act of Parliament. If we do not bring forward another order in this area, the Act simply will go through. I want the House to be aware of that fact.[41]

Lord Bach, rejected this argument, stating that:

> There is a framework Act of Parliament, passed by Parliament, which I have never sought to go behind. These orders add flesh to those bones. This is a very important order. In any event, the Government would have to have some kind of order on these matters. On this occasion, the Government have, in effect, not kept with the intention that they certainly had in the House of Commons. By announcing what they did in the Commons, they managed not to lose a vote and to get the Bill through. As a consequence, it is a serious matter.[42]

Lord Bach's amendment to the motion declining to approve the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012 was agreed to by 201 votes to 191. The issue was further discussed on 27 March 2013 (see section 2.3).

2.3 Government Defeats on 'Non-Fatal' Amendments

As the statistics in Appendix 1 show, since 1997 the House has sought to utilise procedures available to it to place on record where it views there is a problem with an instrument, whilst stopping short of rejecting it altogether. These are often called 'non-fatal' amendments.

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[39] HL *Hansard*, 3 December 2012, col 471.
[40] ibid, col 487.
[41] ibid, col 490.
[42] ibid, col 490.

Since 1997 there have been divisions on 57 non-fatal amendments resulting in 19 Government defeats. In the 2015–16 session the Government has been defeated twice on non-fatal amendments. Most recently in October 2015 on the Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 on a motion to regret.[43]

In the 2010–15 Parliament, the Government was defeated three times, with all three defeats occurring on the 27 March 2013 and relating to legal aid. The first Government defeat, on the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013 was notable for its discussion of what should occur after a Government defeat on a fatal motion. The amendment, moved by Lord Bach (Labour) inserted a statement of regret to the motion of approval, stating:

> But this House regrets that Her Majesty's Government have responded to the opinion of this House, as expressed in a vote on 3 December 2012 on a fatal motion in respect of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012 on inadequate provision for legal aid in first tier tribunal cases, by bringing forward this order which excludes even that limited provision.[44]

The amendment related to an earlier Government defeat, detailed above, held on 3 December 2012 on a motion by Lord Bach which declined to approve the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012. Introducing his amendment Lord Bach stated:

> Why is the Government's behaviour so perverse? Why am I arguing that their line, not to put forward another regulation, is so wrong? It is for two reasons. The first is the constitutional offence that has been caused to Parliament. The Executive are supposed to be subject to Parliament. Parliament's wish that a more generous concession was required was clearly expressed on 3 December; it cannot be more clearly expressed than by a vote of a House of Parliament. The House voted for this.
>
> The Government could have brought back their minor concession if they had wanted to. For them to refuse to bring back anything else is—I choose my words with some care—treating Parliament with contempt. It is saying to Parliament, "We are the masters, not you. We don't care what you say, we will do what we want". I liken it to the behaviour of a spoilt child who cannot get his way. The conduct is more that of a playground bully than a mature, grown-up, confident, democratic Government. What has happened here is dishonourable, and my amendment rejects this behaviour.[45]

Lord McNally, Minister of State for Justice, warning of the limitations of such motions noted:

> If the Opposition Front Bench ever returned to this side of the House, they would be as reluctant as we are to have reopened debate on the final settlements in any legislation by the use of fatal Motions. I believe that that would prolong the issue and put pressure on every Opposition to say, "The matter is not closed. You could pass a fatal Motion and that will get us a better offer". I do not think that is the way that government can operate. The offer was made in good faith after exploring the consequences of the other options. As I say, it would set a precedent for keeping debates running and

[43] HL *Hansard*, 14 October 2015, cols 295–312.
[44] HL *Hansard*, 27 March 2013, col 1086.
[45] ibid, col 1088.

> keeping up pressures which, quite frankly, Oppositions would eventually find difficult to handle. The pressure groups, which quite legitimately keep the pressure on us, would say, "Well, it is not closed now because you could pass a fatal Motion". That is the point. It is always flattering to suggest that, secretly, I do not agree with the decision, but I actually do and in part because of my capacity as a business manager in this House. I believe that we gave the House a clear understanding of the consequences. The House took its decision, and that is how the Act is now set.[46]

In response Lord Bach commented:

> The Minister is absolutely right about fatal Motions. They should be used sparingly. But when such a Motion is passed by a House of Parliament, as was the case on 3 December last year, it is incumbent on a democratic Government to take some notice of it rather than just dismiss it. I pray in aid the last time it happened in this House on 28 March 2007, almost exactly six years ago, when the Labour Government's gambling order was defeated in this House. How did the Government respond? They responded effectively by changing their policy as a consequence of that decision.[47]

This line of argument was something which Lord McNally refuted in the following exchange:

> **Lord McNally (Liberal Democrat):** I am sorry to intervene and I do not want to prolong the debate. However, as the noble Lord knows, I was intimately involved in the passing of that fatal Motion, which stopped the super-casino going to Manchester. The outcome of that Motion was that the Government did not bring back their proposal. That is exactly what has happened again.
>
> **Lord Bach (Labour):** No.
>
> **Lord McNally (Liberal Democrat):** Oh yes; it is four-square. The House took a decision and the decision stood. That was the case with the decision made on legal aid.
>
> **Lord Bach (Labour):** I do not think that the Minister can really get away with that. The Government changed their policy as a consequence of the House of Lords vote. On this occasion, the Government have said, "We don't like what the House of Lords have said. Therefore, we'll do quite the opposite of what they wanted to happen". However, let us not retreat into history; let us talk about today.
>
> If my amendment is agreed, the regulations presented by the noble Lord will go through, of course, and the Act will come into force on 1 April in any event. However, if the House agrees to the amendment, it will show that it has some distaste for the way in which the Government have behaved in this instance. In my view, the Government have not behaved well here and the House should, in its gentle way by a Motion of Regret, just say that.[48]

The amendment to the motion was agreed to by 166 votes to 161.

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[46] HL *Hansard*, 27 March 2013, col 1092.
[47] ibid, col 1096.
[48] ibid, cols 1096–7.

2.4 Other Notable Government Defeats on Delegated Legislation

On 26 October 2015, the Government was defeated in the House of Lords after Members voted to support two amendments to an approval motion, both of which sought to delay consideration of the Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 until certain conditions were met. The regulations sought to implement changes from April 2016 with regard to the income thresholds of Working Tax Credits and Child Tax Credits.

Four amendments to the motion approving the regulations were tabled:

- An amendment declining to approve the regulations tabled by Baroness Manzoor (Liberal Democrat);
- An amendment declining to consider the regulations until certain conditions were met, tabled by Baroness Meacher (Crossbench);
- An amendment declining to consider the regulations until certain conditions were met, tabled by Baroness Hollis of Heigham (Labour); and
- An amendment expressing regret at the regulations, tabled by the Bishop of Portsmouth.

Following debate, Baroness Manzoor's amendment was defeated by 310 votes to 99. Baroness Meacher's amendment was agreed to by 307 votes to 277 and Baroness Hollis's by 289 votes to 272. The Bishop of Portsmouth's amendment was not moved by reason of pre-emption.[49]

Debate on the Amendments

Opening the debate on the motion to approve the regulations, Baroness Stowell of Beeston, the Leader of the House, noted that there had been "unprecedented focus on the passage of secondary legislation through this House" in the lead up to the debate.[50] She explained to Peers the substance of the regulations and reasons the Government had laid them before Parliament. With regard to the four amendments to the motion before the House, Baroness Stowell stated:

> We as a Government do not support any of the amendments tabled to the Motion in my name, but I am also clear that the approach the right reverend Prelate takes in his amendment, by inviting the House to put on the record its concerns about our policy and calling on the Government to address them without challenging the clear and unequivocal decision made in the other place, is entirely in line with the long-standing traditions of your Lordships' House.
>
> The other three amendments take us into quite different and uncharted territory. All three, in the names of the noble Baronesses, Lady Manzoor, Lady Meacher and Lady Hollis, if agreed to, would mean that this House has withheld its approval of the statutory instrument. That would stand in direct contrast to the elected House of Commons, which has not only approved the instrument but reaffirmed its view on Division only last week. It would have the practical effect of preventing the

[49] HL *Hansard*, 26 October 2015, col 1034.
[50] ibid, col 976.

> implementation of a policy that will deliver £4.4 billion of savings to the Exchequer next year—a central plank of the Government's fiscal policy as well as its welfare policy. It is a step that would challenge the primacy of the other place on financial matters.[51]

After taking a number of interventions from across the House, Baroness Stowell reiterated:

> We have a choice. We must choose whether to accept or reject this statutory instrument. Right now, it is absolutely clear that if we withhold our approval for this statutory instrument, we will be in direct conflict with the House of Commons.[52]

Of the four amendments, Baroness Manzoor's sought to reject the regulations by inserting the words: "this House declines to approve the draft regulations laid before the House on 7 September".[53] In support of her amendment, she said:

> Fatal Motions on regulations should be used incredibly sparingly. I wish that we were not in this position but I cannot think of a better reason for this House to use such an option than the lives of 4.9 million children and the parents who go out to work to support them. I have tabled this fatal Motion for a simple reason: when all is said and done, and when the constitutional debate about the role of this House is over, I want to be able to go home this evening knowing that I have done everything I could to stop this wrong-headed and ill-thought through legislation, which will have such a damaging and devastating impact on millions of people's lives.
>
> We have a duty in this House to consider our constitutional role but we also have a duty to consider those affected by the decisions we make and the votes we cast. Were there another way for this House to reject this proposal and send it back to the Commons to reconsider, I would be all for doing so.[54]

Baroness Manzoor was dismissive of the idea that the financial privileges of the House of Commons were at stake. She said:

> Some people have said to me that this is a budgetary measure—indeed, the Leader of the House said so, too—and therefore not within our competence. Were that true, the Government had an opportunity to put these changes into the Finance Bill rather than to use an affirmative statutory instrument, a measure that this House is explicitly asked to consider and approve by the primary legislation from which it stems.[55]

Speaking in support of her own amendment, Baroness Meacher argued that, in reference to Baroness Manzoor, "tabling a fatal amendment was a step too far" and that the purpose of her amendment was "to support the democratic process and to avoid impeding it".[56] Baroness Meacher's amendment sought to insert the words that "this House declines to consider the draft regulations laid before the House on 7 September until the Government lay a report

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[51] HL *Hansard*, 26 October 2015, col 979.
[52] ibid, col 980.
[53] ibid, col 982.
[54] ibid, col 983.
[55] ibid.
[56] ibid, col 985.

before the House, detailing their response to the analysis of the draft regulations by the Institute for Fiscal Studies, and considering possible mitigating action". She explained:

> The House of Commons will have a cross-party debate and a vote on these issues on Thursday. I understand that at least eight Conservative MPs have put their names to Thursday's Motion. It seems, therefore, that the Government no longer have a majority in the House of Commons for the planned cuts as they stand. If we approve the Regulations today, the Commons debate will have been pre-empted. This would undermine the democratic process. If, however, the elected House supports the Government—contrary to my expectations, I have to say—and the Government present a report to your Lordships' House responding to the Institute for Fiscal Studies analysis, I am sure that I and others will support these Regulations. This will not necessarily be because we agree with them—I most certainly do not—but because we respect the democratic process and the limits of the duties of this wonderful House.[57]

In reference to whether the amendment was "unconstitutional", Baroness Meacher explained that, having taken advice from the clerks, there was "no reason why we should not table a delaying amendment".[58]

Baroness Hollis of Heigham spoke to her amendment. This sought to insert the following words into the approval motion:

> […] this House declines to consider the draft Regulations laid before the House on 7 September until the Government, (1) following consultation have reported to Parliament a scheme for full transitional protection for a minimum of three years for all low-income families and individuals currently receiving tax credits before 5 April 2016, such transitional protection to be renewable after three years with parliamentary approval, and (2) have laid a report before the House, detailing their response to the analysis of the draft Regulations by the Institute for Fiscal Studies, and considering possible mitigating action.

She explained the amendment in the following way:

> We can amend Bills; we cannot amend SIs, yet often we do not know the Government's intent until we see the SI itself. We then face either a draconian fatal Motion or a lamenting regret Motion that changes nothing, so instead this is a delaying amendment. It is not fatal, as the Government know. It was drafted with the help of the clerks and it calls for a scheme of transitional protection before the House further considers the SI. Essentially, the cuts would apply to new claimants only. Frankly, that new SI could be drafted in a week and implemented next April exactly as planned.[59]

With regard to issues concerning House of Commons financial privilege, Baroness Hollis was also dismissive:

> […] if the Government wanted financial privilege, these cuts should be in a money Bill; they are not. If they wanted the right to overturn them on the grounds of financial privilege, they could be introduced in the welfare reform Bill on its way here; they did

[57] HL *Hansard*, 26 October 2015, col 985.
[58] ibid, col 988.
[59] ibid, col 991.

> not. So why now should we be expected to treat this SI as financially privileged when the Government, who could have made it so, chose not to do so? It is not a constitutional crisis.[60]

The final amendment was that tabled by the Bishop of Portsmouth. In reference to his 'regret' amendment, the Bishop described it as "an alternative and an opportunity" for the House "to register its disapproval of these proposals and its expectations that our reservations will be addressed".[61]

The debate that followed included contributions from across the House. Lord Mackay of Clashfern (Conservative) felt that the Bishop of Portsmouth's amendment was "by far the safest" and that the others "mark a refusal to accept a decision of the elected House on a matter of financial privilege as the final authority for it".[62] Baroness Thomas of Winchester (Liberal Democrat) referred to the House's "unfettered right over statutory instruments" and said that it was "time we stopped being bullied over how we consider statutory instruments". She urged the House to "stand up for what we believe to be morally right".[63] Lord Lawson of Blaby (Conservative) described himself as "torn". He explained that while he felt the constitutional position, as set out by Lord Mackay, was "very clear" he said he believed that there were "aspects of this measure which need to be reconsidered and, indeed, changed".[64] Lord Butler of Brockwell (Crossbench) argued that a combination of factors before the House in this matter meant "it would be beyond the House's constitutional powers to defeat the Government".[65] Lord Richard (Labour) spoke to reject the idea that financial privilege was at stake. He echoed arguments made in this regard and felt that Lady Hollis's amendment was "not a fatal attack upon these regulations". Were the House to support it, he argued, "We would get the best of both worlds".[66] Baroness Hayman (Crossbench) described "delaying an SI rather than killing it" as "innovative".[67] She observed that "if we have the power to kill a statutory instrument and send it back to base, surely we have the power to delay it and wait for reconsideration". She said that while she accepted the Commons had discussed the issue three times, the regulations needed further consideration.

For the Opposition, Baroness Smith of Basildon stated that it was "unusual to make such major changes in secondary legislation" and that had the Government chosen to make those changes by primary legislation "we would not be here today".[68] She said that Baroness Hollis's amendment was "the common-sense, practical approach" as the "onus is then on the Government to take the proposals away and reconsider". She explained:

> If they are committed to doing something, the Government can bring new proposals to your Lordships' House or choose to bring forward new primary legislation. However, if they failed to bring anything back at all, it would mean that they could not proceed with these cuts, would have to look for another route and would have to reconsider their policy. No Government ever have the wisdom such that they are right all the time. This

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[60] HL *Hansard*, 26 October 2015, col 991.
[61] ibid, col 996.
[62] ibid, col 998.
[63] ibid, col 1004.
[64] ibid, cols 1004–5.
[65] ibid, col 1006.
[66] ibid, col 1011.
[67] ibid, col 1016.
[68] ibid, col 1020.

> House is right to ask the other place and the Government to reconsider, to pause and to try to get it right.[69]

In respect of the effect of Baroness Hollis's amendment, Baroness Smith contended:

> We have been very clear: this is not a fatal amendment; it does not totally block the Government's plans; it allows them to reconsider. Although we do not have the right to pass a fatal amendment, we have a moral and constitutional duty to scrutinise, examine and challenge and, when a Government have clearly got it wrong, to ask them to think again.

Responding for the Government, Earl Howe, the Deputy Leader of the House, noted that it was in the "rarest of circumstances" that the House "vote[s] down or block[s] secondary legislation". These rare circumstances, he contended, "do not include this situation".[70] After taking a number of interventions, Earl Howe concluded his comments by stating that:

> For the House to withhold its consent to the regulations today would, in my submission, mean overruling the House of Commons on an issue which that House has already expressed its view on three times. In other words, it would mean doing what this House has not done for more than 100 years, which is to seek to override the primacy of the House of Commons on a financial matter. So I say respectfully to the noble Baronesses, Lady Manzoor, Lady Hollis and Lady Meacher, that there is a right way and a wrong way to challenge government policy on a matter of this kind. This is the wrong way. The right way is to table an amendment such as the one in the name of the right reverend Prelate—not that I support it, but that is the proper way of doing it—or at a suitable opportunity to table an amendment to primary legislation. Indeed, a Bill is coming to us shortly, the Welfare Reform and Work Bill, which would enable noble Lords to do exactly that, should they so choose.
>
> My contention is this. The measures in these regulations form a central plank of the programme on which the Government were elected to office in May. It is a programme that has been in the public domain for a long time. However, even if it was not and even if these were policies dreamt up by the Chancellor overnight, I respectfully say to your Lordships that this House, under its conventions, should not reject statutory instruments or seek to overturn the primacy of the other place on a matter of very sizeable public expenditure.[71]

3. Proposals and Debates about Lords Reform

Since 1997, Lords reform has largely centred on the issue of composition, rather than powers. The Labour Party fought the 1997 general election on a manifesto that said it would propose no changes to the powers of the House of Lords. A common thread through the various reform documents published by the Labour governments was that reforming the powers of the second chamber was unnecessary. This was because there was enough legislation and convention to regulate the relationship between the House of Commons and a reformed House of Lords. For example, the 2007 white paper praised the conventions that helped regulate the relationship between the two Houses. This included the convention that the

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[69] HL *Hansard*, 26 October 2015, col 1021.
[70] ibid, col 1027.
[71] ibid, cols 1029–30.

second chamber does not usually reject secondary legislation. It noted: "We make clear that we are proceeding on the basis that we would wish to see the current conventions survive into a new House".[72]

The 2008 white paper went further:

> […] the current powers of the House of Lords and the conventions that underpin them have worked well. The second chamber is likely to be more assertive, given its electoral mandate. The Government and members of the Cross-Party Group welcome this. Increased assertiveness is compatible with the continued primacy of the House of Commons, which does not rest solely or mainly in the fact that the House of Commons is an elected chamber whilst the House of Lords is not. Instead it rests in the mechanisms identified above. There is therefore no persuasive case for reducing the powers of the second chamber".[73]

However, the paper struck a note of caution with regard to delegated legislation: "The cross-party discussions raised a number of issues in relation to the arrangements for secondary legislation that the group considered could be taken forward as part of the process of Parliamentary reform more generally".[74] This represented a change from the Government's position in 2001, where it had agreed with the recommendations of the Wakeham Commission to change the delegated legislation powers of the House (see section 3.1).

There was broad continuity in the Coalition Government's approach. In answer to a written question from Lord Stoddart of Swindon about the Government's plans to reform the second chamber's powers, Lord McNally said: "The Government believe that the basic relationship between the two Houses, as set out in the Parliament Acts 1911 and 1949, should continue when the House of Lords is reformed".[75] The publication of the white paper and the draft Bill in May 2011 (Cm 8077) confirmed this view (see section 3.7).

On 26 October 2015, the Conservative Government was defeated in the House of Lords after Members voted to support two amendments to an approval motion, both of which sought to delay consideration of the Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 until specific conditions had been met. Following these votes, on 27 October 2015, the Government announced a rapid review to examine "how to protect the ability of elected governments to secure their business".[76] The review, led by Lord Strathclyde, was published in December 2015. He recommended the creation of a new procedure whereby the Lords could "invite the Commons to think again when a disagreement exists and insist on its primacy". The procedure would be set out in statute.[77]

Since 1997 there have been a number of developments concerning delegated legislation and the powers of the House of Lords, including the publication of reports that have considered the powers the current House has and those that a reformed House should have. These are described below.

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[72] HM Government, *The House of Lords: Reform*, February 2007, Cm 7027, para 4.16.
[73] Ministry of Justice, *An Elected Second Chamber: Further Reform of the House of Lords*, July 2008, Cm 7438, para 5.1.
[74] ibid, para 5.1.
[75] HL *Hansard*, 24 June 2010, col WA206.
[76] See House of Lords, Written Statement: Strathclyde Review, 17 December 2015, HLWS285 for terms of reference.
[77] Cabinet Office, *Strathclyde Review: Secondary Legislation and the Primacy of the House of Commons*, 17 December 2015, Cm 9177, p 5.

3.1 Wakeham Commission (2000)

The Royal Commission on Reform of the House of Lords chaired by Lord Wakeham reported its recommendations in January 2000.[78] In its chapter on delegated legislation, the Commission noted that "the powers of the present House of Lords in respect of statutory instruments are more absolute than those it has in respect of primary legislation".[79] Published before the two defeats in February 2000 (see section 2.2), it added however that "there has since 1968 been no serious challenge to the convention that the House of Lords does not reject statutory instruments. Its influence over secondary legislation is therefore paradoxically less than its influence over primary legislation".[80] The report gave the following assessment of the Lords' powers:

> On the face of it the present arrangements give the second chamber some powerful weapons. It can refuse to approve draft instruments (under the affirmative procedure) or strike down instruments already made (under the negative procedure).These powers should enable the second chamber to bring irresistible pressure to bear on the Government. But they are too drastic. That is the reason why they are not in practice used now and we would not suggest that a reformed second chamber should be more willing than the present House of Lords to persist in blocking an instrument altogether.[81]

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

> **Recommendation 41:** Where the second chamber votes against a draft instrument, the draft should nevertheless be deemed to be approved if the House of Commons subsequently gives (or, as the case may be, reaffirms) its approval within three months.
>
> **Recommendation 42:** Where the second chamber votes to annul an instrument, the annulment should not take effect for three months and could be overridden by a resolution of the House of Commons.
>
> **Recommendation 43:** In both cases the relevant Minister should publish an Explanatory Memorandum, giving the second chamber an opportunity to reconsider its position and ensuring that the House of Commons is fully aware of all the issues if it has to take the final decision.[82]

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

> While a reduction in the nominal power to reject Statutory Instruments absolutely, this change will in practice render the Lords more effective in assuring the quality of secondary legislation, since the House will be able to point out flaws and urge some recasting of the terms of a Statutory Instrument, without rejecting it outright. This

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[78] Royal Commission on Reform of the House of Lords, *A House for the Future*, January 2000, Cm 4534.
[79] ibid, para 7.31.
[80] ibid.
[81] ibid, para 7.33.
[82] ibid, para 7.37.

provides a parallel power to that in main legislation enabling the Lords to ask, through delay, the Government to reflect again, but ultimately not to frustrate a legislative proposal endorsed by the Commons.[83]

3.2 Merits of Statutory Instruments Committee (2003)

In light of the growing volume and importance of statutory instruments, the Wakeham Commission also recommended that a sifting mechanism (either a joint committee of both Houses, or a mechanism in the second chamber) should be established to look at the significance of every instrument subject to parliamentary scrutiny and to draw attention to those which merited further debate or consideration (Recommendations 37 and 38).

Following this, in April 2002, a group established by the Leader of the House to consider how the working practices of the House of Lords could be improved recommended that "a new Lords select committee should be established to examine the merits of every Statutory Instrument subject to parliamentary scrutiny".[84] The House agreed the terms of reference for a new Merits of Statutory Instruments Committee in June 2003.[85] See section 3.9 for information as to the Committee's further development.

3.3 Joint Committee on Conventions (2006)

The Joint Committee was set up in May 2006, chaired by Lord Cunningham of Felling (Labour), to consider "the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation", including conventions on delegated legislation.[86] The Committee was asked to accept the primacy of the House of Commons in doing so. Chapter 6 laid out the Committee's examination of the conventions on delegated legislation. The Joint Committee concluded this assessment by stating that "the House of Lords should not regularly reject Statutory Instruments, but that in exceptional circumstances it may be appropriate for it to do so. This is consistent with past practice, and represents a convention recognised by the opposition parties".[87] It added: "There are situations in which it is consistent both with the Lords' role in Parliament as a revising chamber, and with Parliament's role in relation to delegated legislation, for the Lords to threaten to defeat an SI". It listed these as:

- Where special attention is drawn to the instrument by the Joint Committee on Statutory Instruments or the Lords Select Committee on the Merits of SIs;
- When the parent Act was a "skeleton Bill", and the provisions of the SI are of the sort more normally found in primary legislation;
- Orders made under the Regulatory Reform Act 2001, remedial Orders made under the Human Rights Act 1998, and any other Orders which are explicitly of

[83] HM Government, *House of Lords Reform—Completing the Reform*, November 2001, Cm 5291, para 33.
[84] Report from the Leader's Group appointed to consider how the working practices of the House can be improved, and to make recommendations, April 2002, HL Paper 111 of session 2001–02, para 31(d).
[85] HL *Hansard*, 16 June 2003, cols 527–9.
[86] Joint Committee on Conventions, *Conventions of the UK Parliament*, 6 November 2006, HL Paper 265-I of session 2005–06, p 3.
[87] ibid, para 227.

the nature of primary legislation, and are subject to special "super-affirmative" procedures for that reason;

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

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

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

The Committee concluded that: "The problem with the present situation is that the Lords' power in relation to SIs is too drastic. The picture would be very different if Parliament had power to amend SIs".[88]

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

> […] the reality [is] that a substantially changed House—particularly one with an electoral mandate—would, of necessity, want to re-examine its working practices. It would feel, given the backing those elections would give it, that it would have every right to do so. Speaking as a politician, I would never want to be elected to any institution, at any level, where I could not have some say in how that institution behaved and conducted its business. I do not suppose that even the ingenuity of party lists can come up with clones from all the political parties who would simply come here to accept the status quo. That is not the reality of political life. Sadly, we would also see the demise of the Cross Benches, to say nothing of the Bishops. Consideration of those powers and responsibilities would inevitably be on the agenda.[89]

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

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

[88] Joint Committee on Conventions, *Conventions of the UK Parliament*, 6 November 2006, HL Paper 265-I of session 2005–06, para 229.
[89] HL *Hansard*, 16 January 2007, cols 581–2.

> Order on the grounds it dislikes the policy, if the Order has in fact been properly made under the procedure set out.[90]

The Government said it hoped to see the conventions carry on in a reformed second chamber. However, it stated: "The Government will consider carefully whether any legislative changes in relation to secondary legislation are necessary, but hopes that they are not".[91]

3.4 New Procedure (2009)

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

> We have considered a proposal by Baroness Thomas of Winchester for a new procedure to enable negative instruments to be debated on a neutral "take note" motion. At present such instruments are normally debated on overtly hostile motions, either "fatal" (ie a "prayer" to annul the instrument) or "non-fatal" (ie a critical motion or a motion calling upon Her Majesty's Government to revoke the instrument). Baroness Thomas of Winchester suggests that a "take note" motion should, where appropriate, include a reference to the relevant report of the Merits of Statutory Instruments Committee.

We support this proposal, which reflects the fact that Members of the House may well wish on occasion to debate the issues raised by a negative instrument, and to scrutinise Government policy, without wishing to appear to oppose the instrument itself.[92]

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

> Instead we recommend that where a neutral "take note" motion has been tabled with regard to an instrument, but another Member then tables a prayer or some other substantive motion on the same instrument, the motion inviting a decision of the House should take precedence. The Member tabling the second motion should, as a matter of courtesy, consult the Member who has previously tabled the "take note" motion, but we are clear that the House should under no circumstances be deprived of its right to consider a substantive motion on secondary legislation.[93]

3.5 Lord Strathclyde-Lord Scott Correspondence (2010)

In a letter to Lord Strathclyde, the then Leader of the House, on 20 July 2010, Lord Scott of Foscote (Crossbench) enquired about Lord Strathclyde's recent assertion at a Crossbench meeting that "it had become an important convention of the House that the House would not

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[90] HM Government, *Government Response to the Joint Committee on Conventions' Report of Session 2005–06: Conventions of the UK Parliament*, December 2006, Cm 6997, para 39.
[91] ibid, para 47.
[92] House of Lords Procedure Committee, *Rotation Rule, Debating Negative Instruments, Select Committee Powers*, February 2009, HL Paper 39 of session 2008–09, para 4.
[93] ibid, para 10.

vote down a statutory instrument".[94] In addition Lord Scott also asked whether it was possible for the House to have the power to suggest revisions to, and be able to delay, delegated legislation.

In reply, on 29 July 2010, Lord Strathclyde suggested this idea should be forwarded to the review of working practices. He also confirmed in his letter it was the Coalition Government's view that a convention not to reject delegated legislation existed. He accepted the House has a power to reject such legislation but reiterated the Government's belief that a convention existed that limited its use. He added:

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

On 23 September 2010, Lord Scott wrote in reply:

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

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

> It is right that the House has the power to defeat SIs. It is a potential constitutional safeguard. But the House has a number of powers that it rarely exercises. It may reject

[94] All of the correspondence detailed is included in this section is detailed in the report by the Merits of Statutory Instruments Committee, *Correspondence: Local Land Charges (Amendment) Rules 2010*, 21 October 2010, HL Paper 40 of session 2010–12, Appendix 5.

> a supply Bill that is not certified as a money Bill, but has long stayed its hand. I propose no change in that.
>
> On SIs, as I observed to Lord Scott, the House normally chooses to support a non-fatal motion. That is in my personal view tantamount to a convention; this was illustrated in the case of the recent Royal Parks Regulations, when the House opposed a fatal motion, but supported a non-fatal one on the same subject. It was also illustrated on 22 March in the case of the Norwich and Norfolk and Exeter and Devon Structural Changes Orders, when the House rejected fatal amendments to the approval motions for the two Orders, but supported non-fatal amendments to the same motions. Where the House has departed from this custom, the episodes were clearly not the norm. Indeed, their rarity suggests the convention to which I referred has proved highly robust over the decades, and the House has rightly exercised—as both Labour and Conservative parties chose to in opposition—the utmost restraint in using its power to reject.[95]

3.6 Working Practices Report (2011)

A Leader's Group, chaired by Lord Goodlad, was appointed in July 2010 to "consider the working practices of the House and the operation of self-regulation; and to make recommendations".[96]

The Group identified scrutiny of legislation, including delegated legislation, as one of the House of Lords' core functions, and noted that both the volume and importance of delegated legislation has continued to grow. It judged that: "The House of Lords has good reason to be proud of the quality of its scrutiny of delegated legislation".[97] However, the group questioned Lord Strathclyde's assertion about the existence of a convention that the House of Lords does not reject statutory instruments that the House of Commons has, or would have, approved. Pointing out that the Commons last rejected a statutory instrument in 1979, and that this may even have been by mistake, the Leader's Group argued that:

> […] such a convention, linked as it is to the decisions of the House of Commons, which has not rejected a SI in over 30 years, would be tantamount to a convention that Parliament as a whole does not reject Statutory Instruments. This would defeat the purpose of subjecting SIs to parliamentary control in the first place.[98]

Although the House of Lords has typically exercised self-restraint in rejecting delegated legislation, the Leader's Group believed that the power to vote against a statutory instrument, and force the Government to think again, was "an efficient and valuable form of scrutiny".[99] The Group endorsed the spirit of the proposal made by the Wakeham Commission in 2000 that a reformed second chamber should possess a non-fatal, delaying power in respect of SIs, noting that:

> If the House's powers over secondary legislation were less draconian, the House might be encouraged to use them more often, forcing the Government to rethink its policy

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[95] Merits of Statutory Instruments Committee, *Conventions of the House Relating to Secondary Legislation*, 11 November 2010, HL Paper 52 of session 2010–12, Appendix 1.
[96] HL *Hansard*, 27 July 2010, col WS147.
[97] *Report of the Leader's Group on Working Practices*, HL Paper 136 of session 2010–12, April 2011, Chapter 3, para 142.
[98] ibid, para 147.
[99] ibid, para 150.

> and possibly to amend the proposed legislation. An apparent sacrifice of the House's powers might lead to more effective scrutiny. We also consider that such an approach would be more consistent with the House's role as a revising chamber ultimately respecting the primacy of the House of Commons.[100]

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

> We recommend that the House should adopt a resolution asserting its freedom to vote on delegated legislation, and affirming its intention to use such votes to delay, rather than finally to defeat, such legislation. Such a resolution would establish the House's role as a revising chamber in respect of delegated as well as primary legislation.
>
> We recommend that the resolution should contain the following elements:
>
> - That the House asserts its freedom to decline to approve any draft affirmative instrument, or to pass a prayer to annul any negative instrument, laid before it by the Government;
> - That the purpose of the House's use of this power is to enable the Government of the day to reconsider the policy set out in the instrument;
> - That in the event that the House has declined to approve an affirmative instrument, and the Government has laid a substantially similar draft instrument, and this instrument has been approved by the House of Commons, the House will agree to the approval motion without amendment;
> - That in the event that the House has passed a prayer to annul a negative instrument, and the Government has laid a substantially similar instrument, the House will not vote on a prayer to annul the second instrument.[101]

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

In May 2011, the Coalition Government published its House of Lords Reform Draft Bill.[102] Neither the draft Bill nor the accompanying white paper specified any changes to the second chamber's role in scrutinising or passing secondary legislation, but in the subsequent debate on the draft Bill, several Members brought up points relating to delegated legislation.

The white paper stated that: "The Government believes that the powers of the second chamber and, in particular, the way in which they are exercised should not be extended and the primacy of the House of Commons should be preserved".[103] This was questioned during the debate, as some Members argued that, when it comes to secondary legislation, the House of Commons does not have primacy—Baroness Thomas of Winchester (Liberal Democrat) noted

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[100] *Report of the Leader's Group on Working Practices*, HL Paper 136 of session 2010–12, April 2011, Chapter 3, para 152.
[101] ibid, paras 27–8.
[102] HM Government, *House of Lords Reform Draft Bill*, May 2011, Cm 8077.
[103] ibid, p 11.

the Lords' "unfettered power over most delegated legislation",[104] and Lord Hunt of Kings Heath (Labour) said that the Lords formally had "equal status in approving delegated legislation".[105] While Lord Hunt accepted that in reality "the formal position has come to be moderated by conventions reflecting the primacy of the Commons", he believed that "the moment that elected Members walk into this chamber, those conventions will evaporate".

Lord Williamson of Horton (Crossbench) and Lord Brooke of Alverthorpe (Labour) agreed with him that an elected second chamber would be more assertive about challenging the Government on statutory instruments than the House of Lords as currently composed. Lord Williamson said:

> Our references—oh so discrete references—to ping-pong would need to be changed to kung-fu, or all-in wrestling, or some other phrase that would better describe the relationship between the two Houses, at least on primary legislation.
>
> I think that that would extend also to subsidiary, secondary legislation […] What do we do? We pass Motions of regret, and I vote for them—but what [impact] do they have? They have the impact of a feather duster. If the new House of Lords were largely elected, some at least of those SIs would be challenged or, more probably, simply deleted.[106]

Lord Brooke of Alverthorpe observed:

> The noble Lord, Lord McNally, knows himself what you can [do] with an SI in this House: you can have a fatal vote on an SI and you can change completely a government policy—as indeed Members in this House did on the Gambling Bill when they threw out the SI. When you have elected people in the chamber, can you leave the freedom for them to do that? In no time you will be in trouble.[107]

3.8 New Procedure (2011)

The procedure for rejecting delegated legislation in the Lords was updated again in July 2011. A Procedure Committee report recommended a facility for reasons to be added to prayers to annul negative instruments.[108] The Committee said:

> We believe that it would be helpful to Members and to the Government if reasons could be appended to prayers to annul negative instruments. However, we emphasise that it is for ministers to decide how to exercise powers delegated to them by Parliament, subject to whatever form of parliamentary control is set out in the primary legislation. A prayer to annul a negative instrument, if agreed to, is final and irreversible. The reasons added to such a motion should be just that—reasons explaining why it has been tabled. It would be undesirable, and indeed constitutionally inappropriate, for further conditions or requirements to be added to the motion, for instance calls that the Government should take certain steps before re-laying the instrument.[109]

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[104] HL *Hansard*, 21 June 2011, col 1207.
[105] HL *Hansard*, 22 June 2011, col 1371.
[106] ibid, cols 1284–5.
[107] ibid, col 1352.
[108] House of Lords Procedure Committee, *6th Report*, 8 July 2011, HL Paper 170 of session 2010–12.
[109] ibid, p 3.

The report was agreed by the House on 19 July 2011.[110]

3.9 Introduction of the Secondary Legislation Scrutiny Committee (2012)

On 26 March 2012, the Procedure Committee recommended that the title and terms of reference of the Merits of Statutory Instruments Committee should be changed to reflect the Committee's new responsibility for scrutiny of public bodies orders. The change had been requested following a letter from Lord Goodlad, then Chair of the Merits of Statutory Instruments Committee, to the Chairman of Committees, which stated:

> As you know, the Merits Committee has recently taken on a new function scrutinising public bodies orders under the procedures laid out in the 2011 Public Bodies Act. As a result of our discussions about our working practices and how we would approach this new scrutiny role, I am writing to seek the Procedure Committee's approval to rename the Committee with effect from the start of the next session as the "Secondary Legislation Scrutiny Committee"; and to make two small changes to the Committee's Terms of Reference.
>
> The Merits of Statutory Instruments Committee (or the "Merits Committee" as it is usually known) was named to reflect its original terms of reference: to consider instruments and draft instruments laid before the House with a view to determining whether or not to draw the instruments to the special attention of the House; or in shorthand, to look at the "merits of statutory instruments". This specific phrase appears only in paragraph (5) of our Terms of Reference which gives the Committee the ability to undertake general enquiries.
>
> In carrying out our new role of scrutiny of public bodies orders we take a different approach to that taken on other delegated legislation. We do not look at the "merits" of public bodies orders, rather we are tasked with assessing such orders against a series of statutory tests set out in the 2011 Public Bodies Act and deciding whether to trigger the enhanced scrutiny procedure. We also take the view that the title "Merits Committee" is not altogether helpful in explaining publicly the role the Committee plays in the scrutiny of a wide range of statutory instruments and other items of delegated legislation which it falls to us to consider. The Committee chose the name Secondary Legislation Scrutiny Committee as transparent and easy to explain.[111]

The report was agreed to by the House on 24 April 2012.[112]

3.10 Joint Committee on the Draft House of Lords Reform Bill (2012)

The Joint Committee on the Draft House of Lords Reform Bill was appointed by the House of Commons on 23 June 2011 and by the House of Lords on 6 July 2011 to examine the Draft

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[110] HL *Hansard*, 19 July 2011, col 1201.
[111] House of Lords Procedure Committee, *Merits of Statutory Instruments Committee*, 26 March 2012, HL Paper 283 of session 2010–12, p 4.
[112] HL *Hansard*, 24 April 2012, col 1684.

House of Lords Reform Bill and report to both Houses by 27 March 2012. Its report, *Draft House of Lords Reform Bill*, noted:

> At the heart of the controversy around the draft Bill lies the effect of electing a reformed chamber on current constitutional arrangements and, in particular, the balance of power between the two Houses. At present the House of Lords has a wide range of powers over legislation—it can initiate, amend and reject bills […] The House of Lords also has the capacity to reject delegated legislation.
>
> Because the House of Lords is not elected, however, these powers are used very sparingly indeed. If the House chose to use its powers it would be one of the most powerful second chambers in the world. The restraint it presently exercises, as a consequence of its nonelected status, is expressed in the conventions which govern relations between the two Houses.
>
> The issue therefore is how the practice of the Lords will change once it is elected—whether a reformed house will continue exercise restraint and whether the conventions will survive in their current form.[113]

During the Committee's inquiry, several commentators suggested introducing additional statutory provision emphasising the primacy of the House of Commons.[114] One proposal for achieving this was by replacing of the power of the Lords to reject statutory instruments with a power to delay. The Committee rejected this option, citing evidence from David Beamish, Clerk of the Parliaments, about its "workability and practical effects".[115]

3.11 House of Lords Reform Bill (2012)

The House of Lords Reform Bill received its first reading in the House of Commons on 27 June 2012. It included no references to chamber's role in scrutinising or passing secondary legislation. The Bill failed to proceed through its stages in the House of Commons and did not reach the House of Lords.[116]

3.12 Labour Peers Working Group (March 2014)

In March 2014, the Labour Peers' Working Group published *A Programme for Progress: The Future of the House of Lords and its Place in a Wider Constitution*. The report examined the issue of reform of the House of Lords, and included recommendations regarding the powers of the Lords to reject delegated legislation:

> We recommend that the House of Lords agrees proposals to enable the tabling of a motion deferring further consideration of a particular secondary measure for three months, which would require the Government to reflect upon the arguments against

[113] Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill*, 23 April 2012, HL Paper 284-I of session 2010–12, p 5.
[114] ibid, pp 20–1.
[115] ibid, p 21.
[116] The House of Lords Reform Bill received its second reading in the House of Commons on 9 and 10 July 2012; for more information see: House of Lords Library Note, *House of Lords Reform 2010–15*, 25 March 2015.

> the measure, and if necessary to reconsider it. This would replace the present power to reject such legislation completely.[117]

A subsequent debate on the report was held in the House of Lords on 19 June 2014 on the motion to 'take note'. Introducing the report the co-chair of the working group, Baroness Taylor of Bolton (Labour) noted:

> We also make a proposal about secondary legislation in this House because the current situation of "accept or reject" causes a great deal of frustration. We therefore suggest that there should be a three-month deferral opportunity so that Members can make the Government think again when there is serious concern about an SI.[118]

During a wide ranging debate the House examined proposals for the size of the House and its composition. Lord Dubs (Labour) welcomed the proposal to introduce delaying powers to consideration of statutory instruments:

> All of us when in opposition have wrestled with disliking an order and not wishing, as an unelected House, to actually kill it; we have all had that difficulty. So a three-month delay period would be sensible. [119]

These sentiments were echoed by Lord Hunt of Kings Heath, Shadow Deputy Leader of the House of Lords, who noted:

> The irony is that we have an absolute veto on secondary legislation but we hesitate to use it because we are not elected. Giving ourselves a delaying power—I think that we need to pick up the issue of amendments—would give the House far greater scrutiny powers in relation to secondary legislation.[120]

Lord Rooker (Labour) proposed giving the second chamber the power to amend secondary legislation, commenting "If we give the second chamber powers to amend SIs, I think we should remove the right to reject a statutory instrument in exchange, so there is a quid pro quo".[121]

Lord Phillips of Sudbury (Liberal Democrat) also suggested the Lords should have a greater power to amend secondary legislation, stating:

> We should do more to make our oversight of secondary legislation, which is much greater in volume than primary legislation, more effective. Our inability to amend secondary legislation is weird. Is there another legislature in the world that prevents such amendments? It was only dreamt up to prevent the House of Lords being an obstruction to the smooth passage of Commons legislation, but that is not good enough. In fact, some noble Lords may not know that it is possible to put in primary legislation a provision that allows amendment of secondary legislation to be built on the back of that primary legislation. It has happened in only six or 10 statutes—I remember the India Act of the 1920s, for example. We should put in all major legislation, under which huge powers are left to secondary legislation, a power for Parliament to amend it.

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[117] Labour Peers' Working Group, *A Programme for Progress: The Future of the House of Lords and its Place in a Wider Constitution*, March 2014, p 6.
[118] HL *Hansard*, 19 June 2014, col 926.
[119] ibid, col 938.
[120] ibid, col 983.
[121] ibid, col 943.

> I also agree with the proposal for a three-month delay, which need not be at the expense of rejecting a piece of secondary legislation altogether. We have done that only half a dozen times in our history.[122]

3.13 Hansard Society Report (2014)

In November 2014, the Hansard Society published a report, *The Devil is in the Detail: Parliament and Delegated Legislation*. The report detailed the delegated legislation process and explored how delegated legislation evolved as it progressed through each of the Houses of Parliament; it concluded:

> How Parliament deals with this legislation is unsatisfactory. The way in which delegation and its scrutiny is treated is neither systematic nor consistent.[123]

With reference to the House of Lords the report noted that:

> The House of Lords has the greatest influence on delegated powers and legislation—particularly through the Delegated Powers and Regulatory Reform Committee (DPRRC)—but voluntarily blunts that influence by its reluctance to reject SIs. Its committees are more engaged in the process, more influential with government, and Peers generally have more appetite for the detail and technical scrutiny required than do MPs.[124]

The report recommended an independent inquiry into the legislation making process for both primary and secondary legislation. Were an inquiry not held, the report suggested a number of areas where reforms could be considered to "ameliorate the problems with delegated legislation".[125] The suggested reforms included:

> The House of Lords should make greater, albeit judicious, use of its power of veto in the future, particularly in respect of any SIs emerging from framework legislation that cannot be effectively scrutinised at the primary bill stage. This would be in keeping with the House of Lords' revising function and its power of delay […]
>
> The remit of the Delegated Powers and Regulatory Reform Committee should be changed so that it can report on bills immediately, when they begin their passage through one of the Houses, whether that be Lords or Commons. This would push at the commonly understood boundaries of bi-cameral scrutiny and require an increase in committee resources, but it would ensure that the House of Commons is better advised on the nature of delegated powers in bills than is the case at present […]
>
> The House of Commons should observe the 'scrutiny reserve' that exists in the House of Lords in relation to decisions of the Joint Committee on Statutory Instruments (JCSI). The House should not debate an SI before the Committee has concluded its deliberations on an instrument.[126]

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[122] HL *Hansard*, 19 June 2014, col 978.
[123] Hansard Society, *The Devil is in the Detail: Parliament and Delegated Legislation*, November 2014, p 3.
[124] ibid, p 7.
[125] ibid, p 8.
[126] ibid, p 9.

3.14 Strathclyde Review (2015)

On 26 October 2015, the Government was defeated in the House of Lords after Members voted to support two amendments to an approval motion, both of which sought to delay consideration of the Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 until certain conditions were met. On 27 October 2015, the Government announced a rapid review to examine "how to protect the ability of elected governments to secure their business".[127] The same day a motion in the Lords was narrowly defeated which would have annulled the Electoral Registration and Administration Act 2013 (Transitional Provisions) Orders 2015.[128]

The Strathclyde Review: Secondary Legislation and The Primacy of the House of Commons, published on 17 December 2015, aimed "to consider how more certainty and clarity could be brought" to the passage of statutory instruments through Parliament. It included background information about statutory instruments, their scrutiny in Parliament and relations between the two Houses. Lord Strathclyde noted that although "in the course of my deliberations, I have received many letters with ideas on composition of the House of Lords […] this issue did not form part of the Terms of Reference of my review [and] I have not commented on them"; he pointed to work currently being undertaken by the Lord Speaker, Leaders from several political parties in the Lords and the Campaign for an Effective Second Chamber on these issues.[129]

The review suggested three options which might "provide the House of Commons with a decisive role on statutory instruments":

- **Option one** proposed the removal of the House of Lords from the statutory instrument procedure altogether. This had the benefit of providing simplicity and clarity. However, it was argued that the proposal would "be controversial and would weaken parliamentary scrutiny of delegated legislation and could make the passage of some primary legislation more difficult".[130]

- **Option two** proposed maintaining the role of the House of Lords in relation to statutory instruments but sought to "codify the convention" on House of Lords powers. In this option the House, either in a resolution or in standing orders, would make clear "the restrictions on how its power to withhold approval or to annul should be exercised in practice and to revert to a position where the veto is left unused". The review stated that "agreement would have to be reached on what the resolution should say, and that would not be straightforward in the light of an apparent absence of consensus on what the convention currently requires".[131]

  It concluded that a resolution of the House could be superseded, or standing orders could be suspended, by further decisions of the House, and argued that past experience had demonstrated "that no agreement on vague principles contained in a resolution of

[127] Nigel Morris and Charlie Cooper, 'Tax Credits: David Cameron Announces Urgent Review of House of Lords' Powers', *Independent*, 27 October 2015.
[128] HL *Hansard*, 27 October 2015, cols 1095–1136.
[129] Cabinet Office, *Strathclyde Review: Secondary Legislation and the Primacy of the House of Commons*, 17 December 2015, Cm 9177, p 22.
[130] ibid p 5.
[131] ibid, p 17.

the House could safely be relied on in future".[132] The review therefore concluded that option two "would not provide certainty of application".[133]

- **Option three** would create a procedure whereby the Lords could "invite the Commons to think again when a disagreement exists and insist on its primacy". The procedure would be set out in statute.[134]

The report recommended the third option, arguing that this would allow the Government certainty and "preserve and enhance the role of the House of Lords to scrutinise secondary legislation by providing for such legislation to be returned to the Commons. In the event of a further Commons vote to approve a statutory instrument, it would enable the Commons to play a decisive role".[135] The report also recommended that "in order to mitigate against excessive use of the new process" the Government should take steps to ensure that primary legislation contains "the appropriate level of detail and that too much is not left for implementation by statutory instrument".

In addition, the report proposed a further review, with the involvement of the House of Commons Procedure Committee, to consider the circumstances where statutory instruments should be subject to Commons-only procedures, "especially on financial matters, with a view to establishing principles that can be applied in future".

Further information, and reaction to the review's recommendations, can be found in the House of Lords Library, *Strathclyde Review: Secondary Legislation and the Primacy of the House of Commons* (23 December 2015).

[132] Cabinet Office, *Strathclyde Review: Secondary Legislation and the Primacy of the House of Commons*, 17 December 2015, Cm 9177, p 18.
[133] ibid, p 5.
[134] ibid, p 5.
[135] ibid, p 5.

Appendix 1: Statistical Information, 1950–2015

Table 1: Number of Divisions on Delegated Legislation by Calendar Year, 1950–2015
(up to 31 December 2015)

	Fatal Motion	Non-Fatal Motion	Total
1950			
1951			
1952			
1953			
1954			
1955	1		1
1956			
1957			
1958	1		1
1959			
1960			
1961			
1962			
1963	1	1	2
1964			
1965	2		2
1966	2		2
1967	2		2
1968	1		1
1969	1		1
1970			
1971			
1972	1		1
1973	2	2	4
1974			
1975			
1976			
1977	1	2	3
1978	1	1	2
1979	3		3
1980	6		6
1981	1		1
1982	2		2
1983		1	1

	Fatal Motion	Non-Fatal Motion	Delaying Motions	Total
1984		1		1
1985		2		2
1986		2		2
1987				
1988				
1989				
1990		1		1
1991		1		1
1992	1	1		2
1993		3		3
1994	2	3		5
1995	3	4		7
1996	6	3		9
1997	1			1
1998	1	1		2
1999				
2000	2			2
2001	5	3		8
2002		1		1
2003	2	7		9
2004	2	3		5
2005		2		2
2006	3	3		6
2007	5	4		9
2008	1	3		4
2009	2	5		7
2010	5	5		10
2011		5		5
2012	1	3		4
2013	1	5		6
2014		3		3
2015	4	4	2	10

Total 1950–2015	**75**	**85**	**2**	**162**

This table excludes one division in 1967 where there was no quorum in the Chamber (a second division on the order was held two days later), one division in 2002 where there was no quorum in the Chamber, and a prayer to annul a set of regulations in 1999 which was negatived on question with no division. In addition, a duplicate division from November 2003 is excluded, as is a July 2009 division on a group of delegated legislation and a December 2010 division on a general motion. An amendment to a motion to annul, moved by Lord Kennedy of Southwark on 27 October 2015, is excluded, as the vote related to an amendment to the motion to annul, rather than to the statutory instrument itself.

For more details please see Appendix 2.

Table 2: Number of Divisions on Delegated Legislation since 1997 by Parliamentary Session
(up to 31 December 2015)

Session	Fatal Motion	Non-Fatal Motion	Delaying Motion	Total
1997–98	2	1		3
1998–99				
1999–00	2			2
2000–01	4	1		5
2001–02	1	3		4
2002–03	2	6		8
2003–04	2	3		5
2004–05		2		2
2005–06	2	4		6
2006–07	6	4		10
2007–08	1	3		4
2008–09	2	4		6
2009–10	4	5		9
2010–12	1	7		8
2012–13	2	7		9
2013–14		2		2
2014–15	1	1		2
2015–16	3	4	2	9
Total 1997–98–2015–16	**35**	**57**	**2**	**94**

This table excludes one division in 1967 where there was no quorum in the Chamber (a second division on the order was held two days later), one division in 2002 where there was no quorum in the Chamber, and a prayer to annul a set of regulations in 1999 which was negatived on question with no division. In addition, a duplicate division from November 2003 is excluded, as is a July 2009 division on a group of delegated legislation and a December 2010 division on a general motion.

An amendment to a motion to annul, moved by Lord Kennedy of Southwark on 27 October 2015, is excluded as the vote related to an amendment to the motion to annul, rather than to the statutory instrument itself.

For more details please see Appendix 2.

Table 3: Number of Government Defeats on Delegated Legislation by Calendar Year, 1950–2015
(up to 31 December 2015)

	Fatal Motion	Non-Fatal Motion	Total
1950			
1951			
1952			
1953			
1954			
1955			
1956			
1957			
1958			
1959			
1960			
1961			
1962			
1963			
1964			
1965			
1966			
1967			
1968	1		1
1969			
1970			
1971			
1972			
1973			
1974			
1975			
1976			
1977		1	1
1978		1	1
1979			
1980			
1981			
1982			
1983		1	1

	Fatal Motion	Non-Fatal Motion	Delaying Motion	Total
1984				
1985		1		1
1986				
1987				
1988				
1989				
1990				
1991				
1992		1		1
1993		2		2
1994				
1995		1		1
1996				
1997				
1998		1		1
1999				
2000	2			2
2001				
2002				
2003		4		4
2004				
2005		2		2
2006				
2007	1	1		2
2008				
2009		3		3
2010		3		3
2011				
2012	1			1
2013		3		3
2014				
2015		2	2	4
Total 1950–2015	**5**	**27**	**2**	**34**

This table excludes a Government defeat by Baroness Hanham on 13 July 2009. An amendment to the motion to annul, moved by Lord Kennedy of Southwark on 27 October 2015, is also excluded, as the vote related to an amendment to the motion to annul, rather than to the statutory instrument itself.

For further information please see Appendix 2.

Table 4: Number of Government Defeats on Delegated Legislation since 1997 by Parliamentary Session
(up to 31 December 2015)

Session	Fatal Motion	Non-Fatal Motion	Delaying Motion	Total
1997–98		1		1
1998–99				
1999–00	2			2
2000–01				
2001–02				
2002–03		4		4
2003–04				
2004–05		1		1
2005–06		1		1
2006–07	1	1		2
2007–08				
2008–09		2		2
2009–10		4		4
2010–12				
2012–13	1	3		4
2013–14				
2014–15				
2015–16		2	2	4
Total 1997–98 to 2015–16	**4**	**19**	**2**	**25**

This table excludes a Government defeat on a motion by Baroness Hanham on 13 July 2009. An amendment to a motion to annul, moved by Lord Kennedy of Southwark on 27 October 2015, is also excluded, as the vote related to an amendment to the motion to annul, rather than to the statutory instrument itself.

For further information please see Appendix 2.

Appendix 2: Details of Divisions on Delegated Legislation, 1997–2015

(up to 31 December 2015)

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	4 November 1997 Earl Russell (Liberal Democrat)	1997–98	Social Security (Lone Parents) (Amendments) Regulations 1997 Prayer to annul	Contents 48 Not contents 100	
Labour	27 January 1998 Lord Willoughby de Broke (Conservative)[136]	1997–98	Beef Bones Regulations 1997 Motion to resolve, to revoke		Contents 207 Not contents 97 **Government defeat**
Labour	23 July 1998 Lord Ackner (Crossbench)	1997–98	Conditional Fee Agreements Order 1998 Amendment to motion, to withdraw	Contents 24 Not contents 55	
Labour	18 February 1999 Baroness Blatch (Conservative)	1998–99	Education (School Performance Information) (England) (Amendment) Regulations 1998 Prayer to annul	Motion negatived, no division[137]	
Labour	22 February 2000 Lord Mackay of Ardbrecknish (Conservative)	1999–00	Greater London Authority (Election Expenses) Order 2000 Amendment to motion of approval, to decline	Contents 215 Not Contents 150 **Government defeat**	

[136] Lord Willoughby de Broke became a member of the UK Independence Party in 2007.

[137] Baroness Blatch tried to withdraw the motion, Lord Lucas objected; the motion was then negatived without division, see HL *Hansard*, 18 February 1999, cols 823–30.

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	22 February 2000 Lord Mackay of Ardbrecknish (Conservative)	1999–00	Greater London Authority Elections Rules 2000 Motion to annul	Contents 206 Not Contents 143 **Government defeat**	
Labour	22 January 2001 Lord Alton of Liverpool (Crossbench)	2000–01	Human Fertilisation and Embryology (Research Purposes) Regulations 2000 Amendment to motion of approval, to decline	Contents 92 Not Contents 212	
Labour	29 January 2001 Baroness Young (Conservative)	2000–01	Prescription only Medicines (Human Use) Amendment (No. 3) Order 2000 Prayer to annul	Contents 95 Not Contents 177	
Labour	8 February 2001 Lord Dixon-Smith (Conservative)	2000–01	Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Prayer to annul	Contents 63 Not Contents 116	
Labour	15 February 2001 Lord Cope of Berkeley (Conservative)	2000–01	Political Parties, Elections and Referendums Act 2000 (Disapplication of Part IV for Northern Ireland Parties, etc.) Order 2001 Amendment to motion of approval, to regret		Contents 112 Not Contents 154

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	20 March 2001 Baroness Miller of Hendon (Conservative)	2000–01	Weights and Measures (Metrication Amendments) Regulations 2001 Prayer to annul	Contents 76 Not Contents 115	
Labour	23 October 2001 Lord Kingsland (Conservative)	2001–02	Financial Services and Markets Tribunal Rules 2001 Motion to withdraw rules		Contents 129 Not Contents 140
Labour	19 November 2001 Lord McNally (Liberal Democrat)	2001–02	Human Rights Act 1998 (Designated Derogation) Order 2001 Amendment to motion of approval, to decline	Contents 69 Not Contents 148	
Labour	29 November 2001 Lord Kingsland (Conservative)	2001–02	Damages (Personal Injury) Order 2001 Motion to revoke		Contents 43 Not Contents 106
Labour	15 May 2002 Countess of Mar (Crossbench)	2001–02	TSE (England) Regulations 2002 Prayer to annul and amendment[138]		Contents 95 Not Contents 16

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

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	24 July 2002 Lord McIntosh of Haringey (Labour)	2002–03	Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 Motion to approve[139] Contents 13 Not contents 2 No quorum		
Labour	27 January 2003 Baroness Blatch (Conservative)	2002–03	Education Act 2002 (Modification of Provisions) (No. 2) (England) Regulations 2002 Prayer to annul	Contents 70 Not Contents 130	
Labour	11 February 2003 Lord Smith of Clifton (Liberal Democrat)	2002–03	Strategic Investment and Regeneration of Sites (Northern Ireland) Order 2003 Amendment to motion of approval, to regret		Contents 50 Not Contents 134
Labour	17 June 2003 Lord Lester of Herne Hill (Liberal Democrat)	2002–03	Employment Equality (Sexual Orientation) Regulations 2003 Motion to withdraw moved *before* motion to approve	Contents 50 Not Contents 85	

[139] During the vote on the motion by Lord McIntosh of Haringey there was not quorum in the Chamber, the division is therefore not included in Tables 1 and 2.

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	30 June 2003 Earl Howe (Conservative)	2002–03	Food Supplements (England) Regulations 2003 Motion to revoke		Contents 132 Not Contents 79 **Government defeat**
Labour	12 November 2003 Lord Hodgson of Astley Abbotts (Conservative)	2002–03	Misuse of Drugs Act 1971 (Modification) (No. 2) Order 2003 Amendment to motion for approval, to regret		Contents 78 Not Contents 61 **Government defeat**
Labour	12 November 2003 Baroness Scotland of Asthal (Labour)	2002–03	Misuse of Drugs Act 1971 (Modification) (No. 2) Order 2003 Whether the original Motion, as amended, shall be agreed to[140] Content 63 Not content 37		
Labour	13 November 2003 Earl of Northesk (Conservative)	2002–03	Regulation of Investigatory Powers (Communications Data) Order 2003 Amendment to motion for approval		Contents 92 Not Contents 108

[140] Following the Government defeat on Lord Hodgson of Astley Abbotts amendment a further division was held on whether the original motion, as amended by Lord Hodgson's amendment, be agreed. This was passed but has not been included in Tables 1 and 2, as the motion included identical wording to the original division.

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	13 November 2003 Lord Phillips of Sudbury (Liberal Democrat)	2002–03	Regulation of Investigatory Powers (Communications Data) Order 2003 Amendment to motion for approval		Contents 126 Not Contents 99 **Government defeat**
Labour	13 November 2003 Baroness Blatch (Conservative)	2002–03	Regulation of Investigatory Powers (Communications Data) Order 2003 Amendment to motion for approval		Contents 120 Not Contents 98 **Government defeat**
Labour	16 December 2003 Lord Goodhart (Liberal Democrat)	2003–04	Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 Motion to withdraw moved *after* motion to approve		Contents 50 Not Contents 120
Labour	11 March 2004 Lord Holme of Cheltenham (Liberal Democrat)	2003–04	Anti-terrorism, Crime and Security Act 2001 (Continuance in Force of Section 21 to 23) Order 2004 Amendment to motion for approval		Contents 44 Not Contents 106

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	11 March 2004 Lord Laird (Crossbench)	2003–04	Police (Northern Ireland) Act 2000 (Renewal of Temporary Provisions) Order 2004 Amendment to motion of approval, to decline	Contents 45 Not Contents 134	
Labour	8 June 2004 Lord Redesdale (Liberal Democrat)	2003–04	Guidance issued under Section 182 of the Licensing Act 2003 and Guidance to Police Officers on the Operation of Closure Powers in Part 8 of the Licensing Act 2003 Motion of regret *after* motion to approve		Contents 56 Not Contents 71
Labour	7 July 2004 Viscount Astor (Conservative)	2003–04	Horse Passport (England) Regulations 2004 Prayer to annul	Contents 13 Not Contents 40	
Labour	14 December 2004 Lord Thomas of Gresford (Liberal Democrat)	2004–05	Criminal Justice Act 2003 (Categories of Offences) Order 2004 Amendment to motion, to reconsider		Contents 42 Not Contents 90
Labour	22 March 2005 Lord Glentoran (Conservative)	2004–05	Higher Education (Northern Ireland) Order 2005 Amendment to motion, to regret		Contents 168 Not Contents 150 **Government defeat**

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	14 November 2005 Viscount Astor (Conservative)	2005–06	Licensing Act 2003 (Second Appointed Day) Order 2005 Motion to withdraw and replace		Contents 130 Not Contents 97 **Government defeat**
Labour	15 February 2006 Lord Thomas of Gresford (Liberal Democrat)	2005–06	Prevention of Terrorism Act 2005 (Continuance in Force of Sections 1 to 9) Order 2006 Amendment to motion of approval, to regret		Contents 34 Not Contents 81
Labour	26 April 2006 Lord Smith of Clifton (Liberal Democrat)	2005–06	Local Government (Boundaries) (Northern Ireland) Order 2006 Amendment to motion of approval, to regret		Contents 57 Not Contents 83
Labour	3 May 2006 Lord Hunt of Wirral (Conservative)	2005–06	Transfer of Undertakings (Protection of Employment) Regulations 2006 Motion to revoke		Contents 77 Not Contents 79
Labour	10 July 2006 Lord Rogan (Non-Affiliated)	2005–06	Education (Northern Ireland) Order 2006 Amendment to motion of approval, to decline to approve	Contents 97 Not contents 172	

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	7 November 2006 Lord Smith of Clifton (Liberal Democrat)	2005–06	Rates (Amendment) (Northern Ireland) Order 2006 Amendment to motion, to decline to approve	Contents 62 Not contents 124	
Labour	11 December 2006 Lord Trimble (Conservative)	2006–07	Water and Sewerage Services (Northern Ireland) Order 2006 Amendment to motion, to decline to approve	Contents 83 Not contents 158	
Labour	9 January 2007 Lord Morrow (Non-Affiliated)	2006–07	Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 Motion to annul	Contents 68 Not contents 199	
Labour	5 March 2007 Lord Dholakia (Liberal Democrat)	2006–07	Prevention of Terrorism Act 2005 (Continuance in force of Sections 1-9) Order 2007 Amendment to motion, to regret		Contents 96 Not contents 141
Labour	21 March 2007 Baroness O'Cathain (Conservative)	2006–07	Equality Act (Sexual Orientation) Regulations 2007 Amendment to motion, to decline to approve	Contents 122 Not contents 168	

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	27 March 2007 Lord Trimble (Conservative)	2006–07	Police (Northern Ireland) Act 2000 (Renewal of Temporary Provisions) Order 2007 Amendment to motion, to decline to approve	Contents 97 Not contents 141	
Labour	28 March 2007 Lord Clement-Jones (Liberal Democrat)	2006–07	Gambling (Geographical Distribution of Casino Premises Licences) Order 2007 Amendment to motion, to decline to approve	Contents 123 Not contents 120 **Government defeat**	
Labour	19 June 2007 Lord Bradshaw (Liberal Democrat)	2006–07	Community Drivers' Hours and Recording Equipment Regulations 2007 Amendment to motion, to decline to approve	Contents 57 Not contents 111	
Labour	18 July 2007 Baroness Morris of Bolton (Conservative)	2006–07	Children Act 2004 Information Database (England) Regulations 2007 Amendment to motion, to regret		Contents 46 Not contents 79
Labour	18 July 2007 Baroness Walmsley (Liberal Democrat)	2006–07	Children Act 2004 Information Database (England) Regulations 2007 Amendment to motion, to regret		Contents 38[141] Not contents 77

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

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	18 July 2007 Baroness Hanham (Conservative)	2006–07	Home Information Pack (No 2) Regulations 2007 and Housing Act 2004 (Commencement No 8) (England and Wales) Order 2007 Motion to revoke		Contents 186 Not contents 160 **Government defeat**
Labour	4 March 2008 Lord Wade of Chorlton (Conservative)	2007–08	Cheshire (Structural Changes) Order 2008 Amendment to motion, to not proceed without consultation		Contents 72 Not contents 83
Labour	30 June 2008 Lord Morrow (Non-Affiliated)	2007–08	Sexual Offences (Northern Ireland) Order 2008 Amendment to motion, to decline to approve	Contents 66 Not contents 146	
Labour	10 November 2008 Baroness Thomas of Winchester (Liberal Democrat)	2007–08	Social Security (Miscellaneous Amendments) (No. 4) Regulations 2008 Motion to revoke		Contents 54 Not contents 84
Labour	25 November 2008 Baroness Meacher (Crossbench)	2007–08	Misuse of Drugs Act 1971 (Amendment) Order 2008 Amendment to motion, to delay implementation		Contents 64 Not contents 116

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	5 March 2009 Baroness Miller of Chilthorne Domer (Liberal Democrat)	2008–09	Prevention of Terrorism Act 2005 (Continuance in force of Sections 1-9) Order 2009 Amendment to motion for approval, to decline	Contents 48 Not contents 135	
Labour	16 March 2009 Lord Tyler (Liberal Democrat)	2008–09	Parliamentary Constituencies (England) (Amendment) Order 2009 Amendment to motion for approval, to decline	Contents 45 Not contents 185	
Labour	18 March 2009 Earl Attlee (Conservative)	2008–09	Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2009 Motion to regret		Contents 77 Not contents 69 **Government defeat**
Labour	24 March 2009 Baroness Neville-Jones (Conservative)	2008–09	Data Retention (EC Directive) Regulations 2009 Amendment to motion, to regret		Contents 89 Not contents 93
Labour	11 May 2009 Baroness Thomas of Winchester (Liberal Democrat)	2008–09	Housing Benefit (Amendment) Regulations 2009 Motion to regret		Contents 27 Not contents 58

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	13 July 2009 Baroness Hanham (Conservative)	2008–09	Various Identity Card Regulations 2009 Amendment to motion, to regret[142]		Content 157 Not content 98 **Government defeat**
Labour	14 October 2009 Lord Bates (Conservative)	2008–09	Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2009 Motion to regret		Contents 72 Not contents 66 **Government defeat**
Labour	7 December 2009 Earl of Onslow (Conservative)	2009–10	Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2009 Motion to note with concern		Contents 182 Not contents 118 **Government defeat**
Labour	1 February 2010 Lord Scott of Foscote (Crossbench)	2009–10	Pharmacy Order 2010 Amendment to motion, to regret		Contents 21 Not contents 44
Labour	3 March 2010 Baroness Hamwee (Liberal Democrat)	2009–10	Prevention of Terrorism Act 2005 (Continuance in force of Sections 1-9) Order 2006 Amendment to motion of approval, to decline	Contents 49 Not contents 57	

[142] Baroness Hanham moved a general motion relating to five statutory instruments, rather than an amendment to the motion to approve a specific SI. For this reason it has been categorised as a vote on the Government's policy on identity cards in general, rather than on a vote on a piece of this legislation. It therefore does not appear in Tables 1–4.

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	3 March 2010 Lord Lloyd of Berwick (Crossbench)	2009–10	Prevention of Terrorism Act 2005 (Continuance in force of Sections 1-9) Order 2006 Amendment to motion, to regret		Contents 50 Not contents 43 **Government defeat**
Labour	10 March 2010 Baroness Tonge (Liberal Democrat)	2009–10	Royal Parks and Other Open Spaces (Amendment) etc Regulations 2010 Motion that the draft regulations not be made	Contents 48 Not contents 71	
Labour	10 March 2010 Lord Howard of Rising (Conservative)	2009–10	Royal Parks and Other Open Spaces (Amendment) etc Regulations 2010 Amendment to motion, to regret		Contents 136 Not contents 71 **Government defeat**
Labour	22 March 2010 Lord Tope (Liberal Democrat)	2009–10	Norwich and Norfolk (Structural Changes) Order 2010 Amendment to motion for approval, to decline	Contents 54 Not contents 118	
Labour	22 March 2010 Baroness Butler-Sloss (Crossbench)	2009–10	Norwich and Norfolk (Structural Changes) Order 2010 Amendment to motion, to regret		Contents 169 Not contents 110 **Government defeat**

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Labour	22 March 2010 Lord Tope (Liberal Democrat)	2009–10	Exeter and Devon (Structural Changes) Order 2010 Amendment to motion for approval, to decline	Contents 53 Not contents 110	
Conservative/ Liberal Democrat	19 July 2010 Lord Davies of Oldham (Labour)	2010–12	Child Trust Funds (Amendment No 3) Regulations 2010 Amendment to motion, to regret		Contents 154 Not contents 189
Conservative/ Liberal Democrat	14 December 2010 Lord Triesman (Labour)	2010–12	Higher Education (Basic Amount) (England) Regulations 2010 Amendment to motion, to replace motion to approve with motion to regret	Contents 215 Not contents 283	
Conservative/Liberal Democrat	14 December 2010 Lord Triesman (Labour)	2010–12	Amendment, to replace motion to approve with motion to regret[143]	Content 200 Not Content 273	
Conservative/Liberal Democrat	7 March 2011 Lord Touhig (Labour)	2010–12	Social Fund Maternity Grant Amendment Regulations 2011 Motion to regret and to note with concern		Contents 112 Not contents 149

[143] The initial motion from Lord Henley, which was the subject of Lord Triesman's amendment, was a resolution made under section 24 of the Higher Education Act 2004 to put into effect draft regulations laid in a Command Paper—rather than a SI laid before the House in the usual manner. The House of Lords Journal Office and Delegated Legislation Office classed this as a division on an amendment to a general motion, rather than a division directly on a statutory instrument. The division is therefore excluded from Tables 1 and 2.

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Conservative/Liberal Democrat	15 March 2011 Lord Hunt of Kings Heath (Labour)	2010–12	Transfer of Functions (Dormant Accounts) Order 2010 Motion to regret		Contents 102 Not contents 159
Conservative/Liberal Democrat	10 May 2011 Countess of Mar (Crossbench)	2010–12	Jobseeker's Allowance (Mandatory Work Activity Scheme) Regulations 2011 Motion of regret		Contents 122 Not contents 155
Conservative/Liberal Democrat	6 September 2011 Lord Waddington (Conservative)	2010–12	Equality Act 2010 (Specific Duties) Regulations Amendment to motion, to regret		Contents 126 Not contents 258
Conservative/Liberal Democrat	6 September 2011 Lord Low of Dalston (Crossbench)	2010–12	Equality Act 2010 (Specific Duties) Regulations Amendment to motion, to regret and to call upon government to withdraw		Contents 166 Not contents 178
Conservative/Liberal Democrat	28 March 2012 Lord Young of Norwood Green (Labour)	2010–12	Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012 Amendment to motion, to regret		Contents 125 Not contents 193
Conservative/Liberal Democrat	25 July 2012 Baroness Royall of Blaisdon (Labour)	2012–13	Criminal Injuries Compensation Scheme 2012 Amendment to motion, to regret		Contents 117 Not contents 171

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Conservative/Liberal Democrat	16 October 2012 Lord Hunt of Kings Heath (Labour)	2012–13	National Health Service (Clinical Commissioning Groups) Regulations 2012 Motion of regret		Contents 128 Not contents 161
Conservative/Liberal Democrat	3 December 2012 Lord Bach (Labour)	2012–13	Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012 Amendment to the motion for approval, to decline	Contents 201 Not contents 191 **Government defeat**	
Conservative/Liberal Democrat	5 February 2013 Lord Collins of Highbury (Labour)	2012–13	NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 Motion to regret		Contents 113 Not contents 145
Conservative/Liberal Democrat	13 February 2013 Baroness Sherlock (Labour)	2012–13	Universal Credit Regulations 2013 Amendment to the motion, to regret		Contents 169 Not contents 239
Conservative/Liberal Democrat	27 March 2013 Lord Bach (Labour)	2012–13	Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013 Amendment to the motion, to regret		Contents 166 Not contents 161 **Government defeat**

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Conservative/Liberal Democrat	27 March 2013 Baroness Grey-Thompson (Crossbench)	2012–13	Civil Legal Aid (Procedure) Regulations 2012 Motion to regret		Contents 163 Not contents 148 **Government defeat**
Conservative/Liberal Democrat	27 March 2013 Baroness Scotland of Asthal (Labour)	2012–13	Civil Legal Aid (Procedure) Regulations 2012 Motion to regret		Contents 156 Not contents 140[144] **Government defeat**
Conservative/Liberal Democrat	24 April 2013 Lord Hunt of Kings Heath (Labour)	2012–13	National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 Motion to annul	Contents 146 Not contents 254	
Conservative/Liberal Democrat	3 April 2014 Baroness Sherlock (Labour)	2013–14	Housing Benefit (Transitional Provisions) (Amendment) Regulations 2014 Motion of regret		Content 173 Not contents 188
Conservative/Liberal Democrat	12 May 2014 Baroness Smith of Basildon (Labour)	2013–14	Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2014 Amendment to the motion, to regret		Contents 125 Not contents 216
Conservative/Liberal Democrat	9 December 2014 Lord Lipsey (Labour)	2014–15	Care and Support (Deferred Payment) Regulations 2014 Motion of regret		Contents 54 Not contents 147

[144] The Tellers for the Not contents reported 140 votes; the Clerks recorded 139 names.

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Conservative/Liberal Democrat	24 February 2015 Lord Deben (Conservative)	2014–15	Human Fertilisation and Embryology (Mitochondrial Donation) Regulations 2015 Amendment to motion of approval, to decline and establish a joint committee	Contents 48 Not contents 280	
Conservative	13 July 2015 Lord German (Liberal Democrat)	2015–16	Universal Credit (Waiting Days) (Amendment) Regulations 2015 Motion calling on HMG to remove the housing element of the Universal Credit (Waiting Days) (Amendment) Regulations 2015		Contents 69 Not Contents 132
Conservative	13 July 2015 Baroness Sherlock (Labour)	2015–16	Universal Credit (Waiting Days) (Amendment) Regulations 2015 Motion to delay the enactment[145]		Contents 135 Not Contents 124 **Government defeat**
Conservative	14 October 2015 Lord Beecham (Labour)	2015–16	Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 Motion to regret		Contents 132 Not Contents 100 **Government defeat**

[145] Baroness Sherlock moved a motion to "That this House calls on Her Majesty's Government, in the light of the Social Security Advisory Committee's Report of June 2015, to delay the enactment of the Universal Credit (Waiting Days) (Amendment) Regulations 2015 until Universal Credit is fully rolled out". As this instrument was a negative instrument it would have required a successful prayer asking the Queen to annul it in order for it to be a fatal motion.

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Conservative	26 October 2015 Baroness Manzoor (Liberal Democrat)	2015–16	Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 Amendment to motion to approve, to decline	Contents 99 Not Contents 310	
Conservative	26 October 2015 Baroness Meacher (Crossbench)	2015–16	Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 Amendment to the motion to approve, to decline to consider[146]	**Delayed** Contents 307 Not Contents 277 **Government defeat**	
Conservative	26 October 2015 Baroness Hollis of Heigham (Labour)	2015–16	Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 Amendment to the motion to approve to decline to consider	**Delayed** Contents 289 Not Contents 272 **Government defeat**	
Conservative	27 October 2015 Lord Tyler (Liberal Democrat)	2015–16	Electoral Registration and Administration Act 2013 (Transitional Provisions) Order 2015 Motion to Annul	Contents 246 Not Contents 257	

[146] The amendment to the motion declined to consider the draft regulations until the Government laid a report before the House, detailing their response to the analysis of the draft regulations by the Institute for Fiscal Studies, and considering possible mitigating action. There has been some debate about whether this constituted a fatal or non-fatal amendment. For further discussion please see section 2.1.

Party in office	Date and Peer moving motion	Parliamentary Session	Title of instrument and nature of division	Divisions	
				Fatal motion	Non-fatal motion
Conservative	27 October 2015 Lord Kennedy of Southwark (Labour)	2015–16	Electoral Registration and Administration Act 2013 (Transitional Provisions) Order 2015 Amendment to the Motion to Annul to insert extra wording [147] Contents 267 Not Contents 257		
Conservative	27 October 2015 Baroness Hamwee (Liberal Democrat)	2015–16	Asylum Support (Amendment No. 3) Regulations 2015 Motion to Annul	Contents 68 Not Contents 194	
Conservative	16 December 2015 Lord McKenzie of Luton (Labour)	2015–16	Energy Performance of Buildings (England and Wales) (Amendment) (No. 2) Regulations 2015 Motion to regret		Contents 17 Not contents 97

[147] Lord Kennedy of Southwark moved an amendment to Lord Tyler's motion to annul to insert "on the grounds that it goes against the advice of the Electoral Commission". Although the motion was passed, it was not a vote on the statutory instrument itself and is therefore not included in Tables 1, 2, 3 and 4.