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House of Lords reform: Developments since 1997

The Government has announced that it will introduce a bill to bring in the second phase of House of Lords reform. It will publish proposals and consult on these beforehand. It has made clear that the bill will be based on the recommendations of the Wakeham Commission.

This Research Paper summarises developments in this area since 1997. It provides some statistical analysis of the interim House. It also discusses some of the arguments and options for reform.

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Summary of main points

The Government has announced that it will introduce legislation to complete the reform of the House of Lords. The *House of Lords Act 1999* implemented the first phase of Labour's reform by abolishing the right of all but 92 hereditary peers to sit in the Lords by virtue of their peerage. The new Appointments Commission announced the first 15 non-party peers under the new appointments system in April 2001.

The 2001 Labour Manifesto stated that the Government would complete the second stage of House of Lords reform by implementing the conclusions of the Royal Commission on the Reform of the House of Lords (the Wakeham Commission), *A House for the Future*, Cm 4534, January 2000. Amongst the report's recommendations were:

- The new chamber would have around 550 members.

- It would include a "significant minority" of elected members. Three options were proposed, with 65, 87 or 195 elected members.

- These elected members would represent the nations and regions, and serve three electoral cycles - equivalent to 12-15 year terms, depending on the electoral method used.

- The Appointments Commission would ensure the party balance in the chamber mirrored votes cast at the last General Election, and that 20% of members were not aligned to any of the main parties.

- There would be a statutory minimum proportion (30 per cent) of women, and of men, with the aim of moving to full gender balance over time.

- The Appointments Commission would be required to "use its best endeavours" to ensure that there was a fair ethnic balance.

- There would be no changes in the House of Lords' powers over primary legislation, with powers to delay the passage of a Commons Bill being kept;

- The veto over delegated legislation would be reduced to three months' delay.

- The new second chamber would have no special powers over constitutional matters.

There is much controversy over the appropriate function, composition and powers of the House of Lords, and the arguments have to be seen in the context of wider constitutional reform. The Government had promised a Joint Committee of both Houses of Parliament to consider further reforms, but this has now been shelved. The Government will publishing proposals and will consult on these before introducing legislation. There is, however, no intention to begin from first principles.

CONTENTS

I Introduction

The 2001 Labour Manifesto made it clear that the Government intended completing the reform of the House of Lords which it had begun during its first term:

> We are committed to completing House of Lords Reform, including removal of the remaining hereditary peers, to make it more representative and democratic, while maintaining the House of Commons' traditional primacy. We have given our support to the report and conclusions of the Wakeham Commission, and will seek to implement them in the most effective way possible. Labour supports the modernisation of the House of Lords' procedures to improve its effectiveness. We will put the independent Appointments Commission on a statutory footing.[1]

The Queen's Speech for the 2001-2002 session stated that the Government would, "following consultation" introduce legislation to implement the second phase of House of Lords reform.[2] The first phase, completed in the 1997-2001 Parliament, involved the abolition of all but 92 hereditary peers' right to sit in the House of Lords by virtue of their hereditary peerage under the *House of Lords Act 1999*. The Government also established a non-statutory independent Appointments Commission to appoint Cross Bench peers.

This Research Paper summarises developments in the reform of the House of Lords under the Labour Government and looks at proposals for future changes. There have been a number of Library Research papers over recent years covering Lords' reform, and these are listed on the inside front cover.

II Stage 1 – the Interim House

A. The *House of Lords Act 1999*

This Act received Royal Assent and came into force on 11 November 1999, the last day of the 1998-1999 session. As originally drafted, the Bill would have ended all membership of the House of Lords by virtue of a hereditary peerage. However, during the course of the Bill proceedings, the Government accepted an amendment moved by Lord Weatherill**,** which resulted in 92 hereditary peers remaining in the transitional House. These 92 comprised:

- The Lord Great Chamberlain, as the Queen's representative, and the Earl Marshall, who is responsible for ceremony
- 15 'office holder' hereditary peers who have been elected by the whole House and who serve as Deputy Speakers or Committee Chairmen

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1 Labour Party, *Ambitions for Britain: Labour's Manifesto 2001*, p 35

2 HL Deb 20 June 2001c 6

- 75 hereditary peers elected by the hereditary peers of the three main parties and of the Cross Benches. These 75 amounted to 10 per cent of the total hereditary peers.[3]

The Act also removed the disqualification of hereditary peers, other than the 92 still in the House of Lords, from sitting in, and from voting in elections to, the Commons. Prior to this, hereditary peers could only be elected to the House of Commons if they disclaimed their peerages under the *Peerage Act 1963.* Viscount Thurso was elected to the seat of Caithness, Sutherland and Easter Ross in the 2001 General Election – the first hereditary peer to become an MP since these reforms.

Elections were held for the 15 office holders in October 1999 and for the other 75 hereditary peers in November 1999.[4] For an initial period, up to the end of the 2001-02 session of Parliament[5] any vacancies due to a death are filled by the nearest runners-up. From the next session - or from 2003 at the latest[6] - vacancies will be filled by by-election. If the vacancy is among the 75, only the excepted hereditary peers in the relevant party or Cross Bench grouping will be entitled to vote. If the vacancy is among the 15, the whole House will be entitled to vote. The Opposition pressed for these arrangements because they were anxious for the hereditary element to be maintained should the second stage of reform be delayed. It was partly as a "stimulus to progress for future reform".[7] Further details of this are given in Library Research Paper 99/88.

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3 Background on the Weatherill Amendment is given in Library Research Papers 99/88 and 99/5.

4 HL Deb 29 October 2001 c 510 and HL Deb 5 November 2001 cc 1135-6

5 The initial period is the end of the first session of the next Parliament after that in which the *House of Lords Act 1999* is passed – see Standing Order 10, *Standing Orders of the House of Lords*

6 HL Deb 25 May 1999 c 897

7 Lord Strathclyde, Shadow Leader of the Lords, HL Deb 17 May 1999 c 14

B. Composition of the interim House of Lords

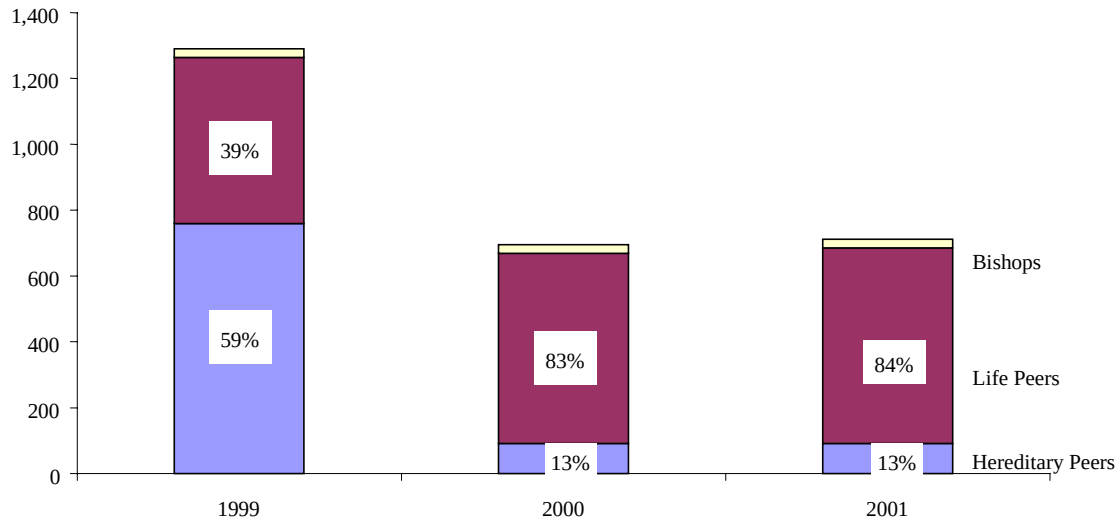
1. Peerage type

There are currently 711 members of the House of Lords.[8] The majority, 84%, are now life peers. Before reform, 59% of potential members of the Lords had been hereditary peers.[9]

Table 1: Composition of the House of Lords by peer type – 10 October 2001

Peer type		
Life	582	84%
Life (hereditary given life peerage)	13	
Elected hereditary	88	12%
Archbishop/Bishop	26	4%
Hereditary Royal Office holder	2	0%
Total	711	100%

Chart 1: Composition of House of Lords by peer type
April 1999, June 2000 & October 2001



[8] Unless specified otherwise, all figures in this section relate to the position at 10 October 2001
[9] See Research Paper 98/104 and 99/5 for statistics of the former House of Lords

2. Gender

In April 1999 in the "old" House of Lords there were 103 women members of the House of Lords. This was 8% of the total. In October 2001, the Lords had 117 women members. This is 16% of the total. 113 life peers are women and 4 elected hereditary peers are women.

Table 2 Composition of the House of Lords by gender and party – October 2001

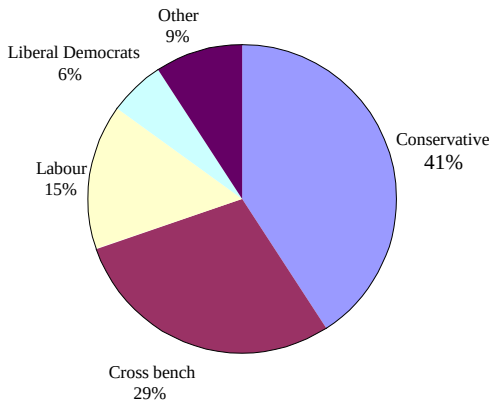
Party	Women	Men & Women	% women
Conservative	34	232	15%
Labour	45	200	23%
Cross Bench	22	174	13%
Liberal Democrat	15	67	22%
Bishops	-	26	0%
Other	1	11	8%
Total	117	711	16%

Around 1 in 7 Conservative peers are women, compared with 1 in 4 Labour and 1 in 5 Liberal Democrat. Women are less represented on the Cross Benches.

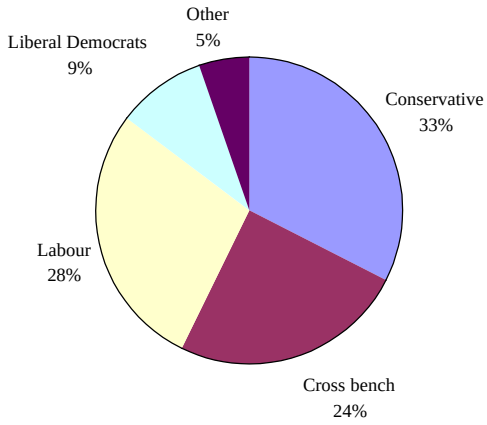
3. Party

In the former House of Lords the Conservatives had 41% of potential members. The Cross Benches had 29%, Labour 15% and the Liberal Democrats 6%. In the current House, the Conservatives are still potentially the largest single group, with 33% but Labour is now the second largest group with 28% of all members.

Chart 2: Composition of House of Lords by party – April 1999 & October 2001



April 1999



October 2001

Table 3: Composition of the House of Lords by party – October 2001

Party	Number	%
Conservative	232	33%
Cross Bench	174	24%
Labour	200	28%
Liberal Democrats	67	9%
Other	38	5%
	711	100%

4. Age

The average age of members of the current House is currently 67 years. In August 1998, the average for the former House was 65 years. 53% of the interim House is aged 65 or over. In August 1998 54% was in this age bracket.

Table 4: Age distribution of the House of Lords October 2001 and August 1998

	Current House Oct 2001		Former House August 1998	
	Number	%	Number	%
21-25	0	0%	2	0%
26-30	1	0%	8	1%
31-35	2	0%	11	1%
36-40	4	1%	17	1%
41-45	15	2%	43	4%
46-50	32	5%	66	6%
51-55	53	7%	86	8%
56-60	101	14%	139	12%
61-65	125	18%	153	13%
66-70	122	17%	168	15%
71-75	95	13%	168	15%
76-80	72	10%	131	12%
81-85	50	7%	84	7%
86-90	24	3%	42	4%
91-95	14	2%	16	1%
96-100	1	0%	4	0%
All Ages(a)	711	100%	1,138	100%

(a) August 1998 excludes peers without writ of summons and those on leave of absence;

Source: Calculations based on data from the House of Lords Information Office

By contrast, the average age of MPs is currently 52 years. 8% of MPs are aged 65 or over.[10]

[10] Source: House of Commons Library database

C. Government defeats[11] in the House of Lords – 1970-71 to 2000-01

The average number of defeats in the Lords is 23 per session since 1970-71. All sessions since 1997/8, bar the pre-election session of 2000-1, have had a higher rate of Government defeats than any session since 1978-79. Previously, relatively high numbers of Government defeats occurred during the 1974-79 Labour Government, particularly in the first two sessions when over 85% of divisions that took place in the Lords were defeats for the Government.[12] From 1970-71 to 1997-98, the average number of Government defeats per session under Labour Governments is 63 compared with 8 for Conservative Governments. **Table 5** shows the number of Government defeats in each session since 1970-71.

In 1998-99 31% of divisions in the Lords resulted in a Government defeat.

Table 5: Government defeats in the House of Lords 1970-71 to 1999-2000

Session	Number	Session	Number
1970/71	4	1985/86	22
1971/72	5	1986/87	3
1972/73	13	1987/88	17
1973/74	4	1988/89	12
1974	13	1989/90	20
1974/75	103	1990/91	17
1975/76	126	1991/92	6
1976/77	25	1992/93	19
1977/78	78	1993/94	16
1978/79	11	1994/95	8
1979/80	15	1995/96	10
1980/81	18	1996/97	10
1981/82	7	1997/98	39
1982/83	5	1998/99	31
1983/84	20	1999/00	36
1984/85	17	2000/01	2

Source: House of Lords Information Office; HL Deb 16 Oct 1995 WA 90; House of Lords Sessional Statistics

[11] Throughout this paper a government defeat is defined as one where the tellers on the losing side are government whips.

[12] For further details see Donald Shell, *The House of Lords*, 1992

D. Peerage creations

Table 7 shows the number of peerage creations by Prime Minister in Office since the first list of life peers was published in July 1958 under the Life Peerages Act 1958.

Table 7: Peerage creations by Prime Minister in office at time of announcement, July 1958 – June 2001

	Hereditary		Life		Law[1]		Total			Annual annual creations[2]
	M	F	M	F	M	F	M	F	All	
Macmillan 1958-63	37	-	40	7	6	-	83	7	90	16
Douglas-Home	10	-	14	2	3	-	27	2	29	26
Wilson 1964-70	6	-	121	14	2	-	129	14	143	25
Heath	-	-	37	8	3	-	40	8	48	12
Wilson 1974-76	-	-	69	11	3	-	72	11	83	38
Callaghan	-	-	53	5	2	-	55	5	60	19
Thatcher	4	-	174	27	11	-	189	27	216	18
Major	-	-	131	29	11	-	142	29	171	25
Blair[3]	1	-	189	50	5	-	195	50	245	56

[1] Peers created under the Appellate Jurisdiction Act 1876
[2] Excluding peers created under the Appellate Jurisdiction Act 1876
[3] Life Peer total includes 10 peerages given to former hereditary peers

Source: House of Lords Library Note 2001/003, *Peerage Creations, 1958–1998* (updated with information from House of Lords Information Office)

Of the 245 peerages announced under the present Prime Minister, 20% have been women. Table 8 shows the distribution of party of allegiance of these 245 peers. Just under half are Labour peers, 22% Cross Benchers, 18% Conservative and 14% Liberal Democrat.

Table 8: Peerage creations since May 1997 by party of allegiance

Party	Number	%
Labour	111	45%
Conservative	43	18%
Liberal Democrat	34	14%
Cross Bench	53	22%
Other	4	2%
Total	245	100%

Note: Party of allegiance is defined as the current or last party to which a peer is affiliated

E. Appointments Commission

1. The establishment of the Appointments Commission[13]

The Appointments Commission – chaired by Lord Stevenson - is a non-statutory Non Departmental Public Body (NDPB). It consists of representatives of the three main political parties and four independent figures, one of whom would chair the Commission. The posts are part time and the Commissioners receive a small remuneration.

Proposals for the Appointments Commission were made in a White Paper published at the same time as the *House of Lords Bill* was introduced. This set out proposals both for the transitional House and for longer-term reform. On the Appointments Commission it said:

> At present, a Prime Minister has sole power of patronage in nominating to The Queen those to be appointed to life peerages. The Prime Minister has made it clear that he is prepared for the first time ever to take steps to reduce this unfettered power of patronage in this area. The Government will establish an independent Appointments Commission to recommend non-political appointments to the transitional House. The Prime Minister will undertake not to veto either its recommendations or those of other party leaders which have received the Commission's vetting clearance.[14]

A selection panel prepared the final shortlist for the chairman and independent members.[15] The Appointments Commission began work in May 2000.[16]

2. The role of the Appointments Commission

The Appointment Commission's website describes this as follows:

> The Commission's role is:
> - to recommend people for appointment as non-party political life peers
> - to vet all nominations for membership of the House to ensure the highest standards of propriety.

In fact, the Prime Minister makes an exception in the case of individuals he appoints as ministers, who are not vetted by the Appointments Commission. This has caused some controversy, which is discussed on pages 21-22.

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13 This is covered in some detail in Library Research Papers 00/60 and 99/5

14 Cabinet Office, *Modernising Parliament Reforming the House of Lords*, Cm 4183, January 1999, p 4

15 HC Deb 10 March 2000 c 825W. The names of the selection panel were set out in 10 Downing Street Press Notice 'Prime Minister Announces Members of the House of Lords Appointments Commission' 4 May 2000 They were : Sir Richard Wilson, Lord Fellowes, Herman Ouseley, Ann Abraham and Paula Grayson.

16 HC Deb 4 May 2000 c 181W

It is the Queen, as the sole fountain of honour, who awards peerages, but she only exercises this prerogative on the advice of her ministers.[17] The Prime Minister must make all recommendations for appointment. Under the system which existed before the Appointments Commission was established, the Prime Minister decided on nominations from his or her own party, sometimes creating peerages to enable individuals to serve as ministers. He or she also invited recommendations from other party leaders to fill vacancies on their own benches. Non-party appointments to the independent Cross Benches were in the control of the Prime Minister. The Political Honours Scrutiny Committee vetted all nominations for life peerages. [18]

Much of this system remains the same. The Prime Minister retains the power to decide the overall number of new peers created and the balance between the parties. The appointment of party political peers is also still a matter for the Prime Minister, in consultation with other party leaders. However, responsibility for the recommendation of non-party peerages has passed to the Appointments Commission. It is still the Prime Minister who passes on these recommendations to the Queen, just as he passes on nominations from other parties. The White Paper stated that the Prime Minister would have no right to refuse a nomination the Commission had passed, although it went on to state that he might intervene if there were exceptional circumstances:

> 12. Awards of peerages will continue to be made by The Queen. In accordance with the normal conventions for the exercise of the prerogative, the names of those recommended will have to be submitted by the Prime Minister. The Prime Minister will decide the overall number of nominations to be made to The Queen and the Commission will be asked to forward to the Prime Minister the same number of recommendations. The Prime Minister will pass these on to Her Majesty in the same way as he will pass on the recommendations of other party leaders to fill the vacancies on their benches. Therefore, except in the most exceptional of circumstances, such as those endangering the security of the realm, the only nominations which the Prime Minister will be able to influence are those from his own party.[19]

3. "People's peers": The first round of appointments

The Commission first invited applications from people wishing to become non-party political members of the House of Lords in September 2000. They were dubbed 'people's peers' in press reports shortly before this.[20] In the announcement itself on

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17 See Bradley and Ewing's *Consitutional and Administrative Law*, 12th Edition, 1997, p 277

18 Further details of how this worked in practice can be found in Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000, pp 111-112 and Nicole Smith, *Reform of the House of Lords*, The Constitution Unit, 1996, pp 15-17

19 Cabinet Office, *Modernising Parliament Reforming the House of Lords*, Cm 4183, January 1999. p 33.

20 See for example "Now anyone can be a lord", *Sunday Express*, 10 September 2000 and "Labour invites applications for people's peerage", *Sunday Times*, 10 September 2000

13 September 2000, the Commission's Chairman, Lord Stevenson emphasised the open nature of the process:

> Today marks a historic change in the way that non-party political members of the House of Lords are appointed. From this moment an open process exists. Anyone in the UK can nominate him or herself or nominate someone else.
>
> We are looking for people with integrity, independence and a significant record of achievement in their chosen field or way of life – people with the skills and experience to contribute effectively to the work of the House of Lords. We also hope that by running an open and fair process we can encourage outstanding applications from groups who are under-represented in the Lords.[21]

The Commission website provides detailed information about the criteria and selection procedure:

> The Commission's Criteria for Assessing Nominations
>
> 5. The Commission will be seeking to recommend nominees
> - who are able to demonstrate outstanding personal qualities, in particular integrity and independence
> - with a strong and personal commitment to the principles and highest standards of public life (…)
> - with a record of significant achievement within their chosen way of life that demonstrates a range of experience, skills and competencies
> - who are able to make an effective and significant contribution to the work of the House of Lords, not only in their areas of particular interest and special expertise but the wide range of other issues coming before the House
> - with some understanding of the constitutional framework, including the place of the House of Lords, and the skills and qualities needed to be an effective member of the House - for example, nominees should be able to speak with independence and authority
> - with the time available to ensure they can make an effective contribution within the procedures and working practices of the House of Lords. This does not necessarily mean the same amount of time expected of "working peers". However, nominees should be prepared to spend the time necessary to become familiar and comfortable with the workings of the House and thereafter, when they have a contribution to make, to participate in its business. The Commission recognises that many active members continue with their professional and other working interests and this can help maintain expertise and experience
> - who are independent of any political party. Nominees and the Commission will need to feel confident of their ability to be independent of party political considerations whatever their past political-party involvement. For this reason, all nominees are asked to respond to the standard questions on

> political involvement and activities that are used for most public appointments.[22]

The Commission set a closing date for this first round of nominations of 17 September 2000. By that date, it had received 3,166 nominations. A report on the Commission's website shows a breakdown of nominees by gender, ethnic origin, disability, age, nationality and regional background. This is reproduced as Appendix 1. The same report details the "extremely rigorous" seven stage sifting process:[23]

On 26 April 2001, the Appointments Commission announced 15 nominations. They were: [24]

Victor Adebolwale
Richard Best
Amir Bhatia
Sir John Browne
Professor Michael Chan
Sir Paul Condon
Professor Ilora Finlay
Professor Susan Greenfield
Sir David Hannay
Valerie Howarth
Lady Elspeth Howe
Sir Robert May
Sir Claus Moser
Sir Herman Ouseley
Sir Stewart Sutherland

The press release included biographical details of the nominees. They included leading figures from charitable organisations, science and business, as well as a former-diplomat and the ex-Commissioner of the Metropolitan Police. A number had already received honours.

The announcement received largely hostile press coverage.[25] The thrust of the criticism was that those nominated were the exactly kind of establishment figures who might well have been nominated under the old system and that there were no "ordinary people" amongst them. The nominees were characterised by the *Independent* as "Seven Knights, four charity grandees, three professors and a Lady".[26] The Commission's nominations

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21 House of Lords Appointments Commission Press Release, 13 September 2000

22 http://www.houseoflordsappointmentscommission.gov.uk/criteria.htm

23 *House of Lords Appointments Commission Report*, 26 April 2001 at: http://www.houseoflordsappointmentscommission.gov.uk/whatsnew.htm

24 Source: House of Lords Appointments Commission Press Release, "House of Lords Appointments Commission announces new peers", 26 April 2001, at: http://www.houseoflordsappointmentscommission.gov.uk/press2.htm

25 See for example "People's peers disgrace democracy", *Observer*, 29 April 2001.

26 "Meet the 'People's Peers': seven Knights, four charity grandees, three professors and a Lady", *Independent*, 27 April 2001

were also criticised by a number of MPs in a Westminster Hall debate on 9 May 2001.[27] However, an article in the *Times* pointed out that half the appointments came from groups under-represented in the Upper House.[28]

In response to the criticism, Lord Stevenson reportedly pointed out that the Commission had never set out to appoint People's Peers, that the phrase was not theirs, and was not a particularly helpful one.[29] He also reportedly said, in response to a question about why there were no hairdressers nominated, that one of the criteria was that "the human being will be comfortable operating in the House of Lords".[30] The Appointments Commission is continuing to accept nominations for the next list, the date of which has not yet been fixed.[31]

There was also some controversy about the dissolution honours list which was published on 2 June 2001. It announced peerages for 24 retiring MPs.[32] There were allegations in the press that the honours system had been used to reward former Labour Members for vacating safe seats.[33]

Shortly after the election, there was controversy when Sally Morgan, the Prime Minister's political secretary was given a seat in the House of Lords without referral to the Appointments Commission.[34] An unnamed member of the Commission was reported as saying that they had assumed everyone would be scrutinised.[35] The 1999 White Paper had said that the Commission would "take on and reinforce the present function of the Political Honours Scrutiny Committee in vetting the suitability of all nominations to life peerages".[36] In a Written Answer to a Parliamentary Question from Gordon Prentice in July 2001, the Prime Minister stated that peerages created to enable individuals to be ministers would not be referred to the Appointments Commission: [37] In a Lords Written Answer on the same day, the following explanation was given:

> **Lord Oakeshott of Seagrove Bay** asked Her Majesty's Governement:
> Whether the conferment of a peerage on baroness Morgan of Huyton was approved by the Appointments Commission; and, if not, why when and by whom it was decided not to seek the Commission's approval.[HL229]

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27 HC Deb 9 May 2001 cc 71-91WH

28 "People's peers shift Lords' balance", *Times*, 26 April 2001

29 "Meet the 'People's Peers': seven Knights, four charity grandees, three professors and a Lady", *Independent*, 27 April 2001

30 Ibid

31 http://www.houseoflordsappointmentscommission.gov.uk/

32 Downing Street Press Notice, *Pre-election peers list*, 1 June 2001

33 See "If you want a peerage, join the Lib Dems", *Guardian*, 4 June 2001 and "Tory anger over peers honours list", *Times*, 2 June 2001

34 10 Downing Street Press Notice, *Her Majesty's Government Ministerial Appointments*, 11 June 2001. For comment see for example "Cronyism charge after Blair gives peerage to aide", Times, 13 June 2001

35 Ibid

36 Cabinet Office *Modernising Parliament Reforming the House of Lords* Cm 4183, January 1999, p 33

37 HC Deb 3 July 2001 c 94W

> **Lord Williams of Mostyn:** The Government have always made it clear that in relation to party political peers, the Appointments Commission was taking over the role formerly fulfilled by the Political Honours Scrutiny Committee. It was never the custom that appointments to the Lords to enable someone to take up ministerial office should be subject to scrutiny by that committee.[38]

4. The Wakeham Commission proposals on the Appointments Commission

The Wakeham Commission report was published in January 2000.[39] Its conclusions are summarised on page 24-25. Chapter 13 dealt with proposals for a new type of Appointments Commission. While the White Paper emphasised the reduction in the power of Prime Ministerial patronage represented by the Appointments Commission, the Wakeham Report argues that the Government's proposals still leave considerable control with the Prime Minister of the day:[40]

> **13.1** The arrangements for appointing life peers which the Government has proposed should apply during the interim stage of House of Lords reform (see Chapter 11) will leave considerable control with the Prime Minister of the day. He or she will be able to control the size and party balance in the interim House by virtue of having the power to set the number of nominations made by each party and the number of Cross Benchers selected by the proposed Appointments Commission. He or she will also retain an ultimate veto over all nominations, through being responsible for putting the final list to the Queen. The present Prime Minister has committed himself to seeking no more than parity between Labour and Conservative members of the interim House of Lords and has undertaken not to challenge other parties' nominations (save in wholly exceptional circumstances). It would, however, be unsatisfactory to base appointment to the reformed second chamber on these or equivalent assurances. The Prime Minister should no longer play a role in appointing members of the second chamber.

A key Wakeham recommendation was the creation of a statutory Commission that would be responsible for all appointments to a second chamber:

> **Recommendation 70**: An Appointments Commission, independent of the Prime Minister, Government and the political parties, should be responsible for all appointments to the second chamber.

Therefore the Wakeham-model Appointments Commission represents a considerable extension of the present Commission's role as exercised for the interim House. The key points are:

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38 HL Db 16 July 2001 c 101WA

39 Royal Commission on the Reform of the House of Lords, *A House for the Future* Cm 4534 January 2000

40 Ibid p 130

- It would nominate all appointed peers – not just Cross Benchers.
- It would also ensure that overall balance between the political parties in the House reflected the share of votes cast at the most recent General Election. This would be implemented by appointing party-affiliated individuals to the appropriate party group. It would ensure that at least 20 per cent of the House were Cross Benchers.
- The Prime Minister's role in patronage for the Lords would disappear. Political parties would submit names to the Commission, but there would be no guarantee that the Commission would decide to accept these nominations. In addition, the Commission would vet all political nominations for propriety. Appointees would serve for 15 years and would not be eligible to stand for the Commons until 10 years after retiring from the Lords.
- The Commission would be set up under an Act of Parliament and Commission members would have statutory protection from interference, in a similar way to the Electoral Commission then being set up under what is now the *Political Parties, Elections and Referendums Act 2000*.[41]

III Stage 2 – Longer-term reform

The 1997 Labour manifesto envisaged two stages of reform. The mechanism it proposed for deciding on the second stage was a Committee of both Houses of Parliament:

> The House of Lords must be reformed. As an initial, self-contained reform, not dependent on further reform in the future, the right of hereditary peers to sit and vote in the House of Lords will be ended by statute. This will be the first stage in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House of Lords will remain unaltered.
>
> The system of appointment of life peers to the House of Lords will be reviewed. Our objective will be to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election. We are committed to maintaining an independent crossbench presence of life peers. No one political party should seek a majority in the House of Lords.
>
> A committee of both Houses of Parliament will be appointed to undertake a wide-ranging review of possible further change and then to bring forward proposals for reform. [42]

In the event, the Government decided that a Royal Commission would be established first to allow for "wider debate and further analysis" before the Joint Committee was

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41 See Research Paper 00/1 for details on the creation of the Electoral Commission

42 Labour Manifesto, *New Labour Because Britain deserves better*, 1997, pp 32-33

established. The then leader of the Lords, Baroness Jay, announced this in a debate on House of Lords Reform:

> The Government recognise that the broader constitutional settlement is both relevant and complicated. It will take time to bed down and assess. For those reasons we want to build on our manifesto proposal for a committee of both Houses of Parliament to consider further reform. We intend to appoint, first, a Royal Commission to undertake a wide-ranging review and to bring forward recommendations for further legislation. When the Royal Commission is formally established, we will set a time limit for it to do its work and a time limit for it to report back to the Government. The Royal Commission is not a delaying tactic but it is right that there should be wider debate and further analysis before the long term is settled. Our detailed proposals on the role and working operations of the Royal Commission will be announced in the forthcoming White Paper. [43]

A. The Wakeham Commission's main recommendations

The Wakeham Commission's main proposals were as follows:

Composition

- The new chamber would have around 550 members.

- It would include a "significant minority" of elected members. Three options were proposed, with 65, 87 or 195 elected members. Each option used a slightly different method of election. The option with the support of most of the Commission was for 87 regional members, elected at the same time as members of the European Parliament.

- These elected members would represent the nations and regions, and serve three electoral cycles - equivalent to 12-15 year terms, depending on the electoral method used.

- The Appointments Commission would ensure the party balance in the chamber mirrored votes cast at the last general election, and that 20% of members were not aligned to any of the main parties.

- Political parties should lose control of appointing party-affiliated members. They would suggest names of individuals, but the Appointments Commission would make the final decision in the light of its published criteria

[43] HL Deb 14 October 1998 c 926

- There would be a statutory minimum proportion (30 per cent) of women, and of men, with the aim of moving to full gender balance over time.

- The Appointments Commission would be required to "use its best endeavours" to ensure that there was a fair ethnic balance.

- The law lords would remain

- Church of England representation would be reduced from 26 to 16, with 15 seats reserved for other religious groups.

Powers

- There would be no changes in the House of Lords' powers over primary legislation, with powers to delay the passage of a Commons Bill being kept;

- The veto over delegated legislation would be reduced to three months' delay.

- The new second chamber would have no special powers over constitutional matters. Instead it would take on a new constitutional role, through establishment of three committees - on the constitution, human rights and devolution.

- Scrutiny of Government and European Union business would be improved.

- A mechanism should be developed which would require Commons ministers to make statements to and deal with questions from members of the second chamber

B. Reaction to the Wakeham proposals

The Royal Commission's report received a considerable amount of hostile press coverage. The coverage is described in detail in House of Lords Library Note 2000/002, *Press Reaction to the Report of the Royal Commission on the Reform of the House of Lords: A House for the Future.* The immediate reactions of the parties and some think-tanks are described in Library Research Paper 00/60 on pages 22-25. A common criticism was that it was indecisive or timid, and fudged some of the key issues, although other commentators pointed to the useful information it contained.

The Constitution Unit produced a commentary on the report. The executive summary is reproduced below:

> - The Wakeham Commission had a large and complex remit, and was given very little time to report. Especially given the speed of other constitutional changes, it is no surprise that the Commission was unable to come up with a fully satisfactory blueprint.

- The Commission proposes that the powers of the chamber remain largely unchanged, and this is broadly welcomed. The legislative powers of the chamber are sufficient by international standards. However, the Commission rejected giving the chamber new constitutional powers, which leaves us out of step with other Western democracies.

- The Commission's proposals that new committees be established is welcomed. These include a new Constitutional Committee, Human Rights Committee, Devolution Committee and Treaties Committee. The House of Lords should act to implement these recommendations as soon as possible.

- The continued role which the Commission propose for the chamber in EU and delegated legislation is welcomed. New conventions could introduce the proposed changes to powers over delegated legislation immediately.

- The proposal that Commons ministers be given access to the upper house is sensible. This could be implemented immediately, on a reciprocal basis.

- The Appointments Commission has been carefully designed to maximise public confidence in the chamber, and end political patronage. Since a Commission is currently being established for the transitional house, it should be given the same responsibilities. These include controlling the party balance, making political appointments, and ensuring the chamber is balanced in gender, ethnic and regional terms.

- The balance between elected and appointed members proposed by Wakeham may result in a chamber with insufficient legitimacy to carry out its job. The proposed chamber is also very large. A reduction in the number of appointees would solve both problems.

- The proposals do not properly take account of devolution. There should be clearer links built with the devolved institutions, and the proportion of 'regional' members in the chamber should be much higher.

- Wakeham has failed to grasp the nettle on the bishops and the law lords. No other democratic parliament includes religious representatives, or judges. The bishops should be removed; and the law lords should sit in an independent supreme court.

- The Commission proposes that allowances and staffing to upper house members are raised. This is long overdue. The proposals should be implemented now. [44]

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[44] Constitution Unit, *Commentary on the Wakeham Report on the Reform of the House of Lords*, 2000, p 1

C. The Joint Committee

The 1997 Labour manifesto had promised that a committee of both Houses would be appointed to undertake a wide-ranging review of possible further change and then to bring forward proposals for reform. [45]

In the event, the Joint Committee of both Houses of Parliament set out in the 1997 manifesto did not, in fact, materialise because talks between the parties failed to reach agreement:

> **Mr. Gordon Prentice**: To ask the President of the Council what progress is being made on setting up the joint committee on the reform of the House of Lords.
>
> **Mr. Tipping**: My right hon. Friend the President of the Council announced on 3 July 2000, Official Report, column 92W, that the Government aimed to establish a Joint Committee of both Houses to consider the parliamentary implications of the Royal Commission on Reform of the House of Lords so that it should begin work as soon as possible after the summer recess. Unfortunately, discussions with the other parties in both Houses on the membership and precise terms of reference failed to reach agreement. We have therefore concluded that there is little present prospect of setting up a Joint Committee in the present Parliament.[46]

In a Written Answer on 10 July 2001, Lord Williams of Mostyn, the Leader of the Lords, said that the Government did not see a role for the joint committee, as the Government would be inviting comments on its proposals before publishing a Bill.[47]

Lord Strathclyde, the Shadow Leader of the Lords, criticised the failure to convene a Joint Committee in a pamphlet written for the Centre for Policy Studies:

> Five years after he pronounced a death sentence on the hereditary peerage, Mr Blair is no clearer about when, or even if, Stage Two might happen, and what it might involve. The Prime Minister, moreover, refuses to let Parliament itself consider the composition of the House, even though a Joint Committee, with precisely this remit, was promised in his Manifesto. Instead of opening up a debate in Parliament and country, he has now returned to private talks with the Liberal Democrats. This is hardly a proper forum for lasting constitutional reform.[48]

In a debate on Parliament and the Executive, the Cross Bench peer, Lord Ampthill, also protested about the failure to establish the Joint Committee. He listed a number of

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45 Labour Manifesto, *New Labour Because Britain deserves better,* 1997, pp 32-33
46 HC Deb 6 March 2001 c 200W
47 HL Deb 10 July 2001 c 69WA
48 Lord Strathclyde, *New Frontiers for Reform*, Centre for Policy Studies, January 2001, p 3

occasions on which the Government had said that a Joint Committee would be set up, and concluded:

> The British constitution depends on process. The integrity of that process depends above all on undertakings given in Parliament being honoured. If Her Majesty's Government believe that they are allowed, or they are allowed by Parliament, to renege on undertakings that they have given, that process is destroyed.
>
> I thank the noble Baroness for giving me this opportunity on behalf of your Lordships to ask: if the process of reforming your Lordships' House is to be abandoned in so cavalier a fashion, how can Parliament hope to hold the executive to account? [49]

In reply Lord Williams of Mostyn, the Leader of the Lords, said that the Committee had not been established because it had not been possible to reach agreement:

> The answer given by my noble friend Lady Jay of Paddington to the question asked by my noble friend Lord Alli was quoted perfectly accurately by the noble Lord, Lord Ampthill. She said that there would be a Joint Committee on the parliamentary aspects, but we failed to reach agreement on that. We have not resiled from our commitment, but we were not able to agree. That being so, we must seek to get on. But I am not in command of any sufficient troops to dictate to your Lordships' House, even if my own troops were unanimous or were capable of being Whipped -and my own experience demonstrates the contrary. [50]

In a separate development, on 20 September 2001, Labour and the Liberal Democrats announced that they were to scrap their Joint Consultative Committee, which had been set up to discuss constitutional reform.[51]

D. Future Legislation

The 2001 Queen's Speech announced that the Government would, following consultation, introduce legislation to implement the second phase of House of Lords reform.[52]

Further details were given in a Cabinet Office Background Note issued to the press the same day. This made it clear that the Government intends to legislate on the basis of the Wakeham Commission's recommendations:

> The House of Lords Bill would complete the process of reform of the House of Lords which the Government began with the House of Lords Act 1999, which removed the bulk of the hereditary peers from the House.

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49 HL Deb 18 July 2001 c 1503
50 HL Deb 18 July 2001 c 1548
51 See for example, "Lib Dems break formal links with Labour", *Independent*, 20 September 2001
52 HL Deb 20 June 2001 c 6

> The Bill would create a House of Lords better equipped to work alongside the House of Commons. It would preserve the position of the House of Commons as the cornerstone of our democracy. It would create a second chamber which is more representative of the people and with a distinctive membership which will look at legislation in a different way from the Commons. It would reduce the ability of any government to pack the House with its supporters, and would open the way to modernisation of the way the House works.
>
> The Bill would be based on the recommendations of the Wakeham Commission. The Government is committed to implementing Wakeham in the most effective way possible. The Government would consult on the basis of its published proposals. There is no intention to begin from first principles.
>
> The Bill would :
>
> - Establish a statutory Appointments Commission with the power to nominate non-political members of the House.
>
> - Set out rules for determining the balance of the political parties in the House, building on the Government's pledge in the previous Parliament not to seek more than rough parity with the main Opposition party.
>
> - Create a new electoral system for that part of the House of Lords which would in future be elected.
>
> - Remove the remaining hereditary peers.[53]

The following PQ made it clear that the Government would publish its proposals before introducing the bill:

> **Lord Rees** asked Her Majesty's Government:
> What consultation there will be before any further legislation on the reform of this House is introduced; and (a) who will be the parties to any such consultation; and (b) what terms of reference will govern such consultation.
>
> **The Lord Privy Seal (Lord Williams of Mostyn):** The Government will publish their proposals before introducing a Bill. It will therefore be open to anyone who wishes to comment on our proposals. We do not intend to repeat the extensive public consultation exercise of the Royal Commission chaired by the noble Lord, Lord Wakeham, but we shall of course ensure that the political parties have a full opportunity to make their views known. We do not see a role for a joint committee. As I told the House in the debate on the Address, our proposals will be based on the recommendations of the Royal Commission (21 June 2001, col.

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[53] Cabinet Office Background Note, 20 June 2001

> 110). We will consider carefully all representations made within this context, but we will not allow consultation to become an excuse for excessive delay. [54]

An article in the *Scotsman* on 15 October 2001 set out reform plans, which it said the Government was discussing.[55] According to the report, "senior government sources" have said that ministers want to allow representatives from the devolved legislatures and assemblies into the new second chamber. This was said to be because they saw the election of regional representatives (recommended by the Wakeham Commission) as impractical. Other changes which the report said were being considered included changing bill procedure to allow bills to be carried from one session to the next, and expanding the legislative session from one year to two. The article said: "the plans may have to be delayed to allow time for emergency legislation to crack down on terrorism, reform asylum laws and improve extradition proceedings". [56] A follow up article the next day quoted a senior Scottish Executive source as saying that he believed that the plans would attract substantial opposition from within the Scottish Parliament.[57] The article also cited comments from party spokespeople. The Scottish Liberal Democrats were quoted as saying the plan would not be their preferred option but they wanted to see the Lords reformed into a democratic chamber, and they would support the use of MSPs if necessary. However, they were sceptical that they could combine the two jobs without difficulties. The article cited the Scottish Conservative party leader as saying that such a model would be an improvement on the existing interim chamber, but that it would need to be viewed in the context of a definitive set of proposals from the Government. The SNP were cited as saying this was not their preferred option, but it would be an improvement on the present situation.

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54 HL Deb 10 July 2001 c69WA

55 "MSPs to sit in House of Lords", *Scotsman,* 15 October 2001, p 1

56 Ibid

57 "MSPs lukewarm on plans to join reformed Lords", *Scotsman,* 16 October 2001, p 1

IV Arguments and options for reform

This section aims to summarise the main options for the reformed House of Lords and outline some of the arguments surrounding them. More detail is provided in Library Research Papers 99/6 and 99/7.

The option of abolition of the House of Lords – ie unicameralism- is not discussed in detail here. None of the main political parties is proposing it, and the terms of reference of the Wakeham Commission assumed the existence of a Second Chamber. The arguments surrounding bicameralism versus unicameralism are set out in Library Research Paper 99/5.

A. Composition

The broad options for the composition of the reformed Second Chamber are simple enough. Membership could be determined by:

- appointment;
- election
- some combination of the two.

Appointment could be:

- based on political patronage, as it has been in the past,
- by an independent body, such as one which builds on the existing Appointments Commission.

Elections could be:

- direct, with people voting for members at the ballot box
- indirect, with elected members of one body, such as the devolved assemblies and legislatures, choosing representatives to sit in the new second chamber.

Either elections or appointments could deliver "representational" membership. This could be of professions, demography, geography or of other sections of society. For example, the upper chamber in Ireland, the Seanad, includes indirectly elected members in five "vocational" categories: culture and education; agriculture; labour; industry and commerce; and administration.[58]

The detail of possible schemes raises considerable complexities, for example, surrounding the timing and method of elections, and the length of term to be served.

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[58] See Meg Russell, *Reforming the House of Lords Lessons from Overseas*, 2000, pp 68-73

B. Function

However, the appropriate composition for a new second chamber, and indeed the appropriate powers, will depend very much on the role that it is expected to perform. The emphasis given by various commentators to the importance of particular functions influences the balance they recommend between elected and appointed members in the new second chamber and whether it should have greater or lesser powers than the present House of Lords. It also influences the relationship commentators feel the second chamber should have with the House of Commons, and with other parts of the British Constitution.

The present House of Lords has a range of functions, some overlapping and some in tension with each other. This current role, in terms of formal powers and the exercise of actual functions, is a result of many centuries of constitutional change. This has included a gradual but decisive shift in parliamentary power to the House of Commons. This makes the idea of an 'ideal' or 'correct' range of roles and functions almost meaningless. A reformed second chamber might, for example, be expected to fulfil any of the following roles:[59]

- Introducing and revising legislation
- Providing specialist advice and expert opinion
- Representation
- Scrutiny of the executive and other bodies (for example EU institutions)
- Providing a check on the executive
- Safeguarding the constitution
- Providing a forum for debate

Representation is a particularly problematic concept. The 1997 Labour Manifesto stated the Government's intention to make the House of Lords "more democratic and representative". Clearly, the House of Commons fulfils a representative function in that its members are chosen by constituents to represent them. However, there are other relevant principles as well as the elective one. The Commons is not "representative" of the wider population of the UK in a microcosmic sense, in terms, for example, of gender and ethnic balance. The academics Donald Shell, and Phillip Giddings, make the point that, while the existing House of Lords is "unrepresentative" in many ways, its

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[59] See 1999 White Paper, Cabinet Office, *Modernising Parliament Reforming the House of Lords*, Cm 4183, January 1999, p 16, for the Government's summary of the Parliamentary functions of the Lords.

independent Cross Bench element makes it more "representative" of the wider population than the Commons in one particular respect:

> It has not been difficult to criticise the House of Lords for its 'unrepresentative' character. Taken as a whole it is heavily skewed towards the wealthy, the public school educated, to landowners, bankers and professional elites. Politically the Conservative Party predominates, a fact endlessly repeated by Labour politicians. In some respects, on the other hand, it may claim to be more representative than the Commons. That House is composed almost entirely of those who not only subscribe to one of the major parties, but who have chosen to serve their party with dedication. The vast bulk of the electorate, members of no party, are in that respect unrepresented. In the House of Lords there is a substantial cross-bench element. To point this out is not to elevate cross-benchers into a position of special virtue, nor is it to argue that Parliament and politics could somehow be run without the necessary cohesion provided by party. It is simply to not that representation does cut in various directions.[60]

The Wakeham Commission identified four main roles for a new second chamber:

- It should bring a range of different perspectives to bear on the development of public policy.

- It should be broadly representative of British society. People should be able to feel that there is a voice in Parliament for the different aspects of their personalities, whether regional, vocational, ethnic, professional, cultural or religious, expressed by a person or persons with whom they can identify.

- It should play a vital role as one of the main 'checks and balances' within the unwritten British constitution. Its role should be complementary to that of the House of Commons in identifying points of concern and requiring the Government to reconsider or justify its policy intentions. If necessary, it should cause the House of Commons to think again. The second chamber should engender second thoughts.

- It should provide a voice for the nations and regions of the United Kingdom at the centre of public affairs.[61]

C. Legislative powers

Currently, the House of Lords has three main powers: to introduce, to amend and to delay public legislation. The powers on primary legislation are restricted through the Parliaments Acts and, importantly, through self-imposed restraints.

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[60] Donald Shell and Philip Giddings *The future of Parliament:Reform of the second chamber*, 1999, p 10

[61] Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000, p 3

Some bills are introduced in the Lords. These are generally, but not always, the less controversial ones. Introduction in the Lords reduces pressure on the Commons and spreads the legislative load more evenly between the Houses and across each session. Such bills are not subject to the Parliament Acts,[62] so that both the Commons and the Lords have the power to reject them.

The Parliament Acts ensure that any bill certified by the Speaker as a Money Bill has to be passed within a month of its being sent up the Lords. The Commons does not have to consider amendments the Lords may have made to Money Bills. Other public bills can be delayed into the next session. The effect of the Parliament Acts is that the Lords can delay these bills until not less than 13 months have passed from the date of Second Reading in the Commons in the first session.[63]

Importantly, the Parliament Acts do not apply to bills to extend the life of a Parliament beyond five years. Thus the House of Lords would have a veto if the Commons wished to do this – the main formal power it has at present in protecting the constitution.

The Parliament Acts do not cover secondary legislation, such as Statutory Instruments. The Lords formal powers over secondary legislation are the same as the Commons. They can accept or reject it, but not amend it.

The House of Lords thus has the power of absolute veto over most secondary legislation, private bills and bills originating in the House of Lords. However, these powers are very rarely used. The veto over Statutory Instruments was used in 2000 to block the *Greater London Authority Elections Order 2000*, but before that the only successful use of the power was in 1968.[64] However, there have been examples where the Lords have influenced the Government over particular regulations while stopping short of using its veto. An example was in January 2001, during the debate on the *Human Fertilisation and Embryology (Research Purposes) Regulations 2000.* The House of Lords agreed to an amendment calling on the Government to support the appointment of a Select Committee of the House to report on the issues connected with human cloning and stem cell research, and to undertake to review the regulations following the report of that Select Committee.[65]

The self-imposed restraints on the Lords use of its powers are extremely important. The main one is known as the Salisbury Convention. This was set out by Lord Cranboune, then shadow Leader of the Lords, in a debate on Lords Reform in October 1998:

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62 Erskine May, *Parliamentary Practice*, 22nd edition, p 569

63 See House of Lords *Companion to Standing Orders*, ch 6, at: http://www.publications.parliament.uk/pa/ld/ldstords/ldstords.htm

64 The rejection of the *Southern Rhodesia (United Nations Sanctions) Order 1968.* The House of Lords approved a virtually identical order some weeks later.

65 HL Deb 22 January 2001 c 124

> Viscount Cranbourne: (…)My clear understanding of the Salisbury convention is that for a manifesto Bill your Lordships' House will not oppose such a Bill at Second Reading. Although it has an obligation to amend a Bill during its passage in the later stages, those amendments should not constitute wrecking amendments for that Bill.
>
> Lord Williams of Mostyn: My Lords, I take it that that applies also to Third Reading.
>
> Viscount Cranborne: My Lords, I am again grateful to the noble Lord. As your Lordships know, I am sure better than I, unlike the other place, we have the right to suggest amendments at Third Reading. I suggest that those amendments should be subject to the same rubric as amendments to previous stages. If those amendments were deemed to be wrecking amendments, they would be breaking the Salisbury convention. [66]

The Salisbury Convention has resulted historically from the lack of legitimacy of a largely hereditary House with a built-in Conservative majority as compared to the elected chamber. As the House becomes more politically balanced, some questions have been raised about the extent to which these self-denying ordinances should still persist. For example, in the Centre for Policy Studies pamphlet already cited, Lord Strathclyde argues that the convention needs to be reviewed because the circumstances that gave rise to it have now changed:

> Fifty-five years ago a wholly hereditary House, Conservative almost to a man, adopted the Salisbury Convention. In essence this was a formal promise by an unelected peerage not to obstruct any Government manifesto promise. It was an appropriate and proper declaration at the time. It has served us well. But the Labour party has unilaterally overthrown the conditions and circumstances that gave it birth. Thus in the wake of the new composition of the House, some of the implications of this convention need to be reviewed.[67]

Lord Strathclyde went on to question how long into a Parliament the convention should apply:

> It is hard to reconcile an absolutist approach to the Salisbury Convention with the modern world. Election promises can be vague and easily manipulated by governments who reserve the right to postpone or to jettison manifesto promises if circumstances change. If governments can have that right – a right they frequently exercise – why cannot Parliament, too, have a say in the propriety of the matter?
>
> The case for giving manifesto promises an easy ride in the first few sessions of a government's life is largely unassailable – subject to Parliament's overriding duty

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66 HL Deb 16 October 1998 c 1162

67 Lord Strathclyde, *New Frontiers for Reform*, Centre for Policy Studies, January 2001, p 26

> to safeguard the constitution. But that does not mean that it should automatically extend to the whole five years. Are there no limits to a manifesto promise that Parliament can be precluded from considering?[68]

The Wakeham Commission discussed these issues as follows:

> Second, we agree with those who argue that the principles underlying the Salisbury Convention remain valid and should be maintained. The convention amounts to an understanding that a 'manifesto' Bill, foreshadowed in the governing party's most recent election manifesto and passed by the House of Commons, should not be opposed by the second chamber on Second or Third Reading. This convention has sometimes been extended to cover 'wrecking amendments' which "destroy or alter beyond recognition" such a Bill. It has played a key part in preventing conflict between the two Houses of Parliament during periods of Labour Government. Some have argued that its main effect has been to provide a rationale for Conservative peers to acquiesce in legislation which they found repugnant; and that once the situation had been reached in which no one party could command a working majority in the second chamber there would be no need to maintain the Salisbury Convention. In our view, however, there is a deeper philosophical underpinning for the Salisbury Convention which remains valid. This arises from the status of the House of Commons as the United Kingdom's pre-eminent political forum and from the fact that general elections are the most significant expression of the political will of the electorate. A version of the 'mandate' doctrine should continue to be observed: where the electorate has chosen a party to form a Government, the elements of that party's general election manifesto should be respected by the second chamber. More generally, the second chamber should think very carefully before challenging the clearly expressed views of the House of Commons on any issue of public policy.[69]

The Commission concluded that this would have to be worked out pragmatically in a new convention.[70]

Clearly there is scope for increasing or decreasing the various powers of the House of Lords, either formally or in their exercise. Whether such changes are appropriate depends on how important the function of acting as a check on the Commons or the Executive is perceived to be. For example, the fact that the Parliaments Acts of 1911 and 1949 do not cover secondary legislation reflects the much smaller role such legislation played when the Acts were passed. It is arguable, therefore, that the House of Lords veto over Statutory Instruments is an anachronism and should be abolished. This would be a curtailment of the House's powers, but would make very little difference in practice as the power has so rarely been used. The Labour Party in its submission to the Wakeham

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68 Ibid, page 27

69 Royal Commission on the House of Lords, *A House for the Future, Cm 4534*, January 2000, p 39

70 Ibid, Recommendation 7, p 40

Commission argued that "the position should be clearly governed by legislation, in a way which would fairly reflect the pre-eminence of the House of Commons".[71] The Conservative Party submission stated that it would oppose removing the power to block secondary legislation, elaborating as follows:

> The House of Lords retains a power, reaffirmed within recent years by a motion of the House, to reject secondary legislation. By convention the two main parties have not exercised that power. However, the growing extent of the use of secondary powers by Ministers, suggests that *both* Houses should have enhanced powers to revise as well as to reject secondary legislation.[72]

Curtailing the Second Chamber's theoretical powers is, paradoxically, very likely to lead to an increase in their use. For example, Donald Shell suggests the following reforms:

> The present power of veto over delegated legislation, and delay for primary legislation (for an uncertain period, but possibly more than a year), should be adjusted to something like a straight six-month delay for all normal legislation. In part the purpose of such a change would be to reassure MPs. A second chamber with a short, clearly defined period of delay would represent no sustained threat to the legislative pre-eminence of the Commons. It would simply have the power, which it might use with some frequency, to ensure that its proposed amendments were given serious attention. There may be a case for allowing a longer period of delay for bills that were clearly constitutional, as was in effect done under the 1911 Parliament Act in relation to any bill to extend the life of a parliament. The Speaker could be required to define constitutional measures just as she now carries responsibility ultimately for deciding which bills are money bills under the terms of the 1911 Act.[73]

D. Legitimacy versus expertise

One of the central questions in the debate on the future of the second chamber is the appropriate balance between legitimacy and expertise. For some of the possible functions listed on page 32, such as provision of expert advice, revising legislation and to some extent scrutiny, specialist knowledge is arguably an advantage. Acting as a check on the House of Commons and the Executive, safeguarding the constitution and the revision of legislation could be said to require a chamber with confidence in its own legitimacy. Closely linked to the concept of expertise is the question of independence from party politics.

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71 Labour Party, *Reforming the House of Lords for the new millennium*, Submission by the Labour Party to the Royal Commission on the Reform of the House of Lords, May 1999, page 36.

72 Conservative Party, *A Stronger Parliament*, Evidence to the Royal Commission on the House of Lords from the Conservative Party, 1999.

73 Donald Shell, "The Future of the Second Chamber", *Political Quarterly*, Volume 70, number 4, October – December 1999, p 392

1. Legitimacy

The most obvious readily accepted source of legitimacy is direct election. However, indirect election can also be said to provide legitimacy, and it is arguable that an open, transparent system of appointment could as well. Expertise is most obviously provided by an appointments system which uses this as one of its main criteria.

The 1999 White Paper identified the House of Lords' lack of legitimacy as a central reason for reform:

> For Parliament to carry out its purpose, it must act with authority and integrity. Each component part must also possess the legitimacy to support its role in the process. The present House of Lords suffers from a lack of legitimacy because of its anachronistic and unrepresentative composition.[74]

The problem lies in deciding what kind of legitimacy is appropriate, and in predicting the consequences of increasing it. For some, too much legitimacy, through too high a proportion of directly elected members raises problems of duplication with the first chamber, with greater control of its members by party and by the Executive. There are also fears of legislative gridlock. This might occur where the second chamber had so much confidence in its authority that it used its powers regularly to frustrate the will of the Commons. The White Paper went on to make it clear that "…the second chamber must have a distinctive role and must neither usurp, nor threaten, the supremacy of the first chamber".[75] The terms of reference given by the Government to the Wakeham Commission required it to make recommendations on the role, functions and composition of the second chamber "(h)aving regard to the need to maintain the position of the House of Commons as the pre-eminent chamber of Parliament…".[76]

The Wakeham Commission emphasised that the authority of the second chamber should not be such as to challenge the House of Commons:

> The reformed second chamber should be authoritative. That authority could be derived from a number of sources, but should not be such as to challenge the ultimate democratic authority of the House of Commons.[77]

Others maintain that claims that legislative gridlock would result from increasing the legitimacy of the second chamber are exaggerated. Peter Riddell, political columnist of *The Times*, makes this case:

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[74] Cabinet Office, *Modernising Parliament Reforming the House of Lords*, Cm 4183, January 1999, p 3
[75] Ibid, p 6
[76] Royal Commission on the House of Lords, *A House for the Future*, Cm 4534, January 2000 p 35
[77] Royal Commission on the House of Lords, *A House for the Future*, Cm 4534, January 2000 p 97

> It seemed axiomatic for both the Wakeham Commission and the Government that an elected upper House would necessarily challenge the Commons and produce legislative gridlock, but this belief is 'not borne out by evidence from second chambers overseas' as the Constitution Unit points out in its post-report commentary and as Meg Russell of the Unit noted in her survey of second chambers overseas (2000). Various mechanisms could be created both to reconcile differences and to produce a membership which is not seen as more representative, and hence more legitimate than the Commons. Lord Richard, Labour Leader of the House for the first fourteen months of the government's life, has suggested a hybrid, two thirds elected and one-third nominated House, while it would be possible to have staggered terms as in Australia. A greater danger seems to be a lack of legitimacy in a largely nominated body which would be unable to perform the necessary role of a second chamber in checking the actions of the main elected chamber.[78]

2. Expertise

Expertise is one of the features of the present House of Lords, which is valued by many commentators. A system of appointment is the most obvious way to ensure that people with particular knowledge and experience become members of the reformed second chamber. However, various schemes of functional representation – for example, from vocational or interest groups – could also provide individuals with useful expertise. However, the idea of a functional or vocational chamber has had little support,[79] and the Wakeham Commission rejected it.[80]

The White Paper sets out the Government's view of the importance of expertise in the second chamber:

> The present House of Lords' deliberative function has grown up alongside its legislative one. The House of Lords has always attached importance to its ability to provide general advice and to initiate a general debate on important issues of the day, in an atmosphere less pressurised than the House of Commons by party political issues. The likelihood that real expertise will be available in the Lords is an important factor in giving these debates an authority they might not otherwise have. The Government wants to see the future second chamber constituted so that it could continue to fulfil this function in a distinctive fashion.[81]

The Wakeham Commission also emphasised the importance of expertise:

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78 Peter Riddell, *Parliament Under Blair*, 2000, p 121

79 See Robert Blackburn, "The House of Lords", in Robert Blackburn and Raymond Plant (ed) *Constitutional Reform The Labour Government's Reform Agenda*

80 Royal Commission on the House of Lords, *A House for the Future*, Cm 4534, January 2000 pp 108-110

81 Cabinet Office, *Modernising Parliament Reforming the House of Lords,* Cm 4183, January 1999, pp 37-38

> One of the characteristics of the present House of Lords which was widely applauded during our consultation exercise was that it contains a substantial proportion of people who are not professional politicians, who have experience in a number of different walks of life and who can bring a considerable range of expertise to bear on issues of public concern. The support for this was reflected in the substantial number of proposals we received that members of the reformed second chamber should be drawn in some way from professional bodies, vocational groups and other organisations representative of specific sectors of society.
>
> We discuss this concept and its practicalities further in Chapter 11, but it seems to us desirable that the reformed second chamber should continue to have members with a wide variety of experience in different walks of life. This would contribute to the goal of extending the range of perspectives from which issues are viewed by Parliament. It would be consistent with our desire to see a second chamber which was broadly representative of British society as a whole. It would reinforce the authority of the second chamber. Above all, the ability to call on at least some people with practical experience or relevant expertise in particular areas would reinforce the scrutinising role of the second chamber by helping it to assess the workability of proposals.[82]

There are counter arguments, however. Some maintain that access to expertise is better achieved through the use of special advisers, or through specialists giving evidence to select committees. Another issue is that expert members will be called upon to deliberate and to vote on areas that are outside their expertise. Professor Ian Mclean argues that there are dangers in the nomination of experts:

> If (say) a quarter of the Second Chamber were nominated, it would fall to the Appointments Commission to nominate the 'expert' crossbench members. Here I can only hope that the commission will use its common sense. Nominating those who say they are experts, and nominating those put forward by trade, professional and other special interest groups, are two predictable routes to disaster. The one set of experts who are clearly indispensable in a scrutinising chamber is that of legal experts. As suggested above, the most appealing way to achieve this is by making members of the Law Commission ex officio members of the Second Chamber for the duration of their time on the commission.[83]

Professor Robert Blackburn, who favours direct elections, argues as follows:

> Most of the arguments in favour of the status quo, or those which seek to avoid elections on any basis on the ground that some other body or person is better equipped than ourselves to choose who should be working in the Second Chamber, are somewhat specious and patronising. The 'expertise' argument – that the Upper House requires persons of a special level of ability and knowledge

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82 Royal Commission on the House of Lords, *A House for the Future*, Cm 4534, January 2000 p 99

83 Ian Mclean, "Mr Asquith's Unfinished Business", *Political Quarterly*, Vol 70, No. 4, October-December 1999, pp 387-8

> to be selected – is palpably misleading to anyone who regularly sits in on debates in the House of Lords today. Certainly there are some highly able peers conducting legislative and committee work, but they represent a minority in the House and even then they attend only on a part-time or spasmodic basis. The fact is that the great majority of life peers who have been appointed at the personal selection of Conservative and Labour leaders over the past 20 years have been persons retiring from politics or not actively engaged in practical politics at all. The converse argument of those who oppose elections, namely that persons of the calibre required for the particular work of the Second Chamber will not be forthcoming through any system of elections is also misleading. It will be for the political parties to select suitably qualified persons prepared to stand as candidates and undertake a working career in Parliament.[84]

The question of the role of expertise in the second chamber is linked to that of independence from party. The White Paper argues for a "significant independent presence in the chamber" – something which is most unlikely to be a feature of a wholly elected chamber:

> The Government also believes that there is value in giving a voice in Parliament, and therefore the opportunity to question the Government, to those whose primary interests lie outside politics. Those who are still active, or only recently retired from, other professions, can frequently make a significant contribution to debate. This is true not only in the examination of legislation, but also in more general, set-piece debates on topical issues. It is for this reason that the Government is committed to maintaining a significant independent presence in the second chamber.[85]

E. The second chamber's role in the wider constitution

1. Safeguarding the constitution

As described above, the House of Lords currently has a veto under the Parliament Acts over legislation to extend the life of a Parliament (and therefore a government) beyond five years. Some people argue that the second chamber should have further special powers over legislation which would change the constitution. For example, it might have an absolute veto, or be able to delay such legislation for longer than ordinary legislation.

The Wakeham report states that: "One of the most important functions of the reformed second chamber should be to act as a 'constitutional long-stop' ensuring that changes are not made to the constitution without full and open debate and an awareness of the

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84 Robert Blackburn, "The House of Lords" in *Constitutional Reform The Labour Government's Reform Agenda*, ed. Robert Blackburn and Raymond Plant, 1999, p 44

85 Cabinet Office *Modernising Parliament Reforming the House of Lords*, Cm 4183, January 1999, p24

consequences."[86] However, it rejected the idea of additional powers over designated constitutional legalisation or issues. This was partly because in its view there was no satisfactory basis on which this could be done and no suitable machinery for adjudicating on whether a Bill raised such issues. It was also because this would be, in its view, inconsistent with one of the principles in its terms of reference – that the position of the House of Commons as the pre-eminent chamber should be maintained.[87]

The Commission instead recommended that a Constitutional Committee be set up "to act as a focus for its interest in and concern for constitutional matters."[88] The new House of Lords Committee on the Constitution was appointed in February 2001, and issued its first report in July 2001.[89] Its terms of reference are: "To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution."[90] The Commission noted that the Government had already announced its intention to ask both Houses of Parliament to establish a Joint Committee on Human Rights.[91] This was established in January 2001 to consider matters relating to human rights in the United Kingdom (but not individual cases) and remedial orders.[92]

The Wakeham report also recommended amending the Parliament Acts, to exclude the possibility of their being further amended under Parliament Act procedures, which would strengthen the veto over bills to extend the life of a parliament.

Some commentators have criticised the absence in the Wakeham report of any proposals for additional powers over constitutional measures. Peter Riddell considers this a missed opportunity:

> Explicit in both the government's White Paper and the Wakeham report is that the Commons should retain its current dominance virtually undisturbed. No one would really question that the Commons would remain the main democratic chamber which, following general elections, forms and sustains governments in office and retains the exclusive say over finance. Yet, as discussed earlier, twentieth-century assumptions about its centrality have been thrown into question by the programme of constitutional reform. Should a government with a majority in the Commons be able to change major parts of the constitution with no other check, apart from the one-year delaying powers of the House of Lords? In practice, the existence of referendums provides a check. It would be politically impossible for any government to reverse Scottish and Welsh devolution in the same way that the Greater London Council was abolished, unless this were the

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86 Royal Commission on the House of Lords, *A House for the Future*, Cm 4534, January 2000, p 48
87 Ibid pp 49-51
88 Ibid p 54
89 House of Lords Select Committee on the Constitution, *Reviewing the Constitution, Terms of Reference and Methods of Working*, HL 11, 2001-02
90 Ibid p 5
91 Royal Commission on the House of Lords, *A House for the Future*, Cm 4534, January 2000 p 55
92 For information see http://www.parliament.uk/commons/selcom/hrhome.htm

> will of the Scottish and Welsh people as expressed in a referendum. But there is nothing to prevent this from happening. That is why the Wakeham commission missed an opportunity in not recommending special powers over constitutional measures – for instance, the right to call referendums on constitutional issues, as a Conservative Party Review Committee suggested in 1978. That would give a reformed second chamber a proper role in the new constitutional settlement rather than merely continuing as back-stop for the Commons on legislation.[93]

Meg Russell, of the Constitution Unit, argues that the lack of such a role for the second chamber would leave Britain out of step with other countries:

> The UK has undergone massive constitutional change since May 1997: the establishment of the Scottish Parliament, Welsh Assembly, Northern Ireland Assembly and Greater London Assembly, Regional Development Agencies in England, the Human Rights Act the reform of the upper house itself. Yet any of these new institutions could potentially be altered, or even abolished, by a future government with a House of Commons majority.
>
> This is a highly unusual situation. In most countries such institutions would be entrenched in a written constitution, and amendments to them would require some special procedure. This acknowledges the fact that constitutional reform should not be made lightly, and should have broad support.
>
> In bicameral states the upper house often has a central role in the special procedure to agree constitutional amendment. (…) The Royal Commission's proposals leave Britain out of step with the rest of the world in terms of constitutional protection. We believe that the Royal Commission should have given the upper house powers to protect central elements of the constitution. The chamber can already block an extension to the life of a parliament, and the Commission propose that this power be entrenched. There are obstacles to going further, which the Commission spell out in their report. But we believe these are surmountable.[94]

A further discussion of House of Lords reform in relation to wider constitutional developments can be found in Library Research Paper 99/5.

2. Devolution

There has been much interest over the years in the Upper House fulfilling the role of representing regional interests.[95] Many commentators argue that in doing this, a Second

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93 Peter Riddell, *Parliament under Blair*, 2000, p 125-6

94 Meg Russell, "The Wider Context and Second Chambers Overseas", in Constitution Unit, *Conference Papers The Future of the House of Lords*, April 2000

95 For historical background, see Library Research Paper 99/6, pp 24-26

Chamber could act as "constitutional glue". [96] This is a role fulfilled by upper houses in both federal and non-federal states, as Meg Russell makes clear:

> The benefits of giving representation to sub-national units in parliament is that it helps to bind parts of a national together. Representatives of the nations regions bring their concerns to the national table, and also take home an understanding of national decision-making. Such arrangements are commonly found in federal states but apply also in countries, such as Italy and Spain, which have devolved assemblies without being federal. This is now one of the core functions of upper houses around the world.[97]

There are some potential difficulties in using the Second Chamber to achieve this function within the context of the UK's asymmetrical devolution settlement. The Wakeham Commission states that this militated against certain forms of representation:

> Many second chambers around the world (see Chapter 3), in unitary as well as in federal states, are constituted on a territorial principle, providing a voice for the distinct interests of different states or regions. This principle may provide a democratic basis for the second chamber which is less directly linked to population than that of the lower chamber, thus reducing any threat to the latter's political pre-eminence. In federations in particular, the second chamber is usually designed to represent the states, frequently on an equal or at least graduated basis, while the lower chamber is constituted on a population basis.
>
> The United Kingdom, however, is not a federal state. The present arrangements have been described as "creating a form of asymmetric quasi-federalism". The reality is that the contrasts between the different components of the United Kingdom are at present very significant. Scotland and Northern Ireland have extensive legislative devolution. The National Assembly for Wales is able to exercise discretion in respect of secondary legislation within the framework of primary legislation passed at Westminster. Legislation and policy for England are settled at Westminster and in Whitehall although the Government Offices for the Regions have begun to ensure that implementation reflects regional circumstances. The Mayor for London, the Greater London Authority and the various English regional structures may exert an increasing influence. These differences may militate against certain forms of regional representation in the second chamber. The reformed second chamber, however, will be part of the national legislature. It is therefore self-evident that it should be, and be seen to be, a chamber which serves the interests of the whole of the United Kingdom.

The Wakeham Commission recommended that "at least a proportion of the members of the second chamber should provide a direct voice for the various nationals and regions of

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96 Ivor Richard and Damien Welfare, *Unfinished Business Reforming the House of Lords*, 1999, p 143

97 Meg Russell, "The Wider Context and Second Chambers Overseas", in *Conference papers The Future of the House of Lords*, The Constitution Unit. 2000

the United Kingdom".[98] It rejected the idea that the second chamber should be a 'federal' chamber or an intergovernmental forum, and it also rejected indirect election of members by devolved assemblies and parliaments. It recommended that the reformed second chamber should consider establishing a committee to provide a focus for its consideration of the issues raised by devolution, possibly as a sub-committee of the Constitutional Committee.[99]

F. The views of the parties

Labour and the Conservatives have shifted their positions on reform the House of Lords at various points in the past 20 or 30 years.[100] Professor Rodney Brazier observes:

> Oppositions want the House of Lords to act against legislation passed at the request of an elective dictatorship, but do not want peers to interfere with their legislation when they are in office.[101]

1. Labour

Labour has always been hostile to a pre-dominantly hereditary upper house, and called for abolition in the Party's early years.[102] In the immediate post-war years it turned its attention to reform rather than abolition, accepting *The Life Peerages Act 1958*. However, calls from the left for abolition resurfaced in the 1970s, and the 1983 manifesto pledged to abolish the House of Lords without replacement.[103] In 1989, following its policy review, the party published *Meet the Challenge Make the Change* which proposed an elected second chamber with enhanced delaying powers over measures affecting fundamental rights.[104] Labour's 1992 manifesto promised:

> Further constitutional reforms will include those leading to the replacement of the House of Lords with a new elected second chamber which will have the power to delay, for the lifetime of a Parliament, change to designated legislation reducing individual or constitutional rights.[105]

Following the 1992 election, the Labour Party's Constitutional Committee, chaired by Tony Blair and Richard Rosser reconsidered policy on the House of Lords. The resulting

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98 Royal Commission on the House of Lords, *A House for the Future*, Cm 4534, January 2000 p 60

99 Ibid p 65

100 See for example, Andre Kaiser "House of Lords and Monarchy: British Majoritarian Democracy and its Current Reform Debate abut its Pre-Democratic institutions" in Peter Catterall et al, *Reforming the Constitution*, 2000

101 Rodney Brazier, *Constitutional Reform*, 1998 p 88

102 See Vernon Bogdanor, *Power and the People A Guide to Constitutional Reform*, 1999, pp 109-110 and Andre Kaiser ,"House of Lords and Monarchy: British Majoritarian Democracy and its Current Reform Debate abut its Pre-Democratic institutions" ,in Peter Catterall et al *Reforming the Constitution*, 2000

103 Labour Party 1983 manifesto, *The New Hope for Britain*, p 29

104 Labour Party, *Meet the challenge Make the Change A new agenda for Britain*, 1989, p56

105 Labour Party, *It's time to get Britain working again* April 1992, p 25

proposals included an elected second chamber, but with the abolition of the hereditary peers' right to sit and vote as a first step.[106] However, by 1996 Labour had dropped, the pledge on direct elections. Instead the aim became to make the second chamber "more democratic and representative."[107] The relevant extract from the 1997 manifesto is set out on page 23, and the extract from the 2001 manifesto is on page 9.

2. Conservatives

Conservative governments introduced a number of measures to reform the House of Lords. These included the *Life Peerages Act 1958*, which introduced life peers, and the *Peerage Act 1963*, which allowed hereditary peers to disclaim their peerages for life and gave women peers the right to sit in the House of Lords. In the late 1970s Margaret Thatcher appointed a party review committee under Lord Home. This proposed a mixed chamber with two thirds of its members elected by proportional representation, and one third appointed.[108] Once the Conservatives were in government, a special Cabinet committee examined reform possibilities, but no initiatives were announced. The 1983 manifesto stated that Conservatives would ensure that the House of Lords had a "secure and effective future" and that "…(a) strong Second Chamber is a vital safeguard for democracy and contributes to good government."[109]

In opposition, the 1999 Mackay Commission examined reform of the House of Lords. It proposed two models for the reformed second chamber. The first was for a chamber of mixed composition, including appointed, directly elected and indirectly elected members. The second model was a directly elected chamber.[110] The Conservative Party evidence to the Wakeham Commission did not advocate a single model because it was in the course of consulting the Party on the Mackay Commission proposals. However, it stated that it was "totally opposed to the creation of an entirely nominated House of Lords", and opposed quotas for specific sections or groups of people. It highlighted the importance of an independent, non-party element.[111]

In January 2001, Lord Strathclyde, shadow leader of the Lords, set out Conservative policy in the pamphlet for the Centre for Policy Studies cited above:

> The Conservative Party's position is clear. It is likely to want a much greater elected element than was envisaged by the Royal Commission. It does not accept the idea of a wholly appointed House. Many have come to fear the

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106 Labour Party, *A new agenda for democracy: Labour's proposals for constitutional reform*, 1993, p 35

107 Labour Party, *New Labour leading Britain into the future*, 1996 , p 15 and Labour 1997 manifesto, *New Labour Because Britain deserves better*, p 32

108 Lord Home, *Report of the Review Committee on the Second Chamber*, 1978

109 Conservative Party, *The Conservative Manifesto 1983*, p 35

110 Constitutional Commission, *The Report of the Constitutional Commission on the options for a new Second Chamber*, chaired by Lord Mackay of Clashfern KT, 1999

111 Conservative Party *A Stronger Parliament Evidence to the Royal Commission on the House of Lords*, 1999

> gerrymandering instincts of this Government. Whatever else may be said against the remaining hereditary peers, at least they are some temporary bulwark against the dangerous prospect of an in-build appointed majority.[112]

The 2001 Conservative manifesto stated the policy as follows:

> In changing the way Parliament works our overriding objective will be to strengthen the ability of the House of Lords and the House of Commons to hold the Government to account. We will strengthen the independence of the House of Lords as an effective revising chamber by requiring new members to be approved by an independent appointments commission. We will set up a Joint Committee of both Houses of Parliament in order to seek consensus on lasting reform in the House of Lords. We would like to see a stronger House of Lords in the future, including a substantial elected element. [113]

3. Liberal Democrats

The Liberal Democrats have long argued for a predominantly directly elected second chamber, as a component of its longer-term proposals for comprehensive constitutional reform. In their 1997 manifesto they made the following commitment:

> We will over two Parliaments, transform the House of Lords into a predominantly elected second chamber

In their evidence to the Wakeham Commission, they recommended a wholly elected Senate:

> Our intention is to strengthen the authority and legitimacy of the second chamber and to enhance its role as a check on executive power. Our recommendations on structure are directed to that end. Our preference is that the ultimate structure of the second chamber should be a wholly elected Senate with 261 Senators. Senators would be expected to be full-time members and would be paid accordingly. The House of Lords sitting in judicial capacity should be separate from the Senate and renamed the Supreme Court. Law lords and bishops should no longer have a place in the second chamber. The functions and powers of the Senate should be defined in law and in some areas, such as the constitution, should be greater than the functions and powers of the present House of Lords.[114]

In its 2001 manifesto, the Liberal Democrats pledged to:

> Replace the House of Lords with a smaller directly elected Senate with representatives from the nations and regions of the UK. The Senate will be given

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[112] Lord Strathclyde, *New Frontiers for Reform*, Centre for Policy Studies, January 2001, p 18

[113] Conservative Party, *Time for Common Sense*, 2001 at http://www.conservatives.com/manifesto.cfm

[114] Liberal Democrat Party, *Modernising Parliament Reforming the House of Lords The Liberal Democrat evidence to the Royal Commission*, Executive Summary, 1999, p 1

> new powers to improve legislation. We will transfer the judicial functions currently undertaken by the House of Lords to a new Supreme Court.[115]

V Recent Library Research Papers on House of Lords reform

RP 00/61	*Lords Reform: The interim House – background statistics*, 15 June 2000
RP 00/61	*Lords Reform: Major developments since the House of Lords Act 1999* – 14 June 2000
RP 99/88	*The House of Lords Bill Lords Amendments* 9 November 1999
RP 99/7	*The House of Lords Bill: Lords Reform and wider constitutional reform,* 28 January 1999
RP 99/6	*The House of Lords Bill: Options for 'Stage Two'*, 28 January 1999
RP 99/5	*The House of Lords Bill: 'Stage One' Issues,* 28 January 1999
RP 98/105	*Lords Reform: Recent Developments,* 7 December 1998
RP 98/85	*House of Lords reform: Developments since the general election,* 19 August 1998
RP 97/28	*Lords Reform: Recent Proposals,* 17 February 1997

[115] Liberal Democrat Party 2001 Manifesto, *Freedom, Justice, Honesty*, p 7

Appendix 1 - Nominations to the House of Lords Appointments Commission

Breakdown of first round of nominations November 2000[116]

	Nominees	House of Lords	UK population
	3,166	696	59,500,000
Gender			
Men	81%	84%	49%
Women	19%	16%	51%
Ethnic origin			
White	85%	97%	94%
Non-white	15%	3%	6%
Disability			
Consider themselves disabled	15%	*	15%
Nationality			
British	98%	*	*
Irish	1%	*	*
Commonwealth	1%	*	*
Age			
60 or under	61%	31%	79%
61 or over	39%	69%	21%
Regional background			
South West	9%	*	8%
South East	18%	*	14%
East Anglia	6%	*	9%
London	27%	*	12%
East Midlands	6%	*	7%
West Midlands	6%	*	9%
Wales	4%	*	5%
North West	9%	*	12%
Yorkshire	4%	*	8%
North East	3%	*	4%
Scotland	5%	*	9%
Northern Ireland	2%	*	3%
Other	1%	*	*

[116] Source: http://www.houseoflordsappointmentscommission.gov.uk/whatsnew.htm

Notes:

1. The regional background of nominees is taken from the address in the nomination form. We believe that the figure for London is substantially overstated since many people working in London during the week regard their regional background as elsewhere in the United Kingdom.

2. The House of Lords figures are based on our analysis of the biographies of current peers.

3. * indicates that either the figures are unavailable or the comparison is invalid.

Appendix 2 – International comparisons

The following tables are reproduced with permission from Meg Russell's comprehensive and authoritative book, *Reforming the House of Lords Lessons from Overseas* Oxford University Press 2000[117]. The book gives an overview of the composition and powers of second chambers world-wide, then looks at seven of these – in Australia, Canada, France, Germany, Ireland, Italy and Spain – in more detail in the context of the countries political systems. It then draws out lessons for the United Kingdom.

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Composition of selected second chambers (Reproduced with permission from Meg Russell's *Reforming the House of Lords*, OUP, 2000)

	Size of Chamber		Composition mechanism	Term
	Lower	Upper		
Australia: Senate	148	76 51%	Directly elected. Senators elected by single transferable vote in six states and two territories. States have 12 seats each irrespective of population. Territories have two seats each. Lower house elected by alternative vote.	Six years for state Senators (half in each state elected every three years) and three for territory Senators.
Austria: Bundesrat	183	64*	Indirectly elected. Members elected by provincial assemblies – three to 12 members each depending on population. Proportional system with at least one seat for second largest party.	No fixed term – members change when provincial assemblies elected.
Belgium: Sénat	150	71* 47%	Mixed (largely directly elected). Forty members directly elected, 25 by Flemish electoral college and 15 by French. 31 appointed by Community Councils – 10 Flemish, 10 French and one German. Six co-opted by Flemish groups and four by French groups. King's children are *ex officio* members.	Up to five years (same day as lower house elections).
Canada: Senate	301	105 35%	Appointed. Members appointed by Governor General on advice of Prime Minister. Senators nominally represent provinces – large provinces have 24 seats, smaller ones four, six or ten. Three territories have one seat each.	Appointment is to age 75.
Czech Republic: Senat	200	81 40%	Directly elected. Majority vote in single member constituencies. Lower house is elected by a proportional system.	Six years, one-third elected every two years.
France: Sénat	577	321 56%	Indirectly elected. Senators are elected in 100 *départments* by an electoral college of councillors and MPs. Each has between one and 12 Senators, based on population, but rural areas are over-represented. Additional 12 Senators are elected to represent French citizens living abroad.	Nine years, one-third elected every three years.
Germany: Bundesrat	656*	69 11%	Indirectly elected. Members are appointed by state governments from amongst their members. Between three and six per state, depending on population.	No fixed term, members change when state governments change.
India: Rajya Sabha	630	245 39%	Mixed (largely indirectly elected). 233 elected by state legislatures using single transferable vote, with seats based on population. President also appoints 12 'distinguished' persons in fields of literature, art, science and social service.	Six years, one-third elected/appointed every two years.
Ireland: Seanad	166	60 36%	Mixed (largely indirectly elected). 43 members elected by councillors and members of parliament in five 'vocational' categories. Six elected by graduates of two oldest universities. Eleven appointed by the Taoiseach (Prime Minister).	Up to five years (linked to lower house elections).
Italy: Senato	630	326* 52%	Mixed (largely indirectly elected). 315 members directly elected by similar semi-proportional voting system to lower house, in	Up to five years (same day as lower house elections).

	Size of Chamber		Composition mechanism	Term
	Lower	Upper		
			regions. Each president may appoint up to five life members (currently there are eight). Ex-Presidents have *ex officio* membership (currently three).	
Japan: Sangiin	500	252 50%	Directly elected. 152 members elected using majoritarian system in 47 constituencies with two to eight members each. 100 members elected by PR from national lists. Lower house uses additional member system.	Six years, half elected every three years.
Mexico: Cámara de Senadores	500	128 26%	Directly elected. Four members elected per state. First three on majority system, with one seat guaranteed for second ranking party. Lower house uses additional member system.	Six years. Candidates may not be re-elected for a consecutive second term.
Netherlands: Eerste Kamer	150	75 50%	Indirectly elected. Elected by provincial councils, using a proportional system, from amongst their members. Number of seats depends on population.	Four-year fixed term.
Poland: Senat	460	100 22%	Directly elected. Elected in 47 constituencies returning two members each and two large cities returning three each, using majority vote. Lower house uses proportional system.	Up to four years (same day as lower house elections).
Russia: Council of the Federation	450	178 40%	Indirectly elected. Two members are appointed by state government and parliament in each of the 89 territories, being the state's head of administration and the chair of the parliament.	Varies by state.
South Africa: National Council of Provinces	400	90 23%	Indirectly elected. Ten members appointed from each of the nine provinces, by parties, based on strength in provincial legislature. Four may be members of that legislature, including the premier – who can designate a substitute.	Five years
Spain: Senado	350	259* 74%	Mixed (largely directly elected). 208 members elected in provinces by semi majoritarian system, mostly four per province. Remainder indirectly elected from regional assemblies, based on population. Lower house uses proportional system.	Up to four years (to date on same day as lower house elections).
Switzerland: Ständerat	200	46 23%	Directly elected. Each canton elects two members and half cantons elect one. Most cantons use a majority system. Lower house elected using proportional system.	Four-year fixed term (same day as lower house elections).
UK: House of Lords	659	1,294* 196%	Mixed. In summer 1999, 759 hereditary peers, 477 appointed life peers, 27 law lords and ex-law lords and 26 bishops *(ex officio).*#	Life membership, except bishops who sit until their retirement.
USA: Senate	435	100 23%	Directly elected. Each state elects two Senators irrespective of population, by majority vote. Lower house also uses majority system.	Six-year fixed term, one-third elected every two years.

* Size of the chamber is not fixed

The transitional house will include the life peers, law lords and bishops, plus 92 hereditary peers, making the upper house roughly the same size as the House of Commons.

Powers of selected second chamber (Reproduced with permission from Meg Russell's *Reforming the House of Lords*, OUP, 2000)

	Ordinary legislation	Financial legislation	Dispute resolution	Constitutional amendments
Australia: Senate	Bills are introduced in either house. Upper house may amend or reject any legislation	Must be introduced in lower house. Upper house may not amend but may 'request' amendments, or reject.	Only means of resolving disputes is to dissolve both house of parliament.	Must pass at least one house with absolute majority and then pass referendum by majority and with support in more than half the states.
Austria: Bundesrat	Bills are introduced in lower house. Upper house can object within eight weeks, but cannot amend.	Upper house cannot object to federal budget.	Lower house can override upper house veto.	Passed by lower house only, but if one-third of upper house members demand it, there must be a referendum.
Belgium: Sénat	Two kinds of legislation: 'ordinary' bills start in lower house and pass automatically unless 15 Senators demand a review within 15 days (Sénat then can consider for 60 days); 'bicameral' bills, covering, eg. foreign affairs, need support of both chambers.	Treated as ordinary legislation.	Lower house can override upper house veto on 'ordinary' legislation.	Require both houses to be dissolved, and two-thirds majority in both new houses.
Canada: Senate	Bills are introduced in either house. Upper house may amend or reject any legislation.	Must be introduced in lower house. Upper house may amend but not increase costs.	No means of resolving disputes – bills may shuttle indefinitely.	Senate can only block for 180 days, but must also be agreed by legislative assemblies in two-thirds of provinces, comprising 50% of population+
Czech Republic: Sénat	Bills are introduced in lower house. Upper house has 30 days to review	Treated as ordinary legislation.	Absolute majority of deputies can overrule upper house veto.	Must be passed by three-fifths majority in both houses.
France: Sénat	Bills are introduced in either house. Upper house has right to amend or veto any legislation.	Must be introduced in lower house. Upper house may have as few as 15 days to consider it.	After two readings in each house, or one in case of urgency, joint committee proposes a compromise, which cannot be amended. If rejected lower house has last word.	These and 'organic' laws (covering, for example, the electoral system) must pass both houses and then either a joint sitting by a three-fifths majority or a referendum.
	Ordinary legislation	Financial legislation	Dispute resolution	Constitutional amendments
Germany: Bundesrat	Upper house sees and comments on all legislation before introduction in lower house. After lower house reading bills return to upper house for approval.	Treated as ordinary legislation, except budget which is introduced in both house simultaneously.	Joint committee recommends a compromise, which usually cannot be amended. Then upper house has veto on bills affecting the states (around 60% of bills), lower house has last word otherwise.	Must be passed by two-thirds majority in both houses.
India: Rajya Sabha	Bills are introduced in either house. Reviewing house has six months.	Most such bills must be introduced in the lower house, but budget in introduced in both houses simultaneously and upper house has 14 days to review (lower house is decisive).	If upper house passes unwelcome amendments, rejects the bill, or fails to consider it within six months, joint session decides.	Must be passed by two-thirds majority in both houses and majority of total membership of both houses.

	Ordinary legislation	Financial legislation	Dispute resolution	Constitutional amendments
Ireland: Seanad	Bills are introduced in either house. Upper house has 90 days to consider bill passed by lower house.	Must be introduced in lower house. Upper house has 21 days to review. Can 'suggest' amendments, but lower house may ignore.	Lower house can override upper house veto within 180 days.	Treated as ordinary legislation, but must then pass a referendum.
Italy: Senato	Both houses have equal powers to introduce, amend, and reject legislation.	Treated as ordinary legislation. Budgets introduced in two houses alternately each year.	No means of resolving disputes – bills may shuttle indefinitely.	Must pass both houses by two-thirds majority. If not by absolute majority, subject to referendum if requested by one-fifth of members of either house, 500,000 electors, or five regional councils.
Japan: Sangiin	Bills are introduced in either house. Upper house has 60 days to review legislation.	Must be introduced in lower house. Upper house has 30 days to review. Lower house has last word.	Two-thirds majority in lower house overrules upper house veto. Lower house may call a joint mediation committee, but has the last word.	Must be passed by two-thirds majority in each house.
Mexico: Cámara de Senadores	Bills are introduced in either house. Both houses may amend or reject legislation.	Must be introduced in lower house. Lower house has last word on spending and upper house on tax.	Bill shuttles twice then 'review' house has the last word.	Must be passed by two-thirds majority in both houses, and by half of all provinces.
Netherlands: Eerste Kamer	Bills are introduced in lower house. Upper house can reject, but not amend, bills.	Treated as ordinary legislation.	Upper house has the last word.	Require both house to be dissolved, and two-thirds majority in both new houses.
Poland: Senat	Bills are introduced in lower house. Upper house has 30 days to review legislation.	Treated as ordinary legislation.	Lower house can override upper house veto.	Must be passed by two-thirds majority in lower house and absolute majority in upper house.
Russia: Council of the Federation	Bills are introduced in lower house. Upper house cannot amend bills but may reject within 14 days.	Treated as ordinary legislation.	Joint committee recommends a compromise, which may be overridden by two-thirds majority in lower house.	Must be passed by two-thirds majority in lower house and six out of nine provinces in upper house, voting as blocks.
	Ordinary legislation	Financial Legislation	Dispute Reolution	Constitutional amendments
South Africa: National Council of Provinces	Bills are introduced in either house. For ordinary legislation upper house members have one vote each. For bills affecting provinces each province casts one block vote.	Must be introduced in lower house, but otherwise treated as ordinary legislation.	Joint committee recommends a compromise, which may be overridden by two-thirds majority in lower house.	Must be passed by two-thirds majority in lower house and six out of nine provinces in upper house, voting as blocks.
Spain: Senado	Bills are introduced in lower house. Upper house has two months to review, or 20 days in case of urgency, and may introduce amendments with an absolute majority.	Treated as ordinary legislation.	Lower house can override upper house amendments. Upper house veto may be overridden by an absolute lower house majority, or a simple majority after two months delay.	Most changes must pass by three-fifths majority in both houses Joint committee can propose compromise, which requires two-thirds majority in lower house and absolute majority in upper house. Also subject to referendum if requested by one-tenth of members of either house.[+]
Switzerland: Ständerat	Bills are introduced in either house. Both houses have veto power over legislation.	Treated as ordinary legislation.	Joint committee recommends a compromise. If this is rejected the bill	Unless passed by both houses, requires a referendum.

	Ordinary legislation	Financial legislation	Dispute resolution	Constitutional amendments
			fails.	
UK: House of Lords	Bills are introduced in either house. Upper house may amend or reject legislation. However, by convention upper house does not reject legislation implementing government's manifesto commitments.	Bills classified as 'money bills' must be introduced in lower house. Upper house may only delay for one month.	Lower house can override upper house veto approximately one year after bill's introduction if reintroduced in new parliamentary session.	Treated as ordinary legislation, except bill to extend life of a parliament, which Lords can veto.
USA: Senate	Bills are introduced in either house. Senate can amend or reject any legislation.	Must be introduced in lower house, but otherwise treated as ordinary legislation.	Shuttles indefinitely, but joint committee, with non-binding outcome, may be called at any time.	Must be passed by two-thirds majority in both houses, and ratified by three-quarters of states with seven years.