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House of Lords Reform – the 2001 White Paper

The Government published a white paper, *The House of Lords Completing the Reform*, Cm 5291 on 7 November 2001. It is consulting on a number of proposals until 31 January 2002.

The white paper endorses many of the proposals of the Wakeham Commission, which published a report on Lords reform in January 2000. However, there are a number of important areas of difference.

This Research Paper compares the white paper's proposals to those of the Wakeham Commission. It covers the debate in both Houses of Parliament on the day the white paper was published, and looks at press reaction and other comments. It goes on to examine the electoral proposals in more detail.

The House of Lords is due to debate the white paper on 9 January 2002 and the House of Commons is due to debate it on 10 January 2002.

Further background can be found in Library Research Paper 2001/77, *House of Lords Reform Developments since 1997*, and in a number of other Library Research Papers cited therein.

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Summary of main points

In January 2000, the Wakeham Commission published a report on the reform of the House of Lords. The 2001 Labour general election manifesto committed the Government to completing House of Lords reform, and implementing the recommendations of the Wakeham Commission in the most effective way possible.

In November 2001, the Government published a white paper, *The House of Lords Completing the Reform* (Cm 5291). It is consulting on some points raised in the document until 31 January 2002.

The white paper proposes that the House would eventually consist of:

- 120 independent members appointed by the Appointments Commission
- 120 directly elected members
- 16 bishops
- at least 12 Law Lords
- a balance of not more than 332 nominated political members where the number available to each party is determined by the Appointments Commission.

Like the Wakeham Report, the white paper proposes that:

- Membership should be separated from peerage
- The new House of Lords should be largely nominated, including a significant minority of independent members, as well as members elected to represent the nations and regions
- There should be a statutory independent Appointments Commission

Like the Wakeham report, it proposes few changes to the House of Lords legislative powers, and no new special powers over constitutional matters. However, the white paper diverges from the Wakeham Commission on a number of issues. For example, it proposes:

- a slightly larger House – eventually 600 rather than the Wakeham Commission's 550
- a slightly higher proportion of elected Members than suggested in the option favoured by a majority of the Wakeham Commission
- no role for the Appointments Commission in the selection of party affiliated members other than propriety checks.

The Wakeham Commission proposed terms of 15 years for appointed members and for elected members under its preferred option. The Government is consulting on whether the term should be 5, 10 or 15 years, and the white paper indicates that the Government favours shorter terms.

On methods of election, the white paper proposed the adoption of the Model B electoral option in the Wakeham Commission proposals, but with some significant changes:

- The electoral system to be used would be regional party lists, as in elections to the European Parliament, but with no firm conclusions as to the use of 'open' or 'closed' lists
- A preference for the date of election to be switched to that of the general election
- A preference for elections to be 'all-out' rather than staggered in one-thirds

The white paper also makes proposals on the disqualifications for membership of the Lords:

- No bar on those holding public offices
- Disqualification where detention under the Mental Health Acts, bankruptcy or imprisonment for longer than a year apply

The white paper also proposed franchise changes as follows:

- Members of the Lords should be able to vote in elections to the Commons
- Members of the Commons should be able to vote in elections to the Lords

The white paper attracted criticism in the press when it was published, including from Lord Wakeham.

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A. Introduction

The first stage of the Government's reform of the House of Lords was implemented by the *House of Lords Act 1999*, which abolished membership of the House of Lords for all but 92 hereditary peers. Also in 1999, the Royal Commission on the Reform of the House of Lords (the Wakeham Commission) was appointed to make recommendations on longer-term reform. It reported in January 2000.[1]

The Labour Party's 2001 election manifesto stated that the Government would complete reform of the House of Lords by implementing the Wakeham Commission's proposals, although it would be consulting on the way in which this would be done:

> 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.[2]

On 7 November 2001, the Government published its white paper setting out its proposals for reforming the House of Lords.[3] The Government is seeking views on these by 31 January 2002. Supporting documents were published in December 2001.[4] The Wakeham Commission made 132 recommendations in its report.[5] The white paper accepts most of the Commission's recommendations on the role of the Second Chamber, and a number of the recommendations on membership. However there are a number of important areas of divergence.

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1 Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000,
available at: http://www.archive.official-documents.co.uk/document/cm45/4534/4534.htm

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

3 Lord Chancellor's Department, *The House of Lords – Completing the Reform*, Cm 5291, November 2001, available at:
http://www.lcd.gov.uk/constitution/holref/holreform.htm

4 Lord Chancellor's Department, *The House of Lords Completing the Reform*, Supporting Documents, December 2001, available at:
http://www.lcd.gov.uk/constitution/holref/holsdocs.htm

5 Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000,
available at: http://www.archive.official-documents.co.uk/document/cm45/4534/4534.htm

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. [6]

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.[7]

The Public Administration Committee is conducting an inquiry into the Government's proposals for House of Lords reform. It will take evidence from both Houses of Parliament and will report by the end of January 2002.[8]

In July 2001, the Leader of the Lords, Lord Williams of Mostyn, set up a Leader's Group to consider how the working practices of the House could be improved.[9] It was originally hoped that this group would report by Christmas 2001. On 18 December 2001, Lord Mostyn announced that the group would be circulating a questionnaire to all members soon after Christmas, and would hope to complete its work soon afterwards.[10]

In addition to its plans for reform of the Lords, there are also plans for reform of the House of Commons. In December 2001, the Modernisation Committee published a Memorandum submitted by the Leader of the House of Commons, Robin Cook, setting out reform proposals for consultation.[11] Some of these proposals, including allowing the carry-over of bills from one session to another, may have implications for the work of the Lords and the operation of the Parliament Acts. There has been criticism that insufficient attention has been paid to the role of the Commons in developing plans for reforming the Lords. [12]

This Research Paper begins by comparing the main proposals in the 2001 white paper with those of the Wakeham Commission. Because most of the areas of divergence concern composition, this Research Paper concentrates on this, rather than the role and functions of the new second chamber. The latter are considered in more detail in Library Research Paper 01/77 *House of Lords Reform: Developments since 1997*[13], and in a number of other Library Research Papers cited in this.

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

7 Further details are given in Library Research Note 2001/77, pp 26-27

8 Public Administration Committee Press Notice No 7, "Public Administration Committee to inquire into Lords Reform", 21 November 2001 at http://www.parliament.uk/commons/selcom/pubpnt07.htm

9 HL Deb 19 July 2001 c 144WA

10 HL Deb 18 December 2001 c 36WA

11 Select Committee on Modernisation of the House of Commons, *Modernisation of the House of Commons: A Reform Programme for Consultation*, 12 December 2001, HC 440 2001-02.

12 See for example "The fall of the House of Lords" *Daily Telegraph*, 8 November 2001 and "Lords reform is doomed without democracy", *Evening Standard*, 9 November 2001

13 available at http://www.parliament.uk/commons/lib/research/rp2001/rp2001.htm

This Research Paper then examines the debate on the white paper in both Houses, and at the press reaction to it. The House of Lords Library has produced a Library Note which discusses the press reaction in more detail.[14]

The Research Paper goes on to look in more detail at the electoral issues raised in the Wakeham Report and the white paper.

B. The white paper's proposals for composition of the House of Lords.

The House of Lords currently has 713 Members. These comprise:[15]

- 595 Life Peers
- 92 hereditary peers under House of Lords Act 1999
- 26 Archbishops and bishops

The life peers include 12 Lords of Appeal in Ordinary.[16]. A more detailed analysis of the composition of the House is contained in Library Research Paper 01/77. This also explains the role of the Appointments Commission in appointing cross-bench life peers. The first of these were announced in April 2001.[17]

The white paper proposes that the House would eventually consist of:

- 120 independent members appointed by the statutory Appointments Commission
- 120 directly elected members
- 16 bishops
- at least 12 Law Lords
- a balance of not more than 332 nominated political members where the number available to each party is determined by the Appointments Commission.

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[14] Lords Library Note 2001/009, *Press reaction to the White Paper, The House of Lords: Completing the Reform*, 21 December 2001

[15] Lords Information Office website: http://www.publications.parliament.uk/pa/ld/ldinfo/ldanal.htm

[16] There are also others who are entitled to sit as Law Lords but in practice do so infrequently. The House of Lords Information Office website states that there are currently 28 Further information on Law Lords is contained in a Lords Information Office Briefing, *The Judicial Work of the House of Lords*, available at http://www.publications.parliament.uk/pa/ld199798/ldbrief/ldjuduc.htm

[17] House of Lords Appointments Commission Press Release, "House of Lords Appointments Commission announces new peers", 26 April 2001

C. Areas of agreement between the white paper and the Wakeham Commission

These include the following:

- Membership should be separated from peerage
- The new House of Lords should be largely nominated, including a significant minority of independent members, as well as members elected to represent the nations and regions
- There should be a statutory independent Appointments Commission
- The Appointments Commission should select independent (i.e. non-party) members
- The Appointments Commission should ensure that at least 30% of new appointees are women and 30% are men, working towards gender balance in the Chamber as a whole over time
- The Appointments Commission should have regard to the importance of ensuring fair overall representation for the nations and regions and from the ethnic minority communities
- There should be no changes in the House of Lords' powers over primary legislation, with present powers to delay the passage of a Commons Bill being kept
- The veto over delegated legislation should be reduced to three months' delay
- The Appointments Commission should ensure the party balance in the chamber mirrors votes cast at the last general election (so far as possible), and that 20% of members were not aligned to any of the main parties
- The new second chamber should have no new special powers over constitutional matters.

D. Divergences between the white paper and the Wakeham Commission

The main divergences are as follows:

1. Size of reformed second chamber

The **Wakeham Report** proposed a cap of 550 members, although this would be a guideline to the Appointments Commission rather than a statutory limit.[18]

The **white paper** proposes a statutory cap of 600 after 10 years, although during the transition the numbers could reach 750.[19]

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[18] Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000, Chapter 13

[19] Lord Chancellor's Department, *The House of Lords Completing the Reform*, Supporting Documents, December 2001, paragraph 91

2. Number and methods of electing regional members

The **Wakeham Report** proposed three models:[20]

- Model A – 65 members (12% of total) would be chosen at same time as general election through complementary voting. Each party would be awarded regional members in direct proportion to the share of votes it had received in each region in the general election..

- Model B – 87 elected members (16%) would be elected at same time as European Parliamentary Elections using same system of Proportional Representation. Elections would be staggered, with only one third of constituencies voting at each European election. Model B had the support of a "substantial majority of the Commission. A majority those supporting this model favoured 'partially open' list system of PR

- Model C – 195 elected members (35%) elected broadly on same basis as for Option B, except that each regional constituency would elect one third of its members at each election after the first.

The white paper favours an option using some elements of Model B, but with 120 elected members (20% of total) - the same number as the appointed independent members. The higher number is partly because the Government's proposed second chamber would be larger than that proposed by Wakeham. There would be a separate election. The Government is attracted to this being on the same day as the general election, rather than the European Parliamentary elections, or regional elections, but is consulting on this point. It is not persuaded that staggered elections are desirable.[21] A list system would be used, but the white paper does not specify whether this would be open or closed.[22]

Electoral issues are discussed in more detail in Part II of this paper.

3. The length of term

This is an important area, as it affects the independence of members of the Lords. The **Wakeham Commission** proposed that both elected members, and appointed members, would serve for between 12 and 15 years, depending upon which model were chosen.[23] It felt that this would help to ensure a degree of independence:

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[20] Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000, Chapter 12

[21] Lord Chancellor's Department, *The House of Lords Completing the Reform*, Supporting Documents, December 2001, page 32

[22] Further details of the proposed electoral system are set out in a separate Standard Note

[23] Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000, paragraph 12.14

> **12.16** One possible criticism is that terms of this length would make it hard for regional electorates or anyone else to hold members of the reformed second chamber to account. But that is precisely the point. One of our central aims is to recommend the creation of a second chamber whose members can speak and vote with a substantial degree of independence and who are in a position to take a long-term view. We want the regional members, in particular, to act as a voice for their regions. We do *not* want them to be constantly looking over their shoulders at either their electorates or their regional party organisations. Electoral accountability should, in our view, be the province of the House of Commons and be the justification for that House's supremacy.[24]

The **white paper** expresses doubt about whether extended terms can be reconciled with accountability:

> Under the Royal Commission's proposals, both elected members under Option B and appointed members (whether party nominations or independent appointments) would be members for 15 years. The Royal Commission attached importance to members having sufficient tenure to encourage a spirit of independence. However, extended terms, for elected members, must be reconciled with the concept of accountability, and the Government seeks views on whether the length of term appropriate to this purpose is 5, 10 or 15 years (or one, two or three Parliaments if elections are tied to General Elections; or one, two or three electoral cycles if elections are tied to regional elections). We note that no other democracy in the world has elected terms approaching 15 years for first or second chambers, nine years (for members of the French Senate, who are indirectly elected) being the next longest term in a Western democracy. Almost all elected second chambers have terms for individual members of 4, 5 or 6 years.[25]

The white paper also questions the 15-year appointment terms for appointed members.[26] The Government does not believe that the length of term should necessarily be the same for elected and appointed members, and is consulting whether it should be 5, 10 or 15 years for each category.

A later PQ stated that, for elected members, "(t)he Government are inclined to the view that the choice lies between the shorter options."[27]

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[24] Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000, paragraph 12.16

[25] Lord Chancellor's Department, *The House of Lords – Completing the Reform*, Cm 5291, November 2001

[26] Lord Chancellor's Department, *The House of Lords – Completing the Reform*, Cm 5291, November 2001, paragraph 55-6

[27] HL Deb 16 November 2001 c 105W

The Wakeham Commission proposed that there should be no provision for re-election, as this would undermine independence. The Government does not propose to bar relevant members from seeking re-election.

4. Role of Appointments Commission in party political nominations

This is also an important divergence considering that the majority of members of the new second chamber (332 out of 600) will be in this category.

The **Wakeham Commission** envisaged that the statutory Appointments Commission should appoint all members of the second chamber, although it would have no discretion over elected members, Law Lords, and representatives of the Church of England. It would select all the nominated members, both party political and independent. It would take account of recommendations from the parties, but have the final decision in all cases – the Commission saw "no reason why (the parties) should have total control over the selection of party-affiliated members":[28]

> **13.42** The Appointments Commission should also be free to pursue the objective of a balanced second chamber, without being limited to the appointment of people who are politically neutral. Such a constraint would be artificial and might tempt people hoping for selection to suppress their political leanings. It might also require awkward questions to be asked about party affiliations, which could lead to the abrupt termination of the consideration of otherwise promising candidates, simply on the basis of their politics. We therefore recommend that the Appointments Commission should be responsible for making all discretionary appointments to the second chamber, not just Cross Bench appointments.
>
> **13.43** We regard it as a very important point of principle that the Appointments Commission should be able to appoint people regardless of their party affiliations in the interests of achieving wider balances within the second chamber. The political parties should not be able to secure the appointment of their own party nominees to the exclusion of the Commission's. Neither should they be in a position to veto Appointments Commission appointments, even of members of their own party. We recognise that ultimately the parties have the right to offer the party whip to, or withhold it from, individual members of the second chamber.There is therefore no sense in which party-affiliated appointees can be 'foisted' on a party group in the second chamber.
>
> **Recommendation 98:** The Appointments Commission should make all discretionary appointments to the second chamber and should make the final decision in all cases. The Appointments Commission should be able to appoint people with party affiliations, whether or not these have the support of their political party.[29]

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[28] Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000, paragraph 13.41

[29] Ibid

The **white paper** proposes that the Independent Appointments Commission would only select independent members of the House, not the party members. It would therefore not have the role envisaged by the Wakeham Commission. The statutory Appointments Commission would vet the propriety of the parties' choices for political nominations, as the non-statutory Appointments Commission does now:

> The Commission will carry out the propriety checks on those nominated by the political parties. This will be its only involvement in the individual nominations made by the parties. The Government does not accept the Royal Commission recommendation that the Appointments Commission should have the final say over the identity of party nominations. Parties of whatever persuasion must be able to decide who will serve on their behalf. The Commission will of course scrutinise nominations to ensure that those put forward are fit and proper candidates for membership of the Lords.[30]

This would obviously leave more power with parties and party leaders than the Wakeham proposals would have done. However, the white paper proposals would still result in a curbing of Prime Ministerial power in comparison with the present system. Unlike under the current arrangements, where the Prime Minister determines the number of nominations from the various parties, the Appointments Commission would determine the numbers of political party members to reflect votes cast in the preceding general election. The Prime Minister would retain the right to appoint a small number of people – 4 or 5 per Parliament – directly as Ministers in the Lords.

5. Religious representation

There are currently 26 Church of England Bishops sitting as Lords Spiritual in the House of Lords. The **Wakeham Report** recommended that Anglican representation be reduced to 16, with five members from other Christian denominations in England and five from other Christian denominations in Scotland, Wales and Northern Ireland.[31] The Report noted that it was not possible to find a way in which all other faith communities could be formally represented as none of them had a suitable representative body. However, it stressed that the Appointments Commission should make clear to the various communities that it is open to receive nominations from them.[32]

The **white paper** agreed that the Church of England's formal representation should be reduced to 16, but felt that the practical obstacles for finding readily identifiable representatives from other denominations and faiths were too great. It would "expect the

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30 Lord Chancellor's Department, *The House of Lords – Completing the Reform*, Cm 5291, November 2001

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

32 Ibid, paragaph 15.17

Appointments Commission to give proper recognition to the non-Church of England faith communities as they seek greater representativeness in the independent membership of the House."[33]

6. The Parliament Acts

The *Parliament Acts 1911* and *1949* 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 described as follows in the Lords Companion to Standing Orders:

> 6.176 If the Lords reject any other public bill to which the Acts apply which has been sent up from the Commons in two successive sessions, whether of the same Parliament or not, then that bill shall, unless the Commons direct to the contrary, be presented for Royal Assent without the consent of the Lords. The bill must be sent up to the Lords at least one calendar month before the end of each session; and one year must elapse between second reading in the Commons in the first session and the passing of the bill by the Commons in the second. The Lords are deemed to have rejected a bill if they do not pass it either without amendment or with such amendments only as are acceptable to the Commons. The effect of the Parliament Acts is that the Lords have power to delay enactment of a public bill until the session after that in which it was first introduced and until at least 13 months have elapsed from the date of second reading in the Commons in the first session. [34]

The Wakeham Commission looked at a number of proposals, including changes to the time limit and whether the Act should be applied to bills starting in the Lords. It concluded these would be complex to enact and the practical effect would be insufficient to justify the Parliamentary time and effort required. The white paper agreed.

However, the **Wakeham Report** did recommend that it should no longer be possible to amend the Parliament Acts using Parliament Act procedures, as was done in 1949. This would, in effect, give the second chamber a veto over any attempt to constrain its existing formal powers in respect of primary legislation.[35] The Report went on to state that "the second chamber's veto over any Bill to extend the life of a Parliament should be reinforced. Our previous recommendation would achieve that".[36]

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33 Lord Chancellors Department, *The House of Lords Completing the Reform*, Cm 5291, November 2001, paragraph 85

34 See House of Lords *Companion to Standing Order*s, ch 6, at: http://www.publications.parliament.uk/pa/ld/ldcomp/compso.htm . See also Library Research Paper 98/103, *Lords Reform The legislative role of the House of Lords*, for further background.

35 Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000, paragraphs 5.13-5.15

36 Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000Recommendation20

The **white paper** did not explicitly mention these two points, although the supporting documents make it clear that the Government is not prepared to accept this proposal:

> The Royal Commission also recommended that a minor change should be made to the Parliament Acts to add Bills amending the Parliament Acts to those over which the Lords retains an absolute veto. The Government does not see the need for this amendment. The effect of the amendment would be to give the House of Lords a veto over their own present powers and the present form of the Parliament Acts. If the Commons insisted on changes to the Parliament Acts which were unacceptable to the country as a whole, it would have to answer for that to the electorate. But there would be no sanction against a veto by the Lords of such changes even when they were desired by the country as a whole The powers of the Lords, in this matter, would therefore effectively become greater than the powers of the Commons. [37]

E. Lord Wakeham's Response

Lord Wakeham reportedly criticised the white paper in an interview on *Breakfast with Frost* on 11 November 2001:

> "I think they [the government] have got several things wrong. First of all, I wanted a wholly independent Appointments Commission. I wanted an end of Tony's cronies – or any politician's cronies. I wanted people appointed on an independent basis. And they seem to have gone soft on that.
>
> "Secondly, I wanted the elected element in the House of Lords to be there for a long time rather than a short time, because I did not want them to be rivals of the House of Commons.
>
> "The House of Lords has got to be a revising chamber and separate from the House of Commons. I think their idea of less than 15 years, something like 10 years or even five years, would be very damaging.
>
> "And the third thing is that we proposed safeguards in the House of Lords in our proposals, which would have stopped any government changing our constitution about dates of elections, things of that sort."[38]

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[37] Lord Chancellor's Department, *The House of Lords Completing the Reform*, Supporting Documents, December 2001 paragraph 18

[38] Quoted in "Lord Wakeham savages reform plans", *House Magazine*, 19 November 2001, p 32

F. Parliamentary debate on the white paper

1. Debate in the Commons

In his statement on 7 November 2001, Robin Cook, the Leader of the Commons, summed up the proposals as follows:

> Those proposals will produce far-reaching reform of the House of Lords. They will remove the last of the hereditary peers from Parliament. They will introduce the first ever elected Members to the House of Lords. They will put the appointment of independent Members outside political patronage. They will ensure that the British electorate voting in a general election, not the Government of the day, decide the proportions in which party appointments are made. They will give Britain a modern second chamber, which will be able to complement the Commons, but unable to compete with it for power. I commend them to the House. [39]

In the debate following Robin Cook's statement in the House of Commons, Eric Forth, shadow Leader of the House criticised the tight timetable for consultation, and the Government's decision not to proceed with a Joint Committee of both Houses.

> The Government have generously – not – allowed us until 31 January 2002 for consultation on this very complex and important matter. Does the Leader of the House seriously suggest that from now until the end of January gives sufficient time for all the varied and legitimate interests to make their considered views known to the Government? That is surely an insult and an absurdity.
>
> In that context, what happened to the Joint Committee of both Houses that was supposed to consider these matters? We have heard nothing of it today, and I am not surprised. The Government made a commitment to it in July 2000; they renewed that commitment in March 2001, but it has now been quietly dropped. Why? Surely the answer is that the abbreviated and truncated period of so-called consultation is presumably designed to replace an approach by a Joint Committee that would at least allow the possibility of cross-party agreement, which the Government have always said they want to achieve. Indeed, they repeat that in the White Paper.
>
> What support does the Leader of the House think his proposals will attract in the parliamentary Labour party? He will no doubt be aware, as we all are, of early-day motion 226, which at the last count had 149 signatures, most from Members of his party. They seem to want a wholly, or at least largely, elected upper House. How will he satisfy his parliamentary colleagues with the contents of the White Paper? I think that we should know. [40]

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[39] HC Deb 7 November 2001 c 241
[40] HC Deb 20 December 2001 cc 24

Since the debate, more signatures have been added. As at 19 December 2001, 177 MPs had signed Early Day Motion 226, that "this House supports the democratic principle that any revised Second Chamber of Parliament should be wholly or substantially elected." 122 of these are Labour Members.

Mr Forth summed up his opposition to the Government's proposals as follows:

> There is a danger that the proposal will provide a fig leaf of democracy over what continues to be a largely unrepresentative appointed body. At worst, we shall have a continuation and indeed an institutionalisation of Tony's cronies. The Government should either withdraw the White Paper or at the very least refer it to a Joint Committee of both Houses, which was always intended to be the vehicle by which this reform would proceed. [41]

Paul Tyler, shadow Leader of the House for the Liberal Democrats argued that the number of elected members proposed was too low to ensure that the new second chamber was sufficiently "representative and democratic":

> Does the Leader of the House recall the explicit promise he made in 1997 to produce "a democratic and representative second chamber".
>
> I am sure that the House recognises that the rats have got at it since then, but I should not like to say at which end of the building they have been gnawing away. However, the White Paper now refers to making "it more representative and democratic".
>
> It could hardly be less.
>
> Does the Leader of the House accept that that is not the promise given in the 1997 manifesto and in the agreement made with the Liberal Democrats? Does he accept that the formula proposed--120, less than a fifth of the total of 750 at the beginning of the process--meets neither the 1997 manifesto commitment nor that in the 2001 manifesto, on which Labour Members stood for election by the public just a few months ago? Does he subscribe to the ludicrous view, expounded this morning on the "Today" programme by the right hon. Member for Manchester, Gorton (Mr. Kaufman), that elections are somehow undemocratic because turnout is so low in safe seats? Does he really want to continue to appoint Archers and Ashcrofts to that body or is he prepared to accept that direct democracy is a more preferable way to ensure that the second chamber is a true part of a parliamentary democracy?
>
> Does the right hon. Gentleman also accept that it will be ridiculous if the parameters for consultation on the composition of the second chamber are set just above or below 120? Surely the consultation must provide an opportunity for hon.

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[41] HC Deb 20 December 2001 cc 242-243

> Members on both sides of the House--especially, perhaps, those on the Labour Benches--to show that many of us believe that that is totally inadequate. The fact that the Conservatives cannot come up with a figure is an additional reason for the rest of us to consider establishing a more democratic House.[42]

2. Debate in the Lords

In his statement on the white paper, also on 7 November 2001, the Leader of the House Lord Williams of Mostyn emphasised that the Government's fundamental principle was that reform should not undermine the House of Commons. He continued:

> Our system of parliamentary democracy is built on the accountability of government to the House of Commons and through it to the people. To assume power, a government must command a majority in the House of Commons. To maintain power, they must sustain the confidence of that House. This constitutional framework, founded on the pre-eminence of the House of Commons, has provided Britain with effective democratic government and accountability, and few would wish to change it. It is vital that reform of this House does not upset that balance but rather that it strengthens the capacity of Parliament to legislate, to deliberate and to hold government to account, whichever government happens to be in power at that particular time.[43]

The shadow Leader of the Lords, Lord Strathclyde, criticised the continuing role of patronage in the new second chamber:

> …(Can) the noble and learned Lord take from me my bitter disappointment with what I believe are shabby and inadequate proposals? Those of us who have been Members of the House for some time have been promised for years plans to create a more authoritative, more legitimate House. What we have before us is an instrument of prime ministerial patronage hiding behind a fig leaf of token democracy. We were promised a stronger and more independent House. What we now have is a House with its powers reduced and the props that reinforced the independence of Members of this place kicked away. That is not reform. It certainly is not democracy and it is not even what my noble friend Lord Wakeham suggested in his Royal Commission.
>
> This document is muddled, superficial and misleading. Frankly, it is an insult to the intelligence of Parliament. In the foreword to the White Paper, the Prime Minister talks of creating a Parliament "fit for the 21st century". That is a soundbite even Miss Jo Moore would have blushed at. The Government propose a House of patronage on a scale unknown in any country of the world and not seen in this country for many centuries[44]

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42 HC Deb 7 November 2001 cc 245-6
43 HL Deb 7 November 2001 c 206
44 HL Deb 7 November 2001 c 209

He argued that the proposals would not lead to a more authoritative House and would damage its indepedence:

> I do wonder what happened to the Jay doctrine; that through reform, this House would be more authoritative and more respected by the Government. It is obvious that elected Peers should mean more power and more authority for this House. If the noble and learned Lord does not accept that, then why on earth are we bothering with this process? The blunt truth is that this Government simply do not want a more powerful House. That is why they go on resisting any proposal to give this House more opportunity to consider and amend financial legislation. How can that position be maintained after the arrival of elected Peers?
>
> Earlier, I said that the Government were out to kick away the props of independence in this House. Why else have they rejected the proposal, common to the reports of both my noble and learned friend Lord Mackay of Clashfern and my noble friend Lord Wakeham, that elected Peers should serve for 15-year terms? The very purpose of that recommendation was to stop Government Whips creeping up to noble Lords and saying, "Oppose Shaun Woodward again, mate, and you'll be deselected". No wonder that is something which the Prime Minister cannot stomach. [45]

Baroness Williams, Leader of the Liberal Democrats in the Lords, argued that the problem was not that the House of Lords might challenge the pre-eminence of the Commons, but the weakness of both Houses in holding the executive to account. She argued that Lords Reform should be considered in the context of wider Parliamentary reform:

> (…)I have a very central problem with the statement. I believe that it is a problem that should be shared throughout the House. I do not believe that any Member of this House wishes to usurp the House of Commons or would challenge the pre-eminence of the other place. Indeed, during the period in which I have been a Member of this House, I have noticed it defer time and again to the elected House. In some cases, it has done so even to the point of not pressing an amendment on being informed that the other place takes a different view. Of course, it is subject to the Salisbury convention, which, in a sense, enshrines the doctrine of the pre-eminence of the other place.
>
> However, with great respect, that is not the problem. Here I may echo to some extent the sentiments expressed in rather fiercer terms by the Leader of the Opposition. The problem is simply that, in this country, we have an executive that is consistently growing in power and a legislature that is incapable of holding it fully to account (.)

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[45] HL Deb 7 November 2001 cc 210-11

> Whatever our party, we cannot fail to recognise that the fundamental problem is the weakness not only of this place, but, indeed, of another place as well. It is a place that responds time and again to these strong instruments of reward, patronage and promotion, and in which it is, quite honestly, therefore difficult to get independent concerns expressed fully. That is the case because the whole structure of our system means that what is essential is party loyalty, which is a very fine virtue, but is very often to the exclusion of the operation of judgment and common sense on the passage of legislation.
>
> Therefore, the question that is before this House and another place is how we can so far reform our legislature that it becomes a powerful and significant one that can hold the government of the day to account. That is what people want. They want a government who are accountable to the people, and it is the job of the legislature to ensure that that accountability is real and transparent, and that it is upheld.
>
> In that context, one of the things that seems to me and to those on my Benches to be crucial is the need for us to consider the issue of Lords reform in the wider context of reform of the whole of Parliament. It makes no sense for us to talk about having lesser or more functions without knowing how far that will complement - I use the word carefully - the work of the House of Commons. We cannot seriously discuss the composition of this House without knowing what our most crucial functions are to be. If I may say so, that is simply to put the job before the job description, and it makes very little logical sense. [46]

Lord Hurd, who was a member of the Wakeham Commission criticised the white paper's proposals for party political nominated members, arguing that no bill based on these would succeed in passing through the House:

> We made a powerful case in the Royal Commission for a mixed elected and nominated Chamber. Will the Leader of the House accept that despite his own silver tongue, the Government have done their best to undermine that case?
>
> I have always argued for a strong elected element, but the case for a nominated element is also strong. It is made stronger by the rapid disappearance from the other House of practical experience of life outside politics. That is a real deficit in our parliamentary system that we can remedy if our arrangements in this House are right. But that will not happen if the arrangements consist of providing that 360 out of the 600 Members of this House are nominated by the party machine. That is not the correct remedy.
>
> Will the Government please consider the matter again in the light of the arguments in our report? Unless they do so, I have the feeling that no Bill will pass through the House because the parties are so deeply divided on the question

[46] HL Deb 7 November 2001 cc 212-3

> of composition. We shall be left to proceed more or less as we are, and imperfect as we are, for several years to come. [47]

G. Press reaction to the white paper

Press reaction to the white paper is analysed in detail in a Lords Library Note.[48] This section draws from a number of the articles cited in that Note.

Most of the press comment was hostile. *The Guardian* commented that there had been speculation that the Government's appetite for further reform of the Lords had waned:

> There remains a suspicion that this is indeed Tony Blair's view even now, and thus that yesterday's white paper has been conceived inside Number 10 as a deliberately self-defeating exercise. At the end of the day, this argument runs, parliament will talk itself into an impasse and will decide to leave things where they are. Mr Blair will then be able to say he has done his best, but that reform has proved impossible due to circumstances beyond his control, and that he is left with no alternative but to coninue to exercise the patronage that is at the heart of the existing system.[49]

The Economist, taking up the point that the white paper proposals would keep intact the current balance of power between the Commons and the Lords, commented as follows:

> …There is nothing self-evidently wrong in choosing to keep balance intact while improving, at the margin, the ability of the upper house to do its existing job.
>
> Noting wrong, that is, unless Mr Blair and Mr Cook pretend that the balance of power between the Lords and the Commons is the one which really matters in the constitution. It is not. The balance that matters is not between Parliament's two houses but between Parliament and the executive. The eternal puzzle of the British system, which the late Lord Hailsham called an "elective dictatorship", is how Parliament can hold the government to account when the members of the ruling party in the House of Commons depend for their personal advancement on the favour of the very prime minister whose actions they are supposed to scrutinise. This problem waxes and wanes, but has become stark under a prime minister who combines a presidential style with his second overwhelming Commons majority.
>
> One way to solve this problem would have been to enhance the powers of the upper house. Having now rejected this possibility, the Government ought to do something to enhance the independence of the lower one. It probably won't.[50]

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47 HL Deb 7 November 2001 c 221

48 Lords Library Note 2001/009, *Press reaction to the White Paper, The House of Lords: Completing the Reform*, 21 December 2001

49 "A charter for patronage", *The Guardian*, 8 November 2001

50 "This old house", *The Economist*, 10 November 2001

The Telegraph argued that reform of the Lords should not be considered in isolation from that of the Commons:

> Perhaps the greatest problem with trying to reform the Lords is that to do so properly would involve re-examining the role of the Commons. Those who want a wholly elected chamber fail to acknowledge that it would radically undermine the primacy of the Commons, around which our entire system of Government is built. But nor is it possible to refine and update the revising role of the Upper House, without considering the way in which the Commons works. Should the Lords be able to consider money Bills, which play such a large part in modern government? What should they do with European legislation? Before one can answer questions like these, one has to consider the role of Parliament in general vis-à-vis the executive, the EU and the courts.[51]

Hugo Young in *The Guardian*, argued that any government elsewhere putting forward a plan in the name of democracy for a second chamber that was only 20 per cent elected would be open to ridicule. He also argued that the Wakeham Commission's remit had been designed to result in a "fudge":

> The white paper grows out of the Wakeham royal commission, which was set up to help achieve the kind of fudge that is now on the way to happening. One has to notice the efficiency of the process. Whitehall has not lost all its mandarin talents. Wakeham was given a clear instruction as to what Mr Blair would accept; there hasn't been a more political royal commission for many years. Yet it is now cited as an authoritative independent voice.
>
> There have been some adjustments, in which the hand of Robin Cook, a scornful private critic of Wakeham's timidities, has won a battle or two. The most important is the proposed increase from 87 to 120 of the number of elected members of the Lords, putting the proportion eventually at one in five of the whole. But that will be a long time coming. Since no present peers, except the 92 surviving hereditaries, are to lose their place for life, natural wastage must take its slow, unpredictable course before the electees attain even that modest proportion. But it is, in any case, far too small: tokenism of a singularly pointless sort, with effects that are certain to be divisive, ensuring ultimately - in another half-century? - that the mix is agreed to be untenable. Meanwhile, we're promised a complicated mess of the elected and unelected, life peers and term-limited MLs, all jostling for equal status.[52]

Peter Riddell in *The Times* argued that it demonstrated the Government's lack of interest in constitutional reform:

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51 "The Fall of the House of Lords", *Telegraph*, 8 November 2001

52 "A Commons revolt might make them think again", *Guardian*, 8 November 2001

> The brutal truth is that hardly anyone in the Cabinet is seriously interested in constitutional affairs. Gordon Brown is (though mainly about national identity), Jack Straw is (but is now preoccupied elsewhere), Robin Cook always has been. Tony Blair has never been, being content to leave these matters to Lord Irvine of Lairg, whose role as constitutional supremo has increased even further since the election.
>
> This is a recipe for a lowest common denominator approach. The first target was hereditary peers, whose membership of the second chamber will be finally ended when the present proposals are enacted. Otherwise, the main aim has been to retain a subordinate chamber that does useful revising work to compensate for the inadequacies of the Commons and is an additional source of prime ministerial patronage.[53]

The *Financial Times* commented that the white paper had ignored the possibilities of increasing the powers of the Lords. It went on to criticise proposals on composition:

> The proposed composition of the chamber reflects this overweening approach. Only 20 per cent will be independent members - appointed by a commission chosen by the Lords itself. Another 20 per cent will be elected by the disreputable process of picking candidates from closed party lists and about half will be chosen by political parties. The government is considering short terms for membership - less than the 15 years suggested by Wakeham. This would be another way to enable party machines to exert control.
>
> The House of Lords deserves better than these intellectually thin and politically squalid proposals. By collapsing the consultation period to three months including the Christmas period, the government shows that it wants to shovel them through hugger-mugger and then get on with the real business of exercising power from the Commons.[54]

H. Other comments

The Constitution Unit has prepared a briefing on the white paper for MPs. This welcomes a number of the proposals including:

- curbing the Prime Minister's powers of patronage
- putting the Appointments Commission on a statutory basis
- introducing an elected element to represent the nations and regions
- breaking the link between the peerage and membership of the Lords
- removing the remaining 92 hereditary peers.

The briefing's executive summary continues:

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53 "Shallow, minimalist and deeply conservative", *Times*, 8 November 2001

54 "Building a House of Cards" *Financial Times*, 8 November 2001

The government deserves credit for maintaining the momentum on Lords reform. But the major departures from the Wakeham recommendations call into question the governments claim that it is implementing the Wakeham report. To fulfil its wish for a House which is 'sufficiently authoritative and confident' the government should

- retain long terms of appointment and election, to ensure independence
- strengthen the role of the Appointments Commission, so that it selects not just the independent members but also the party nominees
- increase the elected element.

Longer terms. In place of Wakeham's 15 year terms, basically non-renewable, the government now proposes 5 or 10 year terms, which would be renewable. 5 year terms would fatally undermine members' independence, because they would constantly have an eye to their re-selection or re-appointment. Ironically - given the governments concern about maintaining the primacy of the House of Commons - they would also create a breed of elected politician with a term rivalling MPs. The government should accept 10 year terms, for elected and appointed members, renewable only once.

The Appointments Commission will not be able to ensure overall gender and other forms of balance if it is responsible for appointing only the cross benchers, who comprise 20 per cent of the House. As Wakeham proposed, the Commission should be given final responsibility for appointing the party nominees as well (who will comprise the bulk of the House, at 55 per cent). This should strengthen public confidence that nominees are not just party hacks. But to give the parties confidence in the process, the Commission should work from shortlists supplied by the parties.

The elected element At the least the government should consider raising the elected element to Wakeham's proposed maximum of 35%. An elected element of one third might bring the balance in terms of attendance to around 50:50, because elected members are likely to attend full time and appointed members to continue to be part time. Election by party list, and appointment from party lists in practice lead to much the same result. The government could concede a higher proportion of elected members without the parties losing control of who sits on 'their' benches.

Election should be by fully 'open' lists, in which voters can express effective preferences between candidates, and not by 'closed' or 'limited open' lists. The latter present an illusion of choice, but almost never result in any re-ordering of the party list. Lists should also use quotas or 'zipping' to encourage female candidates.

Elections to the Lords should be held on the same cycle as elections to the European Parliament Distancing them from general elections would help to emphasise the subordinate nature of the Lords. Lords elections should be held on a staggered basis, with only one third or one half of members elected each time. This would ensure the Commons always has a fresher mandate; help to provide

> continuity of experience (especially desirable if there is a bar on re-election); and make the task of rebalancing easier for the Appointments Commission.

On the question of the Lords powers and functions, the Constitution Unit make the following proposals:

> The Lords should have a recognised role as a 'constitutional longstop'. In bicameral systems the upper chamber often has a specific role in approving constitutional amendments. This need not be a veto. The Lords could have the right to insist upon a referendum.
>
> The Lords should also become the guardian of the devolution settlement The members elected to represent the nations and regions may wish to establish a Devolution Committee. To build links with the devolved institutions, they could be required to make regular reports to their devolved assemblies and parliaments.
>
> The government has rejected the Wakeham recommendation that Commons Ministers should be allowed to make statements and answer questions in the Lords. The government should be willing to allow some limited experiment in this area, with reciprocity so that Lords Ministers could appear before the Commons.
>
> The Lords should not lose their power of veto over subordinate legislation. The government's proposal to reduce this to a 3 month delaying power will not "increase the influence of the Lords over secondary legislation", and is not needed now that the Lords have shown their willingness to vote down statutory instruments. The House of Lords should also have a veto over any future proposals to change their own powers.

The Constitution Unit also propose abolishing religious representation. Law lords, it argues, should sit in an independent supreme court rather than the second chamber.

II Electoral Issues

A. Proposals in Wakeham and the white paper

The Wakeham Commission report of January 2000[55] produced three models for the elected element of the new Lords. Model B, broadly supported by the Government in its recent white paper, was as follows:

> **12.34** In our view, and because we do not want to see the number of electoral systems already in use in this country unnecessarily enlarged, if Model B were to be adopted we would wish the same electoral system to be used for elections to both the European Parliament and the reformed second chamber. It would be up to the Government and Parliament to decide which system to adopt. If Model B was accepted but the Government were then to consider altering the electoral system used in the European Parliament elections, we recommend that they should consider adopting a system which would also be appropriate for the election of regional members of the second chamber. Subject to that, a majority of those supporting this option would prefer the election of regional members to be conducted by a 'partially open' list system rather than the closed party-list system which was used in the 1999 European Parliament elections. The 'partially open' list system enables voters to vote for a party list *or* for an individual candidate on one of the party lists. In the polling booth, the procedure is simple: each voter marks one X on the ballot paper; but (in contrast to the closed-list system) voters can, if they choose, exercise a preference for a particular candidate rather than simply endorse a party list. 'Partially open' list PR elections for the second chamber could therefore be held alongside any other 'X'-voting electoral system without too much risk of confusing the voters; but the risk of confusion would be eliminated if identical systems were in use.
>
> **12.35** Those who support this model believe there should be 87 regional members. This is the same as the number of United Kingdom members of the European Parliament.The same distribution of members between regions could be used. But there is no necessary link between the number of regional members in the second chamber and the number of United Kingdom MEPs.
>
> **12.36** As in the case of Model A, the regional members would be elected on a staggered basis, with elections taking place at each round of European Parliament elections in one-third of the United Kingdom's 12 nations and regions.
>
> **12.37** The perceived advantages of Model B as compared with Model A are that it would not complicate proceedings on the day of the main domestic electoral contest and would give more freedom to the individual voter. He or she could vote for different parties in the second chamber and European Parliament elections and also vote for a party different from the one he or she had supported at the general election. If a partially open list system of election is used, he or she

[55] *A House for the Future* Cm 4534 January 2000

> could exercise a preference for an individual candidate. In addition, the elections to the second chamber under Model B would be free-standing elections, giving the members of the second chamber a separate and distinct electoral mandate. It would also be possible for smaller parties, or even independents, to secure election to the second chamber. For all these reasons, elections held under Model B would be 'proper elections'. As in the case of Model A, however, the proportion of directly elected members in the second chamber would be relatively small (87 compared with Model A's 65). An additional advantage of Model B is that, as members elected under this model would serve for fixed terms of 15 years, the appointed members of the second chamber could serve for fixed 15-year terms – that is, for terms of identical length.

This model was supported by a 'substantial majority of the Commission'.[56] The members of the Commission was concerned about the possible unpopularity of a list system, noting:

> **12.44** One concerns the quality of the parties' lists under all three models and whether the parties could be counted upon to select nominees whose personal qualities were in keeping with the kind of second chamber we are recommending. Ultimately, the choice of candidates would be up to the parties, but our view is that they should be required to bear in mind the sorts of qualities we have been outlining. In particular, they should be required to conform to the gender and minority ethnic targets set for the Appointments Commission. The media – and the other political parties – can almost certainly be relied upon to scrutinise closely the qualities, and the quality, of the parties' nominees. Parties with strong regional lists will have an electoral advantage.

A majority of the Royal Commission were prepared to accept Option B. Under this system, there would be no by-elections, and vacancies would be filled by substitution or co-option. The white paper favoured Model B, but with 120, rather than 87 elected members, to reach an equality of numbers between elected and independent appointed members, each forming one fifth of a House of 600.[57] The commentator Peter Kellner has stated:[58]

> [The white paper's] sole reason for proposing 120 elected members rather than any other number is to ensure parity with the number of non-party elected members to be appointed by the independent Appointments Commission. Why the two numbers should be the same, or why the two together should be outnumbered by Lords appointed by Prime Ministerial patronage, is nowhere explained.

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56 Cm 4534 *Executive Summary*, para 36

57 Further detail on the reasoning behind this decision is given in *The House of Lords: Completing the Reform: Background Papers* December 2001 paras 18-21

58 *Evening Standard* 9 November 2001 'Lords reform is doomed without democracy', cited in House of Lords Library Note LLN 2001/009 Press reaction to the White Paper *the House of Lords: Completing the Reform*, p22

There would be no bar on re-election, nor on selection as an appointed member.[59] The white paper also proposed a shorter term than the 15 years recommended by Wakeham, and asked for responses on the appropriate length., proposing 5 or 10 years as alternatives.[60]

The white paper proposed a regional list system of election:

> **Basis of the constituencies**
>
> 48. The Government proposes that the regional members should be identified through elections in multi-member constituencies, identical to those for the European Parliament. The electoral method will be one of regional lists. Since the European Parliament constituencies are based on the nations and administrative regions of the UK, they are especially suitable for choosing regional representatives. The European Parliament electoral system is also now proportional, again making it suitable for use for elections to a second chamber

A parliamentary answer has given the likely distribution of the proposed 120 directly elected seats, following the last ten elections as follows:

> **Lord Jopling** asked Her Majesty's Government:
> For each of the last 10 Parliaments, what would have been the number of members of each political party who would have been directly elected under the proposals in the White Paper on House of Lords' reform for 120 elected members selected according to votes cast at a general election, assuming they were elected only for one Parliament; and what would be the number of members of each political party assuming they had all been elected in 1966 and thereafter for a five, 10 or 15-year term.
> **The Lord Chancellor:** The table below sets out what would have been the likely distribution of the proposed 120 directly elected seats returned by regional constituency based on the general election results for the past 10 Parliaments.
>
> Statistics on the number of votes cast by the regions that will, according to the Government's plans set out in the White Paper The House of Lords--Completing the Reform (Cm 5291), form the basis of the constituencies for elections to the House of Lords are not readily accessible for general elections prior to 1983.
> The five elections prior to that are results based on the number of votes cast nationally rather than regionally.
> The regional structure to which votes are attributed to various parts of England has varied over the last five Parliaments. Such changes could, at the margin, affect the distribution of seats to political parties. No account has been taken in this analysis of changes in population, with each region allocated seats based on its current share of the proposed 120 elected seats.

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[59] *The House of Lords: Completing the Reform* Cm 5291, para 58
[60] *The House of Lords: Completing the Reform* Cm 5291, para 57

In the results for 1966 and 1970, estimates for the Conservatives include seats won in Northern Ireland.

Election	Conservative	Labour	Lib Dem/Alliance	Plaid Cymru	SNP	DUP	UUP	SDLP	Sinn Fein	Others (NI)
1966	52	58	9	0	0	0	0	0	0	1
1970	57	52	8	1	1	0	0	0	0	1
1974 Feb	46	45	23	0	2	0	2	1	0	1
1974 Oct	43	48	22	0	3	0	2	1	0	1
1979	54	44	16	0	2	0	2	1	0	1
1983	51	33	32	0	1	1	1	1	0	0
1987	51	39	25	0	2	0	2	1	0	0
1992	50	44	20	0	3	0	2	1	0	0
1997	39	56	18	0	3	0	2	1	1	0
2001	38	54	21	1	2	1	1	1	1	0

It is not possible to forecast what the figures would have been for the members of each political party elected in 1966 for five, 10 or 15-year terms. Other than in 2001, there were no general elections in cycles of five, 10 or 15 years from 1966.

The white paper did not indicate whether an open or closed list system would be used and it subsequently emerged that the Government had reached no fixed conclusion on this.[61] The passage of the *European Parliamentary Elections Act 1999* was marked by debate over the pros and cons of each. Background is given in Library Research Paper 98/113 *Voting Systems: The Government's Proposals* and in Research Paper 98/102 *The European Parliamentary Elections Bill*.

Closed lists are described as such because each party lists its candidates in order of preference, and individual voters have no influence over the ordering. Open lists are lists of candidates where the voter can indicate preferences for certain individuals over others. Some 'open' lists are ordered, as in Belgium, where electors have one vote which they can use to endorse a particular party or select an individual candidate from a particular party. In practice, such voter preference appears to have minimal impact on the result.[62] There has been a hostile press reaction to the possibility of using closed lists; the *Financial Times,* for example, argued that a closed list system, combined with a shorter term of office than recommended by Wakeham would 'be another way to enable party machines to exert control'. [63] This point has also been made by the independent Constitution Unit, in its commentary on the white paper.[64]

Another consideration for both government and the critics to bear in mind is that election by a party list system, and a system of appointment from party lists may

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[61] See HL Deb 22 November 2001 c154WA

[62] See *Elections Under Regional Lists* Constitution Unit briefing January 1998, for further details

[63] *Financial Times* 8 November 2001 'Building a house of cards', cited in House of Lords Library Note LLN 2001/009 'Press reaction to the White Paper *The House of Lords: Completing the Reform'* p24

[64] *Commentary on the White Paper The House of Lords- Completing the Reform* January 2002, p10

> in practice lead to much the same result. In both cases the parties control the names on the list and the order in which they are presented. With a party list electoral system, the government could concede a higher proportion of elected members without the parties losing anything in terms of controlling who sits on 'their' benches.

The white paper also cast doubt on the Wakeham recommendation of holding elections to the Lords on the same day as the European Parliament elections and on staggering elections, with one third of elected members being chosen at each European Parliament election date.. It asked for responses on alternatives, such as using general election or local election dates:

> 50. There are, however, disadvantages with this option. Turnout in the past for European elections has always been disappointingly low. Decisions on membership of the Lords might also be made on the basis of attitudes to European issues alone, rather than national or regional ones. And elections which largely fell in the mid-term between Westminster elections would create practical difficulties in terms of balancing the House against the proportion of votes cast at the previous General Election.
>
> 51. The Government is attracted to the alternative of holding elections to the Lords on the same day as General Elections. That would ensure a higher turn out. It would mean that the issues taken into account were national or local ones, since people would be voting at the same time for both Houses of Parliament, consistent with the role that both Houses play in considering and giving their consent to the Government's programme and calling it to account. It would also make it far easier to manage the political balance of the Lords as a whole, since the Appointments Commission would not be faced with a shifting balance within the elected membership during the course of each Parliament. Taken together, the Government believes that these are powerful arguments and it seeks views on this alternative to the Royal Commission's proposal.
>
> 52. Linking with the General Election would have one important effect. Terms for elected members would be variable, which would contrast to that for appointed members. Membership would be for a Parliament or a certain number of Parliaments, rather than for a fixed term of, say, five, ten or fifteen years.
>
> 53. A third alternative would be to hold elections alongside regional or local elections. This would emphasise the link with the purpose of the elections and increase the chances of voters deciding on the basis of regional issues. This alternative faces the problem that at present there is no uniform pattern of such elections. It would therefore mean the election day being different across the UK.

The supporting documents to the white paper list the pros and cons for linking elections to the Lords to each of the electoral cycles.[65]The advantages and disadvantages of linking with elections to the Commons are reproduced below:

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[65] *The House of Lords: Completing the Reform: Supporting Documents* December 2001 paras 25-35

> **Westminster Elections**
> The main advantages of combining the elections with those for the House of Commons are:
> The turnout will be higher.
> The total focus of the election will be on national and local issues, rather than European ones
> It does not complicate the political balancing of the House.
> The main disadvantages of combining elections with those for the House of Commons are:
> It risks completely obscuring the purpose and regional nature of the elections, as voters might fail to distinguish between the two elections
> The term is variable, which makes it difficult to match the terms of the elected and appointed members.[66]

The Constitution Unit has argued for the retention of staggered elections:

> The White Paper is not explicit on whether elections would be staggered, as Wakeham proposed, or whether all elected members would be chosen at once. It is very important that the principle of staggered elections is maintained. If elected members enter the chamber all at one time, this will be far more likely to put them into conflict with MPs. Staggered elections also make the political balance of the chamber less subject to sudden swings, which makes the task of rebalancing easier for the Appointments Commission; and help to ensure a continuity of experience, which is the more important if there is a bar on re-election. Staggered elections are one of the distinguishing features of second chambers overseas, and there are many good reasons for using this model.

B. Other proposals for elections to the second chamber

The white paper did not however, call for responses on alternative voting systems, such as the Additional Member System, the Single Transferable Vote or the Additional Votes plus system advocated by the Jenkins Commission for elections to the Commons. Background on all major proportional representation systems is given in Library Research Paper 98/112 *Voting Systems: The Jenkins Report*. In theory there is no reason why an electoral system other than regional lists should not be used, particularly if the elections cycle for the Lords is made separate from that of the European Parliament.

In bicameral systems where both Houses are directly elected, it is common for different electoral systems to be used for each House. This minimises the possibility of a clash of mandates. A prime example is Australia, where the Alternative Vote is used to elect the

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[66] For background for the arguments on fixed term Parliaments see separate standard note 'Fixed Term Parliaments' 24 April 2001

(lower) House of Representatives and a form of Single Transferable Vote is used for the Senate, with each of the states or territories acting as a multi-member constituency.[67]

The Wakeham Commission report did not address the possibility of using different electoral systems,[68] and the white paper does not offer alternatives for consultation. However other campaigners have suggested a variety of models. A major concern with an elected House of Lords has been that the membership would resemble too closely the House of Commons, and that the independence and expertise valued in the current Lords would be lost. The Wakeham Commission did note, nevertheless, the results of the Dunleavy and Margetts modelling:

> 11.14…One of the points to emerge most clearly was that if the overall political balance of the second chamber had been determined by reference to the parties' share of the vote at national or regional level in any general or European elections since the mid-70s, it would always have produced a chamber in which every party had a proportional share of the seats. The Government party was normally the largest, but no single party ever had a majority. This observation holds true for every general election since 1901, except for the two in the 1930s in which the governing coalition won more than 50 per cent of the popular vote. As want to achieve a second chamber with exactly those characteristics, this finding seemed highly relevant to our work.

Some campaigners see the Single Transferable Vote as an answer to the problem of a Lords dominated by party loyalists.[69] Because voters can choose between candidates from the same party, it allows more of an element of voter choice than a simple party list system.[70] STV has not found favour for the election of members of the Commons, because of the need for multi-member constituencies and concerns by major parties that it would inhibit party discipline. However these factors would be of less relevance for elections to the Lords. It is currently used in local elections in Northern Ireland and for elections to the Northern Ireland Assembly. The Kerley Commission has recommended its use for local elections in Scotland,[71] but this proposal has yet to be accepted by the

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67 In fact, the system can be seen as a type of modified open list- voters can either choose individuals or opt for a party list. For details of the Australian electoral system see Meg Russell in *Reforming the House of Lords*

68 A background paper was prepared by Professor Patrick Dunleavy and Dr Helen Margetts for the Commission: *Electing Members of the Lords (or Senate)* b003, available from the Wakeham Commission CD rom. This concentrated on AMS and regional lists. Model A in the Wakeham report suggested a complementary system of voting whereby parties would be awarded regional members in the Lords in direct proportion to the share of votes received in each region in the elections for the Commons.

69 See for example the Liberal Democrat evidence to Wakeham, available from the Commission CD rom. This recommended that a majority of members be elected by STV for six year terms, with one third facing re-election every two years.

70 The Dunleavy and Margetts background paper noted that a substantial minority of voters used the system to record individual cross-party preferences for candidates in their STV simulation of the 1997 general election (para 49).

71 *Renewing Local Democracy Working Group* June 2000

Scottish Executive. STV is mainly been used in countries such as Ireland or Malta, with a much smaller population than the UK.

Other alternatives are a simple First Past the Post system, as used for the Commons, or an Additional Member System, as used in elections for the Scottish Parliament and the National Assembly for Wales.[72] Most commentators have favoured some type of regional representation in the Lords. In terms of direct elections using regional lists achieves this end, whether as part of an AMS system or as a regional list system. Evidence submitted by the Democratic Audit Task Force to Wakeham suggested that AMS might boost female representation if political parties 'twinned' constituencies by selecting one male and one female candidate. Alternatively regional lists could be twinned, with one female, one male candidate[73] Research Paper 01/75 *The Sex Discrimination (Election Candidates) Bill* gives background on proposed legislative changes to enable parties to use positive discrimination methods to assist female candidates.

Finally, some idiosyncratic solutions have been proposed, including the random allocation of membership by lots (akin to the system for jurors).[74]

There are a number of technical issues which need to be addressed even when an electoral system is chosen. The three main decisions are:

- All-out elections, or stagggered elections by thirds (or other multiple)
- Linkage with other electoral cycles
- Relevant regions or constituencies

A number of commentators have opposed aligning the electoral cycles with the Commons, largely because the cycle is itself unpredictable[75] and because attention would inevitably be focused on the results for the Commons, thus intensifying a partisan effect.[76] On the other hand, the question of the electoral system to be chosen is in theory made more open, as any proportional system chosen would be feasible in combination with a FPTP system for the Commons. Turnout would presumably be higher if the election were directly linked with the Commons.

The size of the regions used is of obvious importance, in terms of the proportionality and practicability of the system. Dunleavy and Margetts, in research for the Wakeham

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72 The Dunleavy and Margetts background paper set out an AMS system based on the Jenkins' 'county' seats, with top ups from the regional areas used for the European Parliament elections

73 *Making a Modern Senate: A new and democratic second chamber for Britain* Democratic Audit Paper no 17 2000

74 *The Athenian option: Radical Reform for the House of Lords* Anthony Barnett and Peter Carty, Demos 1998

75 See standard note *Fixed Term Parliaments* 24 April 2001 for background

76 See for example the analysis by Dunleavy and Margetts in their paper for the Wakeham Commission *Electing Members of the Lords (or Senate)* b003, *General Principles for Designing New Elections* available from the Wakeham Commission CD rom. See this paper in general for detailed comment on the various pros and cons of aligning with other electoral cycles

Commission, suggest that 11 or 12 seats per electoral district is a practical maximum number and in England, with 3 major parties and a category of others, this would imply a ballot paper of at least 44 candidate names on an open list system.[77] They note that STV might reduce the number of candidates on the ballot paper, since it is normal for parties to field candidates only equal to the number of seats they expect to win, plus one.[78] The commentator Billy Bragg has argued that if the same electoral regions were used as proposed by Wakeham in Option B, but a regional list system was used to elect the whole 600 member chamber, then each region would elect 50 members and a minor party or independent candidate would only need to achieve two per cent of the vote in certain regions to gain a seat.[79]

One set of boundaries which has been suggested in addition to the regional boundaries used in the European Parliament elections are those proposed for the Additional Members in the Jenkins Commission scheme for the Commons.[80] These represent 80 'county' and 'city' seats and were also chosen by the Conservatives' Mackay Commission on reform of the House of Lords as suitable boundaries for its recommendations on directly elected members.[81]

Comparisons with other chambers abroad offer a variety of answers to these questions. Research Paper 01/77 *House of Lords Reform: Developments since 1997* reproduces a table from Meg Russell's study *Reforming the House of Lords: Lessons from Overseas* which sets out the composition of selected second chambers. Further detail is available from the Inter Parliamentary Union website which gives full details of the types of electoral systems used for each upper chamber.[82]

Russell found that of the 66 upper chambers world-wide, 27 use direct election as the primary method of selecting members:[83]

> Despite the differences in composition mechanisms between first and second chambers, the commonest method for selecting the latter is now direct election. Of the 66 second chambers worldwide, 27 use direct election by the people as their primary means of selecting members. This is also the commonest composition method amongst the 20 countries in the table, with seven chambers entirely directly elected and three more predominantly so. However, the election of the second chamber does not mean that membership is necessarily similar to that of the lower house. Difference between the chambers is generally achieved

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77 The largest number of representatives elected at any one time at present is 11 MEPS in two of the regions used in England for the European Parliamentary elections and 11 list members for the Greater London Authority

78 ibid paras 30-32

79 *A Genuine Expression of the Will of the People* Billy Bragg 2001 p24 www.votedorset.net

80 See Research Paper 98/112 Part II, D for further details of the operation of the Top Up seats

81 *Report of the Constitutional Commission on options for a new Second Chamber* 1999, pp 33-35

82 www.ipu.org

83 *Reforming the House of Lords* p29

> through employment of different electoral systems or means of distributing seats. Thus in five of the countries in the table the lower house is elected using a proportional system while the upper house uses a majoritarian system. In one case- Australia- the reverse is the case. In the US both chambers use a majoritarian system, but the distribution of seats and the discrepancy between the size of constituencies and the length of parliamentary terms make these very different systems in practice. In three countries both houses use a proportional system for their election. However, in Belgium directly elected members make up only part of the second chamber, and in Japan, different systems, with different parliamentary terms, apply. Only in Italy are two chambers elected using very similar systems with identical parliamentary terms.

C. Representation

There is a wider issue to be considered – the role of the Member once elected. The *Supporting Documents* cite the Burkean tradition of independent Parliamentary representation[84] as a justification for rejecting a model of Lords reform based on Members as delegates:

> 11. Once elected, a member is expected to vote according to his or her own assessment of the issues, taking into account whatever matters he considers relevant. Today, of course, the party's policy on the issue will normally be authoritative. But the member will be expected to take soundings of the views among his constituents, which can be reflected in influencing public policy in more ways than just voting. What, however, the member is emphatically not supposed to do is to seek instructions from either constituents or the constituency party about the way to vote. In the closest example of a delegate body, on the other hand, the German Bundesrat, the element of delegation is so pronounced that its members represent the governments of the Länder, not the Landesrat at all, and cast their votes *en bloc*.

However, neither the Wakeham Commission, the white paper or the *Supporting Documents* explain in detail the type of mandate envisaged for elected members of the new House of Lords. Both Wakeham and the white paper agreed that they would be expected to represent the nations and regions of the United Kingdom,[85] but Wakeham asserted:

> 12.16…We want the regional members, in particular, to act as a voice for their regions. We do *not* want them to be constantly looking over their shoulders at either their electorates or their regional party organisations. Electoral accountability should, in our view, be the province of the House of Commons and be the justification for that House's supremacy.

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84 See *Speech to the Electors of Bristol*, 1774

85 Cm 5291, para 43

British ideas of representation, in the popular mind at least, derive from the concept of territorial representation.[86] This fits uneasily with reform proposals for the Lords, whose members are not expected to take on the constituency role of MPs. This raises the question of a job description for members of the new Lords, and the extent to which it might vary from current perceptions of the role of an individual member there. Wakeham placed emphasis on the importance of an independent outlook in its vision of members' roles in a reformed Lords, but if there is no constituency role for regional members, there might be no countervailing pressure against that of the political party which had placed them on the electoral list.

Another issue is the extent to which members of the new Lords would be part-time. A second chamber with a membership of 600 is very large in international terms, but presumably is justified if most are not full time. Yet the work of the Lords may be expected to expand, and this has major implications for its members. Following the *House of Lords Act 1999*, in the interim House, new peers are expected to play an active role. The Constitution Unit has noted:[87]

> However the political and parliamentary pressures on part-timers are growing, with tighter whipping in the party groups, more committee work (six new committees were created in 2001, three permanent and three *ad hoc*), and the procedural changes which may come from the Leader's Group on Working Practices.[88] The introduction of elected members will be one more source of pressure for membership of the House to be increasingly viewed as a full-time occupation….
>
> It also has implications for the House's recruitment strategy, in terms of continuing to attract people with expertise from outside politics. Instead of combining membership with another career, full time members would be invited to take a career break while they were members of the House, or to join the House at the end of their professional careers.

The white paper proposes the retention of an expenses-based system of remuneration in the Lords, unlike the more formal daily payment envisaged by Wakeham, but has asked for views, in particular on the question of payment for the elected element.[89] It notes that formal salaries would imply a full-time commitment, in turn implying a smaller House.

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86 See *Representation: Theory and Practice in Britain* by David Judge, p20

87 *Commentary on the White Paper The House of Lords – Completing the Reform* January 2002, p16

88 Eg morning sittings, which would make it harder for members of the Lords to hold down a 'day job' and then attend the Lords (as many do now) in the evenings.

89 Cm 5291, paras 86-87

III Membership qualifications

A. Proposals for the new House of Lords

The Wakeham Commission report did not cover issues of disqualification for the Lords, yet this may be considered relevant in the context of the debate on full or part-time members. Membership of the Commons is governed by an elaborate set of disqualifications, covering a number of public offices, membership of the armed forces, police, judiciary and civil service. In addition members of any non-Commonwealth legislature are disqualified, apart from the Oireacthas in Ireland.[90] These are set out in the *House of Commons Disqualification Act 1975*, which is regularly amended by statutory instrument.[91]

The Companion *to the Standing Orders and Guide to the Proceedings of the House of Lords* lists the four categories of disqualification:[92]

- Those under 21
- Aliens (non-Commonwealth or Irish citizens)
- Those convicted of treason under the *Forfeiture Act 1870*
- Bankrupts under the *Insolvency Act 1986*

The *Companion* also notes:

> 11.09 The House of Lords does not have the power to suspend a Member permanently.[469] A writ of summons, which entitles Members of the House to a "seat, place and voice" in Parliament cannot be withheld. A Member can be disqualified temporarily either by statute or at common law, for reasons such as bankruptcy. The House has expressed the opinion that privilege would not protect a Member of the House suffering from mental illness from detention under the Mental Health Act 1983 and while so detained from disqualification for sitting and voting in Parliament.[470]

The white paper made some proposals in this area. In particular it concluded that there would be no bar on those with 'offices of profit' being members of the Lords, noting: 'where it is unsuitable for those in certain positions to become members of the Lords, their conditions of service can take account of this'.[93] Many Members of the Lords are currently members of public boards, and some detailed rules, known as the Addison Rules, have been set out to assist them in their role in the Lords. The *Guide* gives details:

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90 Following the *Disqualification Act 2000*. Research Paper 00/6 The *Disqualification Bill* gives background, and sets out the rationale for disqualifications to the Commons

91 Other disqualifications exist in other statutes, such as for electoral offences, and common law prohibitions on lunacy

92 18th edition 2000, available at http://pubs1.tso.parliament.uk/pa/ld/ldcomp/compso45.htm#a328

93 Cm 5291, para 69

> 4.72 Members of the House of Lords who are members of public boards, whether commercial or non-commercial in character, are not by reason of such membership debarred from exercising their right to speak in the House of Lords, even on matters affecting the boards of which they are members; and it is recognised that, in the last resort, only the Members concerned can decide whether they can properly speak on a particular occasion. By custom, Members should inform the House of their interests if they decide to speak.[166]
> 4.73 The following guidance, based upon that given in 1951 by the then Leader of the House, Viscount Addison, after consultation and agreement between the parties, may be helpful to Members of the House who are considering whether or not to take part in a particular debate:[167]
> (a) when questions affecting public boards arise in Parliament, the government alone are responsible to Parliament. The duty of reply cannot devolve upon members of public boards who happen to be Members of the House of Lords;
> (b) it is important that, except where otherwise provided, public boards should be free to conduct their day-to-day administration without the intervention of Parliament or ministers. If board members who happen also to be Members of the House of Lords were to give the House information about the day-to-day operations of the board or to answer criticism respecting it, the House would in fact be exercising a measure of parliamentary supervision over matters of management. It would also be difficult for the responsible minister not to give similar information to the House of Commons;
> (c) there is no duty upon the board member to speak in any debate or to answer questions put to him in debate. Nor should the fact that a Member spoke in a particular debate be regarded as a precedent for that Member or any other Member to speak in any other debate;
> (d) the foregoing applies only to debates relating to public boards. Experience acquired as a member of a public board will often be relevant to general debates in which the same considerations do not arise, and the contributions of board members who are Members of the House may be all the more valuable because of that experience.
>
> **Employees of public boards**
>
> 4.74 Members of the House of Lords employed by public boards or nationalised undertakings are not thereby debarred from exercising their rights of speech in the House, even when the subjects under discussion affect the particular boards in whose employment they are engaged. If Members so employed should entertain a view different from that of the boards to which they belong, they should not speak at all during debates in the House relating to those boards. In conformity with accepted custom, Members should inform the House of their interests if they wish to intervene during such debates.[168] [94]

The rationale for disqualification of holders of certain public office in the Commons is that Members should be free from possible conflicts of interest which might distort their

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[94] The Lords have adopted a new code of conduct, due to be implemented from April 2002. For further details, see Research Paper 01/102 *Parliamentary Standards*, Part VII

behaviour as independent members of the legislature and their freedom to represent the best interests of constituents. These include financial or other dependence on ministerial, prime ministerial or crown patronage; and also membership of a foreign (though not Commonwealth or Irish) legislature. Historically, this has been the basis of the great majority of disqualifications.

It is open to debate as to whether future members of the Lords should be subject to similar considerations, particularly those elected from regional areas. There is a clear link with the uncertainty about their representational role in the Lords. The point is also relevant to the nominated political members who would form half of the membership of the new House under the white paper proposals. If members of the governing party continued to hold other public offices following ministerial appointments, this might be construed as a form of double patronage.[95] Different considerations might apply to cross-benchers, who have traditionally held public offices, and who may have been appointed to the House partly for this reason. Presumably the statutory Appointments Commission will continue include among its appointments people who have achieved distinction in public life, colloquially known as 'the great and the good'. The matter was considered briefly in the *Supporting Documents* to the white paper, but this material was not included within the white paper itself:

> 5.Membership of the House of Commons, on the other hand, is subject to a large number of disqualifications. Their origin was the need to limit the power of the Crown in Parliament by banning those in 'offices of profit' from sitting in the Commons, because they would be regarded as 'placemen' who would be unwilling to scrutinise the executive. There are a number of different justifications within that overarching principle. Some relate to the undesirability of members of the executive over-dominating the chamber. Others relate to the undesirability of those who ought to be politically even-handed instead identifying themselves with a single party.
> 6. There are three different approaches possible to the question in relation to the House of Lords. These are to keep the existing Lords' rules; to adopt the existing Commons' rules; or to devise an intermediate regime especially for the reformed House of Lords.
> 7. On the side of the current rules, it could be argued that the present Lords' regime has worked perfectly well and there is no overwhelming reason to change it. The House of Lords will not have the power to remove a Government, so the 'placemen' argument is irrelevant. The House of Lords will not be concerned with Supply, so the 'office of profit' argument is irrelevant. At the same time, the qualities that led to people being appointed to offices which would disqualify them from the Commons may also be exactly those which would enable them to make a useful contribution in the House of Lords. There will also continue to be a non-political element in the House.

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[95] Although such appointments are now made under the 'Nolan rules' administered by the Commissioner for Public Appointments. See the website for further details http://www.ocpa.gov.uk/

> 8. On the side of adopting the Commons' rules, it can be argued that the sort of separation between Parliament and the executive and judiciary implied by the rules is the correct one. Now that all members of the House will have actively sought their position, it would be right to make the change. Moreover, the House will have its party political structure institutionalised in a far more explicit way than ever before. The vast majority of members will be chosen with a commitment to support a particular party, and the numbers who support each party will be regulated.
> 9. The argument for the half-way house approach is that there are a large number of posts which specifically carry disqualification for the House of Commons where the connection to Ministerial patronage or public funds is sufficiently tangential for this not to be a bar for membership of the second chamber. On the other hand, some generic categories of occupation may not be suitable for combination with any membership of Parliament.
> 10. On balance, the Government believes that the right answer is to leave the rules largely unchanged from the present position for the House of Lords. It therefore proposes to add only a few additions. Members of the Appointments Commission will be barred from being appointed to the House while they are on the Commission and for five years after they leave it. Some members of the Commission may be existing members of the House, so this will not be a disqualification for membership, but the Government is sure that it would be wrong for members of the Commission to be eligible for appointment by either themselves or their recent colleagues.

The white paper does not differentiate between elected and appointed members in its proposals to allow those sitting on public bodies to be Members of the Lords. Nor does it appear to state specifically that members of the Appointments Commission would be disqualified from membership for a period (apart from those sitting in the Lords already). It offered consultation on possible grounds for suspension or termination of membership, taking into account recently published plans to introduce bankruptcy restriction orders (BROs) to reduce the social stigma of bankruptcy:

> 74. If a statutory solution to this question is preferred, the Government would propose the following solutions:
> For those detained under the Mental Health Acts, **appointed** members would lose their right to sit and vote (as now). **Elected** members would also lose their right to sit and vote, but if the condition persisted for more than 6 months, they would be obliged to vacate their seat (i.e. the rules would be brought into line with those for the House of Commons);
> Members subject to a **BRO** would lose their seats. **Elected** members declared bankrupt would be treated in the same way as MPs. **Appointed** members who were declared bankrupt would have their membership suspended for the duration of the bankruptcy;
> **Any** member subject to a term of imprisonment exceeding 12 months would lose his or her seat.
> 75. In all cases, there would be no bar on a person who lost his seat being able to seek re-election or re-appointment once the condition giving rise to the expulsion had lapsed. Such persons would not, however, be free to resume their membership for the unexpired portion of the original term.

> 76. The alternative approach would be to leave it to the House to draw up the rules under which it would discipline those who had brought it into disrepute. With the ending of the link with the peerage, this could include expulsion (a peer's right to membership is currently absolute unless terminated by statute) as well as suspension.
> 77. The Government proposes that rules on the replacement of members who have been expelled should be the same as they would be if the member had died: that is, only elected members would be automatically replaced. Seats vacated by expelled appointed members would be available to be distributed as appropriate by the Appointments Commission.

B. Franchise issues

For background to this topic, see Research Paper 99/5 *The House of Lords Bill: 'Stage One' Issues*, Part V. The white paper proposed that Members of the reformed House of Lords should be able to vote in elections to the Commons, and that Members of the Commons would be able to vote in Lords elections.[96] The rationale was explained in some detail in the *Supporting Documents:*

> 13. At present, members of the House of Lords are not allowed to vote in Westminster elections. The legal bar is because they are peers, who are barred at common law from voting. (Hereditary peers no longer in the House now have a statutory right to vote.) Members of the House of Commons, on the other hand, may vote in Westminster elections. This is relevant only if there is a by-election in a constituency where they are registered to vote, and is therefore perhaps of limited practical effect. Nonetheless, that is the law. The question therefore arises as to what is the proper franchise for elections to the House of Lords. Should MPs, who can vote for other MPs, be allowed also to vote for regional members of the House of Lords, as they can of course vote for local councillors, MSPs, AMs, MLAs or MEPs? If the answer to that is 'Yes', then there is no rationale to bar members of the House of Lords from voting. If, further, members of the House of Lords can vote in elections for regional representatives in the House of Lords, even though they already sit there in person, what could be the grounds for continuing to ban them from voting in elections to the House of Commons?
> 14. Whatever is done about the rights of members of the House of Lords in relation to elections to the House of Commons will need legislation. This is because the legal bar is by virtue of a peerage. So members of the reformed House who are not peers would not suffer from the common law bar. They would have to be excluded by statute. Conversely present members who are life peers, and those who become life peers in the future, perhaps without being members of the House, will be barred. Peers not in the House would have to be enfranchised by statute.
> 15. The Government believes that it would be right to rationalise the franchise in respect of both Houses. It proposes that all members of either House, and all

[96] Cm 5291, para 60

peers, should be able to vote in all elections to either House. This will be recognition of the different roles played by each House and the different purposes of each election. In particular, it will recognise the extent to which a General Election is now about the election of a Government, on which members of the House of Lords have an equal interest with all other citizens.

Appendix – Consultation issues

The white paper summarises the issues on which the Government wishes to consult as follows:

> The Government would welcome responses to all its proposals. It is, however, particularly interested in views on the following questions:
>
> - Is the overall balance between elected, nominated and *ex officio* (Law Lords and Bishops) right, and the balance between political and independent members? (paragraphs 42 to 47)
> - Should elections for regional members be linked to elections to the European Parliament, as recommended by the Royal Commission, or should they be held at the same time as elections to the House of Commons? Is a link with regional elections a realistic option? (paragraphs 49-53)
> - For how long should regional members be elected? The Royal Commission recommended 15 years or three electoral cycles. The Government inclines to the view that this is too long. Would 5 year/one election or 10 years/two electoral cycles be a better option? (paragraphs 54 and 57)
> - For how long should the appointed members serve? The Royal Commission suggested 15 years. No other UK public appointments, and no term of membership of other second chambers are so long (except that some members of the Canadian Senate may serve for longer if they are appointed at a young age). Would 5 or 10 years give a better balance between accountability and independence? Would it matter if the length of term of elected and appointed members was different? (paragraphs 55-57)
> - What should be the rules for disqualifying members, whether they are temporarily unfit for membership, e.g. because they have been detained under the Mental Health Acts, or have brought the House into disrepute? Should these be statutory provisions, or should they be left to the House. Do the rules for elected and appointed members need to be the same? (paragraphs 70-77)
> - Is it necessary to change the system of remuneration so that members receive daily payments as well as daily expenses, as now? Will this alter the character of membership too much by making it too like a full-time job? Do the rules for elected and nominated members need to be the same? (paragraph 87)[97]

[97] Lord Chancellor's Department, *The House of Lords – Completing the Reform*, Cm 5291, November 2001 p 33