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House of Lords – Developments since January 2004

This Research Paper follows *House of Lords – Developments since January 2002* (November 2003), in summarising recent developments in the process of House of Lords reform.

It begins with a brief chronology of developments since September 2003. It then outlines major events since the beginning of 2004, including:

- The decision not to press ahead with a bill to remove hereditary peers and to create a statutory appointments commission in Session 2003-04;
- The work of the Joint Committee on Conventions;
- The 2007 White Paper, “House of Lords: Reform” and the debate on it; and
- Announcements on how to proceed on Lords reform, after the change in Prime Minister, in June 2007.

Richard Kelly and Mary Durkin

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Summary of main points

The *House of Lords Act 1999* provided for the removal of all but 92 hereditary peers from the House of Lords. The 92 remained to guarantee a second stage of Lords reform. In September 2003, the Government issued a consultation paper on removing the remaining hereditary peers and establishing a statutory appointments Commission. A House of Lords reform bill to do this was announced in the 2003 Queen's Speech. The expected Bill was never published.

After this, the emphasis of reform initiatives from the Labour Party switched from addressing the composition of the second chamber to questions of its powers. Proposals from a group of Labour peers, in July 2004, to limit the length of time the House of Lords could spend considering bills and to codify its conventions were echoed at the Labour Party Conference in 2004 and in parliamentary answers in early 2005. They formed the basis of plans set out in the Labour Party Manifesto (2005) for the establishment of a joint committee to review the conventions of the House of Lords and to limit the length of time bills spent in the Lords. The manifesto also promised a free vote on the composition of the second chamber.

Although these intentions were reiterated during 2005 and in early 2006, the establishment of a joint committee to consider the practicality of codifying conventions took until May 2006. Its establishment depended on separate talks on the composition of the second chamber.

Just as the Joint Committee was established, progress appeared to be threatened by a Government reshuffle. However, Jack Straw was given responsibility for Lords reform and whilst the Joint Committee was meeting, he chaired the cross-party talks on the composition of the House of Lords.

The report of the Joint Committee on the Conventions was published in November 2006 and was well-received in both Houses. The Joint Committee found the word 'codification' unhelpful but nevertheless drew various conclusions about the way in which the conventions of the House of Lords and its relationship with the House of Commons had developed, evolved and operated. It reported that its analysis defined the "present reality" and that if the Lords acquired an electoral mandate its role and relationship with the Commons would change.

In December 2006, in its response, the Government accepted the Joint Committee's report but, from the tenor of the subsequent debates on the report (in January 2007), asserted contentiously that the relationship and conventions set out by the Joint Committee were the ones that should apply to a reformed second chamber.

In February 2007 the Government published a white paper, *The House of Lords: Reform*, which was informed by the Joint Committee's report and the work of the cross-party group. It set out the following principles that should "underpin a reformed House of Lords, whatever its composition":

- Primacy of the House of Commons
- Complementarity of the House of Lords
- A more legitimate House of Lords
- No overall majority for any party

- A non party-political element
- A more representative House of Lords
- Continuity of membership

Its proposals were based upon a 50 per cent elected, 50 per cent appointed second chamber of 540 members. Elections would take place at the same time as European Parliamentary elections (every five years), with one third of elected members elected for a single term of 15 years at each election. A statutory appointments commission would be established to appoint party-political appointments, nominated by the parties, and non party-political appointments. The White Paper envisaged a long transition and, although it discussed the removal of the hereditary peers, it did not state how this was to be done.

Despite basing its proposals on a 50 per cent elected, 50 per cent appointed basis, the White Paper recommended that Members in both Houses should identify their preferred options for the composition of the reformed House of Lords from:

- Option 1 – fully appointed
- Option 2 – 20 per cent elected
- Option 3 – 40 per cent elected
- Option 4 – 50 per cent elected
- Option 5 – 60 per cent elected
- Option 6 – 80 per cent elected
- Option 7 – 100 per cent elected

Initially, Jack Straw had wanted to use the Alternative Vote System for each Chamber to identify a single preferred option. Because of opposition to this plan, in March 2007, both Houses voted on the options in the Division Lobbies. The House of Commons voted in favour of Options 6 and 7, and the House of Lords supported Option 1. The House of Commons also voted in support of a motion to remove hereditary peers, and to retain a bicameral system.

Since that flurry of activity between November 2006 and March 2007, the cross-party group has reconvened and Jack Straw has announced that he would like that group to achieve a consensus. Then the parties could set out proposals for Lords reform before the electorate in their manifestoes. He has indicated that a further white paper and the publication of some draft clauses, rather than a draft bill, were possible but would depend on the progress the cross-party group made.

Proposals for incremental steps to reform the House of Lords were outlined in two private Members' bill introduced by Lord Avebury and Lord Steel of Aikwood in March 2007 (Lord Steel introduced a similar bill in November 2007.) However, the Government has argued against incremental steps: it would prefer to reach a consensus based on the votes taken in the House of in March 2007.

CONTENTS

I	Introduction	9
II	Chronology	10
III	“Next steps for the House of Lords”	14
	A. Legislation not proceeded with in 2003-04	14
	B. Responses to the consultation paper	16
	1. The Appointments Commission	17
	2. Disqualification	18
	3. Prime Ministerial patronage	18
	4. Voluntary resignation	18
	5. Elections	18
	6. Other issues	18
	C. Approaches to moving forward	19
	1. Labour Peers	19
	2. Lord Falconer at the Labour Conference	20
	3. Answers in the House of Commons	20
	4. Cabinet differences	21
	5. A cross-party proposal for reform	22
IV	General Election 2005	23
	A. Manifesto commitments	23
	B. Progress on House of Lords reform since May 2005	23
	1. May 2005 – April 2006	24
	2. Since May 2006	25
V	Joint Committee on Conventions and the cross-party group on Lords reform	28
	A. Joint Committee on Conventions	28
	1. Establishing the Joint Committee – House of Lords	28
	2. Establishing the Joint Committee – House of Commons	30
	3. Establishing the Joint Committee – House of Lords Members appointed	31

	4. Establishing the Joint Committee – call for evidence	31
B.	The Committee’s Report and the Government’s Response	32
	1. The Committee’s Report	32
	2. The Government’s response	33
	3. Lords and Commons debates on the Joint Committee’s report	34
C.	Cross-party group on Lords reform	40
VI	White Paper 2007 – “The House of Lords: Reform”	42
A.	The White Paper	43
	1. Principles	43
	2. Elected, Appointed or Hybrid?	44
	3. Elections	44
	4. Statutory Appointments Commission	45
	5. Membership	46
	6. Transition	47
B.	Reaction to the White Paper	48
	1. In Parliament: to the statement	48
	2. Outside Parliament	49
C.	Reaching a decision on the composition of the House of Lords	51
D.	Decisions on the White Paper	52
	1. House of Commons	52
	2. House of Lords	53
	3. Summary of the results of the divisions in both Houses	53
E.	Implementing Parliament’s decision	54
	1. Initial thoughts	54
	2. Plans of the new Administration	57
	3. Membership of the cross-party group	60
	4. Labour Party Conference 2007 commitments	61
VII	Other developments	62
A.	The size and composition of the House of Lords	62
	1. Size	62
	2. Composition	63
	3. Appointments	64

4. Hereditary peers	65
5. Religious representation	65
B. A more assertive House	67
C. <i>The Constitutional Reform Act 2005</i>	68
D. Private Members' bills in the House of Lords	69
1. House of Lords (Amendment) Bill 2006-07	69
2. House of Lords Bill 2006-07	71
3. House of Lords Bill 2007-08	73
E. Party policy reviews	74
VIII Academic comment on House of Lords reform	74
1. Recent context	74
2. Historic context	76
3. Prospects for further reform	78
Appendix 1 – Nominations made by the House of Lords Appointments Commission	79
Appendix 2 – Hereditary peers sitting in the House of Lords	80
Appendix 3 – Public Administration Select Committee: Propriety and Honours	83

I Introduction

This Research Paper follows *House of Lords – Developments since January 2002* (November 2003),¹ in summarising recent developments in the process of House of Lords reform.

The *House of Lords Act 1999* provided for the removal of the majority of the hereditary peers from the House of Lords. During the passage of the Act, commitments were given that the remaining hereditary peers would stay in the House of Lords until a “second stage” of reform was completed. Since 1999, the “second stage” of House of Lords reform has suffered a number of false starts. Attempts to determine the shape of a future second chamber by a previous joint committee in 2002-03 ended in failure, when the House of Commons rejected all its options for composition.

In September 2003, the Government published a consultation paper, *Constitutional reform: Next Steps for the House of Lords*,² which is discussed in the previous paper. Since then the Government has reported on the responses it received to that consultation. This paper briefly reviews those responses and then reports on the developments that have taken place since.

Like the earlier Research Paper, it begins with a chronology of the main developments in House of Lords reform and some related events. The remaining sections are broadly chronological.

This paper does not discuss the police investigation into loans to political parties and honours. These issues are discussed in the Library Standard Note *Loans to Political Parties*.³

The House of Lords Library has recently issued the following papers which cover issues relating to Lords reform:

- *The Weatherill Amendment*;
- *House of Lords Reform since 1997: A Chronology*;
- *Peerage Creations 1958-2007*;
- *Proposals for reform of the composition and powers of the House of Lords, 1968-1998*.⁴

¹ House of Commons Library Research Paper 03/85, *House of Lords – Developments since January 2003*, 25 November 2003, <http://www.parliament.uk/commons/lib/research/rp2003/rp03-085.pdf>

² Department for Constitutional Affairs, *Constitutional Reform: next steps for the House of Lords – Summary of Responses to Consultation*, April 2004, <http://www.dca.gov.uk/consult/holref/holresp.htm>

³ House of Commons Library Standard Note SN/PC/ 3960, *Loans to Political Parties*, <http://www.parliament.uk/commons/lib/research/notes/snpc-03960.pdf>

⁴ *House of Lords Library Notes*, http://www.parliament.uk/publications/research/lords_library.cfm

II Chronology

In this section, the main developments in House of Lords reform are identified and briefly described. The first entry is the last entry of the previous chronology.

- 18 September 2003 Department for Constitutional Affairs (DCA) launched consultations on:
*Constitutional reform: next steps for the House of Lords*⁵
*Constitutional reform: reforming the office of the Lord Chancellor*⁶
- 26 November 2003 In the Queen's Speech 2003 it was announced that:

 Legislation will be brought forward to reform the House of Lords. This will remove hereditary peers and establish an independent Appointments Commission to select non-party members of the Upper House.⁷
- 25 February 2004 Graham Allen initiated a debate on House of Lords reform in Westminster Hall.⁸
- March 2004 Despite reports anticipating the Bill's publication in February and early March 2004, it was reported that the removal of the remaining hereditary peers would not take place before the next general election.⁹
- 22 April 2004 The Department for Constitutional Affairs published an analysis of the responses to the September 2003 consultation paper on House of Lords reform.¹⁰
- 20 July 2004 A working group of Labour peers, chaired by Lord Hunt of Kings Heath, published a report on the role and powers of the House of Lords.¹¹
- September 2004 The Labour Party's ideas for Lords reform were discussed at the Labour Party Conference.

⁵ See: <http://www.dca.gov.uk/consult/holref/index.htm>

⁶ See: <http://www.dca.gov.uk/consult/lcoffice/index.htm>

⁷ HC Deb 26 November 2003 c5

⁸ HC Deb 25 February 2004 cc97WH-120WH

⁹ BBC News, *Blair puts Lords reform on hold*, http://news.bbc.co.uk/1/hi/uk_politics/3524834.stm

¹⁰ Department for Constitutional Affairs, *Constitutional Reform: next steps for the House of Lords – Summary of Responses to Consultation*, April 2004, <http://www.dca.gov.uk/consult/holref/holresp.htm>

¹¹ Labour Peers Group, *Reform of the powers, procedures and conventions of the House of Lords*, July 2004

- 21 March 2006 The Metropolitan Police announced that they were to conduct an inquiry into allegations made under the *Honours (prevention of Abuse) Act 1925*.
- 28 March 2006 PASC announced that it would postpone its inquiry into propriety issues in the award of honours
- April-May 2006 The Joint Committee on Conventions was established and given the following terms of reference:
- accepting the primacy of the House of Commons, ... to consider the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation, in particular:
- (A) the Salisbury-Addison convention that the Lords does not vote against measures included in the governing party's Manifesto;
- (B) conventions on secondary legislation;
- (C) the convention that Government business in the Lords should be considered in reasonable time;
- (D) conventions governing the exchange of amendments to legislation between the two Houses.¹⁹
- It was originally given a deadline of 21 July 2006, which was subsequently extended to the end of the session.
- May 2006 Responsibility for Lords reform transferred from the DCA to Jack Straw (then the Leader of the House).
- 16 May 2006 PASC took evidence from members of the House of Lords Appointments Commission in connection with its wider inquiry into ethics and standards in public life.
- 20 June 2006 Chris Bryant initiated a debate on House of Lords reform in Westminster Hall.²⁰
- 4 July 2006 Baroness Hayman became the first elected Lord Speaker.
- 13 July 2006 PASC published *Propriety and Honours: Interim Findings*.²¹
- 24 October 2006 Jack Straw gave the Constitution Unit Annual Lecture, in which he outlined five key principles that would guide the forthcoming White Paper.

¹⁹ HC Deb 17 May 2006 c1070; HL Deb 25 April 2006 c74

²⁰ HC Deb 20 June 2006 cc363WH-387WH

²¹ Public Administration Select Committee, *Propriety and Honours: Interim Findings*, 13 July 2006, HC 1119 2005-06

3 November 2006	The Joint Committee on Conventions published its report <i>Conventions of the UK Parliament</i> . ²²
15 November 2006	The Queen's Speech included: My Government will also continue its programme of reform to provide institutions that better serve a modern democracy. It will work to build a consensus on reform of the House of Lords and will bring forward proposals. ²³
13 December 2006	The Government published its response to the report from the Joint Committee on Conventions. ²⁴
16 and 17 January 2007	Both Houses debated the report from the Joint Committee on Conventions: House of Lords – 16 January; ²⁵ House of Commons – 17 January. ²⁶
7 February 2007	The White Paper – <i>The House of Lords: Reform</i> – was published. ²⁷
6 & 7 March 2007	The White Paper was debated in the House of Commons. The House supported an 80 per cent elected/20 per cent appointed chamber and a 100 per cent elected chamber. ²⁸
12,13 & 14 March 2007	The White Paper was debated in the House of Lords. The House of Lords supported a fully appointed chamber. ²⁹
18 May 2007	The <i>House of Lords (Amendment) Bill [HL]</i> , which sought to reduce the number of hereditary peers in the House of Lords by ending the requirement to hold by-elections in the event of a death of an excepted hereditary peer, was given a second reading in the House of Lords. ³⁰

²² Joint Committee on Conventions, *Conventions of the UK Parliament*, 3 November 2006, HC 1212-I 2005-06

²³ HC Deb 15 November 2006 c4

²⁴ Leader of the House of Commons and Lord Privy Seal, *Government Response to the Joint Committee on Conventions' Report of Session 2005-06: Conventions of the UK Parliament*, December 2006, Cm 6997, <http://www.official-documents.gov.uk/document/cm69/6997/6997.pdf>

²⁵ HL Deb 16 January 2007 cc573-638

²⁶ HC Deb 17 January 2007 cc808-887

²⁷ HM Government, *The House of Lords: Reform*, 7 February 2007, Cm 7027, www.official-documents.gov.uk/document/cm70/7027/7027.pdf

²⁸ HC Deb 6 March 2007 cc 1390-1488; 7 March cc1524-1635

²⁹ HL Deb 12 March 2007 cc451-570; 13 March 2007 cc517-609 and cc620-730; 14 March 2007 cc741-759

³⁰ HL Deb 18 May 2007 cc416-442

- 19 June 2007 Jack Straw gave evidence to Constitutional Affairs Committee on House of Lords Reform and party funding.³¹
- 3 July 2007 The Green Paper – *The Governance of Britain* – was published,³² and Gordon Brown made a statement on it.³³
- 19 July 2007 Jack Straw made a statement on Lords reform;³⁴ the statement was promised after the debate on the White Paper.³⁵
- 20 July 2007 The *House of Lords Bill [HL]*, which sought to create a statutory appointments commission and restrict the rights of hereditary peers to sit in the House of Lords, was given a second reading in the House of Lords.³⁶
- 24 July 2007 PASC announced the resumption of its inquiry into propriety and honours.
- 25 September 2007 At the Labour Party Conference, Gordon Brown announced that “...we will in our manifesto commit to introduce the principle of elections for the second chamber”.³⁷
- 11 October 2007 PASC took evidence from members of the House of Lords Appointments Commission in its inquiry into propriety and honours.

III “Next steps for the House of Lords”

A. Legislation not proceeded with in 2003-04

In September 2003 the consultation paper, *Constitutional reform: next steps for the House of Lords*, was published. It sought views on removing the remaining hereditary peers from the House of Lords and on establishing a statutory appointments commission. In the Queen’s Speech of November 2003, it was announced that:

Legislation will be brought forward to reform the House of Lords. This will remove hereditary peers and establish an independent Appointments Commission to select non-party members of the Upper House.³⁸

³¹ Constitutional Affairs Committee, *House of Lords Reform and Party Funding – Oral Evidence : 19 June 2007*, 9 October 2007, HC 738-i 2006-07

³² Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170, <http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf>

³³ HC Deb 3 July 2007 cc815-833

³⁴ HC Deb 19 July 2007 cc449-462

³⁵ HC Deb 7 March 2007 c1636

³⁶ HL Deb 20 July 2007 cc483-542

³⁷ Labour Party, *Gordon Brown speaks to Conference*, Annual Conference 2007, http://www.labour.org.uk/conference/brown_speech

³⁸ HC Deb 26 November 2003 c5

On 23 February 2004, in the report of an interview with Lord Falconer, *The Guardian* said that the *House of Lords Bill* would be published on 27 February 2004.³⁹ However, the Bill was not published, reportedly because of the way in which it had been drafted:

The problem has been caused by a mistake in drafting the legislation, which forced publication of the Bill to be scrapped before its scheduled launch last Friday. It emerged yesterday that cabinet ministers were horrified to discover that officials drawing up the measure had failed to make it "fireproof" to amendments from MPs who want to see the second chamber directly elected by the voters.⁴⁰

On 10 March 2004, it was widely reported by the newspapers, in similar terms, that the House of Lords Bill would be published "next week".⁴¹ However, on 19 March 2004, the BBC reported that "Tony Blair has dropped plans to get rid of the remaining hereditary peers before the next general election". Lord Falconer had told the *Today* programme that there was "no point spending more time in Parliament on the issue":

Lord Chancellor Lord Falconer said the plans were unlikely to succeed and so there was no point spending more time in Parliament on the issue.

[...]

"It became absolutely clear the bill wouldn't get through the Lords," he told BBC Radio 4's *Today* programme. The Lords have indicated clearly they are going to resist. The leader of the Conservative party said he would fight every part of our legislative programme. We have got to focus on the things that really matter when there is no more than about two years to go before an election, at the latest. The critical thing is to focus on what our priorities are."⁴²

The Guardian reported the story under the headline "Labour backs down on Lords",⁴³ whilst *The Independent's* headline was "Blair shelves plans to cut hereditary peers".⁴⁴ These reports followed the Prime Minister's official spokesman's comment that "an announcement on the Bill would be made soon. He confirmed it would not be this week".⁴⁵ The *Financial Times* reported that the final decision would be taken by a Cabinet sub-committee:

Tony Blair has decided, in principle, to abandon plans to reform the House of Lords during this parliament. Following a cabinet discussion yesterday, the prime

³⁹ Clare Dyer and Patrick Wintour, "Interview: Falconer puts reformers zeal into fight with peers and judiciary", *The Guardian*, 23 February 2004

⁴⁰ Andrew Grice, "Lords reform in disarray after officials bungle drafting of bill", *The Independent*, 4 March 2004

⁴¹ Paul Waugh, "Lords told to agree deal or face cut in powers", *The Independent*, 10 March 2004; Philip Webster, "Ministers in deal with Tories after Lords sabotage", *The Times*, 10 March 2004; Patrick Wintour, "Blair appeals for help over law reform bill: Government draws back from clash with Lords and tries to negotiate legislative timetable with opposition", *The Guardian*, 10 March 2004

⁴² BBC News, *Blair puts Lords reform on hold*, http://news.bbc.co.uk/1/hi/uk_politics/3524834.stm

⁴³ Michael White and Sarah Hall, "Labour backs down on Lords", *The Guardian*, 19 March 2004

⁴⁴ Ben Russell, "Blair shelves plans to cut hereditary peers", *The Independent*, 19 March 2004

⁴⁵ 10 Downing Street, Press Briefing, 11am Thursday 18 March 2004, <http://www.number-10.gov.uk/output/Page5544.asp>

minister signalled he intended to pull the Lords reform bill but referred a final decision to a sub-committee meeting next week.⁴⁶

Writing on “The Future of the Second Chamber”, Donald Shell gave the following explanation for the withdrawal of the Bill:

Following this debacle [the failure of the House of Commons to agree to any of the proposed models of composition for a reformed second chamber], the government decided to remove the remaining hereditary peers. This would allow the creation of a de facto all-appointed House, an option rejected by the Commons by 323 votes to 245. This proposal caused real anger in the Lords. Opposition peers believed that removing the 92 hereditary peers unilaterally, without bringing forward any further proposals for reform of membership, breached a clear undertaking given by a Privy Counsellor speaking from the despatch box in the House. The Liberal Democrats made clear that the government would not be able to rely on their support for a measure that would result in an all-appointed House. Faced with the prospect of outright defeat in the Lords and the threat of delay to the remainder of their legislative programme, the government dropped its planned bill. Labour ministers began to talk of proposals for the coming election manifesto that would deal not only with the composition but also with the powers of the House.⁴⁷

B. Responses to the consultation paper

On 22 April 2004, the Department for Constitutional Affairs (DCA) published an analysis of the responses to the September 2003 consultation paper on House of Lords reform.⁴⁸ In the foreword, Lord Falconer, the Secretary of State for Constitutional Affairs, outlined the Government’s September proposals, the reasons for not proceeding with the Bill, and indicated how the process of Lords reform would continue:

... Constitutional reform: Next steps for the House of Lords ... set out the Government’s proposals for taking forward the next incremental stage of reform to the second chamber. The consultation paper proposed to remove the remaining hereditary peers, establish a new independent statutory Appointments Commission, and bring the provisions on disqualification into line with those of the Commons. In the face of determined refusal by the opposition to support these reasonable reforms, the Government has subsequently decided not to pursue this legislation at this stage. Instead, the Government intends to reflect on the possible options for longer-term reform of the House of Lords, and to encourage wide-ranging debate on the best way forward.

The DCA received a total of 222 responses to its consultation paper. However, not all respondents commented on each of the seven issues raised in the paper and some made other points.

⁴⁶ Jean Eaglesham, “Blair set to scrap Lords reform”, *Financial Times*, 19 March 2004

⁴⁷ Donald Shell, “The Future of the Second Chamber”, *Parliamentary Affairs*, October 2004, Vol 57, No 4, p853

⁴⁸ Department for Constitutional Affairs, *Constitutional Reform: next steps for the House of Lords – Summary of Responses to Consultation*, April 2004, <http://www.dca.gov.uk/consult/holref/holresp.htm>

1. The Appointments Commission

There was widespread support for a statutory Appointments Commission whose accountability arrangements followed those of the Electoral Commission (that is accountable to Parliament rather than ministers).

Most respondents to the question favoured an Appointments Commission which included representation from the three main parties and the cross-benchers, and independent members. The cross-benchers expressed a preference for selecting their own representative which would lead to a nine-member commission to allow the majority of the Commission to be independent members. Approximately one quarter of respondents believed that “members of either House of Parliament should be eligible for appointment to the Commission as an independent member”. 73 per cent of respondents favoured the Commission appointing its own chair.

Of 91 responses, 90 per cent believed that members of the Appointments Commission should be ineligible for membership of the House of Lords for a period of time.

In terms of the appointments made by the Commission, 86 per cent of 98 respondents agreed that the Commission should determine the number of appointments. A “significant majority” agreed that the Government should not have an overall majority in the House of Lords.

Most respondents agreed that the share of seats in the House of Lords should “have regard to the previous general election”. And most of those believed this should relate only to votes cast.

There was support for a continuing independent element in the House, and for independents to account for at least 20 per cent of appointments.

The DCA reported that most respondents supported the proposal that “the overall size of the House should not grow beyond its present size of about 675 members and should reduce over time to a House of no more than 600”, although a number of respondents called for a chamber of “around 300”, there was little support for a statutory cap on the size of the chamber (see also section VII A 1).

There was support for the proposal that “the House of Lords should better reflect the make up of UK society”. The Campaign for the English Regions said that regional diversity could be ensured through a system of territorially-based membership, using either direct or indirect election”. The Equal Opportunities Commission called for “balanced representation” in all Appointments Commission and party nominations: “with a floor of at least 30 per cent women/men”. The difficulty of reflecting the country’s age profile and faith representation were highlighted in a number of submissions.

Proposals for a statutory appointments commission were included in the 2007 White Paper (see Section VI A 4).

2. Disqualification

Of the 108 respondents on the issue of disqualification, 91 per cent agreed that rules should be brought into line with the House of Commons, but there was criticism of making disqualification rules retrospective.

3. Prime Ministerial patronage

The Prime Minister currently recommends peerages for the post holders of certain offices: 54 per cent of respondents agreed that this should continue; and 58 per cent of respondents supported the appointment of former holders of high judicial office to the House of Lords. On both issues, however, there were dissenting voices. According to the Constitution Unit, Prime Ministerial appointments would make the Appointment Commission's task of maintaining balance and size limits harder. The Bar Council Law Reform Committee questioned "why only certain distinguished office-holders should be considered worthy of automatic entitlement to the House of Lords".

In their review of the House of Lords in 2005, Meg Russell and Maria Sciara wrote:

A slightly unseemly scrap emerged early in the year with the [House of Lords Appointments Commission] privately expressing unhappiness at the Prime Minister's habit of cutting across its role by directly appointing retiring senior office-holders as peers. (The last were David Hope, the outgoing Archbishop of York, and John Stevens, former commissioner of the Metropolitan Police, in January.) Responding to these concerns, Downing Street issued a statement that in future there would be no more than ten such appointments per Parliament.⁴⁹

4. Voluntary resignation

There was overwhelming support (92 per cent) to allow voluntary resignation and disclaimer of peerage, although some respondents drew a distinction between the two.

5. Elections

Despite the consultation paper making no mention of election, of the 222 responses, 123 mentioned elections. In all, 112 were "in favour of some form of election to the second chamber".

6. Other issues

Some respondents objected to the Government's proposal to remove hereditary peers, and suggested not replacing deceased hereditary peers. Others called for their retention to provide "a forceful incentive to complete the reform".

⁴⁹ Meg Russell and Maria Sciara, "Parliament: The House of Lords – A More Representative and Assertive Chamber?", in Michael Rush and Philip Giddings (eds), *The Palgrave Review of British Politics 2005*, Palgrave Macmillan, 2006, p125; see also HC Deb 25 January 2005 c10WS

There were calls for fixed term appointments: suggestions of seven, ten and fifteen years were made by different respondents.

Some respondents also suggested that there should be a retirement age for members of the House of Lords.⁵⁰

C. Approaches to moving forward

Following the decision not to publish the Bill, the focus on the composition of the reformed House of Lords switched to a focus on the question of the powers of the House of Lords.

1. Labour Peers

In 2004 the Labour Peers' Group considered "what should be the functions of a reformed second chamber and what should be its powers, procedures and conventions, recognising the primacy of the House of Commons". It did not consider the question of composition, arguing that membership "is best considered with a clear understanding of its role, powers and purpose". Its conclusions were:

- A Second Chamber should complement the work of the elected House of Commons and concentrate on the scrutiny and revision of legislation.
- There should be major reform of the legislative process in the Lords to replace much of the current repetition and enable a better focus on the main issues within a bill.
- A new Parliament Act should be enacted.
- The House of Lords should continue to be able to exercise a delaying power on primary legislation.
- A reasonable time limit should be set for all bills to complete their passage in the Lords.
- Bills starting in the Lords should be subject to the new Parliament Act.
- Reconciliation machinery should be established to help resolve differences between the Commons and the Lords.
- Key conventions – principally the Salisbury Doctrine – should be codified.
- Secondary legislation should be subject to Lords delaying power as recommended by the Royal Commission on Lords Reform and the Government White Paper on the Lords (2001).
- Post-legislative review of the effects of Acts of Parliament should be undertaken.
- A Speaker should be elected by the House.
- Members of the House should become more disciplined and abide by its rules and procedures.

⁵⁰ All quotations in this section come from the analysis of consultation responses: Department for Constitutional Affairs, *Constitutional Reform: next steps for the House of Lords – Summary of Responses to Consultation*, April 2004

- Voting on legislation in the main chamber should take place in prime time.
- Select Committee system should be reviewed.
- Administrative and working practices should be streamlined.
- Enhanced support should be given to back-bench members of the House to fulfil their role more effectively.
- Opposition front-bench should be properly resourced to meet their obligations to the House.⁵¹

The House of Lords held a debate on the Labour Peers' Group report on 26 January 2005.⁵²

2. Lord Falconer at the Labour Conference

During the Labour Party's conference in September 2004, Lord Falconer outlined the Government's plans for reform of the House of Lords. *The Times* reported:

... if re-elected the Government would bring forward a Bill to reshape the Lords in the first session of the new Parliament.

In addition to removing the remaining 92 hereditary peers, which ministers announced last year but withdrew, it will clarify the powers of the Lords and limit its ability to delay legislation. Most significantly Lord Falconer announced that it will include further changes to the composition of the Lords.⁵³

3. Answers in the House of Commons

On several occasions, in response to questions requesting a statement on further reform of the House of Lords, Christopher Leslie, then the Parliamentary Under-Secretary of State at the DCA used the same reply, namely:

There continue to be a wide range of views on the proper functions, powers and composition of the House of Lords. We have made it clear that we intend to return to the issue of House Lords reform in the context of our Manifesto.⁵⁴

The reply was also used in response to a question that was answered orally. On that occasion, supplementary questions allowed Christopher Leslie to add that he did not believe that it was possible to have a legitimate second chamber without some reform; that the Government wanted to achieve consensus, if that was possible; that "returning to the matter in our manifesto is one way to make certain that we can make progress early in the next Parliament"; that there was a consensus that the "House of Commons should be supreme and is the ultimate elected chamber". However, he reiterated that

⁵¹ Labour Peers' Group, *Reform of the powers, procedures and conventions of the House of Lords*, July 2004, pp2-3

⁵² HL Deb 26 January 2005 cc1330-1384

⁵³ Greg Hurst, "Falconer bows to pressure for a democratic Lords", *The Times*, 1 October 2004

⁵⁴ HC Deb 8 February 2005 c1371W; HC Deb 26 October 2004 c1186W; HC Deb 21 October 2004 c893W

the question that remained concerned “the powers of the revising chamber and how they should be reflected in its composition”.⁵⁵

4. Cabinet differences

There were reports of Cabinet divisions over the direction that House of Lords reform should take. For his part, the Prime Minister, Tony Blair, accepted the need for a debate about “the future composition of the House of Lords” but made his opposition to a part-elected chamber clear:

My own position is that I think it is very difficult to have a hybrid part-elected, part-appointed House of Lords. That is why I do not favour it, but the debate will continue and I have made it clear that it should be a free-vote issue.⁵⁶

This response came soon after a *Daily Telegraph* interview with Baroness Amos, the Leader of the House of Lords. She told the newspaper that there would not be a proposal on the future composition of the House of Lords in the forthcoming Labour manifesto:

I think there is still more work to be done because if you put four different people in a room, regardless of which party they come from, there will not just be four different views but you’ll probably get eight different views about composition.⁵⁷

She argued that “we can’t look at composition until we have sorted out the powers of the second chamber”.⁵⁸ However, this contrasted with the Government’s view in its 2003 consultation paper on “next steps for the House of Lords”, when it argued that: “The Government has no plans to change the role and powers of the Lords”.⁵⁹ Lady Amos also expressed her preference for a fully-elected second chamber: “You need an elected second chamber in a truly democratic system”.⁶⁰

The Cabinet divisions were also highlighted by *The Independent*,⁶¹ which in a leader article supported a combination of elected and appointed “lords”, with elections “conducted on principles that vary from those that apply to the House of Commons”. Alternatives included longer terms or using proportional representation.⁶² *The Guardian* also reported on the Cabinet divisions.⁶³

⁵⁵ HC Deb 30 November 2004 cc490-491

⁵⁶ HC Deb 26 January 2005 c301

⁵⁷ Toby Helm and Andrew Sparrow, “Labour back-pedals on reform of the Lords”, *Daily Telegraph*, 24 January 2005

⁵⁸ *Ibid*

⁵⁹ Department for Constitutional Affairs, *Constitutional reform: next steps for the House of Lords*, CP 14/03, September 2003, para 7

⁶⁰ Toby Helm and Andrew Sparrow, “Labour back-pedals on reform of the Lords”, *Daily Telegraph*, 24 January 2005

⁶¹ Andrew Grice, “Blair faces revolt as ministers demand elections for Lords”, *Independent*, 3 February 2005

⁶² “The Prime Minister must honour his promises and reform the House of Lords”, *Independent*, 3 February 2005

⁶³ Patrick Wintour, “We must take lead on Lords, says Hain”, *Guardian*, 14 February 2005

5. A cross-party proposal for reform

In January 2005, a cross-party group of MPs published *Reforming the House of Lords – Breaking the Deadlock*. The report included a review of reform that had taken place since 1997, and argued that “no consensus has yet been reached about a workable way forward”. After reviewing the issues that prevented consensus being reached, the group made recommendations on the powers and functions, composition of and transition to a reformed second chamber. In formulating their recommendations, the group took into account the findings of other groups that had made proposals for reforming the House of Lords, and in its preface argued that “a closer look at previous proposals ... shows that there is far more that unites us than divides us”. The group therefore sought to develop a package that built upon existing proposals and could command broad support.⁶⁴

The report also included the text of a Bill that was presented in the House of Commons on 10 February 2005, by Paul Tyler, who was supported by Kenneth Clarke, Robin Cook, Tony Wright and Sir George Young.⁶⁵ The Bill made no further progress because of the General Election.

Plans for the bill were announced in November 2004. *The Guardian* reported the key features of the cross-party group’s proposal, at that time:

- a smaller chamber, about 400 members against the current 700, of whom 70% are elected for 12 years at general elections, with a third standing down every four years;
- a statutory appointments commission to pick most of the remainder, experts and VIPs, but not the 16 bishops;
- a right for prime ministers to appoint up to four ministers in each parliament;
- transitional arrangements to phase out current peers (who can stand for election) with retirement packages;
- largely unchanged powers, but more legitimate authority to use them;
- a voting system, possibly the single transferable vote form of proportional representation, which allows voters to pick candidates from regionally based "open" party lists.⁶⁶

The proposed bill was welcomed by the Electoral Reform Society:

The Electoral Reform Society has warmly welcomed the new cross-party initiative to create a largely elected House of Lords. The Society has called on the Government to make Lords reform a priority for the next two years.

⁶⁴ Kenneth Clarke et al, *Reforming the House of Lords: Breaking the Deadlock*, January 2005

⁶⁵ HC Deb 10 February 2005 c1676

⁶⁶ Michael White, “Cross-party group unveils ‘workable’ Lords reform plan”, *The Guardian*, 26 November 2004

“We strongly support the plan being put forward ...”, said Ken Ritchie, Chief Executive of the Electoral Reform Society. “We believe that it is a well thought through and workable plan which could command the support of a majority in Parliament”.⁶⁷

A separate debate in Westminster Hall, initiated by Robin Cook, took place on 23 February 2005. He hoped that the cross-party report demonstrated that there was some form of consensus building. The features were that the second chamber should be predominantly elected and the primacy of the House of Commons should be preserved.⁶⁸

IV General Election 2005

A. Manifesto commitments

In the 2005 general election campaign, the Labour Party included the following observations and commitments on House of Lords reform in its manifesto:

In our first term, we ended the absurdity of a House of Lords dominated by hereditary peers. Labour believes that a reformed Upper Chamber must be effective, legitimate and more representative without challenging the primacy of the House of Commons.

Following a review conducted by a committee of both Houses, we will seek agreement on codifying the key conventions of the Lords, and developing alternative forms of scrutiny that complement rather than replicate those of the Commons; the review should also explore how the upper chamber might offer a better route for public engagement in scrutiny and policy-making. We will legislate to place reasonable limits on the time bills spend in the second chamber – no longer than sixty sitting days for most bills.

As part of the process of modernisation, we will remove the remaining hereditary peers and allow a free vote on the composition of the House.⁶⁹

The Conservative Party pledged: “We will seek a cross-party consensus for a substantially elected House of Lords”.⁷⁰

The Liberal Democrats pledged to “cut back the powers of patronage, in particular through our plans for a predominantly elected second chamber”.⁷¹

B. Progress on House of Lords reform since May 2005

House of Lords reform was the responsibility of the Department for Constitutional Affairs from its inception until the Government reshuffle in May 2006, when it was transferred to

⁶⁷ Electoral Reform Society News Release, *ERS welcomes Lords reform initiative*, 25 November 2004

⁶⁸ HC Deb 23 February 2005 c72WH

⁶⁹ Labour Party, *Britain forward not back*, Manifesto 2005, p110

⁷⁰ Conservative Party, *Conservative Election Manifesto 2005*, p21

⁷¹ Liberal Democrats, *The Real Alternative*, April 2005, p18

Jack Straw, the Leader of the House of Commons. Following his appointment as Secretary of State for Justice and Lord Chancellor in Gordon Brown's first Administration, Jack Straw retained responsibility for Lords reform.

1. **May 2005 – April 2006**

Harriet Harman, the Minister of State in the DCA, responded to a number of questions on the progress made in implementing the manifesto commitments. In addition, the Lord Chancellor and Secretary of State for Constitutional Affairs, Lord Falconer, gave evidence to the Constitutional Affairs Committee on 18 October 2005. He spoke briefly about the establishment of the Joint Committee and the wider debate on Lords reform.

At the beginning of the new Parliament, in a written ministerial statement, Harriet Harman echoed the Government's manifesto commitment on House of Lords reform when she set out the DCA's legislative programme:

... The Government will bring forward measures to reform the House of Lords including: a Committee of both Houses to identify and set out the key conventions of the House of Lords; a reasonable time limit for Bills to proceed through the second chamber; removal of the remaining hereditary peers; and a free vote on the composition of the House.⁷²

However, in a press report on the Queen's Speech, following the 2005 General Election, there were suggestions that House of Lords reform would not be a priority.⁷³

On 18 October 2005, Lord Falconer gave evidence to the Constitutional Affairs Committee on the DCA's key policies and priorities. House of Lords reform was one of the subjects raised. He was asked to tell the Committee "what plans you have for pushing forward on that reform and also what timetable you have in mind both for consultation and action".

In his response to that question, he commented on the issues that the Labour Party had raised in its manifesto. He said that "it is plain that reform of the House of Lords depends upon building some degree of consensus on a constitutional change of that importance", and that consensus building would include a joint committee looking at the conventions between the two Houses. He confirmed that discussions on the establishment of a joint committee were taking place. He said that the question of composition needed to be considered separately from the question of conventions. He then reaffirmed that votes on composition would take place in both Houses and that "In the light of whatever comes out of that we will then move to legislation". He also explained the reasons for proposing a limit on the length of time that a bill should spend in the House of Lords:

... in the manifesto we said that there should be a time limit for the time that a Bill spends in the Upper House as opposed to the Lower House. The reason we did that was not to curtail debate. The proposed time limit we suggested, which was

⁷² HC Deb 23 May 2005 c9WS

⁷³ Andrew Sparrow, "The Lords Committee to review role of peers", *Daily Telegraph*, 18 May 2005

60 days, was way beyond the time that even the longest Bill takes. We did it to deal with a situation where from time to time when there have been very controversial issues, e.g. hunting or constitutional reform, spokesmen for the Opposition in the Lords have said things like, "If you continue with your Hunting Bill or your Constitutional Reform Bill you will find the rest of your legislative programme disrupted."⁷⁴

He expected that the Joint Committee would be set up "sooner rather than later", and he hoped that it would report in the spring or summer of 2006. His view was that any bill would need to be proceeded with "earlier rather than later in a Parliament, which means not this session but maybe next". He expected a vote on the composition of the House of Lords sometime during the course of the 2005-06 Session.⁷⁵

In the early part of 2006, DCA ministers confirmed the Government's intentions in responses to a number of Parliamentary questions.⁷⁶ Harriet Harman had previously told the House that the Government would "proceed on all those points; one is not conditional on the other".⁷⁷

At Oral Questions to the Department in December 2005, David Heath (Liberal Democrat) criticised the speed of progress on reform. Harriet Harman replied that she "would have liked us to go faster in establishing the Joint Committee of the Lords and the Commons" but that progress was dependent on the agreement of all parties.⁷⁸

2. Since May 2006

The work of establishing the Joint Committee mentioned by Lord Falconer, in his evidence to the Constitutional Affairs Committee in October 2005, took a considerable time, and it was April 2006 before the House of Lords considered a motion to appoint such a committee. Soon afterwards the establishment of the cross-party group considering composition was also confirmed. The vote on composition that Lord Falconer hoped would take place in 2005-06 followed the publication of a white paper, which was informed by the work of both the Joint Committee and the cross-party group.

The establishment and work of the Joint Committee and the cross-party group are described in Section V; and the White Paper and subsequent debate on it are described in Section VI.

Whilst discussions on establishing these groups were taking place and whilst the two groups were deliberating, Jack Straw began to set out the framework in which he considered the two groups should operate, and indicated the directions he would like to see them take.

⁷⁴ Constitutional Affairs Committee, *Department for Constitutional Affairs: Key Politics and Priorities*, 18 October 2005, HC 566-I 2005-06, Q26

⁷⁵ *Ibid*, Qq27-28

⁷⁶ HC Deb 9 January 2006 c240W; see also HC Deb 24 January 2006 c1941W

⁷⁷ HC Deb 18 October 2005 c697

⁷⁸ HC Deb 13 December 2005 cc1229-1230

a. Jack Straw's proposals for Lords reform

Jack Straw took on responsibility for Lords reform when he was appointed Leader of the House of Commons in May 2006. He commented on House of Lords reform in speeches to the Hansard Society and the annual lecture to the Constitution Unit.

In July 2006, in the speech to the Hansard Society on *The Future for Parliament*, Jack Straw set out his views on the wider issue of reform of the House of Lords:

It may seem a bold step to go from that sentiment to the issue of reform of the House of Lords. But reform of the Second Chamber is inextricably linked to the debate about the reform of Parliament. Much has been achieved here in recent years – the election last week of Baroness Hayman as its first Speaker is evidence of that – but there is much to be done. I will be working with colleagues on all sides of both Houses over the coming months as part of an intensive effort to reach a consensus on how a future Upper Chamber may look. I think a consensus is achievable and I believe this: if we do not seize the opportunity before us now, I fear that reform will be placed on the backburner for decades to come. My sense is that we should be able to build consensus around the idea of a House which is split 50% elected and 50% appointed, phased in over a long period, perhaps as long as 12 or 15 years. Crucially the shift must be one which leads to a House which does not threaten the primacy of the Commons, but which is more representative of the society we live in today.

The Joint Committee on Conventions is now meeting. This is due to report by early November. I hope that the Government will then be able to make public its proposals for reform as a whole by the turn of the year.

Maintaining the primacy of the Commons is key. But subject to this, there is no reason why the Lords should not be able to increase its relevance and its effectiveness.⁷⁹

He also gave the University College of London Constitution Unit's Annual Lecture on 24 October 2006, in which he discussed Lords reform. In that speech, he indicated that he hoped to publish a White Paper "within the next few weeks" that would be informed by the conclusions of the report from the Joint Committee on Conventions. However, in October 2006, he was prepared to say that "the White Paper will be guided by five key principles":

First, a reformed Lords must not be a rival to the Commons. The primacy of the Commons is one of the bedrocks of our democracy. It is often claimed that introducing any form of election into the composition of the Lords would inevitably threaten the primacy of the Commons. But the international experience suggests that whether a chamber is appointed or elected is not necessarily an indicator of how much power it wields.

⁷⁹ Jack Straw, *The Future for Parliament*, Speech at the Hansard Society AGM, 11 July 2006, http://www.hansardsociety.org.uk/assets/Hansard_society_speech.pdf

Second, a reformed Lords must not be a replica of the Commons. The role of the Lords is to revise and to scrutinise - to act as a second opinion. It does this very effectively. If it were to replicate what the Commons does, it would not only threaten its position as holding primacy, but it would also remove an effective part of the Parliamentary process.

Third, a reformed Lords must be more representative of the people it serves. This means finding ways of increasing the number of women in the House, and the number of people from minority ethnic groups. The idea of the House of Lords being led by a black woman would have been extremely unlikely 20 years ago, but there is much more to do to ensure it better reflects the make-up of today's United Kingdom. That also means a House which is more representative of the regions, and less focussed on the south-east.

Fourth, is the principle of balance. No single party in a reformed second chamber should be allowed to command an overall majority.

Fifth is the need for a range of voices to be heard in the Lords. And that means a proportion of members who are not drawn from political parties, but who are independently appointed by virtue of their expertise and experience. Many of those crossbenchers currently in the Lords make a valuable contribution and add to the chamber's reputation for high quality debate and scrutiny of legislation. We should not lose that element in a reformed Lords.⁸⁰

Following his speech at the Constitution Unit, he was asked whether "the timetable for reform set out in his speech of 24 October represents Government policy". He responded that the timings were those he hoped to see achieved, adding "But whether these hopes are met depends on many factors".⁸¹

b. A tentative timetable

Just before the Government published its response to the Joint Committee's report, Jack Straw set out to the Lobby a timetable for progress on Lords reform. He confirmed that the Government's response was due before Christmas 2006. It would be followed by debates on the Joint Committee's report, first in the House of Lords and then in the House of Commons, soon after the Christmas Recess. He hoped that the White Paper would be published by the end of January or in early February 2007, with votes in both Houses two or three weeks after that. The lobby briefing continued:

The Government, at that stage, would have to make a judgement whether there was a sufficient consensus to proceed, quite quickly, with a Bill or whether it drew breath. The Leader said that the Joint Committee had managed to achieve a consensus and its report had described the conventions of the relationship between the Houses in greater detail. The issue had been discussed within the cross-party talks.⁸²

⁸⁰ Jack Straw, *Constitution Unit Annual Lecture*, 24 October 2006, <http://www.commonleader.gov.uk/output/page1714.asp>

⁸¹ HC Deb 6 November 2006 c670W

⁸² Leader of Commons, Rt Hon Jack Straw MP, Press Briefing, 7 December 2006, 3.45pm, <http://www.commonleader.gov.uk/output/page1814.asp>

Jack Straw also gave a commitment that any vote on the composition of the House of Lords will be preceded by the question of whether there should be a second chamber.⁸³

However, on 31 December 2006, the *Sunday Telegraph* reported that it had learnt that action on reform of the House of Lords was “likely to be put off until after the next election, with plans forming key parts of Labour’s manifesto”.⁸⁴

A white paper was published in February 2007 and is discussed in Section VI of this paper.

V Joint Committee on Conventions and the cross-party group on Lords reform

Both the Joint Committee on Conventions and the cross-party group on Lords reform began their work in the early summer of 2006. The Joint Committee’s report was published in November 2006 and debated in January 2007. The Government’s response to the Joint Committee was published in December 2006. The White Paper, informed by both the Joint Committee’s report and the work of the cross-party group, was published in February 2007.

A. Joint Committee on Conventions

1. Establishing the Joint Committee – House of Lords

On 25 April 2006, the House of Lords agreed a motion on establishing the Joint Committee, with the following terms of reference:

Moved, That, accepting the primacy of the House of Commons, it is expedient that a Joint Committee of the Lords and Commons be appointed to consider the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation, in particular:

(A) the Salisbury/Addison convention that the Lords does not vote against measures included in the governing party’s manifesto;

(B) conventions on secondary legislation;

(C) the convention that government business in the Lords should be considered in reasonable time;

(D) conventions governing the exchange of amendments to legislation between the two Houses;

and that the committee should report by Friday 21 July 2006.—(*Baroness Amos.*)

⁸³ HC Deb 19 October 2006 c1024

⁸⁴ Patrick Hennessy, “The year of our Gord 2007”, *Sunday Telegraph*, 31 December 2006

Baroness Amos, the Leader of the House of Lords, introduced the debate by describing the motion.⁸⁵

Lord Cope of Berkeley, the Conservative Chief Whip, commented on the motion requiring the Joint Committee to “consider the practicality of codifying the existing conventions”:

... Apparently, some people see this operation as one to limit the powers of this House. They read codification of the conventions as some kind of code for restricting the powers. I point out that the terms of reference do not ask the new committee to consider or to propose any revision or modification of the conventions, only to consider the practicality of codifying the existing conventions. Some may, of course, be best left to conventions, which is a method that has served the British constitution well over many years. We see no case for restricting the powers of the present House. The argument about the powers of either House of the legislature is not that they are too strong, but they are too weak relative to the Executive, the Government.⁸⁶

He went on to argue that as well as the problem of determining the practicality of codifying the conventions, the Committee should also consider the desirability of doing so.⁸⁷ He also reported that some of his colleagues were concerned about the short period of time that committee was being allowed to report.⁸⁸

Lord McNally said that he was initially reluctant for the Liberal Democrats to participate in the Committee. However, Lord Falconer’s commitment to establish a cross-party group to review the composition of the House of Lords swayed him.⁸⁹

Like Lord Cope, Lord Williamson of Horton, the Convenor of the Crossbench peers, noted that the Committee would consider the practicality of codifying the conventions and “not change their substance”.⁹⁰

In closing the debate, Baroness Amos repeated that “the Joint Committee is being asked to consider the practicality of codifying the key conventions”. She pointed out that the Government had been consulting on the establishment of the Joint Committee for over six months. She argued that the Government wanted its promised free vote on composition to be informed by the conclusions of the Committee.⁹¹ However, in response to a question about the implications for the conventions of the establishment of an elected second chamber, she accepted that “conventions, by their very nature, are ongoing and dynamic”. She continued:

⁸⁵ HL Deb 25 April 2006 c74

⁸⁶ *Ibid* c75

⁸⁷ *Ibid*

⁸⁸ For example, later in the debate, Viscount Bledisloe, Lord Phillips of Sudbury, Lord Crickhowell and Lord Richard all voiced concerns [HL Deb 25 April 2006 cc81, 82, 84, 85]

⁸⁹ HL Deb 25 April 2006 cc78-79

⁹⁰ *Ibid* c80

⁹¹ *Ibid* c91

That is precisely why this Motion is worded as it is. It is clear that the committee will look at the practicality of codifying the conventions. We are in no way pretending that this task will be easy. Around this Chamber, we all know that House of Lords reform has been on the agenda for many years. It was on the agenda long before I was born, and I have no doubt that it will be there long after I am gone.⁹²

Finally she confirmed that the Joint Committee could “come back to both Houses to seek an extension if it thinks the timescale is too short”.⁹³

Despite support from the front benches, the House of Lords divided on the Motion: it was agreed to by 179 Contents to 95 Not Contents.⁹⁴

2. Establishing the Joint Committee – House of Commons

On 10 May 2006 the House of Commons debated a motion to concur with the House of Lords on the terms of reference and the timetable for reporting. The Commons motion also provided the Committee with the powers of a select committee and nominated its membership.

Similar concerns to those raised in the Lords on the Committee’s timetable and the wider context of Lords reform were raised. In response to the “chicken and egg” questions of “functions and form” or “power and composition”, Jack Straw argued that:

We might as well have an agreement about where we are starting from and what the common understanding is before we move on.⁹⁵

He also confirmed that, if the Committee considered that it needed more time, both Houses would need to change their motions of appointment.⁹⁶

Questions were raised about the meaning of codification in the motion. Jack Straw outlined a number of possible approaches to codification:

The manner in which the conventions could be codified ranges from a codification in the body of the Committee’s report, to a code that has been negotiated by both Houses and which we endorse in resolutions, through to its inclusion in Standing Orders or its enshrinement in law. That is a subsequent matter.⁹⁷

However, Theresa May, the shadow Leader of the House, pointed out that the Joint Committee was only being asked to consider the practicality of codifying the conventions: unlike the Labour Party’s manifesto commitment to “seek agreement on codifying the key conventions of the Lords”:

⁹² *Ibid* c92

⁹³ *Ibid*

⁹⁴ *Ibid* c93

⁹⁵ HC Deb 10 May 2006 c445

⁹⁶ *Ibid* c473

⁹⁷ *Ibid* c442

The Committee is not being asked to decide whether certain conventions should be scrapped or amended, or indeed what the powers of the two Houses should be.

[...]

So the manifesto commitment on which the motion is based goes considerably further than the motion.⁹⁸

She questioned what would happen if the Committee concluded that codification was not practical:

If the Committee decides that it is not practical to codify the conventions and does not produce recommendations for improving the present arrangements, will the Government undertake not to produce a unilateral Bill constraining the powers of the Lords?⁹⁹

Because some Members objected to the motion, a division was called. In accordance with Standing Orders, the division was deferred until 17 May 2006. Then the motion was agreed to by 416 votes to 20.¹⁰⁰

3. Establishing the Joint Committee – House of Lords Members appointed

On 22 May 2006, the House of Lords debated the membership of the Committee that would join with the Commons Committee. The motion also included provisions on the powers of the Committee.

Lord Peyton of Yeovil moved an amendment: he proposed leaving Lord McNally out of the list of members of the Committee. He argued that he did so to draw attention to the fact that no opponents of the appointment of the Committee had been nominated to serve on it (five who voted in favour of appointing the committee had been nominated); and to re-iterate concerns that the powers of the House of Lords would be diminished.¹⁰¹ Following some further debate on the way in which the Committee was established and its timetable, Lord Peyton withdrew his amendment.¹⁰²

The House then agreed, by 184 Contents to 31 Not Contents, that the Members proposed should serve on the Committee.¹⁰³

4. Establishing the Joint Committee – call for evidence

The Joint Committee held its first meeting on 23 May 2006 and agreed a special report, which was published on 25 May 2006. In that report it commented on its task and issued a call for evidence. The Committee considered that its deadline of 21 July 2006 “will not

⁹⁸ *Ibid* c451

⁹⁹ *Ibid* c455

¹⁰⁰ HC Deb 17 May 2006 c1070; c1111

¹⁰¹ HL Deb 22 May 2006 cc582-583

¹⁰² *Ibid* c594

¹⁰³ *Ibid* cc594-596

allow us to do justice to our remit". It invited both Houses to extend its deadline until the end of the Session.¹⁰⁴

It invited written evidence by 20 June 2006 and set out "some particular questions which everyone submitting evidence is invited to address".¹⁰⁵ It set out briefly the constraints and context it intended to operate under. It assumed that "self-regulation" of the Lords would be maintained; that "codification will not involve increased oversight of Parliament by the courts". It confirmed that it would consider the practicality, not the desirability, of codifying conventions; that it would not modify existing conventions; that it would exclude consideration of conventions wholly internal to each House and conventions which did not affect legislation; that it would not consider financial privilege; nor would it consider the following types of bills:

- supply bills and money bills
- consolidation and tax law rewrite bills
- all forms of private legislation
- draft bills and pre-legislative scrutiny
- private Members' bills.¹⁰⁶

Following the publication of this report, at Business Questions on 8 June 2006, Jack Straw confirmed that he would bring forward an order to extend the Committee's deadline.¹⁰⁷

On 20 June 2006, the House of Lords agreed to change the deadline for the Joint Committee to report from 21 July 2006 to "the end of this Session of Parliament".¹⁰⁸ Its decision was informed to the House of Commons, which concurred with the amended deadline on 4 July 2006.¹⁰⁹

B. The Committee's Report and the Government's Response

1. The Committee's Report

The Joint Committee published its report on 3 November 2006.¹¹⁰ It reported that as well as considering the four issues referred to it, it considered Commons financial privilege. It also reported that it was asked to accept the primacy of the Commons, which it did. It noted that the background to its inquiry was "the continuing debate on reform of the House of Lords". It argued that if the House of Lords were reformed "the conventions between the Houses would need to be examined again".

In brief its conclusions were:

¹⁰⁴ Joint Committee on Conventions, *First Special Report*, 25 May 2006, HC 1151 2005-06, para 3

¹⁰⁵ *Ibid*, para 4

¹⁰⁶ *Ibid*, paras 5-13

¹⁰⁷ HC Deb 8 June 2006 c408

¹⁰⁸ HL Deb 20 June 2006 c633

¹⁰⁹ HC Deb 4 July 2006 c788

¹¹⁰ Joint Committee on Conventions, *Conventions of the UK Parliament*, 3 November 2006, HC 1212-I 2005-06

- The Salisbury-Addison Convention has changed since 1945, and particularly since 1999. It applies to manifesto bills introduced in either House and is recognised by the whole House. The Joint Committee recommended that the Convention should be described as the “Government Bill Convention”.
- It accepted that there was a convention that the Lords consider government business in reasonable time. However, there was no conventional definition of “reasonable” and, while the Joint Committee did not recommend the invention of one, it noted that a symbol could be used to indicate a bill which had spent more than 80 sitting days in the House of Lords.
- It pointed out that “ping-pong” was a framework for political negotiation (not a convention) that would be facilitated if reasonable notice of amendments were given.
- It accepted that the Lords should not regularly reject statutory instruments but it should have the power to do so.

The Joint Committee found the word codification “unhelpful”. But it did offer a formulation for one or both Houses to adopt by resolution. It thought that the resolutions and debates on them “would improve the shared understanding which the Government seek”. It suggested the following formulation:

In the House of Lords:

A manifesto Bill is accorded a Second Reading;

A manifesto Bill is not subject to ‘wrecking amendments’ which change the Government’s manifesto intention as proposed in the Bill; and

A manifesto Bill is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose.

The House of Lords considers government business in reasonable time.

Neither House of Parliament regularly rejects statutory instruments, but in exceptional circumstances it may be appropriate for either House to do so.¹¹¹

2. The Government’s response

The Government published its response on 13 December 2006. In a written ministerial statement announcing the publication of the response, Jack Straw said:

The Government accept the Joint Committee’s analysis of the effect of all the conventions, and the Committee’s recommendations and conclusions. The Government believe that further reform should not alter the current role of the House of Lords as a revising and scrutinising Chamber, or its relationship with the

¹¹¹ *Ibid*, Summary, p4

Commons. The relationship and conventions identified by the Joint Committee therefore should apply to any differently composed chamber.¹¹²

In its response the Government reiterated its acceptance of the Joint Committee's analysis and recommendations and conclusions, adding that "Its report accurately defines the current relationship between the Lords and the Commons".¹¹³

However, as reported in the *House Magazine*, the Government and Jack Straw argued that this situation should pertain in a reformed second chamber:

Further reform should not alter the current role of the House of Lords as a revising and scrutinising chamber, or its relationship with the Commons.

The relationship and conventions identified by the Joint Committee are therefore ones that should apply to any differently composed chamber.¹¹⁴

This latter point provoked a number of comments during the debates on the Joint Committee's report (see below).

3. Lords and Commons debates on the Joint Committee's report

a. House of Lords

The Joint Committee on Conventions' report was debated by both Houses on consecutive days in January 2007. The House of Lords debated the report on 16 January and the House of Commons debated it on 17 January. Both Houses debated a motion to "take note with approval" of the report, and both Houses agreed to their respective motions without division.¹¹⁵

In the House of Lords debate on the Joint Committee's report, all the speakers agreed with the conclusions of the report.¹¹⁶

Whilst peers welcomed the report, a number expressed concerns about the tone of the Government's written response and particularly its insistence that the conventions would apply to a reformed second chamber. However, peers were reassured by the Lord Falconer's speech.

In opening the debate, Lord Falconer had explained that the motion enabled the House to go beyond the Joint Committee's recommendation to agree a resolution on the way in

¹¹² HC Deb 13 December 2006 c92WS

¹¹³ Leader of the House of Commons and Lord Privy Seal, *Government Response to the Joint Committee on Conventions' Report of Session 2005-06: Conventions of the UK Parliament*, December 2006, Cm 6997, para 4, <http://www.official-documents.gov.uk/document/cm69/6997/6997.pdf>

¹¹⁴ "No change in Lords powers' – Straw", *House Magazine*, 18 December 2006, p10; see Leader of the House of Commons and Lord Privy Seal, *Government Response to the Joint Committee on Conventions' Report of Session 2005-06: Conventions of the UK Parliament*, December 2006, Cm 6997, paras 9 and 21

¹¹⁵ HL Deb 16 January 2007 cc573-638; HC Deb 17 January 2007 cc808-887

¹¹⁶ HL Deb 16 January 2007 c633

which the Salisbury-Addison convention should operate.¹¹⁷ He said later that the report would become “the standard account of the current relationship between the two Houses of Parliament, the constitutional set text on this vital issue, and the touchstone for all future considerations of the subject”.¹¹⁸ He also confirmed that the Government accepted the report “unequivocally”:

I say unequivocally on behalf of the Government that we accept the report’s description of the relationship between the two Houses. We accept its formulations of the conventions, including its description of the nature of the conventions as being flexible and unenforceable, and its descriptions of the practices and arrangements that affect the relationship between the two Houses. We support the conclusions set out in the report, subject only to whether what the report recommends be called the “government Bill convention”, should, in fact, be called the “Cunningham convention”, as we submit. That involves no difference of any substance.¹¹⁹

The concern centred on the Government’s response to the Joint Committee’s observation, in paragraph 61. The Joint Committee said:

We have interpreted our remit as being to define the present reality, and to consider the practicality of codifying it. We do so in the chapters which follow. **Our conclusions apply only to present circumstances. If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again. What could or should be done about this is outside our remit.**¹²⁰

In response, the Government said, in paragraph 9:

Our answer to that question is that further reform should not alter the current role of the Lords as a revising chamber, and that the conventions governing its relationship with the Commons are fit for that purpose. We believe the relationship the Joint Committee describes is one which should apply to any differently composed chamber.

And, in paragraph 21:

Changes to composition must take account of the current role of the Lords and should be designed to make the Lords more effective at performing that role, rather than undermining or radically altering it. We should not assume that change means that the current conventions are not the right ones for the future.

¹¹⁷ *Ibid* c573

¹¹⁸ *Ibid* c574

¹¹⁹ *Ibid*

¹²⁰ Joint Committee on Conventions, *Conventions of the UK Parliament*, 3 November 2006, HC 1212-I 2005-06, para 61

Quite the opposite: the continued application of these conventions should define the powers of a reformed House.¹²¹

Lords Higgins, for example, felt that the Government had “jumped the gun” in setting out “why, whatever happens, the powers of this House should not be increased”.¹²² Baroness Symons of Vernham Dean, who sat on the Joint Committee, explained her concerns about the same issue:

... the Government’s response to our recommendations went way beyond the terms of reference of our committee by saying unequivocally that further reform should not alter the current role of this House as a revising Chamber. The Government say that our description of the relationship as it is now should be the relationship, irrespective of any democratic legitimacy applied to this House. They have, as the noble Lord, Lord Higgins, put it, at least jumped the gun, but perhaps, more importantly, they have ignored the very restrictions on comment on this issue which the committee felt bound to observe. The committee kept the rules.

Let us be clear: the committee did not say that the relationship would change. We could not do so; such a conclusion would have been outside our terms of reference. The Government have not been so disciplined in their response. They have responded outside the terms of reference. The fact is that, within accepting the primacy of the House of Commons, the balance of the relationship between the two Houses may well change if the Lords becomes partly or wholly elected. That seems to me to be plain common sense.¹²³

Lord Tyler, for the Liberal Democrats, was prepared to “take a more optimistic and charitable view”:

I take a more optimistic and charitable view of the letter from Mr Straw to members of the committee than other Members of your Lordships’ House. He wrote:

“The Government believes however, that further reform should not alter the current role of the House of Lords as a revising and scrutinising chamber, nor should it alter the balance of the relationship between the Lords and Commons. The principle of the current conventions that the report identifies should therefore still apply in a reformed House of Lords”.

We have got to start somewhere. My contention, and that of my colleagues, is to assume that as soon as any reform package is put before either House, any Government—this Government or any other Government—would immediately be able to tear up the very important report from the committee chaired by the noble Lord, Lord Cunningham. It seems a ludicrous suggestion. That letter also disposes of the cynical idea that somehow it would make it necessary and would

¹²¹ Leader of the House of Commons, *Government Response to the Joint Committee on Conventions’ Report of Session 2005-06: Conventions of the UK Parliament*, December 2006, Cm 6997, paras 9 and 21, <http://www.official-documents.gov.uk/document/cm69/6997/6997.pdf>

¹²² HL Deb 16 January 2007 c583

¹²³ *Ibid* cc619-620

pre-empt any attempt to insist that there was no change at all. There has to be some change, but what sort of change would that be?

If and when the situation arises, there can surely be no question that all the bets are off and suddenly we have nothing in front of either House about the relationship and respective powers of the two Houses. What we have is the report of the Joint Committee and, I hope, the support of both Houses for its principles. This report and its reception by the Government puts paid to the idea that the arrival of an elected element in the second chamber could or should necessitate a diminution of the role and powers of your Lordships' House. It would surely be ridiculous if we accepted greater legitimacy at the risk of greater impotency.¹²⁴

In his concluding speech, Lord Falconer commented on the disputed response:

Perhaps we may go to the point of disagreement because there appeared to be no disagreement about the report, and in approving it we are approving of paragraph 61. It states that if there is compositional change in the House, the convention will have to be re-examined. That is plainly right and there is absolutely no dispute between anyone in the debate that what the Joint Committee has described is what the conventions are in the current House, and if the House changes, the description it gives will no longer apply. The Government have made it clear that they accept that but it is their contention that a new House of a different composition should behave broadly in the same way as this House now does.¹²⁵

b. House of Commons

The report was debated in the House of Commons on the following day, 17 January 2007. In opening the debate, Jack Straw acknowledged that the Government response went further than the Joint Committee's report, but he reiterated that the House was only being asked to approve the Joint Committee's report.¹²⁶

Very early on in his speech, he was asked to compare paragraph 61 of the Joint Committee's report with the Government response and he was told that either he was wrong or the Committee was wrong. He responded by saying that:

Of course paragraph 61 is correct that, were the composition of the other Chamber to be revised, and the Lords acquired an electoral mandate, the relationship between the two would be called into question and have to be re-examined in due course. However, it is important not to parody the Government's response. As my noble Friend the Lord Chancellor made clear, it is a response by the Government as whole. We concluded that the primacy of the Commons can and should be maintained, and that it could be maintained in a reformed House of the sort that I would support. It was not a cavalier judgment but was reached after careful consideration. It is fully consistent with the repeated judgments of substantial inquiries, including that of the royal commission on Lords reform.¹²⁷

¹²⁴ *Ibid* c627

¹²⁵ *Ibid* c635

¹²⁶ HC Deb 17 January 2007 c808

¹²⁷ *Ibid* c810

As in the House of Lords, Jack Straw was assisted by the Liberal Democrats. Simon Hughes understood the Joint Committee to have said that “the question of whether, if we change the composition, there should be a change in the relative powers is bound to come back”.¹²⁸ However, Theresa May, the Conservative Shadow Leader of the House, suggested that:

... it is inconceivable that a second Chamber with elected Members would not want to reconsider the conventions. It might wish to wait to do that until after it had had some time of operating under the current conventions, but as I have said to the Leader of the House on several occasions, an elected House of Lords, or a House of Lords with an elected element, would be a very different House of Lords from that which currently exists.¹²⁹

Andrew Tyrie also considered the question of the Government’s response to the Joint Committee’s view that the conventions could only operate in current circumstances. He was sure that a reformed second chamber would want to consider those conventions and he argued that the Government did not need to comment on that observation in its response at all:

... Over time, a differently composed Chamber will want to re-examine its own conventions, and may decide to change them. No amount of passing resolutions or codifying conventions can alter that. However, I feel that the Government should not protest too much. They did not really need to include paragraph 9, for two reasons.

First, it would be ludicrous to reconstitute the Cunningham Committee and have a “Cunningham 3” on the first day of a reformed House of Lords. Any sensible person would agree that a passage of time—which should perhaps be measured in Parliaments rather than years—should elapse before that becomes necessary. Secondly, in any case, if we have—as I sincerely hope we will—a more democratic second Chamber, the key powers and restrictions that it tests will be not the conventions but the Parliament Acts.¹³⁰

Sir Gerald Kaufman, who served on the Wakeham Commission, argued that “the nature of the primacy of this House would change if the House of Lords were to have an elected element”.¹³¹ He was supported by Sir Malcolm Rifkind, a member of the Joint Committee.¹³² Sir Malcolm went on to cite evidence given by the Clerk of the House and the Clerk of the Parliaments and also commented that the *Parliament Acts* would have to be reconsidered:

The Clerk of the Parliaments said in paragraph 33:

“The introduction of an elected element would undermine”—

¹²⁸ *Ibid* c813

¹²⁹ *Ibid* c825

¹³⁰ *Ibid* c870

¹³¹ *Ibid* c831

¹³² *Ibid* cc847-848

the question of primacy—

“as the House could begin to claim an electoral mandate. It can be argued that the greater the proportion of the elected members the stronger the mandate. If the Lords were elected by a proportional system they might even claim a superior mandate.”

He went on to say:

“All in all it is likely to be difficult to ensure that any definition of the convention now would survive a significant change in the composition of the Lords.”

That was the Clerk of the Parliaments. The Clerk of the House of Commons said—I quote his words—that

“it does reinforce the point made”—

by the Clerk of the Parliaments—

“with which I agree, that the principles on which the Salisbury Convention is based would inevitably be undermined by the introduction of an elected element into the upper House.”

Two of our most experienced officials gave their views quite objectively, making it clear, in their judgment, that there will not only be more debate and more assertiveness, but that the very principles of the Salisbury convention will “inevitably be undermined”—that was the phrase that was used. The Leader of the House must take those matters into account.

It is worth remembering—others have made indirect reference to it—that the preamble to the Parliament Act 1911 made it clear that the constraints on the upper House simply reflected the fact that it was not an elected legislature at that time. If that were to change, the whole basis of the Parliament Acts would have to be reassessed and re-examined. I am not one who wishes to challenge the primacy of this House. I believe that, even if there were an elected upper House, it would be highly desirable that most of what we consider primacy to be about should continue to be relevant. We do not want deadlock in our legislative system and we do not want a situation where the Government would feel themselves equally answerable to both Houses, which might stultify the natural business of government.¹³³

Andrew Miller raised the question of whether the primacy of the House of Commons could be guaranteed without a written constitution.¹³⁴

In his concluding remarks, Jack Straw also cited the Clerk of the Parliaments’ comments on the survival of the Salisbury convention:

¹³³ *Ibid* c849

¹³⁴ *Ibid* c859

The evidence of the Clerk of the Parliaments was cited in the debate, and I take it seriously. Indeed, I have always taken seriously the evidence of senior civil servants in the Departments in which I have worked but, in the end, we have to make our own judgments and form our own opinions. In paragraph 34, the Clerk of the Parliaments said that

“the number of elected members and the mode election may be crucial for the survival of the convention.”

I agree with that. He went on to say:

“For example the preservation of an appointed element in the Lords and a system of staggered elections for the remainder so that only a minority of membership is elected at any General Election is one way of protecting the convention. There may be others.”

Lest hon. Members should accuse me of partial quotation, I should point out that he continued:

“All in all it is likely to be difficult to ensure that any definition of the convention now would survive a significant change in the composition of the Lords.”¹³⁵

C. Cross-party group on Lords reform

During debates on the establishment of the Joint Committee on Conventions, Lord McNally mentioned that Lord Falconer had made proposals to establish a cross-party group to consider reform and composition of the Lords whilst the Joint Committee was undertaking its inquiry. As a result of the Government reshuffle, on 6 May 2006 Jack Straw assumed responsibility for Lords reform from Lord Falconer,¹³⁶ and the establishment of the cross-party group was in briefly in doubt.

During the House of Lords debate on the membership of the Joint Committee, Lord McNally reported that the Committee on Lords reform that Lord Falconer had intended to establish would no longer be convened:

At four o'clock this afternoon, we would have been having the first meeting of the Lord Chancellor's committee—except that, last Thursday, I got a letter from a private secretary in the Lord Chancellor's Department telling me that the noble and learned Lord the Lord Chancellor had been removed from all matters concerning Lords reform. It said that the new Leader of the House of Commons, Mr Jack Straw, had decided to stand down the Lord Chancellor's committee, and would consult individuals on the wider issue of reform from time to time, as needed. When I reported this to my colleagues, a number resisted saying "I told you so", but they certainly looked as though they were thinking it.¹³⁷

¹³⁵ *Ibid* c885

¹³⁶ Number 10 Downing Street, *Leader of the House of Commons, Lords Reform and Party Funding*, <http://www.number10.gov.uk/output/Page1381.asp>

¹³⁷ HL Deb 22 May 2006 c585; see also HC Deb 3 May 2006 cc1665W-1666W

Peter Riddell and Philip Webster reported, in *The Times*, that Jack Straw “has put on hold the talks with other parties started by Lord Falconer”. Instead, he would talk to “key individuals”.¹³⁸ However, at Business Questions on 8 June 2006, Jack Straw told the House that he would hold informal consultations on Lords reform.¹³⁹ Speaking at the Lobby briefing, on 8 June 2006, he provided a little more detail of the process:

The Leader said he was also consulting the parties, plus the crossbench peers and bishops, formally and informally. He was quite clear that the Prime Minister would not have asked him to undertake the task if he did not believe there was a possibility of dealing with it once and for all. Mr Straw said that he thought most people considered the current position of the House of Lords to be unsustainable. They wanted a second chamber which continued the very important work of revising legislation and holding Ministers to account, but one which respected the primacy of the Commons. They wanted to see the issue sorted as well. He was aiming to achieve that and, with luck, there would be a consensus. If the issue was not settled in the next year or so, then the parties’ patience with it would probably be exhausted for five or ten years.¹⁴⁰

Then, at Questions to the Leader of the House on 12 June 2007, Jack Straw provided a little more information on the timing:

The hon. Gentleman is right to say that we all hope and pray to find a consensus on this matter, but we never know. It is the failure to find such a consensus in the past that has left us with a less than satisfactory status quo. As to the time scale, we will have lost some months by extending the deadline for the Joint Committee. My intention is to run the all-party discussions, including within the group, in parallel with the Joint Committee’s sittings, but not in a way that pre-empts the conclusions. We should gain a fairly clear idea about the direction in which it is moving towards October and November, and I hope that we can try to bring all these issues together either this side of the turn of the year or just the other side of it.¹⁴¹

Between then and the publication of the White Paper on Lords Reform in February 2007, the group met eight times. It has met on two further occasions since the publication of the White Paper.¹⁴²

At the time of the publication of the White Paper in February 2007, the membership of the cross-party group was:

The Rt Hon Jack Straw MP, Leader of the House of Commons and Lord Privy Seal (Chair)
The Rt Hon Lord Falconer of Thoroton, Lord Chancellor and Secretary of State for Constitutional Affairs (Labour)

¹³⁸ Peter Riddell and Philip Webster, “Straw sets out to broker all-party agreement on reform of Lords”, *Times*, 16 May 2006

¹³⁹ HC Deb 8 June 2006 c408

¹⁴⁰ Number 10 Downing Street, *Afternoon press briefing from 8 June 2006*, <http://www.number10.gov.uk/output/Page9591.asp>

¹⁴¹ HC Deb 12 June 2006 c529

¹⁴² HC Deb 19 July 2007 c449

The Rt Hon Lord Strathclyde, Shadow Leader of the House of Lords (Conservative)
The Rt Hon Theresa May MP, Shadow Leader of the House of Commons (Conservative)
Oliver Heald MP, Shadow Secretary of State for Constitutional Affairs (Conservative)
The Rt Hon Lord McNally, Leader of the Liberal Democrats in the House of Lords (Liberal Democrats)
Simon Hughes MP, Constitutional Affairs Spokesman and Shadow Attorney General (Liberal Democrats)
David Heath MP, Shadow Leader of the House of Commons (Liberal Democrats)
The Bishop of Chelmsford
Lord Williamson of Horton (Convenor of the Crossbench Peers)¹⁴³

In exchanges before the 2007 Summer Recess, on a statement on Lords Reform, the concerns of a number of backbench members of the House of Lords that they played no part in the cross-party group were expressed (see section VI E 3). These concerns were reiterated during the second reading debate on Lord Steel of Aikwood's *House of Lords Bill* (see section VII D 2).

During that latter debate, Lord Hunt of Kings Heath set out the membership of the group, which had changed following Gordon Brown's appointment as Prime Minister and a Conservative frontbench reshuffle and the appointment. The members of the cross-party group, on 20 July 2007, were:

Secretary of State for Justice, Jack Straw;
Ms Theresa May;
Nick Herbert;
David Heath;
Simon Hughes;
the Leader of this House, Baroness Ashton of Upholland;
Lord Hunt of Kings Heath;
Lord Strathclyde;
Lord McNally;
Lord Williamson of Horton; and
the Bishop of Chelmsford.¹⁴⁴

VI White Paper 2007 – “The House of Lords: Reform”

The White Paper, *The House of Lords: Reform*, was published on 7 February 2006.¹⁴⁵ On publication, Jack Straw, then the Leader of the House and member of the Cabinet

¹⁴³ HM Government, *The House of Lords: Reform*, 7 February 2007, Cm 7027, Annex A, www.official-documents.gov.uk/document/cm70/7027/7027.pdf

¹⁴⁴ HL Deb 20 July 2007 c536

¹⁴⁵ HM Government, *The House of Lords: Reform*, 7 February 2007, Cm 7027, www.official-documents.gov.uk/document/cm70/7027/7027.pdf

with responsibility for Lords reform, made a statement in the House of Commons.¹⁴⁶ The statement was repeated in the House of Lords by Lord Falconer.¹⁴⁷

Jack Straw outlined the recent background to the White Paper: it was informed by the report of the Joint Committee on Conventions and the debates in both Houses on that report; discussion within Government; and cross-party talks – “the starting point for the cross-party talks was that each of the three main parties was committed by its 2005 manifesto to seeking reform of the Lords”. He noted that opinion on the question of reform was “divided in all three parties”. Therefore the White Paper was “self-evidently and unapologetically a compromise, both in terms of destination and of transition”. He said that the Government had “used the White Paper to illustrate how a hybrid House might work, using a model in which 50 per cent of the House is elected and 50 per cent is appointed: 30 per cent from the political parties and 20 per cent from those with no party affiliation”.¹⁴⁸

A. The White Paper

Because the White Paper reflected the views of the cross-party talks as well as the Government, it outlined arguments for and against specific proposals.

After reviewing the background to the Lords reform since the *Parliament Act* of 1911 and the developments since the 2005 General Election, and presenting some international comparisons, the White Paper presented both principles and options for the next stage of reform.

1. Principles

The White Paper argued for a bicameral Parliament.¹⁴⁹

The Government believed that the following principles should “underpin a reformed House of Lords, whatever its composition”:

- Primacy of the House of Commons
- Complementarity of the House of Lords
- A More Legitimate House of Lords
- No Overall Majority for Any Party
- A Non Party-Political Element
- A More Representative House of Lords
- Continuity of Membership.¹⁵⁰

It considered that the first three points in the list above were fundamental, and that the remaining key principles should help to ensure that these fundamental principles could be delivered.

¹⁴⁶ HC Deb 7 February 2007 cc843-859

¹⁴⁷ HL Deb 7 February 2007 cc710-725

¹⁴⁸ HC Deb 7 February 2007 cc843-844

¹⁴⁹ HM Government, *The House of Lords: Reform*, 7 February 2007, Cm 7027, paras 5.18-5.21

¹⁵⁰ *Ibid*, para 6.1

2. Elected, Appointed or Hybrid?

The White Paper stated that “an all appointed House fails to meet a crucial principle in a reformed second chamber – that of legitimacy”. It also expressed concerns that a fully-elected second chamber would challenge some of the principles for a reformed House set out in the White Paper: it could challenge the primacy of the House of Commons; it would be difficult to ensure representation of non party-political members; without strict rules it could be difficult to ensure diversity; and some models “could pose a risk to the principle of continuity”.¹⁵¹

The White Paper concluded that “the obvious alternative would seem to be a hybrid of the two”. In support of that conclusion it cited “all major cross-party proposals ... over the last 10 years”: the Wakeham Commission; the Public Administration Select Committee and *Reforming the House of Lords – Breaking the Deadlock*.¹⁵² It proposed:

7.25 A hybrid House of 50% elected, 50% appointed (20% non party-political and 30% party-political appointments) would allow for legitimacy through direct election, greater diversity within the political parties in Parliament, and a significant element of non party-political membership within the House of Lords. Models composed of a greater proportion of elected members would obviously include fewer party politically nominated members. A House with an 80/20 split, for example, would not contain any party politically appointed members at all.¹⁵³

3. Elections

Although the White Paper identified a range of options to indirectly elect the membership of the second chamber, it argued that “Direct election of individuals plainly would confer more legitimacy than an indirect system”. It also noted that direct elections are used to select the membership of many second chambers around the world.¹⁵⁴

It proposed that partially open regional lists were the most appropriate way to elect members to a reformed second chamber. It suggested that parties would have to consider how to ensure their lists were representative of the diversity of the United Kingdom. In terms of constituency, it argued that the simplest approach was to use the regions used for European Parliament elections. It considered that the advantages of holding elections on the same day as the European Parliamentary elections outweighed the disadvantages; and in relation to length of service, it recommended that:

7.97 Both appointed and elected members would sit for 15 years, and there would be no prospect of re-election or re-appointment. One-third of the elected

¹⁵¹ *Ibid*, paras 7.2-7.12

¹⁵² *Ibid*, paras 7.13-7.23. The earlier reports were: Royal Commission on the Reform of the House of Lords, *A House for the Future*, January 2000, Cm 4534, <http://www.archive.official-documents.co.uk/document/cm45/4534/4534.htm>; Public Administration Select Committee, *the Second Chamber: Continuing the Reform*, 14 February 2002, HC 494 2001-02; and Kenneth Clarke *et al*, *Reforming the House of Lords – Breaking the Deadlock*, January 2005, UCL Constitution Unit

¹⁵³ HM Government, *The House of Lords: Reform*, 7 February 2007, Cm 7027, paras 7.24-7.25

¹⁵⁴ *Ibid*, paras 7.27-7.35

members and one-third of the appointed members of a reformed House would be replaced at each election. Members who had been elected could not subsequently be appointed, nor could former appointees be elected.¹⁵⁵

4. Statutory Appointments Commission

The White Paper reported that:

There seems to be general agreement that under any system with appointed members, party and non party-political appointments would be overseen and made by an independent Statutory Appointments Commission.¹⁵⁶

The White Paper noted that the current non-statutory appointments commission was “a temporary measure to assist with the transitional phase in reforming the House of Lords”. Its proposals broadly followed those of the Wakeham Commission.

The White Paper envisaged the Statutory Appointments Commission having “power over both non-party and party-political appointments”. Therefore its powers would need to be laid down in statute. The Commission would be “independent of Government and should be accountable to Parliament, rather than Ministers”. It proposed it should have nine members, three to represent the political parties and six members independent of Government and the political parties.¹⁵⁷

The White Paper set out the role of the Statutory Appointments Commission:

8.17 The Statutory Appointments Commission would recommend people for appointment in two different classes:

- Political-party appointments (where nominations would be invited from the parties); and
- Non party-political appointments (where individuals would be selected by the Statutory Appointments Commission).

8.18 It is envisaged that the principal functions of the Statutory Appointments Commission would be:

- To establish the characteristics as to suitability which members of the House of Lords should possess (and publish these criteria).
- To ensure that these characteristics deliver high calibre appointees who make a significant contribution to the work of the House of Lords.
- To select all non party-political members using an open and transparent selection procedure.

Bishops and elected members would not have to be approved by the Statutory Appointments Commission before they could take their place in the reformed House of Lords.

¹⁵⁵ *Ibid*, paras 7.93-7.97

¹⁵⁶ *Ibid*, para 8.1

¹⁵⁷ *Ibid*, paras 8.11-8.16

The White Paper noted the arguments that the Prime Minister should no longer directly nominate anyone for membership of the reformed second chamber.¹⁵⁸ In his statement, Jack Straw said:

Should Parliament opt for a system in which appointments to the second Chamber continue, all appointments would be made by a new statutory appointments commission, assessing both suitability as well as propriety. The commission would be independent and report directly to Parliament. The right of the Prime Minister of the day to make appointments would end.¹⁵⁹

Plans for a statutory appointments commission were set out in the 2003 consultation paper, *Constitutional Reform: next steps for the House of Lords*. Responses to the consultation paper are discussed in Section III 3 B.

5. Membership

The Government believes that a House of 540 members, near Wakeham's suggestion [of in the region of 550 members], is a realistic target and an appropriate size. Given the lengthy transitional arrangements we are proposing (see Chapter 10) it is likely to be the middle of the century before the House reduces to the desired size. A House of 540 members on a 50/50 model would see 90 elected members being replaced at each election, and 84 appointed members being replaced in each round of appointments (36 non party-political, and 54 party-political appointments). Lords Spiritual would count towards the appointed total (which is why the number of appointed members at each election is lower than the number of elected members), but would be appointed on different terms to the remainder of the House.¹⁶⁰

The minimum age to enter the House of Lords should be eighteen, the same as the House of Commons.

The White Paper examined the remuneration of members of the reformed second chamber. It called for a new form of remuneration "to be considered", and suggested that the Senior Salaries Review Body should make recommendations once the shape of the reformed second chamber had been determined. The White Paper also said that the arrangements should be "flexible enough to allow members to attend the House on a full or part time basis".¹⁶¹

Members of the House of Lords should be able to resign, and the current rules on leave of absence should be abolished.

The Government did not want to see individuals using their membership of the House of Lords to build a base for a career in the House of Commons. It was therefore "minded to agree" that there should be a period of five years between the end of an individual's term of office in the House of Lords and their membership of the House of Commons.

¹⁵⁸ *Ibid*, paras 8.26-8.36

¹⁵⁹ HC Deb 7 February 2007 c844

¹⁶⁰ HM Government, *The House of Lords: Reform*, 7 February 2007, Cm 7027, para 9.5

¹⁶¹ *Ibid*, paras 9.7-9.15

Members of the House of Lords would no longer be given a peerage. The peerage would continue as an honour.

All members of the second chamber would be able to vote in general elections.

The rules on disqualification from the second chamber would be brought into line with those of the House of Commons.¹⁶²

6. Transition

a. A long transition

The Government believed that “a long transitional period, where new members are introduced but none of the current members of the Lords are forced to leave, is the best way forward”. This would mean that the expectation to be there for life of current members could be met; it would also ensure continuity and it would allow Parliament to adapt.

The White Paper argued that critics of a long transition should take into account that if the reform was the right one, the reformed chamber was likely to exist for a considerable time. The transition, until the House comprised only members who had entered under the new arrangements, would be long because of the pattern of European Parliamentary elections. The White Paper included some projections on the transition.¹⁶³

b. Removing the hereditary peers

If Parliament indicates support for the further reform of the composition of the House of Lords (see Chapter 11 on Next Steps), then the Government intends formally to end the right of the hereditary peers to sit in the House of Lords, whatever the precise outcome of the Free Vote on the composition. This is an explicit commitment of its 2005 manifesto.¹⁶⁴

The Government is committed to removing the hereditary peers, and it considers the process to be “technically straightforward”. It suggested two options, either removing them from membership of the House of Lords immediately or giving them life peerages. However, it cautioned against the first option because the Conservative Party “relies disproportionately on sitting hereditary peers”. It also raised questions about the non party-political peers. The Government “will discuss further the best way to proceed”.¹⁶⁵

Other than its comment that “none of the current members of the Lords are forced to leave”, the White Paper made no comment on the future for life peers. However, there

¹⁶² *Ibid*, paras 9.16-9.41

¹⁶³ *Ibid*, paras 10.1-10.10

¹⁶⁴ *Ibid*, para 10.12

¹⁶⁵ *Ibid*, paras 10.13-10.25

have been press reports suggesting that they “will be offered ‘voluntary redundancy’ payments which could amount to tens of thousands of pounds”.¹⁶⁶

B. Reaction to the White Paper

1. In Parliament: to the statement

Following the statement and its repetition in the House of Lords, both Theresa May and Lord Strathclyde, for the Conservatives, were quite critical of the proposals. Theresa May concluded that:

This proposal does not strengthen Parliament. We want a House of Lords elected by the many. The House as proposed would be selected by the few. Far from making the Lords more independent, the proposal puts it in the gift of political parties. Far from strengthening Parliament, it risks losing the present benefits of the Lords. Far from removing cronyism, it perpetuates it. It is a lowest common denominator solution that will satisfy no one.¹⁶⁷

Lord Strathclyde began his reply to the statement with:

My Lords, your Lordships might be forgiven for thinking that they had come to the House this afternoon at last to see the light at the end of the tunnel. Instead, we have been offered a House of 57 varieties. The Government promised consensus but, instead, are giving us a mudge of compromise, which has itself been compromised once again by the Cabinet, no less.

They offer choices but cannot even decide the name of the reformed House, and, when they make a decision, they make the wrong choice. So, while I thank the noble and learned Lord for repeating the Statement, I sympathise with him, for he has a difficult task today. On the one hand, he comes here with unpopular proposals, thought by many to be unnecessary, and, on the other, he offers an undertaking that the present House can stay for life. My response will not surprise the noble and learned Lord. This is a proud House. It does not deserve, and will not brook, another botched attempt at reform.¹⁶⁸

Simon Hughes and Lord McNally for the Liberal Democrats both welcomed the White Paper, although Simon Hughes expressed some concern about the proposal that 30 per cent of members of the second chamber would be nominated by political parties.¹⁶⁹

Kenneth Clarke, one of the authors of *Reforming the House of Lords – Breaking the Deadlock*, said that the White Paper gave the House the opportunity to resolve the matter at last; he hoped in the current Parliament. He also questioned the high number of political appointments.¹⁷⁰

¹⁶⁶ Andrew Grice and Ben Russell, “Lords reform: MPs attack plan to give life peers ‘redundancy payments’”, *Independent*, 7 February 2007

¹⁶⁷ HC Deb 7 February 2007 c847

¹⁶⁸ *Ibid* c714

¹⁶⁹ *Ibid* cc849-850; HL Deb 7 February 2007 c716

¹⁷⁰ HC Deb 7 February 2007 cc853-854

2. Outside Parliament

Of the five broadsheets, the *Daily Telegraph* was opposed to the package. The *Times*, *Guardian*, *Independent* and the *Financial Times* considered that reform was necessary but had different views on the White Paper's proposals.¹⁷¹

The Elect the Lords campaign, which was set up and is administered by the New Politics Network and Charter88 to call for a predominantly elected second chamber to replace the existing House of Lords at the earliest opportunity,¹⁷² published the following poster¹⁷³:



The Electoral Reform Society (ERS) saw “no justification for 30% of second chamber members being nominated by parties rather than elected by voters”. The ERS also opposed the partially open list system that the Government has proposed to use to elect the elected element of the reformed second chamber. It also quoted Jack Straw’s reservations about the system:

The Society has also reiterated its opposition to an electoral system that allows party hierarchies undue influence on who is elected and who is not. “Jack Straw talks of using a ‘partially open list system’”, said Ritchie [Ken Ritchie, Chief Executive of the ERS]. “As he will know from work he commissioned in 1998 when Home Secretary, in the European countries that use this type of system, voter choice is largely an illusion – what party managers want they generally get.”

As recently as October 2006 a paper by Jack Straw admitted that “partially open lists gives (sic) little genuine voter choice over the identity of successful candidates.”¹⁷⁴

¹⁷¹ The editorials and views of press commentators are summarised in House of Commons Library Standard Note SN/PC/4255, *House of Lords Reform: 2007 White Paper*

¹⁷² The Elect the Lords Campaign Network, <http://www.electthelords.org.uk/pages/organisations.html>

¹⁷³ see: <http://www.electthelords.org.uk/>

¹⁷⁴ Electoral Reform Society News, *Straw’s memory lapse means little real choice*, 7 February 2007, <http://www.electoral-reform.org.uk/news.php?ex=0&nid=57>

On 5 February 2007, the Hansard Society issued the results of a survey conducted by YouGov that showed public support for a second chamber with at least some elected members:

- 42 per cent say yes to a fully elected House
- 40 per cent say yes to a mixture of elected and appointed members
- 6 per cent say yes to a fully appointed House

It also found that 67 per cent supported the existence of a second chamber. In future, respondents thought that members of the Lords should be more independent of party politics than the House of Commons (57 per cent), and bring expertise and experience from science, business, law etc (54 per cent). Only 5 per cent thought that they should represent a single constituency. On the functions of the House of Lords:

The public's view is that the key functions of the House should be holding the government to account for its policies and expenditure (65 per cent) and revising legislation (44 per cent). There is, however, very little support for the ceremonial role of the Lords (3 per cent).¹⁷⁵

Writing in the *Sunday Telegraph* on 11 February 2007, Vernon Bogdanor, Professor of Government at Oxford University, argued against Lords reform. He said that there was little criticism of the way in which the House of Lords performed its task:

For whatever the theoretical imperfections of the Lords, few criticise it for what it does or the way it carries out its tasks. Indeed, although the Labour Party used to favour abolition, the latest White Paper - *The House of Lords: Reform* - proposes no alteration in its role or reduction in its powers.

Professor Bogdanor criticised the decision to elect its members from regions which were "ghosts, administrative constructs rather than constituencies". He agreed that the Government should maintain the primacy of the House of Commons but then questioned: "Why should any person of substance or ambition wish to stand for election to such a house?" He argued that "An upper house elected on a low turnout and peopled with anonymous nonentities whose only qualification is long party service is likely to devalue democracy rather than improve it". He also expressed concern that it was "not easy to discover any alternative principle of representation to that of the representation of individuals" and that the current House of Lords avoided this dilemma. The current House also made effective contributions to society because of individual Member's expertise.

¹⁷⁵ Hansard Society news, *Just six per cent of public support all-appointed Lords*, 5 February 2007, <http://www.hansardsociety.org.uk/node/view/704>. The Hansard Society/YouGov survey results on House of Lords Reform are available in full, on the Society's website: Hansard Society, *YouGov Survey for the Hansard Society: Results*, http://www.hansardsociety.org.uk/assets/YouGov_Survey_for_the_Hansard_Society_on_House_of_Lords_Reform.pdf

Professor Bogdanor did acknowledge that there were problems with the way in which peers were appointed at present but considered that the White Paper went some way to addressing this.¹⁷⁶

In an interview on Sky News' *Sunday Live*, Baroness Boothroyd, the former Speaker of the House of Commons, criticised the plans to get rid of the hereditary peers and proposals for a hybrid House:

Mr Straw proposed a second chamber, no longer called the House of Lords, with 50 per cent of the members elected and 50 per cent appointed.

The 92 places for hereditary peers would be scrapped, but Mr Straw left open the question of whether those currently sitting in the Lords should be removed immediately and, if so, whether they should be offered any compensation.

Lady Boothroyd said: "I've always held the view that these are working people in the House of Lords.

"I would be happy to see them stay there until they just fell off the perch, to put it crudely. But one thing I am adamantly opposed to is a hybrid house, a house that is partly elected and partly appointed.

"That is simply not going to work, it's a mis-match and the worst of all worlds."¹⁷⁷

C. Reaching a decision on the composition of the House of Lords

The White Paper, and Jack Straw in his statement, proposed that there should be free votes on the composition (proportion of members to be elected and appointed) of the reformed second chamber. It was further recommended that in order to reach a clear result, the Alternative Vote System be used in the free vote.

The White Paper included an example of the proposed format of the ballot paper:

¹⁷⁶ Vernon Bogdanor, "Why the Lords doesn't need more politicians", *Sunday Telegraph*, 11 February 2007

¹⁷⁷ "Boothroyd attacks 'disrespectful' Blair", *Daily Telegraph*, 12 February 2007

Table 12: Proposed Format of Ballot Papers BALLOT ON COMPOSITION OF A FUTURE HOUSE OF LORDS	
Option:	Order of preference:
<i>Fully appointed</i>	
<i>80% appointed and 20% elected</i>	
<i>60% appointed and 40% elected</i>	
<i>50% appointed and 50% elected</i>	
<i>40% appointed and 60% elected</i>	
<i>20% appointed and 80% elected</i>	
<i>Fully elected</i>	
Members may indicate on the ballot paper their preferred option or options in order of preference, marking their leading preference with a 1 and so on down to their lowest preference; Members need not allot a preference to all options.	

Source: HM Government, *The House of Lords: Reform*, 7 February 2007, Cm 7027, p58

However, during the course of questions to Jack Straw following his statement, it became clear that many Members had concerns about, or simply opposed, the adoption of a different voting system in the House of Commons. Opposition continued to be voiced in an Early Day Motion¹⁷⁸ and at Business Questions on 8 February 2007.¹⁷⁹

On 19 February 2007, Jack Straw announced that he would not ask the House to endorse the use of the alternative vote system to enable it to choose between the options for the composition of the reformed second chamber: “Instead, we shall revert for all votes to the traditional Division system”.¹⁸⁰

D. Decisions on the White Paper

1. House of Commons

The House of Commons debated the White Paper on 6 and 7 March 2007.¹⁸¹

It supported the principle of having a bicameral legislature. It rejected Jack Straw’s proposal that the second chamber should be 50% elected, 50% appointed. It supported two options:

- 1) Option 6: 80% elected, 20% appointed by 305 votes to 267 – a majority of 38; and
- 2) Option 7: 100% elected by 337 votes to 224 – a majority of 113

¹⁷⁸ Early Day Motion 863, 2006-07

¹⁷⁹ HC Deb 8 February 2007 cc989-990; c994 – George Howarth asked “Is he aware that many of us want not only the opportunity to vote for what we want to happen, but the opportunity to vote against what we do not want to happen?”

¹⁸⁰ HC Deb 19 February 2007 c21

¹⁸¹ HC Deb 6 March 2007 cc 1390-1488; 7 March cc1524-1635

In addition the House of Commons rejected a Conservative-Liberal Democrat amendment that the hereditary peers should retain their seats until the elected members had taken their places.

A summary of the results of the divisions in both the House of Commons and the House of Lords is presented below.

An analysis of the results of the divisions, by party and by Member, is presented in the Library Standard Note *Commons divisions on House of Lords Reform: March 2007*.¹⁸²

2. House of Lords

In the House of Lords, following a two-day debate on the White Paper on a “take note” motion on 12 and 13 March, the House voted on the options for composition on 14 March 2007.¹⁸³

The House of Lords voted in favour of a fully appointed second chamber (Option 1) and rejected every other option. The Constitution Unit, University College London, has analysed the results of the divisions in the House of Lords.¹⁸⁴

3. Summary of the results of the divisions in both Houses

Option	House of Commons		House of Lords	
	Aye	No	Content	Not Content
Bicameral Parliament	416	163	No Motion	
Option 1: fully appointed	196	375	361	121
Option 2: 20 per cent elected	Negatived*		Negatived*	
Option 3: 40 per cent elected	Negatived*		Negatived*	
Option 4: 50 per cent elected	155	418	46	409
Option 5: 60 per cent elected	178	392	45	392**
Option 6: 80 per cent elected	305	267	114	336
Option 7: 100 per cent elected	337	224	122	326
Amendment: Principle to remove hereditary peers	241	329	No Motion	
Principle to remove hereditary peers	391	111	No Motion	
No change to the current composition	No Motion		Motion not moved	

Notes:

The votes on the principle to remove the hereditary peers were:

That this House is of the opinion that the remaining retained places for peers whose membership is based on the hereditary principle should be removed.

Amendment proposed: at end add:

once elected members have taken their places in a reformed House of Lords.

* no division

** the Tellers reported 392 votes; the Clerks recorded 393 names.

¹⁸² House of Commons Library Standard Note SN/SG/4279, *Commons divisions on House of Lords Reform: March 2007*, <http://www.parliament.uk/commons/lib/research/notes/snsg-04279.pdf>

¹⁸³ HL Deb 12 March 2007 cc451-570; 13 March 2007 cc517-609 and cc620-730; 14 March 2007 cc741-759

¹⁸⁴ Constitution Unit, *Lords Reform Votes – Motions on House of Lords reform, 14 March 2007*, <http://www.ucl.ac.uk/constitution-unit/research/parliament/reform-votes.htm>

E. Implementing Parliament's decision

1. Initial thoughts

During the course of his winding up speech, at the end of the debate, Jack Straw indicated that the Government was likely to bring forward a draft bill for consultation that reflected the results of the debates in the two Houses:

The Government intend to bring forward, after consultation, what I think will be a draft Bill—that may take time—that reflects the will of the House and of the other place, as far as we can accommodate them. We will listen with care to what the House of Lords says next week. We have no intention of bringing forward a Bill that simply removes the hereditaries, if the House decides on one of the other alternatives—on one of options 1 to 8 on the Order Paper. It would be mad of us to do so, because the House would quickly amend it.¹⁸⁵

Following the votes in the House of Commons, Jack Straw announced that he would reconvene the cross-party working group and in due course he would make a statement to the House:

... Meanwhile, I shall make arrangements to recall the cross-party working group, and at an appropriate moment after discussions in that group I shall of course make a statement to this House.¹⁸⁶

At Business Questions the following day, Nigel Griffiths, then the Deputy Leader of the House, reiterated this.¹⁸⁷

Jack Straw expanded on his comments on the next steps at the Lobby Briefing following Business Questions. He said that the Cabinet's constitutional affairs committee would meet once the result of the votes in the House of Lords was known. Then the cross-party group would meet. After that, a decision would be taken on the next step. He reiterated that "neither of the results for an elected element could be ignored – and nor would they be". He told the Lobby that the important point was that the fully-elected option was the preference of the House of Commons by a large majority, and that had to be the starting point. When he was asked about the question of tactical voting in the divisions in the House of Commons, he told the Lobby that he had heard such reports, however, votes meant what they meant. He was then asked whether there would be a draft bill:

... Mr Straw said that it was on the Government's agenda to publish one. Whether it was possible before the end of the current session, he said that remained to be seen. He was not going to announce the content of a Queen's Speech in advance.

Pressed to say if such a Bill would set out how members of a reformed Second Chamber would be elected, whether a "big bang" solution would be presented and whether it would be a manifesto commitment at the next election, the Leader

¹⁸⁵ HC Deb 7 March 2007 c1598

¹⁸⁶ *Ibid* c1636

¹⁸⁷ HC Deb 8 March 2007 c1673

said the responsibility now was to produce a draft Bill of the kind which, once it was enacted, would give full effect to Parliament's full decisions. A decision on composition had been taken in principle and account would be taken of the opinion of peers. The Leader said he thought it would be unacceptable to produce a Bill which was merely "loose framework". He said that a major issue for those who supported the options of a fully or partially elected Second Chamber was how the electoral system should operate. There had been a lot of criticism during the debate of the semi-open list system suggested in the White Paper, and the Government would have to heed that. He did not wish to speculate about the contents of a manifesto.

Jack Straw could not indicate how quickly Lords reform would proceed. Despite the clear commitment from the House of Commons, embarking on constitutional change took time. However, the Lobby reported that "Reform of the Lords was now on the track and moving". It also reported that Jack Straw agreed with the proposition that the votes in the House of Commons on 7 March 2007 ended the prospect of a minimalist Bill in the interim to remove hereditary peers. The Lobby's report concluded with some questions about the role and costs of members of the reformed chamber:

Asked about the "value for money" cost of a reformed Upper House, the Leader said it was very odd to argue that, in a modern-day democracy, elections cost money. He described a report by a peer this week on the likely costs as "a total confection" and "nonsense". He pointed out that the Government was proposing to reduce the total number of peers in the Upper House, but there was no proposal to pay elected members a salary. Remuneration would be on a per diem basis. The White Paper had made it clear that the advice of the Senior Salaries Review Body would be sought on the level of remuneration. Mr Straw rejected the suggestion that election to the Upper House would be open only to wealthier individuals. Since a reformed Chamber would not be a rival to or a replica of the Commons, it should enable individuals to combine the role of membership with other functions. Asked what name of the new Chamber would be, he said that was a consequential issue.¹⁸⁸

During the course of the debate on Women, Justice and Gender Equality, on International Women's Day, Julie Kirkbride asked Vera Baird whether the Government would ensure that 50 per cent of those elected to a reformed House of Lords would be women. Vera Baird responded:

Vera Baird: In terms of advancing women, we have a lot to tell the Tories, and they have not got a lot to tell us. We are going to think these proposals through carefully and I know that they are going to be helpful.¹⁸⁹

Following the votes in the House of Lords, Jack Straw made a further brief comment on the way he would progress on the question of House of Lords reform at the Lobby Briefing on 15 March 2007:

¹⁸⁸ Leader of the House of Commons, *Press Briefing, 8 March 2007, 3.45pm*, <http://www.commonslider.gov.uk/output/page1888.asp>

¹⁸⁹ HC Deb 8 March 2007 c1688

The Leader was asked if he was tempted to abandon any hope of compromise between both Houses after last night's votes [in the House of Lords], and whether the Parliament Act could be used to force the will of the Commons to prevail. Mr Straw said it was "one step at a time", in the words of the hymn. The Government would take account of the votes in the House of Lords, pointing out that the total in support of an elected element was more than he had thought they would be. He had indicated a desire to reconvene cross-party talks. The Leader said that the Parliament Act existed and, if the Commons had the will, it operated automatically, but they were not at that position yet.¹⁹⁰

a. Evidence to the Constitutional Affairs Committee – 19 June 2007

On 19 June 2007 Jack Straw gave oral evidence to the Constitutional Affairs Committee on House of Lords Reform and Party Funding. He told the Committee that he doubted Lords reform would be completed in this Parliament – "it would not be feasible". However, he was determined to proceed with a programme of reform in line with the wishes of the House of Commons, which was "a substantially or wholly elected second chamber".¹⁹¹ In the current Parliament, he anticipated a statement setting out the next steps for Lords reform (this was made on 19 July 2007, see below); further meetings of the cross-party group; possibly some draft clauses, rather than a draft bill; and a further white paper.¹⁹² Given this timescale, he expected a further manifesto commitment.¹⁹³

Of the two options supported by the House of Commons, Jack Straw indicated his preference for a reformed House of Lords that was 80 per cent elected and 20 per cent appointed. He noted that the February 2007 White Paper agreed that a reformed House of Lords should include at least 20 per cent non party political members and that no party should have an absolute majority there, which would be easier to achieve if there were non party political members. He also thought that this would allow under-represented groups to be represented.¹⁹⁴ Ultimately the choice between a 100 per cent elected chamber and an 80/20 split would be for the House of Commons to determine.¹⁹⁵ He would not rule out the use of the *Parliament Acts* to ensure that the Commons' view prevailed but argued that if reform was taken "steadily", the Lords were more likely to agree.¹⁹⁶ He said that the Government had yet to form a view on the electoral system that should be used.¹⁹⁷

He outlined what he considered to be the most difficult issue to resolve:

There are plenty of difficult issues, but one of the most difficult issues in my view is working out how we ensure that what has currently been agreed by the parties, which is the agreement on the fundamental principle of primacy and that the

¹⁹⁰ Leader of the House of Commons, *Press Briefing, 15 March, 3.45pm*, <http://www.commonleader.gov.uk/output/page1910.asp>

¹⁹¹ Constitutional Affairs Committee, *House of Lords Reform and Party Funding – Oral Evidence: 19 June 2007*, 9 October 2007, HC 738-i 2006-07, Q1, see also Q4

¹⁹² *Ibid*, Q2

¹⁹³ *Ibid*, Q16

¹⁹⁴ *Ibid*, Q4

¹⁹⁵ *Ibid*, Q5

¹⁹⁶ *Ibid*, Qq14-15

¹⁹⁷ *Ibid*, Q25

House should be a complement for the Commons and not a rival to it, how that is delivered in circumstances in which there is an elected element, which I wish to see. The expectations on those who are elected could be very high indeed unless it has been made clear in advance, very clear, what the limits of the powers are. The question for me is whether the current arrangements for ensuring that the current balance of power in practice applies, which is a mixture of statute resolutions and standing orders and conventions, is sufficient. I frankly doubt that ...

He concluded that:

... we have to be more explicit about the limits of the powers, otherwise when we go down the road of an elected chamber, we are back to the unending argument that if you have an elected chamber it will be a challenge to the House of Commons and so on.¹⁹⁸

Despite the desire to achieve consensus in the cross-party group, Jack Straw did not rule out the possibility of legislating to remove the remaining hereditary peers; to allow current members of the House of Lords to resign; and to bring disqualification rules into line with those of the House of Commons.¹⁹⁹

2. Plans of the new Administration

a. The Governance of Britain

On 3 July 2007, the Government published *The Governance of Britain*, a Green Paper containing proposals for constitutional reform.²⁰⁰

The Green Paper devoted 10 paragraphs to Lords reform. It began with a brief review of the 1999 reforms, which were described as “a fundamental step towards a more legitimate and assertive second chamber which has scrutinised the work of the Government more effectively, thereby improving British democracy overall”. It then reiterated the Government’s commitment to further reform:

131. The Government remains committed to further reform of the House of Lords, to increase its legitimacy, to make it more representative and ensure that it is effective in the face of the challenges of this century.

It then outlined what had happened since the 2005 General Election: the report of the Joint Committee on Conventions; the cross-party talks on House of Lords reform; the publication of the White Paper and the votes in both Houses of Parliament on the composition of the House of Lords. It concluded by stating:

¹⁹⁸ *Ibid*, Q8

¹⁹⁹ *Ibid*, Q12

²⁰⁰ Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170, <http://www.official-documents.gov.uk/document/cm7170/7170.pdf>; the green paper is described in more detail in the Library Research Paper RP 07/72, *The Governance of Britain Green Paper*, 26 October 2007, <http://www.parliament.uk/commons/lib/research/rp2007/rp07-072.pdf>

137. The Secretary of State for Justice and Lord Chancellor will continue to lead cross-party discussions with a view to bringing forward a comprehensive package to complete House of Lords reform. The Government will develop reforms for a substantially or wholly elected second chamber and will explore how the existing powers of the chamber should apply to the reformed chamber.

138. As part of this package, the Government is committed to removing the anomaly of the remaining hereditary peers. This will be in line with the wishes of the House of Commons, which voted by a majority of 280 to remove the hereditary peers in the free votes in March 2007.²⁰¹

In his statement on the publication of *The Governance of Britain*, Gordon Brown confirmed that the previously promised statement on House of Lords reform would be made before the summer recess and confirmed that the Government would “press ahead with reform”.²⁰²

b. Statement – 19 July 2007: a continuing role for the cross-party group

Jack Straw made the promised statement on 19 July 2007. In it, he outlined the issues that the cross-party group would consider as it continued to work for a consensus on the question of Lords reform:

Although there is agreement on some of the areas outlined in the White Paper, there is still some way to go on some other issues. The group will discuss the outstanding elements of the reform package, including powers, electoral systems, financial packages, and the balance and size of the House, including diversity and gender issues. We will also need to discuss the transition towards a reformed House in detail, including the position of the existing life peers and the need for action to avoid gratuitously cutting Conservative party representation in the Lords when and if the remaining hereditary peers are removed.²⁰³

He also set out a number of features that the Government wished to see in the cross-party consensus:

Let me turn to the powers of a reformed House. The Government have always said that the balance of powers between the two Houses described by the excellent and recent Cunningham report should apply to a reformed House. Those powers are currently underpinned by some statutory provisions, standing orders and conventions. We undertook to look further at whether the current conventions were adequate to ensure the desired relationship with a reformed House, following the free votes.

Over the coming months, we will look at how best to deliver a substantially or wholly elected second Chamber, based on the principle that this House is the primary Chamber and that an elected House of Lords should complement the House of Commons and not be a rival to it. As part of that programme of work it is vital that the relative powers of a reformed House be made clear. We will

²⁰¹ Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170, paras 129-138

²⁰² HC Deb 3 July 2007 cc817-818

²⁰³ HC Deb 19 July 2007 c450

therefore look at ways to enshrine in a constitutional settlement the current balance of powers and the different roles of the two Houses.

The Government are determined to proceed with this programme of reform with a view to its completion. In dealing with such a central element of the constitution, it is right that there be as much all-party agreement as possible.²⁰⁴

He then set out a timetable for future progress on House of Lords reform. Although he envisaged a further White Paper setting out “where we have got to in the cross-party talks” and possibly including some draft clauses that “would form elements of the final reform Bill”, Jack Straw said that his timetable would allow all parties to put their proposals to the electorate at the next general election:

... Our intention through the work of the cross-party group is to formulate a comprehensive reform package that we would put to the electorate as a manifesto commitment at the next general election and which hopefully the other main parties would include in their manifestoes.²⁰⁵

Jack Straw was criticised for putting off Lords reform. Nick Herbert, the Conservative Party’s shadow Secretary of State for Justice said that:

It seems that his new ambition is to secure a manifesto commitment for reform at the next election, but that election may not be held for another two or three years and the Labour party first had a manifesto commitment on the issue in 1992. Is not the real message in his statement that Lords reform is on ice until after the next election?²⁰⁶

He then reminded Jack Straw of the binding commitment given by Lord Irvine in 1999 that the excepted 92 hereditary peers would remain in the House of Lords, pending further reform, and asked him to confirm that the hereditary peers would not be removed “unless and until stage 2 of the reform is complete”. However, he offered to work constructively with the Government to build a second Chamber with legitimate authority and to hold the executive to account.²⁰⁷

In response to the question of the commitment to retaining the hereditary peers until stage 2 of the reform of the House of Lords is completed, Jack Straw pointed out that at the end of the debate on the White Paper (6-7 March 2007), the House of Commons “agreed by a majority of 280 that the hereditary peers should be removed”.²⁰⁸

Tony Wright also concluded that Lords reform was “not an immediate prospect”, and asked whether the House of Lords Appointments Commission could be put on a

²⁰⁴ *Ibid*

²⁰⁵ *Ibid*

²⁰⁶ HC Deb 19 July 2007 c451

²⁰⁷ *Ibid* cc451-452

²⁰⁸ *Ibid* c454; for background on the decision to retain 92 hereditary peers see House of Lords Library Library Note LLN 2007/006, *The Weatherill Amendment*, <http://www.parliament.uk/documents/upload/HLLWeatherillAmendment.pdf>

statutory basis. However, Jack Straw argued that Parliament could get bogged down in a piecemeal approach:

I have two quick answers. First, to get to where we want to go, we have to make clear progress, but in the absence of categorical manifesto commitments from the three parties, we would simply find ourselves bogged down in endless debate on the Floor of the House before the next election. I want to make clear progress, so that in the first Session of the next Parliament, we can introduce a final measure. Secondly, on a limited reform measure—that takes us back to Lord Steel's proposal—let us see what the House of Lords says about it. One thing has to be clear: such a reform cannot be an alternative to the major reform to which the House is now committed.²⁰⁹

Sir George Young asked for an undertaking that a draft bill would be ready by the end of this Parliament so that it could be introduced at the beginning of the next Parliament. Jack Straw responded that progress would depend on the extent to which an overall settlement could be reached in the cross-party talks:

On the issue of a draft Bill, we are certainly aiming to produce draft clauses. Whether we can get to a full draft Bill depends on the extent to which we can agree an overall settlement in the cross-party talks, but I hope that we can reach such a settlement.²¹⁰

In his statement on the Government's programme of constitutional renewal on 25 October 2007, Jack Straw, the Secretary of State for Justice confirmed that the cross-party group considering reform of the House of Lords was continuing to meet:

For the sake of completeness, may I tell the House that in respect of reform of the House of Lords, discussions are proceeding inside the all-party talks? We are arranging for two meetings of the working group before Christmas.²¹¹

3. Membership of the cross-party group

During his statement Jack Straw announced his intention to find out the views of all parliamentarians in the process of reaching consensus on Lords reform:

... of course we want the widest possible consensus and I intend to make arrangements so that we can take proper account of the views of all parliamentarians, including non-party independent Members, and interest groups and the public".²¹²

In the House of Lords, Lord Strathclyde asked for clarification:

... perhaps I may ask the noble Lord to explain more fully ... the arrangements he is making to take the views of Back-Benchers in your Lordships' House, who were referred to in the Statement. How this is done is clearly matter for the

²⁰⁹ HC Deb 19 July 2007 c455

²¹⁰ *Ibid* c456

²¹¹ HC Deb 25 October 2007 c410

²¹² HC Deb 19 July 2007 c449

Government, but I, too, have had strong representations that it should be done; I am glad that now it will be.²¹³

Lord Hunt of Kings Heath replied that:

The question that the noble Lord raises about taking the view of Back-Benchers is a matter for the House authorities, but I know that my noble friend the Leader of the House will wish to take a view on how Members of your Lordships' House can make an active contribution to the necessary discussions. I do not have a list of interest groups for the noble Lord today, but we can discuss that matter in the cross-party group. I confirm that we wish to have a wide engagement with groups with an interest and with the public in general. That is entirely consistent with the approach that we will take in parallel with the Green Paper on governance, which very much reflected a wish to engage extensively with the public.²¹⁴

This issue was raised again the following day, during the second reading debate on Lord Steel of Aikwood's *House of Lords Bill* (see section VII D 2).

The question of involving backbenchers in the process was also raised at the Constitutional Affairs Committee meeting on 19 June 2007. Jack Straw said that he would be "happy if a cross-party group of backbenchers formed themselves". When pressed, he said that he would give the idea further thought.²¹⁵

The question of involving other parties in the cross-party discussions was raised by Pete Wishart of the Scottish National Party. Jack Straw replied that the "key cross-party group should be the three parties" but he promised that there would be discussions with the SNP, Plaid Cymru and other smaller parties in the House; and he apologised for not having previously made such arrangements.²¹⁶

4. Labour Party Conference 2007 commitments

In his speech to the Labour Party Conference, Gordon Brown said that "... we will in our manifesto commit to introduce the principle of elections for the second chamber".²¹⁷

²¹³ HL Deb 19 July 2007 c392

²¹⁴ *Ibid* c395

²¹⁵ Constitutional Affairs Committee, *House of Lords Reform and Party Funding – Oral Evidence: 19 June 2007*, 9 October 2007, HC 738-i 2006-07, Q 7 and Qq10-11

²¹⁶ HC Deb 19 July 2007 c460

²¹⁷ Labour Party, *Gordon Brown speaks to Conference*, Annual Conference 2007, http://www.labour.org.uk/conference/brown_speech

VII Other developments

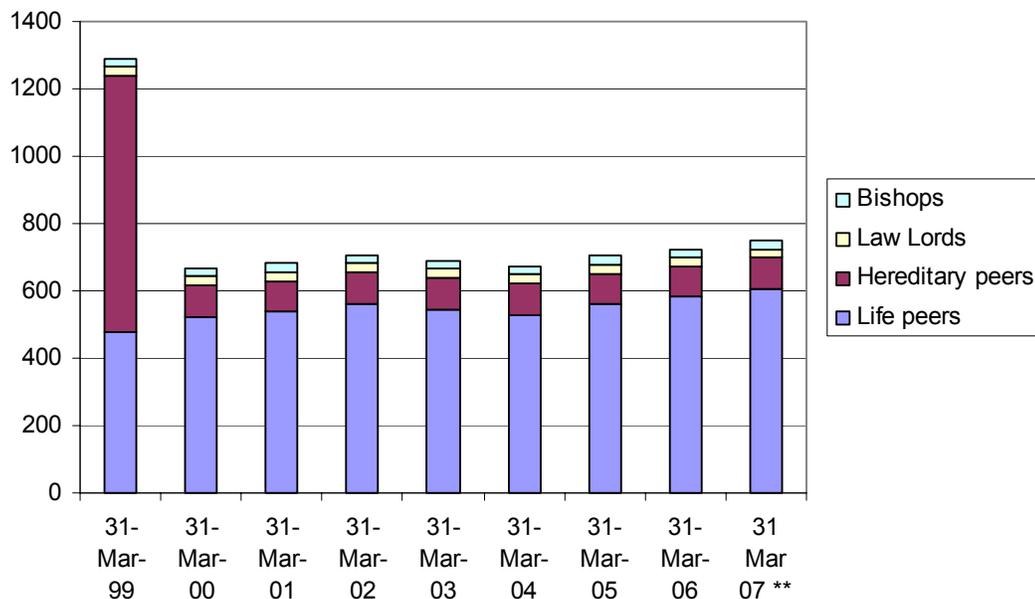
A. The size and composition of the House of Lords

1. Size

The passing of the *House of Lords Act 1999*, which provided for the removal of all but 10 per cent of the hereditary peers, saw the size of the House of Lords reduce from 1,290 to 695 (including those on leave of absence and those without writ of summons).

The size of the House of Lords is affected by both peerage creations and by death. The size of the House of Lords grew between 2001 and 2002 as 18 new peerages were announced in the dissolution honours on 1 June 2001. But it declined in the following two years: only 11 new peerages, including the appointment of four Law Lords, were announced between 2 June 2001 and 30 April 2004.²¹⁸ Since then, the membership of the House of Lords has increased, beginning with the announcement of 46 new peerages, on 1 May 2004.²¹⁹

The Size and Composition of the House of Lords*



Source: House of Lords, *Annual Report*, 1998/99-2005/06

* including peers without Writs of Summons (31 March 1999, only) or on leave of absence

** at 16 April 2007. Source: House of Lords Information Office

²¹⁸ Among the Law Lords was Baroness Hale, the first female Law Lord, whose appointment was announced on 12 January 2004

²¹⁹ House of Lords Library, Library Notes LLN2007/004, *Peerage creations, 1958-2007*, <http://www.parliament.uk/documents/upload/HLLPeerageCreation.pdf>

The House of Lords has continued to increase in size, reaching 735 at the beginning of July 2007 (excluding 12 peers on leave of absence). Then, at the beginning of his term of office as Prime Minister, Gordon Brown appointed five new ministers to the House of Lords and David Cameron has announced two new frontbench spokespeople. The Liberal Democrats announced two new peers and Sir Robin Janvrin, formerly the Queen's Private Secretary, was also awarded a peerage.

The House of Lords is now considerably bigger than the House of no more than 600 suggested in *Constitutional Reform: next steps for the House of Lords*²²⁰ and the 540 proposed in the 2007 White Paper.²²¹

Meg Russell and Maria Sciarra have charted the gradual increase in the size of the House of Lords since 1999 and questioned whether this growth will increase the pressure for further reform. Writing about the House of Lords in 2006, they reported that 36 new peers were appointed, and continued that:

... With only 18 deaths and retirements, the size of the chamber continues to grow, and is now 79 higher than it was when reform greatly reduced the membership in November 1999. The pattern of gradual growth since then ... does not appear sustainable in the longer term.²²²

Lord McNally has also expressed concern about the size of the chamber:

I worry also that because so many Peers have been appointed in the last 10 years—and as we have been reminded today, the average age is 68—we could quickly become a House of nearly 1,000 Members with the majority of that membership aged over 70. A House of Struldbrugs is not going to be attractive to the British people or be seen as particularly representative. Also, as the Bill rightly reflects, there is the continuing problem of the linkage between the peerage and the need of political parties to raise millions of pounds to conduct their affairs. We have to break that linkage once and for all.²²³

2. Composition

As a result of the dissolution honours in 2005, when 27 peerages (16 Labour) were announced, the Labour Party became the largest party in the House of Lords. This took Labour's strength in the House of Lords to 214, compared to the Conservative Party's 211.²²⁴

²²⁰ Department for Constitutional Affairs, *Constitutional Reform: next steps for the House of Lords*, CPR 14/03, September 2003, paras 44-52 and Issue 3, <http://www.dca.gov.uk/consult/holref/index.htm>

²²¹ HM Government, *The House of Lords: Reform*, 7 February 2007, Cm 7027, para 1.6, para 9.5, <http://www.official-documents.gov.uk/document/cm70/7027/7027.pdf>

²²² Meg Russell and Maria Sciarra, "Parliament: The House of Lords – Negotiating a Stronger Second Chamber" in Michael Rush and Philip Giddings (ed), *The Palgrave Review of British Politics 2006*, 2007, pp121-123

²²³ HL Deb 20 July 2007 c530

²²⁴ Ben Russell, "Blair's friendly peers make Labour biggest party in Lords for first time ever", *Independent*, 14 May 2005. The peerages announced were: 16 – Labour; 6 – Conservative; 5 – Liberal Democrat

One further effect of the reform of the House of Lords that has already taken place is that the Conservative Party no longer has an in-built majority in the House of Lords. During the debate on the Joint Committee on Conventions' report, Lord Wallace of Saltaire reflected that, when in opposition, the Labour Party might benefit from that change, which he argued it had yet to notice:

I am struck as I listen on many occasions to the Benches opposite that any party that is in power for more than two elections begins to take the executive point of view: to feel that the Executive is always right and that parliamentary opposition is a nuisance. I think that some on the Labour Benches still think of the Lords as a Conservative-dominated House. This House has changed fundamentally since 1999, and when, as will happen, the Labour Party finds itself again in opposition, it will find a reformed second Chamber an asset. Some Labour Members of this House need to remember that very carefully.²²⁵

This was echoed by Meg Russell in a short article in *Parliamentary Monitor*. She wrote that:

... to many on the Labour side it feels like little has changed – the Lords continues to defeat Labour governments. The difference is that a Conservative government would now also suffer the same fate – with defeats inflicted by a coalition of Labour and Liberal Democrat peers. Ironically, it is only when Labour finds itself in opposition that it will feel the benefit of its 1999 reform – if indeed the current chamber lasts that long.²²⁶

3. Appointments

Following criticism of its first round of appointments in April 2001, the House of Lords Appointments Commission made no further nominations until May 2004. In total, it has nominated 42 individuals to the Crossbenches of the House of Lords.

House of Lords Appointments Commission – nominations

Date	No. of nominations
April 2001	15
May 2004	7
22 March 2005	2
22 July 2005	5
3 May 2006	7
15 February 2007	6

A full list of those nominated by the House of Lords Appointments Commission is given in Appendix 1.

This paper does not discuss the police investigation into loans to political parties and honours. These issues are discussed in the Library Standard Note *Loans to Political*

²²⁵ HL Deb 16 January 2007 cc595-596; see also Lord Falconer of Thoroton during the same debate, c635

²²⁶ Meg Russell, "A House of Cards?", *Parliamentary Brief*, Volume 11, No 4, May 2007, p12

Parties.²²⁷ The Public Administration Select Committee began to look at propriety issues in the award of honours in 2005: the Committee's work is outlined in Appendix 3.

4. Hereditary peers

Following the passing of the *House of Lords Acts 1999*, the automatic right of hereditary peers to sit in the House of Lords came to an end. However, the Act provided for 92 hereditary peers to continue to sit in the House of Lords. (In addition to 90 hereditary peers chosen by election, the Earl Marshal and the Lord Great Chamberlain were also to continue to take seats in the House of Lords. In the event of the death of either of these, they would be succeeded by their heir.) The Act required the Standing Orders of the House of Lords to establish procedures for filling vacancies among the excepted hereditary peers through by-elections.

In addition 16 hereditary peers were awarded life peerages and continued to sit in the House of Lords following the passing of the 1999 Act. Although they received new titles they have continued to be known by their hereditary titles.

The 92 excepted hereditary peers and the additional 16 hereditary peers who were awarded life peerages are listed in Appendix 2.

Two private Members' bills, which were introduced in the House of Lords, proposed ending the procedure for by-elections to the House of Lords are discussed in section VII D.

5. Religious representation

Writing in 2003, Charlotte Smith considered "The Place of Representatives of Religion in the Second Chamber". She noted that both the Wakeham Commission and the Government's subsequent White Paper (*The House of Lords: Completing the Reform*) argued for the retention of at least some of the 26 Church of England bishops in the reformed House of Lords, whilst the Public Administration Select Committee recommended that Church of England bishops should no longer be afforded *ex officio* seats. (Since then the 2007 White Paper, *The House of Lords: Reform*, also proposed that a reduced number of bishops should sit in a chamber of 540 members that was half-elected and half-appointed.)

After reviewing the current situation and proposals for reform, Charlotte Smith explored the arguments for religious representation and the difficulties of widening that representation to other Christian denominations and to other faiths. She also examined the legal and constitutional position of the Church of England and argued that a better understanding of Establishment and how the Church of England saw its role as a "national Church" were needed to underpin reform of religious representation in the House of Lords.²²⁸

²²⁷ House of Commons Library Standard Note SN/PC/ 3960, *Loans to Political Parties*, <http://www.parliament.uk/commons/lib/research/notes/snpc-03960.pdf>

²²⁸ Charlotte Smith, "The Place of Representatives of Religion in the Second Chamber", *Public Law*, Winter 2003, pp674-696

Theos, the public theology think tank established in 2006, addressed the subject of the bishops in a report that was published in 2007. It considered whether bishops attend, vote, speak and what they say. It recorded that the bishops' attendance has been higher under the Labour Government than it was between May 1979 and May 1987; and that bishops' participation in divisions has increased. In a final chapter, Andrew Partington and Paul Bickley reviewed the contribution made by bishops and considered the future for bishops.²²⁹

In an interview on Radio 4's *Sunday* programme, Rt Rev Peter Selby (PS), the retiring Bishop of Worcester was asked by Roger Bolton (RB) about the role of bishops in the House of Lords and his doubts about their place in the second chamber. The bishop concluded this part of the interview by saying that he would not have bishops in the House of Lords. The interview was introduced by Jane Little (JL):

JL: He's been an outspoken voice in the Church of England on a variety of issues, particularly in his role as bishop to Her Majesty's prisons. Now he is one of the bishops who sits in the House of Lords and he has been called by his fellow peers the conscience of the House of Bishops. This week after ten years the Bishop of Worcester, the Rt Rev Peter Selby retires. Roger Bolton met him earlier in the week and asked whether he had ever had doubts about his presence in the House of Lords.

PS: Oh yes, in fact I was researching as my term was due to come whether you could turn down the seat and just then a letter arrived from the Archbishop of Canterbury, in the name of the three Archbishops of England and Wales, saying would I like to be bishop to prisons and the letter was full of statements about how important it was that the bishop to prisons was in the House of Lords, and I took that as a sign that God had a sense of humour and the Archbishop of Canterbury probably had too. So I thought well I'd better say yes.

RB: So you had doubts in principle at that stage?

PS: I had and I have.

RB: What are they?

PS: I don't think it's a good thing and I don't think it does credit to the ministry of the Lords spiritual that they are there *ex officio* and as of right, and I think that there are some of us who do the job really well and I think there are some people of other faith communities who would do that job really well, and I think it inhibits that good quality if you have 26 people there just because it goes with the job.

RB: So they have to have additional qualifications and it shouldn't just be in your view exclusive to the Church of England.

²²⁹ Andrew Partington and Paul Bickley, *coming off the bench: The past, present and future of religious representation in the House of Lords*, Theos, 2007, http://campaigndirector.moodia.com/Client/Theos/Files/Theos_theBench.pdf

PS: Absolutely not. I think there should be a bishop to prisons. Let's say that first. I think we cannot, as a church, walk away from such a significant area of our society, and it's really very important that there is somebody there if you have a place. It's one thing to say what do you do if you've got this place and it's another to say how you like society organised and I wouldn't start with having bishops in the House of Lords.²³⁰

An official view was given in the Archbishops of Canterbury and York's response to the 2003 consultation, *Constitutional reform: next steps for the House of Lords*. In the letter accompanying their response, they commented that:

For our own part we remain fully committed as a national church to our deep engagement in the public life of the country, of which parliamentary service is an important aspect.²³¹

More recently, following the publication of the White Paper, *House of Lords: Reform*, in February 2007, the Archbishop of York, Rt Rev John Sentamu, spoke in the debate before the House of Lords voted on the options for composition, and argued for a continued presence for the Lords spiritual in the House of Lords:

The right reverend Prelate the Bishop of Chelmsford spoke yesterday of Parliament needing to take into account the spiritual dimension of people as it legislates—that beliefs affect people, and that the voices of a religious life needed to be heard. The presence of the Lords Spiritual is a necessary reminder of that. I want to go further and say that the Queen in Parliament is sovereign, but is also Queen in law, in council, and in the Executive. That is the constitutional arrangement. Are we going to preserve it? The Lords Spiritual remind Parliament of the Queen's coronation oath and of that occasion when the divine law was acknowledged as the source of all law. We do not see ourselves as representatives, but as connectors with the people and parishes of England. Ours is a sacred trust—to remind your Lordships' House of the common law of this nation, in which true religion, virtue, morals and law are always intermingled; they have never been separated.²³²

B. A more assertive House

Much has been made of Baroness Jay of Paddington's comments made during a debate in the House of Lords, on the Government's proposals for House of Lords reform that were set out in the Party's manifesto. Then, as Leader of the House of Lords, she said: "I have no hesitation in asserting that the transitional Chamber will be more legitimate than that we have today".²³³ Her comments have frequently been echoed, and sometimes used as an argument for retaining the "transitional" House of Lords instead of undertaking the next stage of reform.

²³⁰ BBC Radio 4, "Bishop bows out", *Sunday*, 30 September 2007

²³¹ Department for Constitutional Affairs, *Constitutional reform: next steps for the House of Lords – Consultation Responses*, Response from the Church of England (Archbishops of Canterbury and York), <http://www.dca.gov.uk/consult/holref/responses/hl049.pdf>

²³² HL Deb 13 March 2007 c579-582

²³³ HL Deb 14 October 1998 c925

In their review of the House of Lords in 2005, Meg Russell and Maria Sciara suggested that:

By 2005, the notion that the chamber dubbed 'transitional' in 1999 (with the departure of most hereditary peers), might continue to exist for many years was starting to take hold.²³⁴

During the debate on the 2007 White Paper, Jack Straw confirmed the Government view that the House of Lords had become more active since the reforms of 1999 were introduced:

It might, and I shall develop the point in a moment. Such a House might indeed be more assertive, and the House of Lords has already become more active since the changes of 1999. I have gone on record as saying that I do not mind that at all: I think it is a good thing, as long as it does not challenge the primacy of this House. We can protect that primacy by convention and by the use of law.²³⁵

Meg Russell argued that "it is clear that peers feel increasingly assertive". She cited survey evidence and set out the reasons for a feeling of increased legitimacy:

In a survey we conducted in 2005, 78 per cent of them [peers] believed that the reform had made the chamber more legitimate. Labour peers (88 per cent) were the most likely to agree. This is unsurprising given the government's claims during the reform debates that greater legitimacy would be one of the results.

There are clear reasons why the chamber now feels more legitimate. The reform ended the automatic birthright to sit in parliament, and removed many who never attended or had little interest in politics. More importantly, it resulted in a chamber that was far more politically balanced.²³⁶

C. The *Constitutional Reform Act 2005*

When it was introduced in the House of Lords in 2003-04, the *Constitutional Reform Bill* included provisions to abolish the Office of the Lord Chancellor; to remove the requirement of the Lord Chancellor to be Speaker of the House of Lords; to create a Supreme Court; and to remove the Law Lords from the House of Lords. The Law Lords would become Justices of the Supreme Court.

The Bill was controversial and was referred to a select committee following its second reading in the House of Lords.²³⁷ The Select Committee on the Constitutional Reform Bill made a number of recommendations for change and the Bill was amended as it passed

²³⁴ Meg Russell and Maria Sciara, "Parliament: the House of Lords – A More Representative and Assertive Chamber?", in Michael Rush and Philip Giddings (eds), *The Palgrave Review of British Politics 2005*, 2006, p122.

²³⁵ HC Deb 6 March 2007 cc1396-1397

²³⁶ Meg Russell, "A House of Cards?", *Parliamentary Brief*, Volume 11, No 4, May 2007, p11

²³⁷ HL Deb 8 March 2004 cc979-1006, cc1023-1112

through Parliament.²³⁸ Because the position of the Lord Speaker was raised, the House of Lords established a Select Committee on the Speakership of the House of Lords.²³⁹

Amendments to the Bill in the House of Lords required the Lord Chancellor to be both a peer and a senior lawyer but the Bill was further amended in the House of Commons.

The *Constitutional Reform Act 2005* made provision for modifying the office of Lord Chancellor so that the office-holder is no longer a judge, nor exercises any judicial functions; nor was the office-holder required to sit in the House of Lords. It also set out the qualifications for appointment to the office of Lord Chancellor. It made provisions in relation to the Speakership of the House of Lords. The Library Standard Note, *The Constitutional Reform Act 2005 – the role of the Lord Chancellor*, provides additional information.²⁴⁰

Baroness Hayman was elected as the first Lord Speaker on 4 July 2006.²⁴¹

In July 2007 Jack Straw was appointed Lord Chancellor, the first time the office has been held by someone who does not sit in the House of Lords in modern times.

D. Private Members' bills in the House of Lords

Two private Members' bills to amend the House of Lords Act 1999 were introduced in the House of Lords during the 2006-07 Session. Lord Avebury's *House of Lords (Amendment) Bill* (HL Bill 51) and Lord Steel of Aikwood's *House of Lords Bill* (HL Bill 52) were both introduced on 14 March 2007.²⁴² Both bills were read a second time but made no further progress. Lord Steel introduced a similar bill at the beginning of the 2007-08 Session.

1. House of Lords (Amendment) Bill 2006-07

... a Bill to amend the House of Lords Act 1999.²⁴³

In opening the second reading debate, Lord Avebury described the purpose of his Bill:

The purpose of this very modest Bill is to enable your Lordships to revisit the decision to freeze the number [of excepted hereditary peers] in accordance with that private deal that was made between the former Lord Chancellor and the former Leader of the Opposition.²⁴⁴

²³⁸ Select Committee on the Constitutional Reform Bill, *first Report*, 2 July 2004, HL 125 2003-04

²³⁹ The Select Committee on the Speakership of the House issued two reports: *First Report: Speakership of the House*, 27 November 2003, HL 1999 2002-03; and *Speakership of the House*, 19 December 2005, HL 92 2005-06

²⁴⁰ House of Commons Library SN/PC/3792, *The Constitutional Reform Act 2005 – the role of the Lord Chancellor*, <http://www.parliament.uk/commons/lib/research/notes/snpc-03792.pdf>

²⁴¹ HL Deb 4 July 2006 c121

²⁴² HL Deb 14 March 2007 cc740-741

²⁴³ *Ibid* c740

²⁴⁴ HL Deb 18 May 2007 c417

He noted that the provision in the *House of Lords Act 1999* to retain 92 hereditary peers was meant to be a transitional provision. He argued that if it had been anticipated that it would remain in place for nine years, debate on it may well have been different. He said that the argument that retaining the hereditary peers to provide an incentive for further reform was “manifestly ineffective”.²⁴⁵ He argued that his Bill “does not in any way inhibit this or the next Government’s freedom to propose wider reforms, but it does remove a serious and dysfunctional error in the Weatherill arrangements, which continues to undermine our credibility”.²⁴⁶

A number of peers likened the by-elections to fill vacancies among hereditary peers to the pre-1832 ‘rotten boroughs’. However, others argued that the Bill should not proceed because constitutional change should not result from private Members’ bills; and because the Bill did not provide a complete “stage 2” of Lords reform envisaged when the *House of Lords Act 1999* was passing through Parliament.

Although Baroness Ashton of Upholland, then the Parliamentary Under-Secretary of State at the Ministry of Justice, expressed reservations about the Bill, in accordance with the traditions of the House of Lords, she did not oppose the Bill’s second reading. However, she did reiterate Jack Straw’s comments on the “stage 2” pledge. On 7 March 2007, he said:

He said that paragraphs 3.27 and 3.28 of the White Paper correctly indicate the position,

“until the second stage of House of Lords reform has taken place”.

He continued:

“For the avoidance of doubt, I spoke to my noble Friend, the former Lord Chancellor, this morning, and he authorised me to say that the passage in the White Paper, at paragraphs 3.27 and 3.28, is a correct summary of the position”.

In the context of what the noble Lord, Lord Norton of Louth, was moving us on to, my right honourable friend Jack Straw also said that,

“what was agreed in 1999 implied no guarantee of any particular stage 2”.

He said that that was because,

“the commitment was made even before the royal commission had reported, and still less before there had been White Papers, Public Administration Committee reports and so on”,

which is important when we think about what we believe stage 2 should be. My right honourable friend went on to say that,

“we accept that the removal of the hereditaries should take place in the context of a Bill that reflects the views of this House”—

that is, another place—

²⁴⁵ *Ibid* c417

²⁴⁶ *Ibid* cc418-419

“as expressed in the votes today, the views subsequently expressed by those in the other place”—

that is, of course, your Lordships’ House—

“and any agreement that we can reach”.—[*Official Report*, Commons, 7/3/07; col. 1597.]

I hope that that is helpful to explain precisely where we stand.²⁴⁷

2. House of Lords Bill 2006-07

... a Bill to make provision for the appointment of a commission to make recommendations to the Crown for the creation of life peerages; to restrict membership of the House of Lords by virtue of hereditary peerage; to make provision for permanent leave of absence from the House of Lords; to make provision for the expulsion of Members of the House of Lords in specified circumstances; and for connected purposes.²⁴⁸

When he introduced his Bill in the second reading debate, Lord Steel of Aikwood explained that it was the work of an all-party group (the Campaign for an Effective Second Chamber).²⁴⁹ He noted that in the statement the previous day, Jack Straw had said that the *House of Lords Bill* (the Steel Bill) “did not contain the comprehensive reform” that the Government was seeking. But he argued that to achieve comprehensive reform “a series of steps” was needed, and that his Bill offered the “prospect of limited but early reform”.²⁵⁰

In his closing speech, Lord Steel pointed out that of the 49 backbench speakers in the debate, 46 had supported his Bill.²⁵¹

Baroness Shephard of Northwold summarised the various views of most of those who spoke about the Bill, whether they thought it was an end-point in itself or a step the way towards comprehensive reform, it had achieved consensus:

Many in this House will feel that the reforms proposed in the Bill are not only necessary but enough. Others will feel that they are necessary but not enough. That divergence of view is a matter for another day. The point of the Bill is that it has achieved what the Government, and Ministers in this House, say they wish to achieve but have so far signally failed to achieve; all-party consensus on reform of the House of Lords. In that sense, the Bill is historic, although its scope is modest. Those working on it set out to achieve consensus across the House on reform, where that could be done without upsetting the balance between the Houses and without in any way threatening the supremacy of the elected House. It demonstrates that progress can be made on the basis of consensus when a

²⁴⁷ *Ibid* cc439-440

²⁴⁸ HL Deb 14 March 2007 c741

²⁴⁹ HL Deb 20 July 2007 c511; the Campaign for an Effective Second Chamber has a website at: <http://www.effectivesecondchamber.com/>

²⁵⁰ HL Deb 20 July 2007 cc483-484

²⁵¹ *Ibid* c540

real effort is made to accommodate all honestly held convictions and to take account of them. For that reason, it should be welcomed and not belittled.²⁵²

In that context, Baroness Hollis of Heigham suggested that the only way to achieve any reform was to move incrementally and she explained that she favoured “incrementalism, not as a step towards comprehensive reform but as an alternative to it”.²⁵³

Some speakers took comfort in being able to argue that the Bill was “firmly based on the principle of a wholly appointed House”,²⁵⁴ while others suggested it was “a staging post”.²⁵⁵ Lord McNally, from the Liberal Democrat front bench, argued that it was too late to adopt the former position:

But what is not reflected in the debate today is an awareness that a political Rubicon was crossed when the Commons voted for 80 or 100 per cent. I have heard the rationalisations, but I have not seen them reflected in opinions down the Corridor. Members of this House have to realise that when you get a number of factors coming into play—a Prime Minister committed to reform, all three major parties committed to reform and an overwhelming vote of the House of Commons committed to reform—there is a need to move on from working out how to delay reform to working out how it can be facilitated.²⁵⁶

For the Conservatives, Lord Strathclyde argued that whilst the Bill offered “architecture towards an alternative: an all-appointed House”, it did not touch upon “substances of great issue – powers, role conventions, pay and retirement provisions among others”.²⁵⁷

Lord Hunt of Kings Heath faced a number of questions about the role that backbenchers would play in securing cross-party agreement for Lords reform. Lord Lea of Crondall had referred to a letter from the Leader of the House of Lords about how the cross-party group could take views of backbenchers into account. He argued this was important because many backbenchers on both sides were “clearly at odds with their field marshal”.²⁵⁸ Lord Hunt argued that the prospect of agreement on Lords reform between the parties was a better way forward than progressing with the Steel Bill:

... we have the prospect of agreement between the parties on the way forward. Many noble Lords here are connoisseurs of the history of reform of your Lordships’ House. Surely the prospect of that party agreement, in the mechanism that we have made clear to your Lordships’ House, is how we will take it forward. Surely that suggests that we must put our efforts into completing Lords reform and ensuring that it takes place as part of a comprehensive approach.

He continued:

²⁵² *Ibid* c490

²⁵³ *Ibid* c500

²⁵⁴ *Ibid* c505

²⁵⁵ *Ibid* c518

²⁵⁶ *Ibid* c530

²⁵⁷ *Ibid* c532

²⁵⁸ *Ibid* cc487-488; see also c520

The other place voted for both an 80 per cent and 100 per cent elected House. Noble Lords have today repeatedly emphasised the primacy of the elected House. The elected House has made clear its position on how Lords reform is to be taken forward. The cross-party group, which consists of leaders of the respective parties and a representative of the Lords Spiritual and the Cross Benches, is the mechanism by which we will have those discussions.

The noble and learned Lord asked how the views of Members of this House can be brought to bear. The letter from my noble friend the Leader of the House yesterday made it clear that we are anxious to set up a number of mechanisms to allow the views of Members of this House to be brought to the attention of the cross-party group.²⁵⁹

At the end of his speech he reiterated this point:

My Lords, I certainly understand that many Members of your Lordships' House are not particularly happy with the model of reform which the other place has voted for and which the Government have said they wish to put into operation. Of course, I understand that Members of this House wish to have an important input into those discussions and on the way forward. Equally, to be fair to all noble Lords, I must restate the way in which the Government will take this forward. Our intent is to seek cross-party agreement on the basis of the vote taken in the House of Commons in March. It would be unfair of me not to restate that position.²⁶⁰

3. House of Lords Bill 2007-08

Lord Steel of Aikwood introduced the *House of Lords Bill* [HL Bill 3 of 2007-08] on 7 November 2007.²⁶¹ It is similar to the Bill he introduced in the previous Session.

In opening the second reading debate on 30 November 2007, Lord Steel noted that:

I do not want to repeat the speech that I made in July when we had broadly the same Bill before us. If I were to do that, I would be guilty of the parliamentary offence of tedious repetition before I got into my second sentence. I want instead to explain very briefly the four purposes set out in the Bill and to draw the attention of the House to the changes that have been made since we debated the Bill in July. These changes have been made entirely in response to the speeches in that debate.²⁶²

For the Government, Lord Hunt of Kings Heath again confirmed that "The Government's formal position on the Bill is as I stated it when we debated the noble Lord's Bill in July: that, as with all Private Members' Bills that go through your Lordships' House, the Government will adopt a neutral position". He also restated that "the Government's efforts are focused on comprehensive reform".²⁶³

²⁵⁹ *Ibid* c535

²⁶⁰ *Ibid* c539

²⁶¹ HL Deb 7 November 2007 c21

²⁶² HL Deb 30 November 2007 c1415

²⁶³ *Ibid* c1480

E. Party policy reviews

The Conservative Party's Democracy Task Force, chaired by Kenneth Clarke, has published two reports:

- *An End to Sofa Government – Better Working of Prime Minister and Cabinet*; and
- *Power to the People – Rebuilding Parliament*, in June 2007

Both of the Democracy Task Force's reports refer to a reformed House of Lords but neither sets out how the Conservative Party could go about reforming the House of Lords.

In a press release issued by the Conservative Party after Jack Straw's statement on 19 July 2007, the Party argued that reform of the House of Lords should strengthen Parliament as a whole:

Conservatives have stressed that the latest plan to reform the House of Lords must be part of a wider strategy to strengthen Parliament as a whole - and make Government more accountable to the people.²⁶⁴

The Liberal Democrats published a Policy Paper, *For the People, by the People*, for their Party Conference in September 2007. The Paper reiterated the Party's call for a wholly-elected second chamber: members would be elected in thirds for non-renewable terms using a Single Transferable Vote system.²⁶⁵

VIII Academic comment on House of Lords reform

1. Recent context

Alexandra Kelso examined a number of proposals for House of Lords reform since 1997.²⁶⁶ She based her analysis on a clear understanding of the difference between the terms representative, democratic and legitimate, some or all of which were used in different ways in the various proposals she examined.²⁶⁷

She also traced a change in the language used to describe the reason for reforming the House of Lords. In its 1997 manifesto the Labour Party sought to make the Lords "more democratic and more representative" but the 2003 consultation paper on Lords reform sought a "more legitimate and more representative" second chamber.

²⁶⁴ Conservatives News, *Any reform of the Lords must strengthen Parliament*, 19 July 2007, http://www.conservatives.com/tile.do?def=news_story_page&obj_id=137652

²⁶⁵ Liberal Democrats, *For the People, by the People*, Policy Paper 83, September 2007, paras 5.2.1-5.2.4 http://www.libdems.org.uk/media/documents/policies/PP83_constitutional_Sep07.pdf

²⁶⁶ Labour Party Manifesto, 1997; The Government White Paper 2001; Public Administration Committee, *the Second Chamber: Continuing the Reform*; Joint Committee on Reform of the House of Lords

²⁶⁷ Alexandra Kelso, "Reforming the House of Lords: Navigating Representation, Democracy and Legitimacy at Westminster", *Parliamentary Affairs*, October 2006, Vol 59, No 4, pp563-581

John Parkinson also explored the question of the legitimacy of the House of Lords. Rather than assert that, because the House of Lords was unelected, it was illegitimate, he examined whether an appointed House of Lords could be considered more legitimate if it was tested against the ideals of deliberative democracy. He argued that

... much of the debate on the future of the House of Lords has been a narrow one, drawing on a limited model of democratic legitimacy and focusing on the Lords in isolation, rather than considering its role more generally in British democracy. Instead, [this article] uses a broader, deliberative account of democracy to suggest that an appointed House of Lords makes an important contribution to that democracy.

He contended that “Underlying deliberative democracy is the idea that democratic legitimacy depends on the successful public argument for an idea or course of action”. He addressed the question “how well does the House of Lords as presently constituted play that deliberative role?” by considering how the House of Lords instantiated the deliberative criteria of inclusiveness and of accountability. He argued that whilst the House of Commons had electoral legitimacy, the House of Lords was much better equipped to perform the accountability role than the House of Commons because peers were less constrained by party loyalty and patronage. However, the House of Lords lacked “sufficient power to force the government to reach agreements”.²⁶⁸

Gavin Phillipson, writing before the Joint Committee on House of Lords reform published its proposals for both Houses to vote on a number of options for the composition of the reformed second chamber, considered the powers of the second chamber. In the light of the reports published beforehand and which the Joint Committee was told to consider, he anticipated that the reformed second chamber would contain a mixture of elected and appointed members. This meant that “the new chamber will be substantially more legitimate, in democratic terms, than the current wholly unelected House”. He continued:

Given this context, it would seem paradoxical, to say the least, to accompany such a substantial increase in the House’s legitimacy with anything less than *at least a* maintenance of its existing powers. Since it is a trite observation that the current House rarely exercises its legal powers to the full, a more legitimate House could exercise considerably more political muscle without any increase in its legal powers, simply by adopting a less self-denying approach to the use of existing powers of delay. But any *diminution* in its powers would seem perverse, given the whole purpose of reform is to increase the capacity of the House to make a contribution to the legislative process and the protection of liberal constitutional values and human rights.

He considered in some detail the powers of the House of Lords has and a reformed second chamber should have in relation to delegated legislation and “constitutional” bills.²⁶⁹

²⁶⁸ John Parkinson, “The House of Lords: A Deliberative Democratic Defence”, *Political Quarterly*, July 2007, Vol 78, No 3, pp374-381

²⁶⁹ Gavin Phillipson, “The powers of a reformed second chamber”, *Public Law*, Spring 2003, pp32-40

The late (Denis) Lord Carter raised similar points about the House of Lords exercising the powers it already has in a *Political Quarterly* article in 2003. He argued that any reform of the House of Lords would have to take into account the conventions of the House of Lords, noting that “Half a dozen peers could bring the progress of business to a standstill by ignoring the conventions of the House but without contravening a single Standing Order”.²⁷⁰

2. Historic context

In his 2004 paper on “The Future of the Second Chamber”, Donald Shell developed four arguments that explained why, between 1911 and 1999, reform of the House of Lords was “so long delayed and introduced with such caution”:

- the House of Lords has not posed any serious threat to any government, though it has often been convenient for some party leaders to claim otherwise;
- in its essentially unreformed state it has had the capacity to make modest changes which have cumulatively altered it a great deal;
- attempts at major reform impose significant costs on the government – costs that might well seem disproportionate to the benefits such reform can be expected to bring; and
- the House of Lords has in practice been a very useful chamber, not least to the government of the day.

Having done that, he suggested that “there is no reason to suppose that change in the future will not take the same basic form as change in the past”, that is rather than the abolition of the House of Lords and the establishment of a new second chamber there would continue to be gradual and incremental change. He then outlined five principles – principles that bear a considerable resemblance to those outlined by Jack Straw in his speech to the Constitution Unit in October 2006 – that should be borne in mind as these changes were made:

- The second chamber must not threaten the primacy of the first;
- The second chamber must have some real formal powers;
- The second chamber must have sufficient legitimacy to be able to use the power it possesses;
- The second chamber should be composed so as to ensure that no single party has an overall majority, and so that it retains an independent element; and

²⁷⁰ Denis Carter, “The Powers and Conventions of the House of Lords”, *Political Quarterly*, Vol 74, No 3, July–September 2003, pp319-321

- Expertise and experience of a kind not readily found in the Commons should be mobilised into the service of Parliament.²⁷¹

Peter Dorey opened a paper on the various Labour Governments' attempts to reform the House of Lords with a quotation from Richard Crossman's diaries and a summary of the similarities between the difficulties encountered at each attempt:

On summer evenings and winter afternoons, when they have nothing else to do, people discuss how to reform the House of Lords. Schemes are taken out of cupboards and drawers and dusted off, speeches are composed, pamphlets written, letters sent to newspapers ... Occasionally legislation is introduced; it generally fails. The frenzy dies away until next time.
[Crossman Diaries]

If there is one sense in which New Labour shares a similarity to Old Labour, it derives from the party's uncertainty about how to reform the House of Lords. Although the Blair governments have gone considerably further than their predecessors by abolishing most of the hereditary peers, New Labour is no clearer or more agreed than Old Labour on what the composition of a non-hereditary House of Lords should be, how its composition should be determined and what its powers – if any – should be. In these respects, the tardiness of the transition to 'stage two' of New Labour's avowed two-stage programme of House of Lords reform should not, perhaps, be surprising.

He put the Labour Party's ambivalence about how – and even whether – to reform the House of Lords down to various factors. He said that the most notable were:

- "Labour's own reluctance to engage in a critical reflexivity over constitutional affairs";
- "a concomitant constitutional conservatism amongst many senior Labour politicians" – particularly once they have attained office;
- lack of agreement over what reforms ought to be enacted; and
- many Labour politicians considered reform neither politically important or electorally salient.²⁷²

Peter Dorey has also reviewed the Conservative Government's decision to create life peers.²⁷³

²⁷¹ Donald Shell, "The Future of the Second Chamber", *Parliamentary Affairs*, October 2004, Vol 57, No 4, pp852-866

²⁷² Peter Dorey, "1949, 1969, 1999: The Labour Party and House of Lords Reform", *Parliamentary Affairs*, October 2006, pp599-620

²⁷³ Peter, Dorey, *Change in order to Conserve: Explaining the Conservatives' 1957 decision to create Life Peers*, paper presented to the Parliament and Legislatures Group Annual Conference, July 2007

3. Prospects for further reform

Peter Dorey argued that the *House of Lords Act 1999* and the Royal Commission's consideration of options for further reform were open to two markedly different interpretations:

The first, more charitable, interpretation was that these initiatives illustrated the Blair government's unequivocal commitment to House of Lords reform and its determination to move on to 'stage two' once the various issues and options had been carefully considered by an all-party committee. The second, more sceptical – or realistic – interpretation was that the government (or, perhaps, Tony Blair in particular) hoped that the impetus for further reform would subsequently dissipate.²⁷⁴

In June 2007 Robert Hazell of the Constitution Unit published an agenda for constitutional reform. He recommended that the cross-party talks on Lords reform should continue. He suggested that there could be a role for a constitutional convention or citizens' assembly to advise on Lords reform. He warned that the Government should not attempt to undertake any reform of the House of Lords in isolation – he identified the links between Lords reform and electoral reform and devolution.²⁷⁵

²⁷⁴ Peter Dorey, "1949, 1969, 1999: The Labour Party and House of Lords Reform", *Parliamentary Affairs*, October 2006, p612

²⁷⁵ Robert Hazell, *Towards a New Constitutional Settlement – An Agenda for Gordon Brown's First 100 Days and Beyond*, June 2007, <http://www.ucl.ac.uk/constitution-unit/files/archive/Briefing%20v8%20final%2014%20june%2007.pdf>

Appendix 1 – Nominations made by the House of Lords Appointments Commission

On 26 April 2001, the Appointments Commission announced 15 nominations:

Victor Adebolwale	Sir Paul Condon	Lady Elspeth Howe
Richard Best	Professor Ilora Finlay	Sir Robert May
Amir Bhatia	Professor Susan Greenfield	Sir Claus Moser
Sir John Browne	Sir David Hannay	Sir Herman Ouseley
Professor Michael Chan	Valerie Howarth	Sir Stewart Sutherland ²⁷⁶

On 1 May 2004, the Appointments Commission announced seven nominations:

Professor Sir Alec Broers	Dr Frances D'Souza	Professor Lola Young ²⁷⁷
Ms Nicola Chapman	Professor Elaine Murphy	
Sir Ewen Cameron	Dr Diljit Ranan	

On 22 March 2005, the Appointments Commission announced two nominations:

Dame Rennie Fritchie	Sir David Ramsbotham ²⁷⁸
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On 22 July 2005, the Appointments Commission announced five nominations:

Dame Ruth Deech	Professor Sir Martin Rees	Jo Valentine ²⁷⁹
Michael Hastings	Adair Turner	

On 3 May 2006, the Appointments Commission announced seven nominations:

Karan Bilimoria	Geoffrey Dear	Kamlesh Patel ²⁸⁰
David Rowe-Beddoe	Colin Low	
Elizabeth Butler-Sloss	Molly Meacher	

On 15 February 2007 the Appointments Commission announced six nominations:

Paul Bew	Jean Coussins	John Krebs
Jane Campbell	Khalid Hameed	Andrew Mawson ²⁸¹

²⁷⁶ House of Lords Appointments Commission (HLAC) Press Release, *House of Lords Appointments Commission announces new peers*, 26 April 2001,

<http://www.houseoflordsappointmentscommission.gov.uk/press2.htm>

²⁷⁷ HLAC Press Release, *House of Lords Appointments Commission – New Non-Party Political Peers*, 1 May 2004, <http://www.houseoflordsappointmentscommission.gov.uk/news/2004/index.asp>

²⁷⁸ HLAC Press Release, *House of Lords Appointments Commission – New Non-Party-Political Peers*, 22 March 2005, <http://www.houseoflordsappointmentscommission.gov.uk/news/2005/index.asp>

²⁷⁹ HLAC Press Release, *House of Lords Appointments Commission – New Non-Party-Political Peers*, 22 July 2005, <http://www.houseoflordsappointmentscommission.gov.uk/news/2005/July2005.asp>

²⁸⁰ HLAC News Release, *House of Lords Appointments Commission - New Non-Party-Political Peers*, 4 May 2006, <http://www.houseoflordsappointmentscommission.gov.uk/news/may2006.aspx>

²⁸¹ HLAC News Release, *House of Lords Appointments Commission - New Non-Party-Political Peers*, 15 February 2007, http://www.houseoflordsappointmentscommission.gov.uk/news/150207_appointment.aspx

Appendix 2 – Hereditary peers sitting in the House of Lords

The excepted hereditary peers

1	Addington	
2	Allenby of Megiddo (V)	
3	Amphill*	
4	Arran (E)	
5	Astor (V)	
6	Astor of Hever	
7	Attlee (E)	
8	Avebury	
9	Baldwin of Bewdley (E)	
10	Bledisloe (V)	
11	Brabazon of Tara	
12	Bridgeman (V)	
13	Bridges	
14	Brookeborough (V)	
15	Brougham and Vaux *	
16	Caithness (E)	
17	Cathcart (E)	by-election winner, following death of Lord Mowbray and Stourton
18	Cholmondely (M)**	
19	Chorley	replaced Earl Carnarvon, before by-election procedures were put in place
20	Cobbold	replaced Lord Wharton, before by-election procedures were put in place
21	Colville of Culross (V)	
22	Colwyn*	
23	Courtown (E)	
24	Craigavon (V)	
25	Crathorne	
26	Darcy de Knayth	
27	De Mauley	by-election winner, following death of Lord Burnham
28	Denham	
29	Dundee (E)	
30	Eccles (V)	by-election winner, following death of Lord Aberdare
31	Elton*	
32	Erroll (E)	
33	Falkland (V)*	
34	Ferrers (E)	
35	Freyberg	
36	Geddes*	
37	Glasgow (E)	by-election winner, following death of Earl Russell
38	Glenarthur	
39	Glentoran	
40	Goschen (V)	
41	Grantchester	by-election, winner, following death of Lord Milner

42	Greenway	
43	Henley	
44	Home (E)	
45	Howe (E)	
46	Hylton	
47	Inglewood	
48	Lindsay (E)	
49	Listowel (E)	
50	Liverpool (E)	
51	Lucas	
52	Luke	
53	Lyell*	
54	Mancroft	
55	Mar (C)*	
56	Methuen*	
57	Monson	
58	Montagu of Beaulieu	
59	Montgomery of Alamein (V)	by election winner, following death of Baroness Strange
60	Montrose (D)	
61	Moran	
62	Moynihan	
63	Norfolk (D)***	succeeded father
64	Northbourne	
65	Northbrook	
66	Northesk (E)	
67	Onslow (E)	
68	Palmer	
69	Peel (E)	
70	Rea	
71	Reay*	
72	Roslyn (E)	
73	Rotherwick	
74	Saltoun of Abernethy (Ly)	
75	Sandwich (E)	
76	Selborne (E)	
77	Selsdon	
78	Shrewsbury (E)	
79	Simon (V)*	
80	Skelmersdale *	
81	Slim (V)	
82	St John of Bletso	
83	Strabolgi*	
84	Strathclyde	
85	Swinfen	
86	Tenby (V)	
87	Trefgarne	
88	Trenchard (V)	by-election winner, following death of Lord Vivian
89	Ullswater (V)*	by-election winner, following death of Viscount Oxfield
90	Walpole	

- 91 Waverley (V)
 92 Willoughby de Broke
 * office holder in the House of Lords
 ** Lord Great Chamberlain
 *** Earl Marshal

Hereditary peers awarded life peerages after the passing of the *House of Lords Act 1999*

Existing title	Title of life peerage	Date announced	Date of death
Earl of Snowdon	Lord Armstrong-Jones	2 Nov 1999	
Lord Carrington	Lord Carington of Upton	2 Nov 1999	
Lord Erroll of Hale	Lord Erroll of Kilmun	2 Nov 1999	14 Sept 2000
Lord Belstead	Lord Ganzoni	2 Nov 1999	3 Dec 2005
Viscount Cranbourne (now Marquess of Salisbury)	Lord Gascoyne-Cecil	2 Nov 1999	
Lord Windlesham	Lord Hennessy	2 Nov 1999	
Earl Jellicoe	Lord Jellicoe of Southampton	2 Nov 1999	22 Feb 2007
Lord Aldington	Lord Low	2 Nov 1999	7 Dec 2000
Earl of Longford	Lord Pakenham of Cowley	2 Nov 1999	3 Aug 2001
Lord Shepherd	Lord Shepherd of Spalding	2 Nov 1999	5 Apr 2001
Lord Acton	Lord Acton of Bridgnorth	31 Mar 2000	
Lord Grenfell	Lord Grenfell of Kilvey	31 Mar 2000	
Lord Berkeley	Lord Gueterbock	31 Mar 2000	
Viscount Chandos	Lord Lytton of Aldershot	31 Mar 2000	
Lord Redesdale	Lord Mitford	31 Mar 2000	
Lord Ponsonby of Shulbrede	Lord Ponsonby of Roehampton	31 Mar 2000	

Appendix 3 – Public Administration Select Committee: Propriety and Honours

On 14 November 2005 the Public Administration Select Committee (PASC) launched an inquiry into ethics and standards in public life. As part of this inquiry it intended to “look afresh at propriety issues in the award of honours”. Following allegations that loans were being made to political parties to circumvent the need to publish the names of donors to political parties, the Committee announced on 14 March 2006 that it would consider whether “the scrutiny of honours and peerages for political service was working”, and arranged evidence sessions for 28 March and 2 May 2006. However, on 21 March 2006, the Metropolitan Police announced that they were to conduct an inquiry into allegations that offences had been committed under the *Honours (Prevention of Abuses) Act 1925*.

Deputy Assistant Commissioner John Yates asked the Committee to postpone its inquiry because “many of the individuals that you wished to hear evidence from may be the very people that could be central to our criminal inquiry, either as witnesses or suspects”. In the light of advice PASC received from the police and Speaker’s Counsel, it decided to “have a short pause in our inquiry”.²⁸²

The PASC inquiry was actually put on hold until October 2007. The Committee announced in July 2007 that the inquiry was to be resumed.²⁸³ These developments followed the Crown Prosecution Service’s (CPS) announcement on 20 July 2007 that no-one would face charges over donations to the Labour Party in the cash for honours investigation; although it was not until 9 October 2007 that the CPS announced that no-one would face charges over donations to the Conservative Party in the ‘cash for honours’ investigation. (Further details of the “cash for honours” investigation are given in the Library Standard Note *Loans to Political Parties*.²⁸⁴)

After announcing the resumption of the inquiry, PASC confirmed that it would be taking evidence from Lord Stevenson of Coddendam, the Chairman of the House of Lords Appointment Commission (HLAC), and Lord Hurd of Westwell, a member of the Commission, on 11 October 2007.²⁸⁵

In the interim, PASC took evidence from members of the HLAC in its wider inquiry into ethics and standards in public life.²⁸⁶ In that session, PASC received a lot of information

²⁸² Public Administration Select Committee, *Inquiry into the Scrutiny of Political Honours*, 30 March 2006, HC 1020 2005-06; PASC Press Notice No 8 (2005-06), *Guarding the Guardians: PASC inquires into Ethical Regulators*, 14 November 2005; PASC Press Notice No 29 (2005-06), *PASC to probe scrutiny of political honours*, 14 March 2006

²⁸³ Public Administration Select Committee Press Notice No 47 (2006-07), *PASC statement on Propriety and Honours*, 24 July 2007;

²⁸⁴ House of Commons Library Standard Note SN/PC/3960, *Loans to political parties*, <http://www.parliament.uk/commons/lib/research/notes/snpc-03960.pdf>

²⁸⁵ Public Administration Select Committee Press Notice No 49 (2006-07), *PASC Inquiry into Propriety and Honours: Lessons Learned – Evidence from HoLAC*, 2 October 2007

²⁸⁶ Public Administration Select Committee, *Propriety and Honours – Corrected Evidence*, 16 May 2006, HC 1119-i 2005-06

from the Commission about how it worked. In addition, Lord Hurd of Westwell told PASC that he thought the House of Lords Appointments Commission “ought to be a statutory body”.²⁸⁷ PASC also took evidence from Deputy Assistant Commissioner Yates and his colleagues whilst the police investigation was underway. Although the evidence was taken in private, PASC said that it would be “in some form, with agreement, be published as part of the report”. It published “Interim Findings” in July 2006, including the evidence from the Metropolitan Police. It made a number of recommendations relating to political honours. It recommended that the HLAC’s “role, powers and independence should be defined in state as soon as possible”. It also called on the Commission to consult political parties and more widely on criteria that should be used in assessing propriety and how they should be interpreted.²⁸⁸

²⁸⁷ *Ibid*, Q70

²⁸⁸ Public Administration Select Committee, *Propriety and Honours: Interim Findings*, 13 July 2006, HC 1119 2005-06