House of Lords: conventions

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Author: Richard Kelly
Parliament and Constitution Centre

In its 2005 manifesto, the Labour Party outlined its plans (i) to establish a joint committee to review the conventions of the House of Lords; (ii) to limit the length of time bills spent in the Lords; and (iii) to allow a free vote on the composition of the second chamber. These intentions have been subsequently confirmed by ministers in the Department for Constitutional Affairs.

On 25 April 2006, the House of Lords agreed a motion on establishing the Joint Committee.

On 10 May 2006, the House of Commons debated a motion to concur with the Lords. The Commons motion also detailed the Members who would serve on the Committee. The motion was opposed but agreed to a deferred division on 17 May 2006.

The House of Lords agreed the names of the Lords to serve on the Committee on 22 May 2006.

This note outlines the background to the establishment of the Joint Committee and then reviews the conventions identified in the motion. It reviews the debates in both Houses on establishing the Joint Committee in the House of Lords.

The Joint Committee published a report on 25 May 2006, in which it commented on its task and issued a call for evidence.

The Joint Committee published its report on 3 November 2006 and the Government published its response on 13 December. Jack Straw indicated that both Houses would debate the report, and a debate has been scheduled for 16 January 2007 in the House of Lords.

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A. Introduction

1. House of Lords reform

Since the removal of the majority of the hereditary peers as a result of the *House of Lords Act 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 ended in failure, when the House of Commons rejected all its options for composition. The House of Lords reform bill that was announced in the 2003 Queen's Speech was never published.

In its 2005 manifesto, the Labour Party outlined its plans (i) to establish a joint committee to review the conventions of the House of Lords; (ii) to limit the length of time bills spent in the Lords; and (iii) to allow a free vote on the composition of the second chamber:

> 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 for 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 60 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.[1]

These intentions have been subsequently confirmed by ministers in the Department for Constitutional Affairs (DCA), in January and March 2006.[2]

Following the Government reshuffle in May 2006, responsibility for Lords reform was given to the new Leader of the House of Commons, Jack Straw. Just before the Government published its response to the Joint Committee's report, he set out, to the Lobby, a timetable for progress on Lords reform:

> Asked to indicate the envisaged timetable, Mr Straw said that the Government's response to the Joint Committee on Conventions, chaired by Lord Cunningham, was due before Christmas. It would be followed by a debate on it in the House of Lords where part of the outcome would be a Message to the House of Commons on the conclusion of the Upper House. MPs would then debate it, provisionally, during the first few weeks after the recess.
>
> The Leader mentioned that cross-party group was meeting on the issue of the future composition. He hoped that there could be a White Paper by the end of January or

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1 Labour Party, *Manifesto 2005*, p110

2 HC Deb 9 January 2006 c240W; HC Deb 28 March 2006 c871W

> early February, followed by a free vote on composition two or three weeks later, to enable time for it to be digested.
>
> 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.[3]

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".[4]

2. Powers and conventions of the House of Lords

(Denis) Lord Carter, a former Government Chief Whip in the House of Lords, wrote about the powers and conventions of the House of Lords in *Political Quarterly*. 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". He noted that:

> Before the departure of 90 per cent of the hereditary peers in 1999, the Lords operated on two powerful unwritten conventions: 'the government is entitled to have its business considered without unreasonable delay', and 'the elected chamber shall finally have its way'.

He considered that "the two conventions mentioned above have more or less held in the House since the removal of 90 per cent of the hereditary peers".[5]

3. The motion

On 25 April 2006, the House of Lords agreed:

> 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;

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3 Leader of Commons, Rt Hon Jack Straw MP, Press Briefing, 7 December, 3.45pm, http://www.commonsleader.gov.uk/output/page1814.asp

4 Patrick Hennessy, "The year of our Gord 2007", *Sunday Telegraph*, 31 December 2006

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

(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.[6]

The motion agreed in the House of Commons contained all these points but also gave the committee various powers and nominated the Members who are to serve on the Committee.

B. Conventions to be considered by the Committee

The Joint Committee was asked to consider four specific conventions, although it was "free to consider other conventions which it thinks fall within its terms of reference".[7]

The following notes on the conventions were prepared before the Committee reported.

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

The House of Lords Library Note on *The Salisbury Doctrine* provides a helpful summary of the convention and its origins:

> The Salisbury doctrine, as generally understood today, implies that the House of Lords should not reject at second reading Government Bills brought from the House of Commons for which the Government has a mandate from the nation. It has its origins in the doctrine of the mandate developed by the third Marquess of Salisbury, Prime Minister in 1885 and from 1886–1892 and 1895–1902, as part of his effort to perpetuate the influence of the House in an age of widening suffrage. Salisbury, a Conservative who sat in the Lords from 1868 until his death in 1903, developed a doctrine of the mandate over this period which argued that the will of the people and the views expressed by the House of Commons did not necessarily coincide, and that in consequence, the House of Lords had an obligation to reject, and hence refer back to the electorate, particularly contentious Bills, usually involving a revision of the constitutional settlement, which had been passed by the Commons.
>
> Since 1945, the Salisbury doctrine has been taken to apply to Bills passed by the Commons which the party forming the Government has foreshadowed in its General Election manifesto. It has been more particularly associated with an understanding between Viscount Addison, the Leader of the House of Lords, and Viscount Cranborne (the fifth Marquess of Salisbury from 1947), Leader of the Opposition in the Lords, during the Labour Government of 1945–51; and is sometimes called the Salisbury/Addison doctrine.[8]

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6 HL Deb 25 April 2006 cc74-95

7 HL Deb 25 April 2006 c74

8 House of Lords Library, Library Note LLN 2005/004, *The Salisbury Doctrine*, June 2005, http://www.parliament.uk/documents/upload/HLLSalisburyDoctrine.pdf

Neither the Liberals nor the Crossbenchers were party to the 1945 agreement.[9] Robert Rogers and Rhodri Walters described the "Salisbury convention" as "an understanding reached between the Conservative opposition in the House of Lords (led by the fifth Marquess of Salisbury) and the Labour government immediately after immediately after the Second World War in 1945". They commented further:

> … the Salisbury convention is perhaps more a code of behaviour for the Conservative Party when in opposition in the Lords than a convention of the House. Indeed it is a moot point whether, following the passage of the House of Lords Act 1999, the expulsion of the hereditary members and the ending of the overwhelming numerical advantage of the Conservative Party, the Salisbury convention as originally devised can have any continuing validity.[10]

Indeed, during the debate on Queen's Speech, in May 2005, Lord McNally, the leader of the Liberal Democrats in the House of Lords, questioned the current role of the convention:

> … I do not believe that a convention drawn up 60 years ago on relations between a wholly hereditary Conservative-dominated House and a Labour Government who had 48 per cent of the vote should apply in the same way to the position in which we find ourselves today.
>
> I hope that the Lord Chancellor will approach the issue in a constructive way. However, if the Government's aim is simply to clip the wings of this House, so that a Government who have already demonstrated hubris and impatience on any check to their powers check the powers of this House even further without proper reforms both down the corridor and in general governance, then Salisbury convention or no Salisbury convention, we will fight those proposals tooth and nail.[11]

There were further exchanges on the Salisbury convention in a debate[12] on the House of Lords Constitution Committee's report on the *Parliament and the Legislative Process*.[13] The subject had also been raised during the course of the debate on the Labour Peers' Group's report, in that debate, Lord McNally, commented:

> The Salisbury convention was designed to protect the non-Conservative government from being blocked by a built-in hereditary-based majority in the Lords. It was not designed to provide more power for what the late Lord Hailsham rightly warned was an elective dictatorship in another place against legitimate check and balance by this second Chamber.[14]

(B) conventions on secondary legislation

The House of Lords *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* includes the following comments on the conventions on the way in which the

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9 HL Deb 25 April 2006 cc74-75

10 Robert Rogers and Rhodri Walters, *How Parliament Works*, 5th edition, 2004, p222; see also Rodney Brazier, "Defending the hereditaries: the Salisbury convention", *Public Law*, Autumn 1998, p375

11 HL Deb 17 May 2005 cc20-21

12 HL Deb 6 June 2005 cc759-760

13 Constitution Committee, *Parliament and the Legislative Process*, 29 October 2004, HL 173 2003-04

14 HL Deb 26 January 2005 c1371

House of Lords deals with secondary legislation (the original footnotes are included at the end of the quotation):

> **General powers of the House over delegated legislation**
> 8.02 The Parliament Acts do not apply to delegated legislation. So delegated legislation rejected by the Lords cannot have effect even if the Commons have approved it. Neither House of Parliament has the power to amend delegated legislation. (1) The House of Lords has only occasionally rejected delegated legislation.(2) The House has resolved "That this House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration".(3) Delegated legislation may be debated in Grand Committee, but must return to the floor of the House if a formal decision is required.
>
> **Critical amendments and motions**
> 8.03 There are two ways in which Members of the House can table amendments or motions on a statutory instrument to express criticism without challenging the instrument directly.(4)
>
> 8.04 First, an amendment or motion may be moved regretting some aspect of a statutory instrument but in no way requiring the government to take action. This provides an opportunity for critical views to appear on the Order Paper and be voted upon which would otherwise simply be voiced in the debate. Such motions are invitations to the House to put on record a particular point of view. Even if carried, the motion or amendment has no practical effect: the House passes the instrument in any event.
>
> 8.05 Secondly, a motion or amendment may be moved calling on the government to take some specific action. Such motions have been used to invite the government to amend subordinate legislation, thereby avoiding the need to vote on the legislation itself. (5)
>
> 8.06 It is usual for such motions to be moved at the same time as the substantive motion on the legislation.[15]
>
> *Footnotes*
> (1) Except in the very small number of cases where the parent act specifically provides for such amendment, e.g. Census Act 1920.
> (2) The last two instances of the rejection of an affirmative instrument were 18 June 1968: Southern Rhodesia (United Nations Sanctions) Order 1968; and 22 February 2000: Greater London Authority (Election Expenses) Order 2000. A motion for an address praying against a negative instrument (Greater London Authority Elections Rules 2000) was agreed to on 22 February 2000.
> (3) LJ (1993–94) 683, HL Deb. 20 October 1994 cols 356–83.
> (4) Procedure 1st Rpt 1990–91.
> (5) e.g. 27 January 1998: Beef Bones Regulations 1997; 5 December 1995: Probation (Amendment) Rules 1995.

The cross-party group that brought forward the *Second Chamber of Parliament Bill* in the 2004-05 Session commented on the House of Lords' role and the conventions that covered its consideration of delegated legislation. They noted:

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[15] House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2005, paras 8.02-8.06, http://www.parliament.the-stationery-office.co.uk/pa/ld/ldcomp/compso.pdf

> The second area where there have been proposals for reform in is the Lords' power over secondary legislation. In contrast to primary legislation the second chamber has an absolute veto over these matters, in part because the use of secondary legislation was minimal when the 1911 [Parliament] Act was passed. In practice the chamber rarely uses the power it has, and only two pieces of secondary legislation have ever been vetoed (in 1968 and 2000). Consequently there have been proposals that the Lords' power would become more 'usable' if it was reduced to one of delay. The Royal Commission suggested a change to delaying power of up to three months, and the government endorsed this conclusion in 2001. However, other groups, including the Public Administration Committee, expressed concern that this would in practice neuter the Lords. We agree that this is a matter that should be treated with care. The fact that vetoes do not happen does not mean that the Lords' power is worthless – indeed it may simply indicate that government takes the chamber's views properly into account before statutory instruments are introduced. On occasion instruments are withdrawn by the government and redrafted after debate in the Lords without there having been an explicit rejection. Particularly given the chamber's expertise in this area … this seems a healthy state of affairs. Given these factors, and the lack of agreement amongst earlier groups, we are not inclined to recommend any change in the chamber's powers in this area.[16]

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

Lord Carter in the quotation above indicated that the convention that government business in the Lords should be considered in reasonable time was long-standing.

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 concluded, among other things, that "a reasonable time limit should be set for all bills to complete their passage in the Lords". It noted that the question of a time-limit was not new and that the 1968 White Paper on Lords Reform had suggested a time-limit of 60 days. The Labour Peers' Group considered that "60 parliamentary days … would be a good starting point for discussion".[17]

The Labour Party's 2005 General Election manifesto used a slightly different formulation of "reasonable time":

> … We will legislate to place reasonable limits on the time bills spend in the second chamber – no longer than 60 sitting days for most bills.[18]

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

The procedures for dealing with the exchange of amendments between the two Houses were examined by the House of Lords Procedure Committee in its *First Report* in session

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16 Kenneth Clarke et al, *Reforming the House of Lords – Breaking the Deadlock*, UCL Constitution Unit, January 2005, pp16-17

17 Labour Peers' Group, *Reform of the powers, procedures and conventions of the House of Lords*, July 2004, pp2, 3, 7

18 Labour Party, *Manifesto 2005*, p 103

2004-05. It examined the implications of the practice of the House of Commons of "packaging" Lords' amendments to bills:

> … Packaging is currently used only in the House of Commons, where a number of related amendments may be grouped together for the purposes of both debate and decision. (It differs from grouping in the Lords, where related amendments may be debated together, but the fate of individual amendments in the group is decided separately.)[19]

This practice caused difficulties in the Lords on the *Planning and Compulsory Purchase Bill* in May 2004, when the two Houses took differing views on the application of the double insistence rule. (The double insistence rule: if one House insists on an amendment to which the other has disagreed, and the other insists on its disagreement, and neither has offered alternatives, the bill is lost.) In the case of the *Planning and Compulsory Purchase Bill*:

> It appeared to the Lords' authorities that double insistence had been reached on an amendment and that the bill was therefore lost, whereas the Commons' intention was that the bill could be further considered since that amendment had been decided in the Commons as part of a "package" with another amendment to which an amendment in lieu had been offered. In the event this difference was resolved by means of an exceptional motion, moved by the Leader of the House of Lords, to provide for further consideration of the bill in spite of the apparent double insistence.[20]

Subsequently, the Clerks of the two Houses agreed a joint statement on the subject of double insistence:

> … The Clerks agreed that, if a Commons' message clearly identified amendments as a package, "the resultant message to the other House would not amount to a double insistence, whether or not the House receiving it chose to 'unpackage' the amendments for the purposes of debate". Thus the Lords would have the opportunity to consider the amendments in spite of a double insistence within the package. The Clerk of the Parliaments invited us to consider changes to the practice of the House to deal with Commons amendments which have been packaged. Before we could consider the statement, there was a further instance of packaging of amendments on the Hunting Bill, which raised this issue once again.
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> 7. In considering this subject, we had in mind that the House of Commons have been considering Lords' amendments in packages since at least 1997, and are unlikely to change their practice, whatever the decision of this House. There may also be potential advantages to the Lords in considering Commons' amendments in packages, in ensuring coherent and orderly debate by means of fewer, simpler motions. If properly used, packaging can be an aid to Parliamentary scrutiny.
>
> 8. However, there is a danger that the packaging of Lords' amendments in the House of Commons would reduce the Lords' legitimate power to ask the Commons to think again, if unrelated amendments were packaged together by the Commons in order to be able to reject them without offering any substantive alternative.

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[19] Procedure Committee [Lords], *First Report*, 1 March 2005, HL 48 2004-05, para 4

[20] *Ibid*, para 5

9. **We therefore recommend that packages from the Commons should be considered by the House only if they are confined to single or closely related issues, not disparate issues joined together simply for reasons of convenience. We further recommend that, where packages from the Commons are confined to single or closely related issues, the House should in future be willing to consider amendments in packages and, where this is done, the double insistence rule should apply to the whole package and not to individual amendments within it**.[21]

C. Debates on establishing the Joint Committee

1. Lords: appointment of the Committee

Baroness Amos, the Leader of the House of Lords, introduced the debate on establishing the committee, on 25 April 2006, by describing the motion.[22]

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.[23]

He went on to argue that as well as the problem of determining the practicality of codifying the conventions, the Committee should also consdier the desirability of doing so. Furthermore it would "have to try to decide what it thinks the current conventions are".[24] He identified various difficulties: there is no unanimity about the applicability of the Salisbury/Addision convention; defining reasonable, in relation to the length of time the House of Lords has to consider Government bills (he noted the 60-day limit mentioned in the manifesto and reported that 13 bills had taken longer than that – he recited examples).[25]

He also reported that some of his colleagues were concerned about the short period of time that committee was being allowed to report.[26] However, he pointed out that "the Motion does not rule out a provisional or interim report in July".[27]

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21 *Ibid*, paras 6-9; the full text of the Clerks' joint statement was reported to the House of Lords by Baroness Amos [HL Deb 12 July 2004 WS19-WS21]

22 HL Deb 25 April 2006 c74

23 HL Deb 25 April 2006 c75

24 *Ibid*

25 HL Deb 25 April 2006 c76

26 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]

27 HL Deb 25 April 2006 c78

Lord McNally said that he was initially reluctant for the Liberal Democrats to participate in the Committee. However, Lord Falconer's review of the composition of the House of Lords swayed him:

> I have been willing to go along with this group because parallel with it is an initiative by the Lord Chancellor that will look at reform and composition, and I do not think that you can separate composition and powers in the way the Government are trying to do.

He added:

> The House of Lords, by one of those paradoxes of history, now has a higher reputation than perhaps at any time in the recent past, partly because it uses its limited powers prudently but constructively, and I am determined that it should still retain the right to say no.[28]

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". He also discussed the conventions and highlighted problems: on Salisbury/Addison, he argued that "if there is to be any further codification, it would be desirable to identify more clearly what constitutes the core programme of the Government and to indicate the manifesto Bills in that programme"; and on "reasonable time", he argued that "We must not prejudice our capacity to improve legislation to a large degree on lines which the Government approve". He was surprised that the issues of delegated legislation and procedures for dealing with amendments between the two Houses were included in the Committee's terms of reference as he thought these subjects were already documented.[29]

A number of peers raised concerns about the wider context of Lords reform. Lord Waddington argued:

> Surely we can all agree that the way this place is composed and the powers it is given must have a great bearing on the relevance and appropriateness of our conventions. Already there are differences of view and debate about the relevance of the Salisbury convention, now the House is no longer in any way like the House that existed when the convention came into existence. When the composition of this place is changed again, it will be appropriate to examine the Salisbury convention—not now, when the future is quite uncertain. We are wasting our time debating this matter today.[30]

Although he received support,[31] Lord Lea of Crondall opposed him, arguing that "this Motion puts the horse before the cart and not the other way round".[32]

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28 HL Deb 25 April 2006 cc78-79
29 HL Deb 25 April 2006 c80
30 HL Deb 25 April 2006 c82
31 e.g. Lord Campbell of Alloway [HL Deb 25 April 2006 c90]
32 HL Deb 25 April 2006 c83

Lord Maclennan of Rogart suggested that such a "sensitive and important matter of constitutional reform" should not have been approached in an adversarial manner.[33]

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.[34] However, 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:

> 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.[35]

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".[36]

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.[37]

2. Commons: appointment and membership of the Committee

On 10 May 2006, the House of Commons debated a motion to concur with in 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, the Leader of the House, 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.[38]

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

> We have debated the timetable and I hope that members of the Committee will be able to complete their work by the 21 July deadline, but if that is not possible the

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33 HL Deb 25 April 2006 cc89-90
34 HL Deb 25 April 2006 c91
35 HL Deb 25 April 2006 c92
36 *Ibid*
37 HL Deb 25 April 2006 c93
38 HC Deb 10 May 2006 c445

> Chair of the Committee can come to see me and I shall do my best to respond positively to the Committee's requests. I cannot say more than that.[39]

Broader constitutional questions were also raised, particularly about the primacy of the House of Commons. Richard Shepherd argued that if the House of Lords was legitimised by elections it would "be what it was historically: co-equal—the two parts of Parliament".[40]

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.[41]

But 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 commeitment to "seek agreement on codifying the key conventions of the Lords":

> 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.[42]

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?[43]

Because some Memebrs 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.[44]

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39 HC Deb 10 May 2006 c473
40 HC Deb 10 May 2006 c436
41 HC Deb 10 May 2006 c442
42 HC Deb 10 May 2006 c451
43 HC Deb 10 May 2006 c455
44 HC Deb 17 May 2006 c1070; c1111

3. Lords: membership of the Committee

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.[45] Following some further debate on the way in which the Committee was established and its timetable, Lord Peyton withdrew his amendment.[46]

The House then agreed that the Members proposed should serve on the Committee, by 184 Contents to 31 Not Contents.[47]

4. Members of the Joint Committee

Commons	**Lords**
Russell Brown	Viscount Bledisloe
Wayne David	Lord Carter
George Howarth	Lord Cunningham of Felling
Simon Hughes	Lord Elton
Sarah McCarthy-Fry	Lord Fraser of Carmyllie
Andrew Miller	Lord Higgins
Sir Malcolm Rifkind	Lord McNally
John Spellar	Baroness Symons of Vernham Dean
Gisela Stuart	Lord Tomlinson
Andrew Tyrie	Lord Tyler
Sir Nicholas Winterton	Lord Wright of Richmond

D. First Special Report: the Committee's task and call for evidence

1. Report

The Joint Committee held its first meeting on 23 May 2006 and agreed a special report, which was published on 25 May 2006.

The Committee considered that its deadline of 21 July 2006 "will not allow us to do justice to our remit". It invited both Houses to extend its deadline until the end of the Session.[48]

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45 HL Deb 22 May 2006 cc582-583
46 HL Deb 22 May 2006 c594
47 HL Deb 22 May 2006 cc594-596
48 Joint Committee on Conventions, *First Special Report*, 25 May 2006, HC 1151 2005-06, para 3

It invited written evidence by 20 June 2006 and set out "some particular questions which everyone submitting evidence is invited to address".[49] 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.[50]

2. The Committee's deadline

At Business Questions on 8 June 2006, Jack Straw confirmed that he would bring forward an order to extend the Committee's deadline.[51]

On 20 June 2006, the House of Lords agreed to change the deadline for the Joint Committee to report from 24 July 2006 to "the end of this Session of Parliament".[52] Its decision was informed to the House of Commons, which concurred with the amended deadline on 4 July 2006.[53]

E. The Committee's hearings

The Joint Committee has taken oral evidence on four occasions:

- 13 June 2006 – from the Labour Party;
- 20 June 2006 – from the Conservative Party and the Convenor of the Crossbench peers;
- 27 June 2006 – from the Liberal Democrats;
- 4 July 2006 – from the Clerk of the Parliaments and the Clerk of the House of Commons;
- 18 July 2006 – from the Professor Lord Norton, Professor Anthony Bradley and Dr Meg Russell.

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49 *Ibid*, para 4
50 *Ibid*, paras 5-13
51 HC Deb 8 June 2006 c408
52 HL Deb 20 June 2006 c633
53 HC Deb 4 July 2006 c788

Transcripts of these evidence sessions are available on the Joint Committee's website.[54]

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

1. The Committee's Report

The Joint Committee published its report on 3 November 2006.[55]

It reported that as well as considering the four issues referred to it, it also 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:

- 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

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54 http://www.parliament.uk/parliamentary_committees/joint_committee_on_conventions.cfm

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

> 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.[56]

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 Commons. The relationship and conventions identified by the Joint Committee therefore should apply to any differently composed chamber.[57]

In its response the Government accepted the Joint Committee's analysis and recommendations and conclusions:

> We accept the Joint Committee's analysis of the effect of all the conventions, and the Joint Committee's recommendations and conclusions. Its report accurately defines the current relationship between the Lords and the Commons.[58]

The *House Magazine* reported Jack Straw's comments on the publications of the Government's response:

> 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.[59]

3. Debates on the Report

On 7 December 2006, at the Lobby Briefing following Business Questions, Mr Straw said that there would be a debate on the report in both Houses:

> [The Government's response to the Joint Committee's report] would be followed by a debate on it in the House of Lords where part of the outcome would be a Message to

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56 Joint Committee on Conventions, *Conventions of the UK Parliament*, 3 November 2006, HC 1212-I 2005-06, Summary, p4

57 HC Deb 13 December 2006 c92WS

58 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

59 "'No change in Lords powers' – Straw", *House Magazine*, 18 December 2006, p10

> the House of Commons on the conclusion of the Upper House. MPs would then debate it, provisionally, during the first few weeks after the recess.[60]

The debate in the House of Lords is expected to take place on 16 January 2007.

G. Other developments

1. Lord Falconer's committee on Lords reform

During debates on the establishment of the Joint Committee on Conventions, Lord McNally mentioned that Lord Falconer had made proposals to consider reform and composition of the Lords whilst the Joint Committee was undertaking its inquiry. But as a result of the Government reshuffle, on 6 May 2006, Jack Straw assumed responsibility for Lords reform from Lord Falconer.[61]

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.[62]

Peter Riddell and Philip Webster, in *The Times*, reported that Jack Straw "has put on hold the talks with other parties started by Lord Falconer". Instead, he would talk to "key individuals".[63]

However, at Business Questions on 8 June 2006, Jack Straw told the House that he would hold informal consultations on Lords reform:

> I will hold informal consultations with the other parties, Cross Benchers and bishops about the formula that would be appropriate. In view of that, I am not sure whether I will be able to make a statement to the House before we rise, but I will think about it.[64]

Speaking at the Lobby briefing, on the afternoon, 8 June 2006, he provided a little more detail of the process:

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60 Leader of Commons, Rt Hon Jack Straw MP, Press Briefing, 7 December, 3.45pm, http://www.commonsleader.gov.uk/output/page1814.asp

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

62 HL Deb 22 May 2006 c585

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

64 HC Deb 8 June 2006 c408

> 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.[65]

Then at Questions to the Leader of the House, 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.[66]

2. Future developments

In a speech to the Hansard Society, on *The Future for Parliament*, Jack Straw, commented briefly on the work of the Joint Committee but also 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.

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

[66] HC Deb 12 June 2006 c529

> 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.[67]

He also gave the University College of London Constitution Unit's Annual Lecture, on 24 October 2006, in which he discussed Lords reform. This lecture and other developments on House of Lords reform are discussed in the Library Standard Note, *House of Lords – continuing debate*.[68]

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67 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

68 House of Commons Library Standard Note SN/PC/3895, *House of Lords –continuing debate*