House of Lords Reform: the 2008 White Paper and developments to April 2010

Standard Note: SN/PC/05135

Last updated: 11 May 2010

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In July 2008 the Government published *An Elected Second Chamber: Further reform of the House of Lords.* The White Paper was the latest in a series of proposals for reform that have been published by the Government since the removal of the majority of the hereditary peers in 1999. The Government had previously published a white paper on House of Lords reform in February 2007. Free votes were held in both Houses of Parliament in March 2007 on the composition of the House of Lords. The House of Lords voted for a fully appointed second chamber, and the House of Commons voted in favour of both an 80% elected and 100% elected chamber.

The 2008 White Paper was based on the how a second chamber with the compositions preferred by the House of Commons might be constituted. The proposals in the White Paper were the result of cross-party talks, and where there were differences between the parties, these are set out in the White Paper. The Secretary of State for Justice and Lord Chancellor Jack Straw stated in the Foreword to the White Paper that the paper was intended to generate discussion and inform debate rather than representing a final blueprint for reform. He said that proposals for reform would have to be included in a general election manifesto, to ensure that the electorate ultimately decided the form and role of the second chamber.

In June 2009 the Government announced that they would be "moving forward" with House of Lords reform. They would first legislate to remove the remaining 92 hereditary peers, and then publish a draft bill "for a smaller and democratically constituted second chamber".

This note sets out a brief history of reform of the House of Lords before summarising the proposals made in the 2008 White Paper and the measures on Lords reform included in the *Constitutional Reform and Governance Bill 2008-09* introduced in the Commons in July 2009. The Bill as introduced allowed for the resignation, suspension and expulsion of peers, and for the ending of by-elections to replace hereditary peers. However, these clauses were all removed from the Bill during the 'wash-up' period before the May 2010 General Election.

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1 Introduction

Jack Straw announced the publication of the White Paper, *An Elected Second Chamber: Further reform of the House of Lords* in an oral statement on 14 July 2008. He explained that the White Paper was the outcome of cross-party talks, which had proceeded on the basis of the votes of the House on 7 March 2007. In these votes, the House of Commons had supported the principle of having a bicameral legislature. It had rejected Jack Straw's proposal that the second chamber should be 50% elected and 50% appointed but had supported two options: 80% elected and 100% elected.

On 14 July 2008 Jack Straw stated that:

> The White Paper sets out how a wholly or mainly elected second Chamber might be created within a bicameral legislature in which the House of Commons retains primacy. The White Paper reflects the considerable consensus reached in the cross-party talks. Inevitably, we did not reach agreement on all issues. In some instances, those taking part have asked that the White Paper record their difference of view, which of course it does.
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> As I indicated to the House in my statement on 19 July last, our intention is that the product of the cross-party talks would be the basis of a
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> "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 manifestos".—[*Official Report*, 19 July 2007; Vol. 463, c. 450.]
>
> It has therefore never been the intention to legislate in this Parliament—as I said last year. The White Paper represents a significant step on the road to reform, and is intended to generate further debate and consideration rather than being a blueprint for final reform.[1]

In June 2009 it was announced that provisions would be included in a *Constitutional Renewal Bill,* to remove the 92 hereditary peers who have remained in the House of Lords since the majority of hereditaries were expelled in 1999.

The *Constitutional Reform and Governance Bill 2008-09* was introduced in July 2009 and was carried over into the 2009-10 Session.[2] Along with clauses to end the by-elections for hereditary peers the Bill as introduced also included provisions to allow for suspension, expulsion and resignation from the House of Lords. The clauses in the *Constitutional Reform and Governance Bill* on Lords reform were removed from the Bill during the 'wash-up' period at the end of the 2005-10 Parliament.

The Government had also announced that they would publish a draft Bill to put into effect proposals for a "smaller and democratically constituted second chamber".[3] However, in the event, no such draft Bill was published before Parliament was dissolved in April 2010 before the May General Election.

The current membership of the House of Lords is set out on the Parliamentary website.[4]

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1 HC Deb 14 July 2008 c21

2 For more information on the Bill as introduced see the Library Research Paper09/73 *Constitutional Reform and Governance Bill 2008-09*

3 HM Government, *Building Britain's Future,* Cm 7654, June 2009, p29

4 See http://www.parliament.uk/mpslordsandoffices/mps_and_lords/analysis_by_composition.cfm

2 House of Lords reform 1999-2009 – in brief

The 1997 Labour Party manifesto had included a commitment to remove the hereditary peers from the House of Lords, as the first stage in a process of reform to make the House of Lords "more democratic and representative". The *House of Lords Act 1999* provided for the removal of all but 92 hereditary peers from the House of Lords.

The Government established the Royal Commission on Reform of the House of Lords (the Wakeham Commission) in January 1999. It reported in January 2000, favouring a "significant minority" of members of the reformed second chamber to be elected. It made a total of 132 recommendations.[5]

In May 2000 the non-statutory House of Lords Appointments Commission was established to nominate cross-bench members and vet recommendations put forward by political parties for propriety. For more information about the role of the House of Lords Appointments Commission see the Library Standard Note SN/PC/2855, *House of Lords Appointments Commission.*

The 2001 Labour election manifesto had stated that the Government would complete the second stage of House of Lords reform by implementing the conclusions of the Royal Commission on the Reform of the House of Lords.

In November 2001 the Government published a White Paper, *The House of Lords: Completing the Reform* which proposed the removal of the remaining hereditary peers, and a majority appointed House of Lords.[6]

In February 2002 the Public Administration Select Committee published a report on House of Lords reform, in which it made proposals for the role of the reformed House and indicated how its proposals should be implemented.[7] They suggested that 60 per cent of the members of the second chamber should be elected, with 20 per cent appointed by parties and 20 per cent independent of any party. In addition, the second chamber should be substantially smaller than the unreformed House.

A Joint Committee on House of Lords Reform was established in May 2002, in the words of the then Leader of the House, Robin Cook, "in the hope we can forge the broadest possible parliamentary consensus on the way forward". The Committee published two reports. The first considered the roles, conventions and powers of the current House of Lords and recommended that a number of options on composition should be voted on in both Houses.[8] In the series of votes which then took place in February 2003, the Commons did not vote in favour of any option put before them. The Lords, meanwhile, voted in favour only of a fully-appointed second chamber.

The Joint Committee published a further report in May 2003 in which it made a case for its work to continue, investigating and reporting on specific issues.[9] In a statement coinciding with the publication of the report, nine members of the Joint Committee indicated that they believed the Joint Committee could not continue to meet "without a fresh mandate based on

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

6 *The House of Lords: Completing the Reform,* Cm 5291

7 Public Administration Select Committee, *The Second Chamber: Continuing the reform,* 14 February 2002, HC 494 2001-02

8 Joint Committee on House of Lords Reform, *House of Lords Reform: First Report,* HL 17 2002-03

9 Joint Committee on House of Lords Reform, *House of Lords Reform: Second Report,* HC 97 2002-03

an indication by the Government of its preferred route to achieve a 'more representative and democratic' House of Lords, and subsequent debate in Parliament". The Government response stated that "For the time being, the Government will concentrate on making the House of Lords work as effectively as possible in the fulfilment of its important role".[10]

In September 2003, the Government issued a consultation paper on removing the remaining hereditary peers and establishing a statutory House of Lords Appointments Commission.[11] A Bill was announced to bring these proposals into effect in the 2003 Queen's Speech. However, the Bill was never published.

Reform of the House of Lords came to public attention once more in March 2006 when the Metropolitan Police announced that they were to conduct an inquiry into allegations made under the *Honours (Prevention of Abuses) Act 1925.* The Public Administration Select Committee had, just weeks earlier, launched an inquiry into 'Propriety and Honours'. Elements of the PASC inquiry were postponed. However, in May 2006 the Committee took evidence from members of the House of Lords Appointments Commission, and they published an 'interim findings' report in July. Their final report, *Propriety and Peerages,* was not published until December 2007. The Committee recommended that there should be an interim House of Lords reform Bill to establish a statutory appointments commission whose advice would no longer be 'advisory', and that an 'exit route' (both for voluntary retirement and enforced removal) from the House of Lords should be introduced. No charges were brought in the so called 'cash for honours' case.

In the meantime, in spring 2006 the Government established a Joint Committee of both Houses on Conventions, 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.

The Joint Committee on Conventions published its report *Conventions of the UK Parliament* in November 2006.[12]

The Queen's Speech at the opening of the 2006-07 Session included a commitment from the Government to "work to build a consensus on reform of the House of Lords and bring forward proposals". In February 2007, the White Paper, *The House of Lords: Reform* – was published. The White Paper, which presented both principles and options for the next stage

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10 Joint Committee on House of Lords Reform, *House of Lords Reform: Government reply to the Committee's Second Report,* HL 155, 2002-03

11 Department for Constitutional Affairs, *Constitutional Reform: Next steps for the House of Lords,* CP 14/03

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

of reform, is fully summarised in the Library Standard Note SN/PC/4255 *House of Lords Reform: 2007 White Paper.*

The 2007 White Paper was debated by the House of Commons on 6 and 7 March 2007. The principle of having a bicameral legislature was supported by the House of Commons. It rejected Jack Straw's proposal that the second chamber should be 50% elected and 50% appointed but supported two options:

- 80% elected, 20% appointed by 305 votes to 267; and
- 100% elected by 337 votes to 224.

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.

The House of Lords held a two-day debate on the White Paper on a "take note" motion on 12 and 13 March 2007, and the House voted for the options for composition on 14 March. The House of Lords voted in favour of a fully appointed second chamber and rejected every other option.

In the introduction to the 2008 White Paper, the Government explained how they had proceeded since the votes had taken place:

> Given the difference of view between the two chambers, the Government said that it would look at how best to deliver a mainly or wholly elected second chamber in accordance with the wishes of the House of Commons, which is the primary chamber in the UK legislature.
>
> Since the free votes, the Justice Secretary and Lord Chancellor has continued to chair the cross-party talks that led to the February 2007 White Paper. The continuing talks have considered what giving effect to the votes of the House of Commons for a wholly or mainly elected second chamber might mean in practice. The Cross-Party Group has considered the respective roles of the two Houses, the powers that a reformed second chamber might have, electoral systems, how an appointed element might operate, and the transitional arrangements. The Cross-Party Group consists of members of the front benches of the political parties in both Houses, the Lords Spiritual and the Crossbenchers… The Convenor of the Crossbench Peers expressed concern in the talks that the basis on which they were proceeding ignored the outcome of the free votes in the House of Lords. The Convenor continues to believe that this is unacceptable and that therefore any use of the term 'consensus' is inappropriate.[13]

The 2008 White Paper set out the Government's proposals for a reformed second chamber, and reflects the outcomes of the cross-party talks. The White Paper indicates the areas where the Cross-party Group did not reach a consensus.

The House of Lords Library has published a detailed chronology, *House of Lords Reform Since 1997: A Chronology (updated March 2010)*.

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[13] Ministry of Justice, *An Elected Second Chamber: Further Reform to the House of Lords,* Cm 7438, July 2008, paras 1.5-1.6

3 The 2008 White Paper, *An Elected Second Chamber: Further reform of the House of Lords*

3.1 Introduction: role and composition

The White Paper argued that the most significant reform to the House of Lords would be in its composition. This should "increase the extent to which the second chamber represents the UK as a whole", giving the chamber "more legitimacy, making Parliament more accountable to the people it serves". But any consequent changes to the way in which the role of the House of Lords changed "would take place within the context of the primacy of the House of Commons".[14] The Government stated:

> The reformed second chamber should be confident in challenging both the executive and the House of Commons. The second chamber should be able to make the government pause and reconsider. Ultimately, however, the government should be able to get its business through the legislature, through effective resolution of disagreements between the two Houses and, if necessary in the most exceptional cases, by using the Parliament Acts. This ensures the primacy of the House of Commons and means that, ultimately, any gridlock between the two Houses can be resolved.[15]

The White Paper sought a second chamber that complemented the House of Commons in performing its role of "scrutinising legislation, holding the executive to account and investigative work". It argued that "complementarity" would be affected by the way the work of the two Houses was organised and that it would "also be about its composition". It continued:

> There is a need for a different basis for membership from that of the House of Commons, bringing different perspectives to bear on relevant parliamentary processes. This can be achieved through implementing a number of key principles, within the context of the democratisation of the House.
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> **The representative basis for elected members of the reformed second chamber should be different from that for members of the House of Commons…**
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> **Members of the reformed second chamber should be able to bring independence of their judgement to their work…**
>
> **Long tenure…**
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> **The reformed second chamber should take account of the prevailing political view amongst the electorate, but also provide opportunities for independent and minority views to be represented…**[16]

3.2 Increased legitimacy

The White Paper concluded that "There is widespread consensus that elected members of the second chamber should serve a single, non-renewable term of 12-15 years".[17] The Government proposed that elections to the second chamber should be staggered, with a third of members elected at each election. The poll would take place at the same time as general elections (unless a general election had been held in the previous three years). The

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14 Ministry of Justice, *An Elected Second Chamber: Further reform of the House of Lords,* July 2008, Cm 7438, para 1.5

15 *Ibid,* para 1.7

16 *Ibid,* paras 3.2-3.6

17 *Ibid,* para 4.11

Liberal Democrats proposed that second chamber elections should take place at the same time as those for the devolved legislature and assemblies, i.e. every four years.

The Government proposed that constituencies should be large multi-member constituencies, returning more than one member at each round of elections.[18]

The Government argued for a smaller second chamber but sought views on the size of the chamber. The Conservative Party considered that there was "a strong case for a second chamber of no more than 250-300 members".[19]

The White Paper considered the effect of various voting systems. Indirect elections were considered but "there was strong consensus in the Cross-Party Group for, and the Government proposes that there should be, direct elections to the second chamber".[20]

The White Paper reviewed the outcomes of "four voting systems options [which] were modelled for elections to the second chamber". The Government believed that further consideration should be given to the following systems:

First Past the Post
Alternative Vote
Single Transferable Vote; and
An open or semi-open list system.

It said that it would welcome views. It also sought views on the arrangements for filling vacancies that arose.[21]

3.3 The powers of the Second Chamber

The Government stated its view that:

> The current powers of the second chamber, the Parliament Acts and the conventions that underpin them have worked well. Given its electoral mandate, a reformed chamber is likely to be more assertive. The Government welcomes this. Increased assertiveness on the part of the second chamber is compatible with the continued primacy of the House of Commons, which does not rest solely or mainly on the fact that the House of Commons is an elected chamber whilst the House of Lords is not. (One aspect of the primacy of the House of Commons is the operation of the 1911 and 1949 Parliament Acts, which the Government does not intend to change.) There is no persuasive case for reducing the powers of a reformed second chamber.[22]

3.4 An appointed element?

The Government believed that there was a case for maintaining an appointed element in a reformed second chamber. It argued that:

> … any appointed element in a reformed second chamber would be an effective way of securing the continuation of a number of independent members. The presence of a significant minority of independent members would both distinguish the second

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18 *Ibid*, paras 4.11-4.25; the Liberal Democrats proposed that the elections should take place at the same time as those for the devolved legislature and assembly. The Conservative Party accepted larger constituencies but argued that constituencies should "reflect traditional city and county boundaries to which people have loyalty".

19 *Ibid*, paras 4.26-4.30

20 *Ibid*, paras 4.31-4.41

21 *Ibid*, paras 4.42-4.87

22 *Ibid,* para 5.1

> chamber clearly from the House of Commons and complement the work of the Commons by providing non-partisan viewpoints in the legislative revision process. The size of any appointed element should be at the level of the 20% voted for by the House of Commons in March 2007.[23]

The Government's view was that, subject to the result of views on whether there should be provision for a government to appoint individuals specifically to become a Government Minister, there should be no party-political appointments to the second chamber. This should not bar those with or who had had party-political affiliations from being considered for appointment.

The Government considered that, if the appointed element remained, there should continue to be an Appointments Commission. The Government set out both principles for appointment and the focus of the work of any Appointments Commission:

> If there is to be an appointed element in a reformed second chamber, the Government proposes that the key focus in assessing potential appointees should be their ability, willingness and commitment to take part in the full range of the work of the chamber. …
>
> The Government proposes that an Appointments Commission for a reformed second chamber should not have a general remit to ensure that aspects of society such as sport or the arts were represented, with the possible exception of faith …
>
> The Government proposes that any appointed members of a reformed second chamber should take part fully in the work of the chamber, in general terms devoting the same amount of time to this work as elected members.[24]

It argued that if it was needed, the Appointments Commission should be a statutory body, accountable to the Prime Minister. The published criteria for appointments "would need to be devised by the Commission itself and approved by Parliament". Like elected members, appointees would serve a term of three electoral cycles, with one-third of appointees replaced at each election. Arrangements should be put in place to replace appointed members who leave before their term of office is completed. The Commission would recommend appointees but the appointment would be made by the Monarch on the advice of ministers.[25]

The Government said that it was "clear that if a reformed second chamber is wholly elected, there should be no seats for Church of England Bishops or any other group". However, if the reformed second chamber did contain an appointed element, additional seats would be reserved for Church of England bishops. In line with a reduction in the size of the House, the number of seats for bishops would be reduced.[26]

The Government argued that the Appointments Commission should encourage applications from leaders of all churches and faith communities, and sought views on whether the Commission "should be given a specific remit to provide for representation of other churches and faith communities in making its appointments".[27]

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23 *Ibid*, para 6.15
24 *Ibid*, paras 6.26-6.28
25 *Ibid*, paras 6.29-6.41
26 *Ibid*, paras 6.48-6.52; the Liberal Democrats did not think that any seats should be reserved for Church of England bishops in a reformed second chamber.
27 *Ibid*, paras 6.53-6.54

When the Supreme Court starts work in 2009, Justices of the Supreme Court will replace Law Lords (initially Law Lords will become Justices of the Supreme Court). Justices of the Supreme Court who are not former Law Lords would not be members of a reformed second chamber.[28]

The Government proposed that any appointments commission should have seven members; some should have experience of the House of Lords. However, none should come from the House of Commons. Commissioners would be ineligible for appointment to the second chamber for five years after ceasing to be a commissioner. Commissioners would be appointed according to Nolan principles and would be recruited on a non-party political basis. The Government proposed that commissioners should serve a single non-renewable ten year term but that there should be provision for the replacement of commissioners who leave before the end of the ten-year period. The work of a commissioner would be undertaken on a part-time basis – remuneration would be similar to current arrangements.[29]

3.5 Other issues

In this section the Government addressed a number of other issues including restrictions on members of the Lords. In summary, the proposals included:

- that membership of the reformed second chamber should no longer carry with it a peerage, nor should it be associated with the award of any other honour;[30]
- the minimum age for membership would be 18 and there would be no maximum limit;[31]
- in the absence of any other changes to nationality requirements for membership of the legislature, British citizens and qualifying citizens of the Commonwealth (including citizens of British Overseas Territories) and citizens of the Republic or Ireland would be eligible for membership of the reformed second chamber;[32]
- those subject to a bankruptcy restriction order would be excluded from membership of the second chamber;[33] further consideration should be given as to whether people in particular public professions, holding certain public offices or who are members of specific public bodies would be excluded from a reformed second chamber; and similar provisions should exist as those for the Commons in relation to criminal convictions and detentions for reasons of mental health;[34]
- the creation of a reformed second chamber would include provision disqualifying from membership anyone who is not resident in the UK for tax purposes;[35]
- those who have served as elected members of the second chamber should not be eligible to be appointed to the chamber; and those who have served as appointed members would not be eligible to stand for election;[36]

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28 *Ibid*, paras 6.55-6.59
29 *Ibid*, paras 6.60-6.73
30 *Ibid,* para 7.7
31 *Ibid,* para 7.9
32 *Ibid,* para 7.11
33 *Ibid,* para 7.12
34 *Ibid,* para 7.13
35 *Ibid,* para 7.16
36 *Ibid,* para 7.17

- there should be provision for members of the second chamber to resign, for any vacancy to be filled,[37] and in the case of major illness, a leave of absence from the second chamber could be sought;[38]

- members of a reformed second chamber in the UK should receive a taxable salary;[39]

- it would not be possible to be a member of the second chamber and the House of Commons simultaneously,[40] and there should be a five year gap between leaving the second chamber and being eligible for the House of Commons (the Conservatives believed that rather than a 'cooling off period', former members of the second chamber should remain eligible for membership of the House of Commons).[41]

The White Paper also proposed that in the run-up to the creation of a reformed second chamber, the House of Lords should give further consideration to the accountability arrangements that would apply in the new chamber.[42] Provisions for recall ballots were also discussed.[43]

3.6 The transition

The White Paper sets out three options in relation to the transition to a fully reformed second chamber:

> One is to allow all life Peers to continue to be members of the second chamber for life, but for hereditary Peers to leave when the third group of elected members arrives in the reformed second chamber. Another is for all existing peers to leave when the third group of elected members (and any appointed members) arrives. This would be the first point at which there would be a full complement of new members. The third option provides for existing peers to leave in three groups, each coinciding with the arrival of a group of new members.[44]

3.7 Next steps

In his introduction to the White Paper, Jack Straw indicated that further reform of the House of Lords would not occur until after a general election:

> Parliament as a whole will not be an effective and credible institution without further reform of the House of Lords. The proposals and options in this White Paper are intended to generate discussion and inform debate, rather than representing a final blueprint for reform. The Government has long held that final proposals for reform would have to be included in a general election manifesto, to ensure that the electorate ultimately decide on the form and role of the second chamber.[45]

3.8 Reactions to the White Paper

Responding the Jack Straw's statement to the House on 14 July 2008, the Opposition spokesman Nick Herbert commended Jack Straw on the way he had handled discussions in the cross-party group for many months, but pointed to the areas of disagreement:

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37 *Ibid,* para 7.18
38 *Ibid,* para 7.19
39 *Ibid,* para 7.38
40 *Ibid,* para 7.43
41 *Ibid,* paras 7.45-7.47
42 *Ibid,* para 7.22
43 *Ibid,* paras 7.23-7.35
44 *Ibid,* para 8.4
45 *Ibid,* p3

Will he accept that the question of the electoral system for any reformed second Chamber is far from settled? We believe that that system should mirror that for this House: a first-past-the-post system, with recognisable constituencies, based on our historic cities and counties. We would strongly resist any move to introduce an electoral system based on proportional representation. Would not simultaneous elections to both Houses involving two different electoral systems be a recipe for confusion?

At a time of increasing public disquiet about politicians' use of taxpayers' funds, the cost of the second Chamber is bound to be an issue. What plans does the Justice Secretary have to set out the pay, pensions and responsibilities of members of a reformed second Chamber, and the costs of reform as a whole?

The Justice Secretary says that a reformed second Chamber should be significantly smaller than the existing House of Lords, but is not 400 members too large? We have argued for a second Chamber of between 250 and 300 members, which would be a similar size to the upper houses of France, Italy and Spain. The United States Senate has only 100 members for a population of 300 million people, albeit in a federal system.

On the subject of a senate, the White Paper notes that the working group reached a "strong consensus" that a reformed second Chamber should be known as the "Senate", yet the Government's proposals do not use that name. Will the Justice Secretary tell us why the Government appear reticent to adopt a name that was agreed by the cross-party group?

The issue of transition could be highly contentious. The White Paper suggests that life peers could remain members of a reformed second Chamber even after transition was complete. How could reform possibly be considered complete while life peers remained in a second Chamber, perhaps for decades? The White Paper also suggests that the remaining hereditary peers would go at the completion of transition. Does the Justice Secretary accept that given that the former Lord Chancellor, Lord Irvine, gave an undertaking that the elected hereditary peers would remain until stage 2 of reform had taken place it would be invidious and inequitable to remove those remaining hereditary peers sitting in the other place as long as the 400 life peers created under Labour continued to sit? While the largest number of Members of this House voted last year for a 100 per cent. elected second Chamber—I was one of them—is it not the case, in view of the contrary position taken by the Lords themselves, that retaining an appointed minority would provide the best hope of consensus?

We welcome the special place that the Government intend to reserve for the Church of England bishops in a mainly elected, reformed second Chamber. However, does the Justice Secretary agree that retired justices of the supreme court, who would not be appointed to the second Chamber automatically, would make every bit as valuable a contribution to its work as the Lords Spiritual?

Reform should not be supported unless it strengthens the authority of the second Chamber in holding Governments to account. However, a reformed second Chamber should not seek to compete with this House, which must continue to have primacy. Is it not the case that both Houses of Parliament need strengthening to hold the Executive to account? Does the Justice Secretary agree that the next reform of the Lords should be a democratic one and that we should be wary of any proposals that might cement the current arrangements, especially by allowing an entire second Chamber to be appointed by an unelected quango?

> The White Paper represents the next step after last year's votes in the House for a mainly or wholly elected second Chamber, but is it not clear that the change envisaged is a radical one? It is not so much the reform of the House of Lords as the creation of a new second Chamber. Reform of the Lords has been proposed and attempted for the past 100 years. Will the Secretary of State for Justice indicate when he thinks the proposals will be translated into a Bill? It is right that Members in this House should reflect on and debate the issues carefully. We Opposition Members will continue to seek consensus on a way forward.[46]

For the Liberal Democrats, Simon Hughes also thanked Jack Straw for his work on the White Paper. He continued:

> The Secretary of State heard my colleagues and me make a commitment in the talks and on behalf of our party. We will repeat that commitment in our next election manifesto: it is to make sure that all our MPs vote at the earliest opportunity in the next Parliament for just this sort of reform package. However, if people are to be elected to the second Chamber—it will be called "the Senate", I think—in thirds, for one term only, there is no justified argument that those elected with a party affiliation should not proportionately reflect the public's votes for the parties at the election. That argument is not about this place; we can have that at another time. It is an argument about proper representation down the corridor.
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> Will the Secretary of State accept that, like the life peers, the hereditaries have known throughout their service in the House of Lords—many have served it well—that the time would come when their service would end? The only logical position is that all the hereditary peers should go at the beginning of the democratic process and that the life peers should go, at the latest, at the end of the three elections, probably by thirds over the period. In the White Paper, the Government express the preference that we have discussed: that the elections for the second Chamber should take place on the same day as the general election. However, does the Secretary of State agree that there is a strong case for our needing a fixed-term Parliament for the House of Commons and for there to be, at half-time intervals, elections for the second Chamber as well as for the devolved Administrations in Scotland, Wales, Northern Ireland and for any future devolved Administration in England?
>
> There has been a debate about the bishops. I hope that the Secretary of State accepts that many of us in the Church—not only the Anglican Church, but the Church generally—believe that the time has come for the Church of England not to be part of the establishment any more. The Church was not part of the establishment at the beginning and it was not intended to be so. Whether there are to be women bishops soon or not—I hope that there will be—the Church must, like anybody else, put its case for representation to the people. It is nonsense to protect one bit of the old House of Lords, but not any other.
>
> Lastly, does the Secretary of State agree with the point made by the hon. Member for Arundel and South Downs (Nick Herbert)? The proposals do not come instead of, but as well as, the reform and democratisation of the Commons. We need a stronger Parliament in this country if the British people are to think that their Governments, of whatever colour and composition, are to be held properly to account in future.[47]

In response to these questions, Jack Straw made the several points including that:

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[46] HC Deb 14 July 2008 HC 24-26

[47] *Ibid,* cc26-27

- the costs would depend of the size of the second chamber, which ran into issues about transition;
- on the terminology used, the White Paper stated that "To avoid a preoccupation with name over function and composition… we use the neutral term 'reformed second chamber' throughout this document";
- it had never been part of the Government's agenda to gratuitously to disadvantage the Conservative party representation in the second chamber;
- suggesting the process will be completed by 2011 was "probably pushing it; however, getting the legislation in by 2011 would be a good target".

During the following questions, Sir Patrick Cormack suggested that the vote for 100 per cent was caused by a tactical switch by a large number of members. Jack Straw replied that those who "take seriously the way we vote", had to be "bound by the consequences of their votes".[48] Jeremy Corbyn asked how members elected on a 12-15 year non-renewable term could be held to account by the constituency which they represented. Jack Straw mentioned the possibility of recall elections in his reply. A number of the questions focused on religious representation in the second chamber.

4 The *Constitutional Reform and Governance Act 2010*

4.1 Background

In June 2009 the Prime Minister made a statement on 'constitutional renewal' in which he addressed many constitutional issues, including reform of the House of Lords. He said:

> …we will move forward with reform of the House of Lords. The Government's White Paper, published last July, for which there is backing from other parties, committed us to an 80 or 100 per cent. elected House of Lords, so we must now take the next steps as we complete this reform. The Government will come forward with published proposals for the final stage of House of Lords reform before the summer Adjournment, including the next steps we can take to resolve the position of the remaining hereditary peers and other outstanding issues.[49]

The Government published their draft legislative programme on 29 June 2009 which announced further details. It announced that the forthcoming Constitutional Renewal Bill would include provisions which would:[50]

- complete the process of removing the hereditary principle from the second chamber;[51]
- provide for the disqualification of Peers convicted of a serious criminal offence;[52]
- allow peers to resign.

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48 *Ibid,* c29
49 HC Deb 10 June 2009 c797-8
50 HM Government, *Building Britain's Future,* Cm 7654, p108
51 For more information about the remaining hereditary peers in the House of Lords see the Lords Library Paper, *The Weatherill Amendment.*
52 For more information about standards of conduct in the House of Lords see the House of Commons Library Standard Note, SN/PC/4950, *Standards of Conduct in the House of Lords*

4.2 The Bill

The *Constitutional Reform and Governance Bill 2008-09* was published on 20 July 2009. It included various provisions on the civil service, the Attorney General and the National Audit Office. The Bill provided for the suspension and expulsion of peers, and would have allowed peers to resign from membership of the House of Lords. The Bill also included provisions to end the by-elections used to fill vacancies for the 92 hereditary peers who sit in the Lords. The clauses on the House of Lords were not included in the draft version of the bill, the *Draft Constitutional Renewal Bill,* which had been published in March 2008 and was scrutinised by a Joint Committee.[53]

As the *Constitutional Reform and Governance Bill* passed through Parliament other clauses on membership of the House of Lords were added. An amendment was passed during the Committee state in the Commons to require members of the House of Commons and House of Lords to be treated as resident and domiciled in the UK for tax purposes.[54] Another amendment was passed to clarify the eligibility of Commonwealth and Republic of Ireland citizens to sit in the House of Lords.[55] The Bill received its Second Reading in the House of Lords before the 2010 General Election was called. It therefore went through its remaining stages during the 'wash-up' period and many parts of the Bill were removed, including the clauses on suspension, expulsion and resignation from the House of Lords, and on ending the by-elections for hereditary peers.

The remaining stages in the Lords took place on 7 April 2010. The Liberal Democrats registered their objection to the removal of clause ending the by-elections for hereditary peers.[56] Lord Bach, for the Government, explained that:

> On Clause 53 and the appointment of hereditary Peers, I should make it absolutely clear that we want to end the farce of hereditary by-elections as soon as possible but the question is at what price. If we had insisted on that clause in this wash-up period, the price would have been no Bill, which it is hoped there will be by the end of tonight, and there may well have been no other Bills that the Government wanted to get through in the last few days of this Parliament. So one has to make a choice.[57]

The House of Lords divided on the motion that clause 53 stand part of the Bill with 42 contents and 98 not-contents.[58]

Lord Strathclyde, Leader of the Conservatives in the House of Lords, explained that he knew that there was concern about the clauses on expulsion and suspension from the second chamber, but that:

> It is not vital that it should be passed today. If we are the next Government, we will certainly wish to find an early opportunity to put this right.[59]

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53 Ministry of Justice, *The Governance of Britain: Constitutional Renewal,* March 2008, Cm 7342 I and II; Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill,* 31 July 2997, HL Paper 166-I HC 551-I 2007-08

54 HC Deb 1 February 2010 c113

55 HC Deb 19 January 2010 c273. See also Library Standard Note SN/PC/5357, *Clarification of the Act of Settlement 1701*

56 HL Deb 7 April 2010 c1626

57 HL Deb 7 April 2010 c1630

58 HL Deb 7 April 2010 c1632

59 HL Deb 7 April 2010 c1610

Lord Tyler, the Liberal Democrat spokesman argued that the clauses on suspension and expulsion were "a real issue of principle, as well as trust and confidence in the parliamentary process and your Lordships' House in particular".[60]

The consideration of Lords amendments took place in the Commons on 8 April 2010. Jack Straw explained that:

> We were faced with a situation where a number of backbench Members had tabled amendments to delete every single clause. As a consequence, we were faced with difficult but inevitable choices with those Members, party leader and the leader of the Cross-bench group to arrive at an accommodation.[61]

He went on to say that:

> I greatly regret that we have had to remove certain aspects of the Bill, particularly on the alternative vote and the removal of the hereditary peers. To accommodate the Conservative party, we offered an arrangement by which all existing hereditaries would in addition be deemed life peers, and a provision whereby, on the death of a hereditary-cum-life peer, the leader of a party or group – this mainly applies to the Conservative party – would have a right to nominate a replacement. There was, therefore, no question of any gratuitous reduction in their numbers. That, however, was not considered acceptable.[62]

Dominic Grieve, the Conservative Shadow Justice Secretary, said that:

> When the process started, the Secretary of State approached me and asked for my views and those of the official Opposition on what might remain in the Bill. We worked together very amicably to narrow the areas of difference. As I have no doubt that the Secretary of State will be willing to confirm, I pointed out to him at the outset that my own information coming down from the other place was that whatever we agreed would not be sufficient to meet the objections of some of their lordships. I am, I hope, a parliamentarian as well as a politician and, as far as I am concerned, a perfectly valid case has been made. This is a constitutional Bill of sufficient importance that it had to be taken on the Floor of this House. In those circumstances, any hon. Member who criticising a Member of the House of Lords for obstructing a constitutional measure that there lordships were being asked to pass within a very small number of hours, without proper consideration is on shaky ground...[63]

Full details of the parts of the Bill which dealt with Lords reform can be found in the Library Standard Notes, *House of Lords reform: proposals to end the by-elections for the hereditary peers* and *Resignation, suspension and expulsion from the House of Lords.*[64]

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60 *Ibid,* c1627
61 HC Deb 8 April 2010 c1203
62 HC Deb 8 April 2010 c1205
63 HC Deb 8 April 2010 cc1206-1207
64 Library Standard Note, SN/PC/5141, *House of Lords reform: proposals to end the by-elections for the hereditary peers* and SN/PC/5148, *Resignation, suspension and expulsion from the House of Lords*