Parliamentary Voting System and Constituencies Bill: Lords stages

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This Note summarises the Lords stages so far of the *Parliamentary Voting System and Constituencies Bill 2010-11.* It supplements Research Paper 10/55 which was produced for the Bill's second reading in the House of Commons and Research Paper 10/72 which summarises all the Commons stages of the Bill. Standard Note 5863 *The Parliamentary Voting System and Constituencies Bill: summary of amendments* picks out the main points during the passage of the Bill.

No major changes were made during the passage of the Bill in the Commons, however the text of the referendum question was altered and legislative provision was made for the combination of polls on 5 May 2011.

The Bill received its second reading in the Lords on Monday 15 November and Tuesday 16 November 2010 and was committed to a committee of the whole House. So far there have been 16 committee days with one more scheduled. After a protracted stand off, agreement was reached by the usual channels, to take the report and third reading stage as soon as possible. Report stage will continue on 9 February, with Third Reading scheduled for 14 February.

So far, the Bill has been amended significantly seven times in the Lords; firstly, an amendment moved by Lord Rooker on 6 December 2010 to insert "before 31 October" instead of 5 May for the date of the referendum was agreed after a division in which the Government was defeated by 4 votes. Secondly, an amendment to treat the Isle of Wight as a special case to prevent part of the island from being added to another constituency was moved by Lord Fowler and the Government lost by 196 votes to 122 on 19 January 2011. A third amendment, moved by Lord Tyler, was agreed without a division on 24 January and adds existing constituency boundaries to the list of factors in new Rule 5 that the Boundary Commissions may take into consideration when drawing up new boundaries.

On 31 January the Government offered to bring forward a package of amendments for Report stage, which will include public inquiries in limited circumstances on the decision of the boundary commissions. This followed some weeks of speculation about the progress of

the Bill. On the first day of Report, 7 February, Lord Rooker moved an amendment to ensure that the referendum result would not be binding if fewer than 40 per cent of the electorate voted in favour. The amendment was passed by 219 to 218. On 8 February a Government amendment to introduce a limited form of public hearing during the 12 week consultation period was added.

On Report on 9 February Lord Pannick, a crossbencher, moved an amendment to allow the Boundary Commission to create constituencies with up to 7.5 per cent deviation from the average of 72,000 electors in exceptional cases of geographical considerations or local ties. The amendment was added by 275 votes to 257. A Government new clause to create a review of the reduction in the number of MPs to be held between 1 June 2015 and 30 November, was added. A majority of the review committee would be MPs.

The Lords gave a Third Reading to the Bill on 14 February and Lords amendments will be considered on 15 February by the Commons. Parliament is due to adjourn on 17 February. The Bill needs to receive Royal Assent by 16 February 2011 in order for the referendum on AV to be held on 5 May 2011. A period of ten weeks, the referendum period, is required between Royal Assent and the poll in order for there to be sufficient time to hold and regulate a campaign, and Parliament is due to go into recess on 17 February. The Electoral Commission wrote to the Government on 11 January, setting out the key milestones to be reached if the poll was to be held in May.

A Lord's Library Note also provides background: *Parliamentary Voting System and Constituencies Bill* LLN 2010/028.

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1 Motion to refer the Bill to the Examiners

On 15 November 2010 Lord Falconer of Thoroton moved a motion to refer the Bill to the Examiners to consider whether it was hybrid. Lord Falconer argued that the Bill was hybrid because it singled out two constituencies, Orkney and Shetland and the Western Isles, for special treatment. These constituencies would not be subject to the general provisions in the Bill but would be preserved constituencies.[1] The Chancellor of the Duchy of Lancaster, Lord Strathclyde, suggested that the motion was 'a political tactic designed to delay a Bill concerning elections to the House of Commons' and said that 'the Clerks of this House are clear that this Bill is not prima facie hybrid and cannot be hybrid".'[2] The motion to refer the Bill to the Examiners was defeated on a division; Contents 210; Not-Contents 224.

2 Second Reading

The Second Reading of the Bill by the House of Lords took place on 15 and 16 November 2010. Opening the debate, Lord Strathclyde said that it was hoped that the Bill would complete its passage through Parliament as soon as possible in January 2011. In response to an intervention about reducing the size of the Executive as well as reducing the number of MPs, Lord Strathclyde responded that the Government had expressed a desire to do that but it would not be done by this Bill.[3]

Many Peers who spoke in the debate were critical of the speed with which the Bill had been introduced and the lack of pre-legislative consultation. Lord Forsyth of Drumlean (Conservative) said there had always been 'an understanding and a convention that on constitutional matters we should try to proceed with consensus and by agreement' and suggested that the Bill 'was the product of a political deal and that is no basis on which to amend the constitution of our country.'[4] Lord Howarth of Newport (Labour) said that twenty years ago it would have been unthinkable for major constitutional legislation to be programmed in the House of Commons.[5] Lord Falconer, speaking for the Opposition, said:

> It is an insult to democracy and to the principles that we in this House hold so highly that a measure to enact constitutional change of such lasting significance has not been subject to pre-legislative scrutiny and public consultation.[6]

Reducing the number of MPs and constituency boundaries

Lord Falconer said that it was 'virtually impossible to discern any principle underlying the proposal to reduce the number of MPs' and that the Opposition would oppose this and would 'in any event make any reduction conditional on a proportionate reduction in the number of Ministers in the Commons.'[7] Lord Norton of Louth (Conservative) said that the Government should not be strengthened by a reduction in the number of MPs and that there was 'a compelling case for reducing the number of Ministers.'[8] A number of Peers, including Lord Bach, speaking for the Opposition, questioned why the size of the House of Commons was to be fixed at 600 by the Bill. Lord Bach suggested that it was because at 600 seats the

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1 HL Deb 15 November 2010 c524
2 HL Deb 15 November 2010 c531
3 HL Deb 15 November 2010 c571
4 HL Deb 15 November 2010 c638
5 HL Deb 16 November 2010 c724
6 HL Deb 15 November 2010 c575
7 HL Deb 15 November 2010 c578
8 HL Deb 15 November 2010 c657

Opposition stood to lose many more seats than its opponents.[9] The Minister, Lord McNally, said later in the debate that he thought that if there were to be constituencies of 76,000 'with our electorate, I suspect that comes to somewhere around 600.'[10]

On redrawing constituency boundaries Lord Falconer said that the Government should 'seek a balance between equalisation and recognition of tradition, culture, and local authority boundaries rather than aim for bland uniformity.'[11] Lord Elystan-Morgan (Cross-bencher) agreed saying that 'if there is any real benefit to be gained, even superficially and over a short period of time, by a slavish adherence to a mathematical formula, it will all be lost and counterproduced by uncertainties and the sheer chaos brought about by this attempt at equality in relation to constituencies.'[12] Lord Grocott (Labour) said that 'the link between MPs and their constituents is at the heart of our constitution' and he saw no justification for increasing the size of constituencies as proposed in the Bill.[13]

Lord Elystan-Morgan spoke about the effect of the Bill on Wales and said that the equalisation of constituencies would bring about 'the greatest injustice of all in Wales' where the number of seats would be reduced by 25%.[14] Lord Touhig (Labour) agreed and said that Wales would be more adversely affected than any other part of the United Kingdom by the Bill and in particular the Welsh-speaking parts of the country.[15] Lord Maples (Conservative) argued that Wales was over-represented and said that he supported the provisions of the Bill which would mean that the 'massive distortion in favour of Wales' would be removed.[16]

Lord Baker of Dorking (Conservative), who had introduced a Private Member's Bill in 2007 which proposed reducing the size of the House of Commons by 10%, supported the second half of the Bill which reduces the number of MPs to 600.[17] However, he said that he was opposed to the Alternative Vote system.

Lord Myners (Labour) spoke in support of retaining constituencies in Cornwall that were wholly within the county's boundaries.[18] Lord Tyler (Liberal Democrat) said that there was strong evidence that 'keeping Cornwall whole' was a priority but he added that some communities might have to accept a lower level of representation in exchange for maintaining their identity.[19] Lord Oakeshott of Seagrove Bay (Liberal Democrat) supported the campaign to keep the Isle of Wight as one single constituency and argued that the island should be a preserved seat.[20] He also suggested that there could be a local referendum on the issue on the same day as the referendum on AV.

Local inquiries

There was criticism of the provision in the Bill to end the system of local inquiries; Lord Falconer described them as being 'the democratic life-blood of boundary reviews'[21] and Lord

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9 HL Deb 16 November 2010 c761
10 HL Deb 16 November 2010 c767
11 HL Deb 15 November 2010 c579
12 HL Deb 15 November 2010 c581
13 HL Deb 15 November 2010 c618
14 HL Deb 15 November 2010 c581
15 HL Deb 15 November 2010 c595
16 HL Deb 16 November 2010 c731
17 For further details of Lord Baker's bill in 2007 see SN/PC/5570
18 HL Deb 15 November 2010 c589
19 HL Deb 15 November 2010 c594
20 HL Deb 15 November 2010 c641
21 HL Deb 15 November 2010 c574

Touhig (Labour) said that abandoning the system would 'silence the voice of local people.'[22] Lord Alton of Liverpool (Cross-bencher) also supported the retention of local inquiries and Baroness Henig (Labour) said that local inquiries were being abolished 'to save time so that boundary changes can be rushed through in the next three years.'[23] However, Lord Baker of Dorking said that in his experience no members of the public attended local inquiries.[24] Lord Rennard (Liberal Democrat) thought that the consultation procedure proposed by the Bill might be a better system than the present one and suggested that 'many of the arguments made by QCs representing the parties, not generally the voters, have had disproportionate sway in the forum of the public inquiry.'[25]

Electoral registration

Baroness Farrington of Ribbleton (Labour) and Lord Campbell-Savours (Labour) raised the issue of low levels of electoral registration and Lord Falconer of Thoroton said that it was estimated that 3.5 million people would be missing from the electoral register which would be used to determine the new constituencies.[26] Lord Hart of Chilton (Labour) said later in the debate that there had been no analysis of population shifts and increases nor a proper analysis of the 'missing millions from the electoral register' and that there had been an absence of any 'full, proper and normal consultation and scrutiny' of the Bill.[27] Lord Wills (Labour) asked why there was a rush to draw up new boundaries before the introduction of individual registration in 2015 which would ensure a more comprehensive and accurate register.[28] When pressed on this issue the Minister, Lord McNally, said that '93 per cent on the register is not a bad outcome' and that the Government intended to 'carry through reforms to keep the register up to date but, again, it is not really central to the Bill.'[29]

Referendum and AV

Lord Falconer raised four points concerning the referendum which he said the Opposition would explore further in the next stages of the Bill. These were:

- the referendum should be advisory and not binding;
- the referendum should give voters an opportunity to vote on other electoral systems apart from AV and First Past The Post;
- the date of the referendum should be moved to a date when there were no other elections;
- there should be a threshold of 'yes' votes measured against the total number of those who can vote in the referendum.[30]

Lord Lamont of Lerwick (Conservative) said that the 'result of the referendum vote would be much strengthened if there was a provision for a minimum turnout'.[31]

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22 HL Deb 15 November 2010 c596
23 HL Deb 16 November 2010 c719
24 HL Deb 15 November 2010 c587
25 HL Deb 15 November 2010 c626
26 HL Deb 15 November 2010 c574
27 HL Deb 15 November 2010 c589
28 HL Deb 15 November 2010 c607
29 HL Deb 16 November 2010 c767
30 HL Deb 15 November 2010 c576
31 HL Deb 15 November 2010 c615

Lord Campbell-Savours said he would be introducing an amendment in Committee to change the referendum question to read 'should *an* 'alternative vote' system be used instead?' This would mean that Parliament would have to decide between the different AV systems if there was a yes vote. Lord Plant of Highfield (Labour) also suggested that there should be a broader choice in the referendum question:

> There is a case for saying that the choice should be between a majoritarian principle and a proportional one or between two majoritarian systems like first past the post and AV, with the option of a proportional system. But of course that makes any referendum far more complex and the results of it much more difficult to determine.[32]

There was some debate about the holding of the referendum on the same day as other elections; Lord Rennard said there was 'no ideal or perfect time to hold a referendum' and that it was convenient for many voters if an election and referendum were combined.[33] Other Peers criticised the lack of consultation with the devolved assemblies about holding the referendum on the same day as elections to these bodies. Lord Dubs (Labour) suggested that it was anomalous that Peers could vote in a referendum which would determine the voting system for general elections in which they did not have a vote and said he would be proposing an amendment to the Bill to resolve this issue.[34]

The Bill was read a second time on 16 November 2010 and committed to a Committee of the whole House.

3 Committee stage

3.1 Procedural questions

At the beginning of proceedings, Baroness McDonagh (Labour) moved a motion to instruct the Committee of the whole House to divide the Bill into two so as to 'separate the provisions relating to the parliamentary voting system from those relating to constituencies.'[35] Baroness McDonagh argued that this would allow for proper scrutiny of the Bill; Lord Pannick (Cross-bencher), a member of the House of Lords Constitution Committee, regretted the lack of pre-legislative scrutiny and public consultation about the Bill.

Lord Tyler (Liberal Democrat) said that splitting the Bill would mean a dramatic delay in the implementation of Part 2 and that the new boundaries would not be in place for the next general election. Lord Tyler also suggested that the House of Lords should be 'extraordinarily careful' with a Bill which was entirely concerned with the Commons. Lord Falconer agreed with Baroness McDonagh that the Bill should be split into two but said that discussions with the Clerks had revealed that if the Bill was divided it would have to come back together again before it returned to the House of Commons. Therefore the Opposition front bench recognised that the motion could not achieve a split and would not support it in a vote. Lord Strathclyde said that the measures in the Bill were 'the key plank' in the Coalition Government's commitment to reform the country's political system and the House of Commons had already accepted it as one Bill. The motion was withdrawn.[36]

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32 HL Deb 15 November 2010 c653
33 HL Deb 15 November 2010 c622
34 HL Deb 15 November 2010 c648
35 HL Deb 30 November 2010 c1373
36 HL Deb 30 November 2010 c1381

3.2 Committee stage first day 30 November 2010

Types of AV electoral systems

Lord Campbell-Savours (Labour) moved an amendment to make provision for the establishment of an inquiry 'for the purpose of selecting a voting system that, following debate in Parliament and consideration by the Government, would lead to a decision by Parliament on the referendum question.'[37] Lord Campbell-Savours said that the country was 'being railroaded into a system that has never been tested in the United Kingdom.'[38] He added that the AV system proposed was the one used for the Queensland state parliament (optional preferential system) and not the one used for the Australian federal parliament which was obligatory ie voters have to rank all the candidates in order of preference or their vote does not count. During the debate about the two versions of AV, Lord Lipsey said that the advantage of the obligatory system was that the winning candidate 'unambiguously gets at least half the votes of their electorate.'[39] Lord Rooker commented that only in the Australian federal system where there was compulsory voting and a compulsion to use all the preferences could 'you come remotely near to the promise and commitment of [the winning candidate] having more than 50% of the vote.'[40]

Lord Deben (Conservative) was opposed to any form of proportional representation and 'would rather see somebody elected who is favoured by the majority of people than somebody who is the least unfavoured.'[41] Lord Rennard noted that the Scottish Parliament used STV in local government elections but AV in local by-elections; he added that AV was used by political parties when electing their leaders and was also widely used by other organisations.[42]

Lord Falconer agreed with Lord Campbell-Savours's amendment and called for a proper consideration of which AV system was the best but Lord Strathclyde said the amendment would delay the referendum, possibly by a considerable period, and the coalition Government had made a firm commitment to hold the referendum in 2011.[43]

The amendment was disagreed on a division; Contents 166, Not-contents 242.

Indicative referendum

Lord Rooker moved an amendment that would make the referendum indicative, not binding; 'an indicative or consultative referendum is the normal way we operate in the UK' and it would 'preserve Parliamentary sovereignty in a formal way, whereas the way the Bill is drafted it certainly does not'.[44] Lord Rooker also argued that there would be no need to deliberate about thresholds if the referendum was indicative 'as it would allow time for reflection afterwards and Parliament would decide, having listened to and taken the views of the people.' Lord Sewel referred to the referendums held before Scottish devolution and the 1997 indicative referendum on the White Paper on devolution; he agreed with Lord Rooker that the referendum on AV should be indicative:

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37 HL Deb 30 November 2010 c1393
38 HL Deb 30 November 2010 c1394
39 HL Deb 30 November 2010 c1397
40 HL Deb 30 November 2010 c1401
41 HL Deb 30 November 2010 c1399
42 HL Deb 30 November 2010 c1403
43 HL Deb 30 November 2010 c1408
44 HL Deb 30 November 2010 c1413

> My Lords, when it comes to major constitutional change, there is some benefit in looking at what has happened in the past when Parliament has confronted the best way of proceeding - a way that enables Parliament clearly to have the decisive say but nevertheless has reference to the directly expressed will of the people.[45]

The Opposition front bench supported the amendment; Lord Falconer said that there were 'there are certain levels of turnout and certain levels of yes vote that no one would regard as a sufficient mandate for the change' and that if the referendum indicates a preference for AV 'the right course is for Parliament to debate properly the best system of AV to adopt.'[46] Lord McNally responded for the Government that the mandate for the introduction of the AV system for Parliamentary elections 'will come from the decision of the people in the referendum.'[47]

The amendment was disagreed on a division; Contents 175, Not-Contents 202.

Combination of polls

Lord Foulkes of Cumnock moved an amendment which would prevent the referendum from being held on 5 May 2011 saying that it would 'create tremendous problems' to have the referendum and the Scottish Parliament elections on the same day and that there would be a 'contamination' of one campaign with the other.[48] Lord Browne of Ladyton supported the amendment and agreed that the people of Scotland would receive mixed messages and that debates in the national media would be about the referendum to the detriment of the election campaign for the Scottish Parliament.[49]

Lord Lipsey agreed with the amendment and drew attention to the situation in Wales where there would be a referendum on the legislative powers of the National assembly for Wales in March 2011 followed by the combined NAW elections, local elections and the referendum on AV on 5 May 2011. Lord Lipsey asked the Minister to confirm that savings of £15 million would be made by holding the elections and the referendum on the same day. Lord Strathclyde said that around 84% of the UK electorate would be voting that day already and this would maximise turnout for the referendum. He added that the combination would actually save £30 million across all polls.[50]

Lord Foulkes withdrew his amendment saying he would have another opportunity of making these arguments at Report Stage.

3.3 Committee stage second day 6 December 2010

Date of referendum

Lord Rooker spoke to amendment 5 to insert "before 31 October" instead of 5 May for the date of the referendum. He argued that there was insufficient time to undertake a public information campaign about the issues in the referendum, noting that "with 20 weeks to go, a lot could go wrong"[51] He noted that at least 10 weeks was necessary and this period would begin on 24 February. Lord Tyler pointed out that the referendum establishing the Greater London Authority had been combined with local elections on 7 May 1998. Lord Grocott commented that as a former Chief Whip he could not see how the timetable set out for the

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45 HL Deb 30 November 2010 c1416
46 HL Deb 30 November 2010 c1423
47 HL Deb 30 November 2010 c1424
48 HL Deb 30 November 2010 c1431
49 HL Deb 30 November 2010 c1441
50 HL Deb 30 November 2010 c1451
51 HL Deb 6 December 2010 c13

Bill could be met.[52] Lord Fowler said that the turnout would be greater with a May date, but a succession of speakers disagreed. In summing up, Lord Strathclyde said he was entirely satisfied that the Government was capable of holding the referendum on 5 May.[53] **Nevertheless, the Government was defeated by 4 votes**. **The impact of the amendment is not entirely clear, since it does not prevent the poll from being held on 5 May 2011, but simply offers alternatives.**

This amendment was passed by 199 votes to 195.

The Electoral Commission issued a statement asking for clarity from the Government on the poll date:

> We will continue to plan towards a possible referendum on 5 May 2011 but given the importance of clarity about the rules on how the polls will be conducted we have written to the Government today asking them to set out as soon as possible how they intend to proceed so that Parliament can specify the date for the proposed referendum.[54]

Lord Falconer introduced amendment 15 to prevent the combination of polls. There was subsequent discussion by a series of speakers of the implications of the Gould report and concern as to the lack of consultation with the devolved administrations in Scotland and Wales. The amendment was lost by 210 votes to 166.

Multi option referendum

Lord Skidelsky introduced an amendment on behalf of Lord Owen which would offer a multi option referendum, including the 'proportional voting system'.[55] This led to a debate on similar amendments on the wording of the question to be asked. Lord Campbell Savours pressed the merits of the Supplementary Vote system. Lord Lipsey regretted that there had not been a referendum on the AV plus system after Lord Jenkins reported in 1998.[56] Lord Touhig argued that in the five parliamentary constituencies in Wales where Welsh is the first language, the question should appear first in Welsh.[57] The benefits or otherwise of the various electoral systems introduced into the UK since 1997 were discussed. In response, Lord Strathclyde that the public needed a clear choice and that the question in the Bill reflected the advice of the Electoral Commission. None of the amendments were moved formally.

Lord Rooker then introduced an amendment to make the poll into two questions; whether change was needed, and if so, which system. He noted the precedent of the New Zealand referendums in 1992 and 1993. This led to a discussion on the variants of AV, as to whether it should be compulsory to use all preferences on the ballot paper. Lord Rooker warned that under the optional system in the Bill, most winners would not be elected on the basis of over 50 per cent of the vote.[58] Lord Tyler pointed out that the Labour manifesto in 2010 had contained a commitment to hold a referendum on AV and no other electoral system.[59] Lord Strathclyde resisted the amendment and it was withdrawn, as was one from Baroness McDonagh, which changed the wording of the question.

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52 HL Deb 6 December 2010 c17
53 HL Deb 6 December 2010 c34
54 Electoral Commission Alert no 154 7 December 2010
55 HL Deb 6 December 2010 c51
56 HL Deb 6 December 2010 c57
57 HL Deb 6 December 2010 c66
58 HL Deb 6 December 2010 c101
59 HL Deb 6 December 2010 c106

3.4 Committee stage third day 6 December 2010

Debate continued on the merits of different voting systems. Lord Campbell-Savours spoke to amendments to facilitate the adoption of the Supplementary Vote system, supported by Lord Rooker who argued that the type of AV chosen for the Bill had not been fully thought through. Lord Strathclyde referred to the support of leading Labour politicians for AV in the recent launch of the Yes campaign, and stated again that electors had to be given a clear choice.[60] He defended the use of the non optional preferential form of AV.

Thursday as polling day

Lord Snape then spoke to an amendment to give voters the choice of Saturday or Thursday as a polling day.[61] He withdrew the amendment and then spoke to one on compulsory voting.[62] Lord Foulkes of Cumnock then introduced an amendment to require a Gaelic version of the ballot paper in Scotland. He pressed this to a division which was lost by 196 votes to 135[63]

A debate then followed on Clause 1, as amended, to stand part. Lord Campbell Savours raised concerns as to whether the public would understand the issues in the AV referendum. He reiterated that there would be considerable confusion on the type of AV proposed and demonstrated examples where Members had been elected with less than 50 per cent of the vote.[64] Lord Lipsey and others defended AV, arguing that SV did not offer the breadth of choice, particularly in four party marginals.[65] Lord Elystan-Morgan complained that the Welsh translation of the question on the ballot paper was incomprehensible. Lord Grocott complained that there were already 5 different electoral systems in use in the UK and AV would be the sixth. Lord Tyler pointed out that all major political parties now used AV as a method of candidate selection.

Lord Falconer summed up the debate, noting that it would be possible to put an order making power in the Bill which would specify the date; he also argued that the referendum should be indicative, enabling Parliament to debate after a poll the precise form of AV. Lord Strathclyde reiterated his support for a referendum and promised to clarify issues on the translation of the question into Welsh.[66] Clause 1 was agreed without a vote.

Peers to vote in general elections

Lord Dubs then introduced an amendment to allow Members of the House of Lords to vote in general elections.[67] In contrast, Lord Grocott argued that if peers had a near unique influence on the legislative process, it would not be right to have a determining role in the composition of the other House. In response Lord McNally noted that the bill was specifically about the referendum and the amendment was withdrawn.

3.5 Committee Stage fourth day 13 December 2010

Prisoners voting

Lord Foulkes of Cumnock moved an amendment to allow prisoners serving sentences of less than four years the right to vote in the referendum on AV. Lord Foulkes said that the

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60 HL Deb 8 December 2010 c194-298
61 HL Deb 6 December 2010 c211
62 HL Deb 8 December 2010 c218
63 HL Deb 8 December 2010 c236
64 HL Dev 8 December 2010 c242
65 HL Deb 8 December 2010 c247
66 HL Deb 8 December 2010 c280
67 HL Deb 8 December 2010 c284

Government was expected to make an announcement soon on how they were going to implement the judgment of the European Court of Human Rights that the UK's blanket ban on prisoners voting contravened the European Convention on Human Rights.[68] Lord McNally responded that the Government accepted that there was a need to change the law and that when a decision was announced there would be an opportunity for Parliament to debate the issue.[69] Lord McNally was pressed on when legislation to allow convicted prisoners the right to vote would be introduced but was unable to give a commitment as to when an announcement would be made. Lord Rennard suggested that it would be difficult to introduce changes to the franchise in time for the elections and referendum on 5 May 2011; Lord McNally indicated that he was probably right. [70]The amendment was withdrawn.

16 and 17 year olds

Baroness Hayter of Kentish town moved an amendment which would allow 16 and 17 year-olds to vote in the referendum on AV.[71] Lord Falconer supported the amendment in a personal capacity but said that the Labour party had indicated that there should be a free vote on the issue.[72] Lord McNally said that the Government had no current plans to change the voting age and that the Bill was not the right platform on which to discuss the issue.[73] The amendment was withdrawn.

EU citizens

An amendment to include citizens of EU countries resident in the UK in the franchise for the referendum was moved by Lord Foulkes.[74] Lord Falconer agreed that there would be confusion about the different franchises for the different elections and the referendum on 5 May 2011 but the Opposition front bench had concluded that, instead of changing the franchise, the referendum date should be moved.[75] The amendment was withdrawn.

Clauses 2 and 3 were agreed.

Combination of polls

During debate on Clause 4, combination of polls, Lord Foulkes moved an amendment to prevent the referendum from being held on the same day as elections to the Scottish Parliament.[76] Lord Foulkes argued that there would be confusion in campaigning and difficulties in differentiating between expenditure on the election and expenditure on the referendum. Lord Hamilton of Epsom supported the amendment and said that the referendum should be held on a separate day to the other elections due to be held on 5 May 2011 so that the issue 'could be properly debated'. Lord Hamilton added that

> The fact that we are a coalition Government is all to do with necessity. We should not change the constitution of this country to make coalition Governments more likely for the indefinite future.[77]

The amendment was disagreed without a division.

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68 For further information see Library Standard Note SN/PC/1764, *Prisoners' voting rights*
69 HL Deb 13 December 2010 c411
70 HL Deb 13 December 2010 c413
71 HL Deb 13 December 2010 c446
72 HL Deb 13 December 2010 c462
73 HL Deb 13 December 2010 c464
74 HL Deb 13 December 2010 c481
75 HL Deb 13 December 2010 c485
76 HL Deb 13 December 2010 c487
77 HL Deb 13 December 2010 c491

A Government amendment to Clause 4, the combination of polls, was agreed after a division; Contents 96, not-contents 38. Lord Wallace of Tankerness explained the purpose of the amendment:

> During the Bill's Report stage in another place concerns were raised that the current drafting of the clauses restricts the ability set out in existing legislation for the date of the elections to the devolved Assemblies to be moved to a day which would be different from that on which the referendum is scheduled to take place. In order to avoid confusion, we have tabled this amendment to make it clear that the existing legislative powers to change the date of the polls for the Welsh Assembly, the Scottish parliamentary election and the Northern Ireland Assembly elections are not affected by the combination provisions in the Bill.[78]

3.6 Committee stage fifth day 15 December 2010

Broadcasts and expenditure limits

Lord Falconer of Thoroton moved an amendment on referendum and party political broadcasts. He was concerned that it would be difficult to differentiate between the subject matter of the election and the referendum in a combined election. He suggested that party election broadcasts should not be broadcast if they contained references to alternative electoral systems. This was supported by the Electoral Commission.[79] In response, Lord McNally promised to consider whether the amendment was necessary and if so, to redraft it.[80]

There followed a stand part debate on Clause 5 (press comment not subject to spending controls). Peers referred to the difficulties of campaigning in referendums and focused on the complexities of combination. Concerns were raised as to the problems which would be faced by the Electoral Commission in promoting neutral material.[81]

Lord Falconer then spoke to an amendment to reduce the maximum amount that a registered party could spend in the referendum campaign from £5m to £500,000, arguing that this would give a huge advantage to a political party rather than the yes or no campaigns.[82] Lord McNally said in response that preparations for the referendum were too far advanced for this sort of change to be made, which would be unfair to permitted participants.[83] The proposed amendment prompted a more general debate on enforcement of expenditure limits. Lord McNally emphasised that this first national referendum would be an opportunity to test the regulation in PPERA, and the Electoral Commission had recommended against changes at this stage, but Lord Falconer said that it was the duty of the House to recommend changes where there was a clear case for review. The amendment was lost by 194 votes to 169.[84]

Loans

Lord McNally then introduced a **Government amendment to apply the regulation of loans to all permitted participants.** Political parties are already covered in the Bill. The amendment applies the Electoral Commission's new civil sanction powers to loans. During the debate, Lord McNally promised that the powers of the Electoral Commission to inform

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78 HL Deb 13 December 2010 c503
79 HL Deb 15 December 2010 c615
80 HL Deb 15 December 2010 c621
81 HL Deb 15 December 2010 c625
82 HL Deb 15 December 2010 c632
83 HL Deb 15 December 2010 c634
84 HL Deb 15 December 2010 c647

voters about the referendum would be fully debated when Schedule 1 was reached.[85] Clause 6 was agreed.

Lord President of the Council

Lord Bach asked for clarification about the inclusion of the Lord President of the Council as the minister responsible for the referendum. This is a position held by Nick Clegg as Deputy Prime Minister. In response, Lord McNally said that clause 7 enabled the Lord President to take decisions with a nationwide effect but also to enable territorial decisions to be taken by territorial ministers.[86] Lord McNally's remarks about 'timewasting' by Opposition spokesmen in the Commons during the debates on the Bill were challenged by several peers, who argued that the Bill needed detailed scrutiny.[87]

Lord McNally then introduced some **technical Government amendments to ensure that there is a single definition of registration officer in the Bill. These were accepted.** [88]

Counting areas

Lord Grocott introduced amendment 40B to make the Westminster parliamentary constituencies across the UK the counting areas for the referendum. He argued that returning the results in individual constituencies would make the impact of AV much clearer. He defended his amendment against the comments of the Electoral Commission to the effect that such a change would risk the successful delivery of the elections and the referendums.[89] He noted that it was common for parliamentary and local elections to be held on the same day and that it should not cause too much disruption to electoral administrators. He received support from a number of peers. Lord McNally defended the decision but promised to investigate why results in London were also to be made available on a borough basis when there were no local elections there. The amendment was lost by 161 votes to 90.[90] Clause 7 was then passed.

Threshold

Baroness Hayter of Kentish Town then introduced an amendment to create a 25 per cent minimum turnout for the referendum to take effect. She thought that introducing major constitutional change on the back of a 15 or 20 per cent turnout was unacceptable. She received support from several peers who argued that a threshold of 40 or 50 per cent was the more sensible and had tabled amendments to that effect. Lord Lamont of Berwick and Lord Lawson of Blaby spoke in favour of thresholds. Lord Tyler pointed out that in the Commons the Labour spokesman Chris Bryant had argued against thresholds, as encouraging people not to vote and the Commons had voted overwhelmingly against a threshold.[91] Lord Grocott argued that a threshold was a sensible insurance policy, particularly as the referendum would result in legislative change and was not merely advisory. In response, Lord Strathclyde said that the Government had not specified a turnout threshold because this could make every abstention a no vote. Baroness Hayter withdrew her amendment to allow further consideration at a later stage. The debate did indicate substantial interest in a threshold.

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85 HL Deb 15 December 2010 c656
86 HL Deb 15 December 2010 c658
87 HL Deb 15 December 2010c660
88 HL Deb 15 December 2010 c656
89 HL Deb 15 December 2010 c666
90 HL Deb 15 December 2010 c678
91 HL Deb 15 December 2010 c698

3.7 Committee stage sixth day 20 December 2010

The House sat until 1.14am on the Bill, and there a number of accusations of undue delay. Debate was interrupted by three statements, but in response to a question from Lord Bassam at 11.10pm, Lord Strathclyde indicated that the Government wished to finish clause 9 on that day.[92] In the event, there were no amendments to the Bill on the sixth day.

AV threshold

Baroness Hayter spoke to an amendment to require a majority in favour of an AV in Scotland, Wales, Northern Ireland and England.[93] This prompted a broader debate on the referendum and thresholds. In response, Lord Strathclyde confirmed that the Government had no intention of introducing thresholds.[94]

Linkage of AV with boundaries

Lord Lipsey spoke to an amendment to remove the requirement for the reduction of the size of the House of Commons before an affirmative vote in the AV could come into effect.[95] He argued that there should have been two separate bills. A number of speakers argued that the linkage was solely due to the coalition agreement and that is was not appropriate to legislate for this. This led to a more general discussion on the size of the House of Commons where Lord Rooker confirmed that he believed in a House of no more than 500 and would not therefore table amendments on the boundaries aspect of the bill.[96] There were concerns that the boundary review might be judicially reviewable which would delay the implementation. In response, Lord Wallace of Tankerness, the Advocate General for Scotland, said that the question of hybridity had been raised and dealt with at the start of proceedings on the bill and that he would be happy to discuss judicial review when this part of the bill was reached, noting that the boundary reviews would be completed by October 2013.[97] He said that it was the Government's view that the two issues were linked in terms of the composition of the 2015 Parliament.

Accuracy of the electoral register

Lord Falconer introduced an amendment to require the Electoral Commission to certify the existence of a substantially accurate electoral register before implementation of an affirmative AV referendum.[98] Lord Wallace indicated that the Government would not accept the amendment, which was subsequently withdrawn. Lord Falconer indicated that he would return to the issue at a later stage.[99]

Debate on clause 8

Lord Campbell Savours highlighted his concern about the dangers of an indicative referendum where the number of electors voting might be derisory.[100] In response, Lord Strathclyde argued that there would be a reasonable turnout on May 5, given the other elections taking place on that day.

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92 HL Deb 20 December 2010 c953
93 HL Deb 20 December 2010 c826
94 HL Deb 20 December 2010 c845
95 HL Deb 20 December 2010 c869
96 HL Deb 20 December 2010 c880
97 HL Deb 20 December 2010 c883
98 HL Deb 20 December 2010 c918
99 HL Deb 20 December 2010 c933
100 HL Deb 20 December 2010 c934

AV and ballot paper

Lord Campbell Savours and Lord Lipsey spoke to separate amendments which allowed for a more general discussion on the use of the cross on the ballot paper rather than 1,2, etc. In response, Lord Wallace pointed out that Schedule 10, para 6(2C) already provided for the position where a vote makes a clear X indicating preference for a particular candidate.[101]

Transfers of votes under AV

Lord Rooker spoke to an amendment to reduce the weight given to preferences expressed by supporters of the losing candidates under AV. He argued that the second vote of the person who had voted for the least popular candidate should not have the same weight as a first preference vote.[102] He did not receive support from other Labour peers and Lord Wallace said that the purpose of the AV system being proposed was to give equal weight to those votes still in the count.[103] The amendment was withdrawn. Lord Beecham then spoke to an amendment to set aside reallocation of votes from any eliminated candidate who received less than five per cent of the vote.[104] This was also opposed and the amendment withdrawn.

Election counts

Lord Falconer then spoke to an amendment on publicity on each round of the count under AV. Lord Wallace said that it would be up to the returning officer to decide how to make information public on each round, but there was a requirement for the process to be transparent.[105]

Finally, Lord Foulkes of Cumnock spoke to an amendment requiring the devolved bodies to be consulted over consequential changes to electoral law following the introduction of AV. In response, Lord Wallace said that it would be important to consult should AV be introduced, but resisted the amendment, which was withdrawn.[106]

3.8 Committee stage seventh day 10 January 2011

There were denials from Labour peers that filibustering was taking place during the Committee stage. The lack of participation in the debate by Conservative and Liberal Democrat Peers was also noted by the Opposition; Lord Grocott suggested that there was 'negligence on the part of groups, parties and individuals who do not make a full contribution to this debate.'[107] Later in the debate Lord Soley said that 'what we have seen this afternoon, sadly, is the reverse of a filibuster. A government party – or two parties – refused to take part in a serious debate about the constitutional matter of a Government taking on themselves the power to change the size of Parliament.'[108] Lord Wallace denied that Conservative and Liberal Democrat back-benchers had been told not to speak in the debate.[109]

Size of the House of Commons and Rules for Redistribution

Lord Wills (Labour) moved an amendment to insert a new clause which would require the Government to set up a committee of inquiry, such as a Royal Commission, to review and make recommendations about the Rules for Redistribution and the size of the House of

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[101] HL Deb 20 December 2010 c950
[102] HL Deb 20 December 2010 c954
[103] HL Deb 20 December 2010 c964
[104] HL Deb 20 December 2010 c969
[105] HL Deb 20 December 2010 c974
[106] HL Deb 20 December 2010 c984
[107] HL Deb 10 January 2011 c1185
[108] HL Deb 10 January 2011 c1267
[109] HL Deb 10 January 2011 c1278

Commons.[110] Lord Wills argued that such an inquiry would allow the public to have a say in the changes and that these would be made on the basis of consensus; he added that his amendment would 'enable this legislation to proceed on the basis of constitutional principle not on that of arbitrary and partisan calculation.'[111] The amendment was supported by Labour peers; Lord Grocott argued that the issues were of 'profound constitutional significance' which needed greater consideration and Lord Campbell-Savours said that the measures in the Bill had required a proper inquiry before legislation was put before Parliament. Baroness Liddell of Coatdyke asked again why the Government had settled on the figure of 600 for the size of the House of Commons. Lord Wills said that he had made a freedom of information request for any deliberations on the electoral consequences of different sizes of the House of Commons but he had not received a response to his request.[112] Lord Wallace of Tankerness said later in the debate that he would ensure that Lord Wills received an answer as soon as possible.[113]

Lord Howarth of Newport supported the amendment and suggested that a committee of inquiry should examine the options for different margins of fluctuation from the electoral quota because he thought 'the very narrow margin of fluctuation of 5 per cent either side of the norm of 76,000 electors that the Government propose is simply inadequate.'[114] Lord Howarth agreed with Lord Wills that the impact of the Bill's proposals on the whole constitution needed to be considered:

> You cannot simply take a chunk of the constitution and push it, pull it around, mould it and remake it as if it was a piece of plasticine while ignoring the impact that a change in one part of the constitution has on other parts. If you alter the size of the House of Commons, if you alter the relationship between Members of Parliament and the Executive, and if you alter the capacity of Members of the House of Commons to scrutinise legislation, from all of these things there necessarily follow major implications for the work of this House.[115]

Lord Maclennan of Rogart (Liberal Democrat), who said he had no mandate to speak on behalf of the Government, rebutted the assertions made earlier in the debate that constitutional change should be based on consensus. Lord Maclennan said it was 'a chimerical view that we could have a consensus on this set of proposals' and that the proposal for a committee of inquiry was a 'method of delaying decision' on constitutional reform.[116] Lord Falconer disagreed and said that there had been consensus on constitutional change since 1944; he urged the Government to 'give ground in relation to an independent look at the changes that they are making.'[117]

Lord Wallace of Tankerness responded to the debate and said that an independent committee of inquiry was unnecessary and would slow down the proposed reforms so that new boundaries would not come into effect until the general election after the one in 2015.[118] On the question as to why the Government had decided that the size of the House of Commons should be fixed at 600, Lord Wallace said that the Government thought

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[110] HL Deb 10 January 2011 c1174
[111] HL Deb 10 January 2011 c1179
[112] HL Deb 10 January 2011 c1194
[113] HL Deb 10 January 2011 c1219
[114] HL Deb 10 January 2011 c1197
[115] HL Deb 10 January 2011 c1198
[116] HL Deb 10 January 2011 c1213
[117] HL Deb 10 January 2011 c1216 and 1218
[118] HL Deb 10 January 2011 c1219

> ... that 600 would seem to strike the right balance without reducing by too much and having regard to the fact that one-third of existing seats would be within 5 per cent either way of the existing norm. In addition, a slightly smaller House will mean that savings can be made without, in the Government's view, losing the capacity of individual Members or the Chamber as a whole to perform their functions.[119]

Lord Wills withdrew his amendment saying that he hoped the Government would reconsider referring the issues in the Bill to an independent committee.

Boundary reviews and electoral registration

Lord Falconer moved an amendment which would require the Electoral Commission to specify the date by which the boundary review should be completed and that this should take place once the Commission had certified that every local authority had taken all reasonable steps to ensure that the electoral register was as complete and accurate as possible.[120] During the debate on the amendment Labour peers drew attention to variations in electoral registration levels in different parts of the country and amongst different social groups; they also called for local authorities to increase their efforts to improve registration rates. Lord Wallace reminded peers that Electoral Registration Officers were already under a statutory duty to compile and maintain comprehensive and accurate registers and that the Government was launching a pilot scheme in 2011 which would enable local authorities to compare the electoral register with public databases to identify people who were missing from the register.[121] Lord Falconer withdrew his amendment but said that he would introduce another amendment at Report Stage which would deal with both the 'unrealistic timetable for the first review' and the issue of under-registration.[122]

3.9 Committee stage eighth day 12 January 2011

The House sat until almost midnight, amid further debate on the manner in which the Bill was being debated. On 13 January there were a number of media reports that the Bill might be amended to facilitate its passage. These ranged from dropping the boundary review clauses to postponing the date of the referendum.[123]

Timing of boundary reviews

The Committee continued to consider clause 10. Lord Lipsey spoke to an amendment to postpone the end of the boundary review to 2015, commenting on the need to allow the parliamentary boundary committees sufficient time.[124] He withdrew the amendment and immediately spoke to another on lengthening the gap between reviews from five to seven years. Again, Labour peers were the main party to debate the amendments. In response, Lord Wallace of Tankerness defended the lack of pre-legislative scrutiny as due to the need for an incoming government to pursue flagship legislation.[125] He also noted that the primary purpose of the Bill was to serve the electors not the elected. Lord Lipsey withdrew his amendment. Lord Falconer of Thoroton spoke to an amendment to align boundary reviews with the provisions of the *Fixed Term Parliaments Bill*, given that Parliaments might not last

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[119] HL Deb 10 January 2011 c1224
[120] HL Deb 10 January 2011 c1253
[121] HL Deb 10 January 2011 c1281
[122] HL Deb 10 January 2011 c1284
[123] "Voting referendum may be delayed" 13 January 2011 *BBC News Politics;*" AV, guerrilla warfare and a stand off coming" 13 January 2011 *Channel 4 News*
[124] HL Deb 12 January 2011 c1421
[125] HL Deb 12 January 2011 c1436

the full five year cycle.[126] In response Lord Wallace said that the Government would reflect on whether there was sufficient protection should there be a significant mismatch between the review and the start of a new Parliament.

Electoral registration

There followed a series of debates on amendments on improving electoral registration among specific groups, before the boundary committees undertook the reviews. Baroness Thornton spoke about 17 to 24 year olds;[127] Lord Wallace confirmed that among the datasets to be used for data matching would be the Department of Education national pupil database. He said that there would be meetings with stakeholders in the next few months as part of the introduction of individual registration. However he stressed that these initiatives should be not delay the review, since the boundaries were now 15 years out of date. Baroness Thornton was not satisfied with this, and pressed the amendment to a division which was lost by 203 votes to 133.[128] Lord McKenzie of Luton spoke to an amendment to improve the registration of private rented tenants, but did not push the amendment to a division.[129]

The House returned to the Bill after a statement on maternal health. Lord Boateng spoke to an amendment to improve the registration of black and minority ethnic voters.[130] A number of peers contributed to the debate, and in response Lord Wallace drew attention to the need to increase the frequency of reviews so that more up to date registers could be used for the purpose of allocating seats.[131] Lord Boateng reflected on suggestions from Lord Lester of Herne Hill that there might be a role for guidelines from the Quality and Human Rights Commission and withdrew his amendment, for further discussions with the minister.[132] Lord Bach then spoke to an amendment on sufficient resources for the boundary commissions; in response Lord McNally said that the Bill already made provision for this, and the amendment was withdrawn.[133] Lord McAvoy then asked whether the reports of the boundary commissions should not also be presented to the Lord Speaker, and was told by Lord McNally that the amendment was unnecessary since the reports would be made available in both Houses.[134]

Miscellaneous

Lord Campbell Savours spoke to amendments designed to ensure that the boundary reviews did not take place unless the AV referendum was won.[135] He protested that the main rationale for linking the two measures was the politics of the Coalition and argued that it would be in the interest of the Liberal Democrats to accept the amendment, which he subsequently withdrew. Lord Lipsey then queried the drafting of the Bill where it was designed to remove the discretion of the Secretary in modifying a boundary commission report. Lord Wallace undertook to consider his point.[136] Lord McNally moved a minor amendment to add to the assessor officers for the Boundary Commission for Northern Ireland, the Chief Survey Officer of Land and Property Services.[137] Finally, there was a

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126 HL Deb 12 January 2011 c1439
127 HL Deb 12 January 2011 c1444
128 HL Deb 12 January 2011 c1451
129 HL Deb 12 January 2011 c1454
130 HL Deb 12 January 2011 c1476
131 HL Deb 12 January 2011 c1493
132 HL Deb 12 January 2011 c1497
133 HL Deb 12 January 2011 c1500
134 HL Deb 12 January 2011 c1502
135 HL Deb 12 January 2011 c1502
136 HL Deb 12 January 2011 c1514
137 HL Deb 12 January 2011 c1517

debate on Clause 10. A number of Labour peers commented that they considered the Government to have been obstructive in dealing with amendments; this was disputed by Lord King of Bridgewater, who argued that the proposed amendments were designed to delay an overdue boundary review.[138] There were further comments that participation by Conservative peers in the debates had been minimal.[139] The clause was agreed without a vote and the House adjourned at two minutes to midnight.

3.10 Committee stage ninth day 17 January 2011

The House sat until 12.51pm on 18 January, provoking much media interest. However, at the end, amendments to Clause 11 were still under debate.

At the beginning, Lord Strathclyde expressed concern about the length of time being taken to debate individual amendments.[140] In response, Lord Falconer said that he did not accept the allegations of timewasting and urged the Government to split the Bill into two parts, stating that the Opposition was prepared to let the AV referendum take place in May, but wanted more scrutiny on the boundary changes.[141] He further noted that his advice was that the House could not send a Bill which had been split back to the Government unless the Government consented.[142]

Various amendments were then debated on clause 11 (number and distribution of seats). Lord Falconer began with an amendment to retain the number of MPs at 650, using a fixed divisor method. There followed some hours of debate on MP workload, number of ministers and the alleged lack of rationale for a Commons of 600, ending with the amendment being withdrawn. After a statement on Tunisia, the Committee resumed and Lord Soley introduced an amendment on an independent commission to decide the size of the House and Lord Lipsey an amendment on a Speaker's Conference. At 11.30pm Lord Trefgarne requested that the question be now put. As required by the Lords Companion, the Lord Speaker reminded the House that the procedure was exceptional only. On a division, the closure was passed by 219 votes to 130.[143] Lord Falconer then moved that the House resume (adjourn), but lost by 188 votes to 124.

Subsequently there were a number of amendments discussed on the appropriate size of the Commons. Baroness McDonagh spoke to an amendment on 630 which she withdrew after 3 hours as 3.15am.[144] Lord Falconer then moved to resume, but this division was lost by 126 votes to 77. Lord Snape talked on reducing numbers to 640[145]and Lord Kennedy of Southwark spoke to an amendment on 650.[146] Both were withdrawn and Lord Falconer then put another motion to resume, which was lost by 146 votes to 69.[147]

At 9.10am, Lord Knight of Weymouth then introduced an amendment to link the Bill to reform of the House of Lords, taken together with a similar amendment from Lord Grocott. These were followed by a debate on an amendment by Lords Grocott to set a maximum number of

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138 Hl Deb 12 January 2011 c1524
139 HL Deb 12 January 2011 c1524 [Lord Davies of Stamford]
140 HL Deb 17 January 2011 c12
141 HL Deb 17 January 2011 c18
142 HL Deb 17 January 2011 c19
143 HL Deb 17 January 2011 c138
144 HL Deb 17 January 2011 c147
145 HL Deb 17 January 2011 c191
146 HL Deb 17 January 2011 c222
147 HL Deb 17 January 2011 c266

650.[148] Lord Grocott indicated that he was prepared to finish before 1pm to allow the next day's sitting to go ahead and the House adjourned at 12.52pm.

3.11 Committee stage tenth day 18 January 2011

Lord Falconer spoke to an amendment to create a 10 per cent rather than 5 per cent threshold for constituency size.[149] He received support from the Conservative peer Lord Crickhowell, as helping with the potential problems posed by boundary changes in Wales. In response, Lord Wallace of Tankerness said that the Government concern was that making the variation 10 per cent would move too far away from the principle of equality, but promised to feed back the forceful comments made, without commitment to an amendment.[150] Lord Falconer withdrew the amendment and Lord Lipsey spoke to a similar amendment on 90 per cent of quota, also withdrawn.[151] The House adjourned at 4.34pm.

3.12 Committee stage eleventh day 19 January 2011

Isle of Wight

An amendment was made in respect of preserving the Isle of Wight as either a single constituency or two constituencies. Lord Fowler complained that Andrew Turner had not been given time in the Commons to consider a similar amendment.[152] He received support from several peers who emphasised the importance of communities in devising boundaries, but Lord Wallace indicated that the Government had no plans to modify its position. Lord Fowler pushed the matter to a division which the Government lost by 196 votes to 122.

Earlier, Lord Bach spoke to an amendment on the choice of December 201) for the electoral quota.[153] Lord Thomas of Gresford moved a closure motion at 5.20pm, which was won by 229 votes to 188. There followed a vote on the amendment which was lost by 167 votes to 242 and Lord Bach moved that the House resume.[154] There was cross bench concern in the House about the use of 2 closure motions within a week.[155] Lord Mackay of Clashfern suggested that both sides needed to reconsider the implications. Lord Bach withdrew his motion to resume on the basis that there would be no more closure motions and in view of the next amendment on the Isle of Wight.[156]

After a statement, Lord Lipsey introduced an amendment on socio economic aspect of the electoral register.[157] He then spoke to amendments on the formula of dividing seats by 598[158] He pointed out that the Isle of Wight amendment meant that this part of the bill would need adjusting to make the formula 597.[159] Lord Corbett of Castle Vale spoke to an amendment on the question of prisoner voting rights and its implications for the Bill.[160] Lord Brooke of Sutton Mandeville spoke to an amendment to recognise the special position of the City of London.[161] Debate continued into the small hours. There was another attempt for the House to resume

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148 HL Deb 17 January 2011 c319
149 HL Deb 18 January 2011 c336
150 HL Deb 18 January 2011 c350
151 HL Deb 18 January 2011 c354
152 HL Deb 19 January 2011 c407
153 HL Deb 19 January 2011 c367
154 HL Deb 19 January 2011 c399
155 HL Deb 19 January 2011 c400 (Baroness O'Neill of Bengarve)
156 HL Deb 19 January 2011 c405
157 HL Deb 19 January 2011 c436
158 HL Deb 19 January 2011 c453
159 HL Deb 19 January 2011 c463
160 HL Deb 11 January 2011 c466
161 HL Deb 19 January 2011 c479

which was lost on a division by 63 votes to 103. Lord Foulkes then spoke to an amendment on overseas voters. He withdrew the amendment and the House rose at 3am.

On 18 January Mark Harper indicated that the Electoral Commission had issued a letter highlighting key dates and milestones that had to be met between royal assent and 5 May and promised to place the letter in the Library.[162]

3.13 Committee stage twelfth day 24 January 2011

Lord Strathclyde said that it was 'unprecedented and worrying' that the usual channels had been unable to come to an agreement on the timescale for the Bill in Committee; he noted that the Lords had now spent nearly 80 hours in Committee and that there were a further 54 groups of amendments remaining.[163] Lord Falconer acknowledged that there was an impasse; he and others had recently met with Ministers and the Opposition would consider any government proposals constructively but he said that 'in the mean time we will continue to maintain the level of scrutiny that we have been applying to the Bill.'[164] Baroness D'Souza spoke on behalf of the Cross-benchers and said that their collective concern was that the self-regulation of the House of Lords should be preserved; she also called for 'significant compromises on both sides of this House so that we may proceed with dignity and resolve.'[165]

Lord Snape moved an amendment which would require each constituency to be wholly within a single county boundary.[166] Baroness Liddell of Coatdyke spoke of the difficulties that would arise if wards were split between constituencies and the importance of keeping community cohesion when deciding on constituency boundaries.[167] Lord Rennard opposed the amendment and argued that the Boundary Commissions should be given the discretion to cross ward boundaries in order to achieve more equal constituencies but he added that this should be a rare occurrence and that county boundaries, district boundaries or London borough boundaries should not be crossed more than was really necessary.[168] During the debate Lord Campbell-Savours said that much of the debate on the amendments could be avoided 'if the Government were to concede on the principle of the 5 per cent' which was a 'straitjacket' that would not allow flexibility.[169] Lord Wallace of Tankerness responded that to ensure the fairest constituencies it was inevitable that ward boundaries would be crossed on some occasions.[170] **Lord Wallace also indicated that the Government thought that there might be 'some merit in placing a discretionary consideration of wards in the Bill' and would bring back a fully considered response about the use of wards at Report Stage.**[171] Lord Snape withdrew his amendment**.**

Lord Falconer moved an amendment to insert a number of additional factors for the Boundary Commissions to take account of when drawing up constituencies; he said this would 'provide a clearer requirement that administrative units and boundaries in the four parts of the United Kingdom, in particular the ward boundaries in England, Wales and

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[162] HC Deb 18 January 2011 c715W
[163] HL Deb 24 January 2011 c680
[164] HL Deb 24 January 2011 c682
[165] HL Deb 24 January 2011 c683
[166] HL Deb 24 January 2011 c686
[167] HL Deb 24 January 2011 c694
[168] HL Deb 24 January 2011 c702
[169] HL Deb 24 January 2011 c708
[170] HL Deb 24 January 2011 c712
[171] HL Deb 24 January 2011 c713

Northern Ireland, should be respected and given proper account when parliamentary constituencies are being created.'[172] Peers supporting the amendment agreed that it was desirable that the boundaries of parliamentary constituencies should be aligned with local authority boundaries. Lord Wallace of Tankerness said that an absolute prohibition on the splitting of wards would be going too far but he reiterated the Government's commitment to look again at the issue of wards and bring back proposals at Report Stage.[173] Lord Falconer withdrew the amendment.

Lord Bach's amendment to remove Rule 4 on the territorial extent of constituencies from the new Rules for Redistribution in the Bill sought to probe the thinking behind the Rule. [174]Lord Bach asked why the geography of the Scottish Highlands should be the only part of the United Kingdom to qualify for special recognition in the construction of constituencies. Lord McNally assured Peers that the new rule had nothing to do with the present incumbent of the seat of Ross, Skye and Lochaber and that the Boundary Commission for Scotland had recommended that the geographical extent of this seat was the maximum manageable size for a constituency. Lord Bach withdrew the amendment but said that the Minister's explanation was unsatisfactory and the Opposition would return to the issue at Report Stage.

Lord Lipsey moved an amendment which sought to replace the limit of the geographical extent of a constituency in the new Rule 4 with that of the size of the constituency of Brecon and Radnor, the largest constituency in England and Wales.[175] Lord Lipsey described the geographical features of the constituency and how difficult it would be for the Boundary Commission to increase its size in order to comply with the equality rule. Lord McNally said the amendment would result in more than ten constituencies being out of line with the UK electoral quota and would depart from the fundamental principle of the Bill that all votes should have broadly equal weight. Lord Lipsey withdrew the amendment but said the Bill needed to be 'improved to reflect the realities of the electoral geography of our country.'[176] A further amendment was moved by Lord Kennedy of Southwark which would require that the Boundary Commissions 'should take into account' special geographical considerations, local government boundaries and local ties when drawing up new boundaries; the new Rule 5 in the Bill states that the Commissions 'may take account' of these.[177] This amendment was also withdrawn.

Existing constituency boundaries

An amendment moved by Lord Tyler (Liberal Democrat) was agreed without a division.[178] The amendment adds existing constituency boundaries to the list of factors in new Rule 5 that the Boundary Commissions may take into consideration when drawing up new boundaries. Lord Davies of Stamford (Labour) supported the amendment and suggested that it would 'create a bias in favour of not changing existing constituency boundaries.'[179] Lord Falconer welcomed the amendment which he said would reduce the disruption that would be caused by constantly changing constituency boundaries. Lord Wallace of Tankerness said the Government was content to accept the amendment because

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[172] HL Deb 24 January 2011 c719
[173] HL Deb 24 January 2011 c743
[174] HL Deb 24 January 2011 c781
[175] HL Deb 24 January 2011 c795
[176] HL Deb 24 January 2011 c806
[177] HL Deb 24 January 2011 c807
[178] HL Deb 24 January 2011 c836
[179] HL Deb 24 January 2011 c834

> ...it will allow for the merits of existing boundaries to be taken into account where appropriate, thereby ensuring that the boundary commissioners do not have to start with a blank page.[180]

3.14 Committee stage 13th day 25 January 2011

Lord Lipsey spoke to an amendment to allow the boundary commissions some discretion in the exercise of the Rules.[181] This led to a more general debate on crossing of county boundaries. Lord McNally having been taken ill the day before, Lord Wallace of Tankerness put the Government's position that such discretion would lead to wide variation between constituency sizes.[182] There followed a debate on amendments to prevent constituencies crossing rivers such as the Tyne, the Mersey and the Thames.[183] Lord Kinnock indicated that if the Government were prepared to accept a 10 per cent rather than 5 per cent tolerance, the need to debate these amendments would disappear.[184] The amendments were withdrawn. Lord Foulkes then spoke to an amendment allowing the boundary commissions to take into account the Scottish Parliament constituencies.[185]

After a dinner break, Lord Falconer then introduced an amendment on the question of island constituencies, followed by an amendment to that amendment moved by Lord Liddle on adding Cumbria to the list.[186] There followed a general debate in which Lord Crickhowell and Lord Roberts of Conwy opposed exempting the island of Anglesey, as connected with the mainland. Lord Teverson supported special recognition for Cornwall and the Scilly Isles and contributions from the Conservative and Liberal Democrat were noted by the Labour peers.[187] Lord Strathclyde defended the Government position. Lord Falconer noted that there had been broad support within the House on special recognition for Argyll and Bute and also for Cornwall, but the amendment was too broad to form the subject of a division.[188]

Lord McAvoy then spoke to an amendment to delete Orkney and Shetland as a protected constituency.[189] He referred to the fact that the Scotland Bill had 10 days in committee in the Lords all of which went after 10.30pm.[190] He then spoke on South Lanarkshire and the implications for the Royal Burgh of Rutherglen.[191] Finally, Lord Myners spoke on an amendment on preserving existing Cornish constituencies. Lord Tyler expressed his sympathy, but preferred an amendment which would allow either 5 or 6 constituencies in Cornwall.[192] Lord Wallace of Tankerness said that he was well aware of the depths of feeling on Cornwall, but argued that it would be possible for a cross boundary constituency. Lord Myners withdrew the amendment. Finally Lord Falconer moved amendments to adjust the formula for allocation of seats, allowing for the total number of seats allocated to each country not to be cut by more than 10 per cent in relation to the existing number of constituencies.[193] This was not accepted and the amendment was withdrawn. At the end of

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[180] HL Deb 24 January 2011 c836
[181] HL Deb 25 January 2011 c847
[182] HL Deb 25 January 2011 c859
[183] HL Deb 25 January 2011 c863
[184] HL Deb 25 January 2011 c885
[185] HL Deb 25 January 2011 c887
[186] HL Deb 25 January 2011 c898
[187] HL Deb 25 January 2100 c902
[188] HL Deb 25 January 2011 c922
[189] HL Deb 25 January 2011 c924
[190] HL Deb 25 January 201 c929
[191] HL Deb 25 January 2011 c933
[192] HL Deb 25 January 2011 c939
[193] HL Deb 25 January 2011 c951

the debate **Lord Wallace moved a Government amendment to deal with the scenario whereby the Saint Lague formula resulted in a tie between two or more countries. The amendment ensures that the final seat be allocated to the smallest country**.[194] The House adjourned at 11.25pm

3.15 Committee stage 14th day 26 January 2011

Further amendments to clause 11 were debated and clause 12 was reached. Lord Touhig spoke to an amendment on maintaining the representation of Wales at 35 seats.[195] Lord Crickhowell expressed some scepticism as to whether the quality or quantity of Welsh representation was most important.[196] There were contributions from several peers with Welsh backgrounds. Lord Wallace of Tankerness reiterated the Government's commitment to equal sized constituencies.[197] Lord Touhig pressed the amendment to a division which was lost by 196 votes to 146. After a statement, Baroness McDonagh spoke to a probing amendment on the mechanisms for increasing the Commons beyond 600.[198] She withdrew the amendment and a debate on Clause 11 itself began. Lord Falconer asked for some technical clarifications and the clause was added to the Bill without a vote. Lord Falconer of Thoroton then spoke to a new clause which would reduce the number of ministers under the *House of Commons Disqualification Act 1975.* This was debated with a similar amendment from Lord Norton.[199] In response, Lord Strathclyde said that while the Government agreed with the spirit of the amendments, they need not feel the need to rush to legislate, noting that the amendment did not take into account the number of PPSs in the Commons.[200]

Finally, Lord Kennedy of Southwark spoke to amendments to Clause 12 on representations on boundary commission proposals. He proposed that the commissions publish them online within 24 hours, so that other objectors could see them. **In response to an amendment from Lord Lipsey, that there should be a requirement for the commissions to take into consideration any comments on the representations, Lord Wallace indicated that the Government would bring forward its own amendments on report.** Lord Falconer spoke to an amendment which would enable the commissions to hold a local inquiry if they considered it necessary. He received support from the former Lord Chief Justice, Lord Woolf, who warned of the possibility of increased judicial review if there was no provision for an inquiry.[201] Lord Wallace agreed that the Government would reflect on the spirit of the amendment to see if there could be some agreement. Lord Falconer withdrew the amendment and the House rose at 11.48pm.[202]

3.16 Committee stage 15th day 31 January 2011

The sitting began with an announcement from Lord Strathclyde that the usual channels has reached an agreement that the committee stage would be completed at the end of Wednesday 2 February. He said that the Government would bring forward a package of concessions on Report, and that the Bill needed to be returned to the Commons by 14 February to meet the deadline for the referendum.[203] The announcement followed negotiation

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194 HL Deb 25 January 2011 c954
195 HL Deb 26 January 2011 c978
196 HL Deb 26 January 2011 c993
197 HL Deb 26 January 2011 c1015
198 HL Deb 26 January 2011 c1034
199 HC Deb 26 January 2011 c1043
200 HL Deb 26 January 2011 c1056
201 HL Deb 26 January 2011 c1067
202 HL Deb 26 January 2011 c1072
203 HL Deb 31 January 2011 c1215

by the convenor of the crossbench peers, Baroness d'Souza who had announced plans to press to a division an amendment on public inquiries on 31 January. Crossbench concern stemmed from suggestions that guillotine procedures would be introduced to the Lords by the Government if the prolonged scrutiny could not be brought to an end. She spoke to her amendment but withdrew it, in expectation of the promised Government amendments.[204] Lord Wallace said:

> Perhaps I should remind the Committee that together with this-because it was very late last Wednesday-the Government have already said that we will, in addition, provide for an initial counter-representation stage. Nothing I have said today detracts from the concession we made to the noble Lord, Lord Lipsey, last week, whereby all written representations received during the period allowed for representations to be made on the commission's initial proposals will be published, and there will follow four weeks for comments on the representations. Indeed, we would wish the public hearings to which I referred kick in upon publication of the initial Boundary Commission proposals. The proposal in the amendment of the noble Lord, Lord Lipsey, emanated from recommendations from the British Academy report on the Bill, and we believe that it will provide scrutiny for the arguments put forward by others.
>
> These two changes-a public hearing stage, aimed at improving public understanding and letting the public have their say in the process, and a counter-representation period-represent substantial changes to the proposals that were initially in the Bill. I hope that the House will agree that the Government have been willing to show considerable flexibility and a willingness to accommodate reasonable concerns, reasonably expressed.[205]

There followed a debate on clause 12 (publicity and consultation) where a number of peers asked for more information on the timing of the reviews. Lord Wallace said that the commissions could not produce draft guidance and that he had every confidence that they would provide appropriate information as the reviews progressed.[206]

Lord Lipsey then spoke to an amendment on the appointment of assistant commissioners to assist with the workload of the commissions. Assistant commissioners have generally been used to manage the process of local inquiries and Lord Wallace promised to consider this point when drafting amendments on inquiries.[207]

A debate on Clause 13 prompted some discussion on the impact on Wales, in particular the breaking of the link with Assembly seats. Lord Wallace gave some details on the transitional provisions involved.[208] Lord Lipsey raised the question of the use of affirmative orders under the bill in a debate on Clause 14. He pointed out that when MPs realised the extent of the boundary changes, they might decide not to pass the Orders under the affirmative resolution procedure to bring the change into effect. [209]. There followed a debate on an amendment on the question of accurate electoral registers in relation to Clause 18.[210] Lord Bach withdrew the amendment but signalled that it might be a matter brought up at Report. Lord Williamson of Horton then spoke to an amendment to defer the coming into force of the boundary review

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[204] HL Deb 31 January 2011 c1216
[205] HL Deb 31 January 2011 c1223
[206] HL Deb 31 January 2011 c1242
[207] HL Deb 31 January 2011 c1249
[208] HL Deb 31 January 2011 c1251
[209] HL Deb 31 January 2011 c1253
[210] HL Deb 31 January 2011 c1259

until the Secretary of State laid orders under the affirmative procedure.[211] In response, **Lord Strathclyde indicated that although he could not accept the amendment, the Government would be open to bringing forward an amendment on report for an independent review of the numbers of MPs after implementation of the boundary review**.[212]

Moving onto Clause 18 and Schedule 1,Baroness McDonagh spoke to amendments to retain the household system of electoral registration;[213] Lord Lipsey then suggested a minimum period of 3 months between royal assent and the referendum being held, expressing concern that the timetable for achieving a yes vote was too short.[214] In response, Lord Strathclyde pointed to the short intervals between the passage of the legislation on the devolution referendums and the polls in 1998. Finally, Lord Low of Dalston spoke to an amendment to ensure access to the polls for disabled voters.[215]

3.17 Committee stage 16th day 1 February 2011

There were some technical Government amendments to clarify the administration of the referendum. The debate began with a discussion on the duties on the Electoral Commission to produce information on AV. Lord Rooker spoke to an amendment to require the Commission to produce information which would summarise the arguments for and against AV.[216] This was taken with a similar amendment from Lord Lipsey Several peers spoke in response on the difficulty of getting the facts across. Lord Strathclyde rejected a prescriptive approach for the Commission, noting that its leaflet would be factual only and not contain the arguments. The draft information leaflet is currently available on the Electoral Commission website.[217] Lord Bach then spoke to an amendment to give the Speaker's Committee on the Electoral Commission supervision over the production of the Electoral Commission information,[218] but this was rejected as an inappropriate responsibility for a parliamentary committee. Lord Philips of Sudbury then introduced an amendment to facilitate cooperation for the conduct of the referendum and this gave rise to a discussion on polling hours, and other points of electoral administration.[219] In response to an amendment from Lord Foulkes of Cumnock, Lord Wallace indicated that the Government would consider the position of a judicial review challenge to the referendum or election under Scots law.[220]

The committee then moved to Schedule 2 (Rules for the conduct of the referendum) and there was a debate about extending polling hours to 11pm and lengthening the timetable to 30 days. These were rejected, in view of the short time before May and the combination of polls.[221] Lord Falconer then introduced amendments on the number of polling stations and a requirement to print 100 per cent of ballot papers.[222] Both were not moved and an amendment on the procedure for sealing ballot boxes before the commencement of poll was

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211 HL Deb 31 January 2011 c1268
212 HL Deb 31 January 2011 c1272
213 HL Deb 31 January 2011 c1273
214 HL Deb 31 January 2011 c1281
215 HL Deb 31 January 2011 c1289
216 HL Deb 1 February 2011 c1309
217 Electoral Commission *Referendum on the voting system used to elect MPs to the House of Commons* January 2011
218 HL Deb 1 February 2011 c1341
219 HL Deb 1 February 2011 c1351
220 HL Deb 1 February 2011 c1360
221 HL Deb 1 February 2011 c1367
222 HL Deb 1 February 2011 c1372

also withdrawn.[223] Other points on electoral administration were raised, including the potential difficulties of polling clerks when asked by voters to explain the meaning of the referendum.[224]Lord Strathclyde promised to write on some of the technical points and offered an opportunity for party officials to discuss some of the outstanding questions.[225] Schedules 2, 3 and 4 were agreed.

3.18 Lords report stage 1st day 7 February 2011

Lord Falconer noted that the beginning of debate that the Opposition were prepared to see agreement on the AV aspects of the Bill that day. Baroness D'Souza spoke on behalf of the crossbenchers that a majority would want to see the Bill returned to the Commons by 14 February in order to meet the referendum deadline.[226] Amendments were put down by the Government in respect of part 2 on boundary changes..

Lord Rooker then moved an amendment which would not make the result of the referendum binding on the Government unless 40 per cent of the electorate had voted in the poll. There was some debate as to the implications of the amendment which was passed by 219 votes to 218.[227] Lord Rooker said that it would do no more than allow a reconsideration of the policy should turnout be derisory. However, Lord Wallace protested that it would introduce uncertainty:

> In addition, the amendment offers no indication of what kind of process might be followed where less than 40 per cent of the electorate voted. Even if Amendment 10B were carried, there would be a heavy responsibility on the Minister and then on Parliament if there had been a yes vote. The Boundary Commission review would be complete but he or she may or may not bring the provisions into force. As we are all aware, the boundary review will not be completed until 2013 at the earliest. Is it really the case that we want to replace the current provisions in the Bill, which provide both clarity and certainty, with provisions that could leave us with no clear resolution for the two years following on from the referendum? I am not saying that that would be the case, but that is the possibility that we open ourselves up to with these amendments. I cannot believe that that lack of clarity would be healthy.[228]

There was some reference to the only other referendums held with a 40 per cent threshold, those for Scotland and Wales held in 1979,; there was also reference to the decision by the Opposition to oppose a threshold during the Commons debates on the Bill. Following the defeat, Lord Wallace indicated that the Government would need to reflect on the implications.[229] Lord Rooker then moved amendments to put the Bill in order following the amendment to ensure that the referendum took place before 31 October 2011.[230]

Lord Campbell Savours moved an amendment to change the wording of the question to allow more general consideration of a move to PR.[231] He also spoke to an amendment to introduce the SV system, but did not press either to a vote. An amendment by Lord Howarth

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[223] HL Deb 1 February 2011 c1376
[224] HL Deb 1 February 2011 c1390
[225] HL Deb 1 February 2011 c1396
[226] HL Deb 7 February 2011 c15
[227] HL Deb 7 February 2011 c35
[228] HL Deb 7 February 2011 c28
[229] HL Deb 7 February 2011 c102
[230] HL Deb 7 February 2011 c40
[231] HL Deb 7 February 2011 c41

of Newport to allow for votes at 16, and a grouped amendment on allowing peers to vote in general elections were also withdrawn.[232]

There followed a debate on amendments to remove the combination of elections with the referendum poll. One amendment was pushed to a division which was lost by 232 votes to 154.[233] Lord Foulkes then spoke to an amendment on the timing of the count for the Scottish elections. Lord Strathclyde noted that the parliamentary count would be taken before the referendum count, once there had been verification. There was nothing in statute to require an overnight count, as Lord Foulkes preferred.[234] The amendment was withdrawn.

Lord Falconer spoke to a debate to probe how the referendum broadcasts would be regulated. He was concerned that party political broadcasts might be used to promote a Yes or No vote in the referendum. Lord Wallace said that the Government had reflected on the debate in committee and agreed that the PPBs should not be used for referendum campaign broadcasts and did not consider that an amendment was necessary, given the existence of section 127 of the *Political Parties, Elections and Referendums Act 2000.* The chair of the Broadcasters' Liaison Group had written to the political parties in November 2010 about their interpretation of s127.[235] Lord Falconer indicated that he found the response inadequate and would seek to table an amendment on 3rd reading.

A series of amendments on a threshold for the referendum were then debated, but withdrawn.[236] Lord Lipsey spoke to an amendment to decouple the AV referendum from the boundaries review, which was withdrawn, as was another on introducing a compulsory form of AV. Lord Rooker noted that although the Government were committed to the optional preference form of AV, there was not a single national state which currently used the system.[237]

3.19 Lords report stage 2nd day 8 February 2011

On the second day of Report, Lord Wallace moved an amendment to introduce a public hearing during the 12 week consultation period which begins after the publication of initial plans for constituencies. In opposition, Lord Falconer moved an amendment to retain a modified version of the current public inquiry system involving an inquiry lasting a maximum of 4 months. This amendment was lost by 266 votes to 262 and the Government amendment accepted. A number of peers queried the Government proposals as not representing a full public inquiry. Lord Woolf and Lord Pannick considered that an independent person would need to chair the inquiry and that the commission would need more than a summary of the oral representations made at the hearing.[238] However, the length of time involved in the Falconer amendment was remarked upon by Lord Marks of Henley on Thames and others.

Lord Wallace explained that at the end of the 12 week period all representations would be published including the record of the public hearing and there would be a four week period for counter representations.[239] This would enable effective scrutiny of the arguments put forward by others, as recommended by the British Academy report.

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[232] HL Deb 7 February 2011 c58
[233] HL Deb 7 February 2011 c68
[234] HL Deb 7 February 2011 c73
[235] HL Deb 7 February 2011 c98
[236] HL Deb 7 February 2011 c102
[237] HL Deb 7 February 2011 c115
[238] HL Deb 8 February 2011 c138
[239] HL Deb 8 February 20100 c130

Lord Wills moved an amendment for a Committee on Inquiry on the numbers of constituencies. He criticised Government plans to hold a limited inquiry after the conclusion of the boundary review. The amendment was lost by 287 votes to 201.[240] Lord Falconer moved an amendment on ensuring an accurate electorate amendment by 266 votes to 192.[241] Lord Lipsey spoke to amendments on a 10 year boundary review process and for special arrangements should there be a general election before May 2015, but withdrew both.[242] Lord McNally then moved amendments to make clear that the Secretary of State would not be able to modify a boundary commission report before laying it before Parliament.[243] Lord Falconer moved an amendment to retain the number of MPs at 650 which was lost by 252 votes to 171.[244]

3.20 Lords report stage 3rd day 9 February 2011

Lord Pannick, a crossbencher, moved an amendment to allow the boundary commissions to create constituencies with up to 7.5 per cent deviation from the average of 76,000 electors where there are special geographical consideration or local ties. The Government opposed the amendment as likely to increase judicial review challenges to the reviews and as creating difficulties for the commissions in Scotland Wales and Northern Ireland where there was less flexibility. However, the amendment was made by 275 by 257.[245]

Lord McNally moved a Government new clause to create a review of the reduction in the number of MPs, no later than 30 November 2015 but no earlier than 1 June 2015. A majority of the members of the review body would be MPs. The Opposition argued that the review had no end date, and it would be preferable to begin the review now before changes were made. The clause was added without a division.[246]

The Government also indicated that it would be prepared to accept the principle of an amendment moved by Lord Brooke of Sutton Mandeville to prevent the City of London from being split between two constituencies.[247]

An amendment from Lord Lipsey to treat Brecon and Radnor as a special case was withdrawn, as was a similar amendment from Lord Kennedy of Southwark in respect of Ynys Mon.[248] Lord Teverson moved an amendment to ensure that there would not be constituencies in Cornwall which crossed the border into Devon. This was lost by 250 votes to 221.[249] Lord McAvoy spoke to an amendment to preserve Rutherglen, Cambuslang and Halfway within a constituency within South Lanarkshire, but withdrew the amendment on hearing a response from a Liberal Democrat minister, Lord Wallace.[250] Lord Falconer moved an amendment to ensure that no constituent part of the UK should lose more than 10 per cent of its seats at any one time. He referred principally to the position in Wales. This amendment was lost by 247 to 191 votes.[251]

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240 HL Deb 8 February 2011 c170
241 HL Deb 8 February 2011 c182
242 HL Deb 8 February 2011 c186
243 HL Deb 8 February 2011 c186
244 HL Deb 8 February 2011 c200
245 HL Deb 9 February 2011 c247
246 HC Deb 9 February 2011 c296
247 HL Deb 9 February 2011 c254
248 HL Deb 9 February 2011 c256
249 HL Deb 9 February 2011 c262
250 HL Deb 9 February 2011 c267
251 HL Deb 9 February 2011 c280

Lord Falconer then moved an amendment to reduce the number of ministers proportionately once the number of MPs had fallen; this was linked with an amendment from Lord Howarth of Newport on the number of PPSs (the payroll vote). In response, Lord McNally said that the Government did not wish to see an increase in the payroll vote, but it would be better to consider the question after the Bill had been implemented. The amendment was lost by 222 by 161.[252]

Lord Forsyth of Drumlean moved an amendment to link the Bill with the implementation of a limit on the size of the House of Lords. He complained that the House of Lords had increased in size by over 100 since the general election at a time when the Bill would reduce the size of the elected House. He was supported by Lord Grocott and Baroness O'Cathain who expressed concern about the current working conditions in the Lords.[253] Lord Falconer calculated future costs of the Lords:

> The coalition agreement says:
>
> "Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last General Election".
>
> The report of the constitution unit of University College London of 22 November 2010 estimates that fulfilling that commitment will result in a House of 977 compared to the current 786, which makes it already the largest second chamber in the world. The coalition agreement on Lords appointments would therefore mean an additional 200 Peers. Accepting the limitations on the figures, which the noble Baroness, Lady O'Cathain, has rightly pointed out-that means that there may be better figures-that would mean an additional cost of £33.5 million. Even if one took a third of that figure to deal with the capital costs, the saving of approximately £12 million each year, which is advanced as the reason for making the cull in MPs, would be dwarfed. The importance of those figures is that they perhaps undermine the justification given.[254]

The amendment was lost by 195 votes to 136.[255]

Lord Low of Dalston spoke to an amendment on voters with disabilities, but withdrew the amendment after assurances from Lord Strathclyde. An amendment on polling hours from Lord Lipsey was also withdrawn.[256] Lord Phillips of Sudbury moved an amendment to take steps to facilitate cooperation between the Chief Counting Officer and regional counting officers on encouraging participation.[257] Finally, Lord Strathclyde moved amendments to facilitate the combination of absent voting provisions in Schedule 3.

3.21 Third Reading 14 February 2011

Party election broadcasts

Lord Falconer moved an amendment which sought to prevent a party political broadcast which supported one side or the other in the AV debate from being broadcast during the referendum period. Lord Wallace said that the Government agreed with the principle that party election broadcasts should not be used as referendum broadcasts.[258] He added that

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[252] HL Deb 9 February 2011 c290
[253] HL Deb 9 February 2011 c301
[254] HL Deb 9 February 2011 c303
[255] HL Deb 9 February 2011 c306
[256] HL Deb 9 February 2011 c338
[257] HL Deb 9 February 2011 c339
[258] HL Deb 14 February 2011 c510

Section 127 of the *Political Parties, Elections and Referendums Act 2000* prevented the main purpose of any broadcast, other than a referendum campaign broadcast, from being to procure or promote a referendum's outcome. Lord Wallace said there was merit in maintaining some flexibility in this area and this might enable a brief statement to be included in a broadcast as to whether the party supported a particular outcome in the referendum but ultimately it was a matter for broadcasters to ensure that the rules in Section 127 of PPERA and the guidance issued under the *Communications Act 2003* were adhered to.[259] The amendment was defeated on a division: Contents 153; Not-Contents 236.

Threshold

Lord Rooker had moved an amendment at Report Stage which would not make the result of the referendum binding on the Government unless 40 per cent of the electorate had voted in the poll. The amendment was passed by 219 votes to 218. At Third Reading he moved a further amendment to clarify the definition of electorate and turnout, given that the Electoral Commission had indicated that this would need to be set out on the face of the Bill.[260] Lord Rooker explained the definitions in his amendment:

> It seems to me to be reasonable to call the electorate those people defined in Clause 2 as entitled to vote. The vote is those counted under Part 1. That gives clarity. The Bill sets out the electorate in Clause 2, on which we had long debates. The vote is defined as voters who are counted under Part 1 of the Act, namely those who are yes or no. Those are the only votes that count. Spoiled votes do not count.[261]

Lord Rooker emphasised that this was not a standard threshold. If fewer than 40 per cent of the electorate voted, AV could still be introduced if Parliament so decided.[262]

These amendments were not opposed, but Lord Wallace noted that some further drafting changes would be necessary to make the result of the vote indicative rather than binding, should less than 40 per cent of the electorate vote.

City of London

The Government did not accept an amendment from the Conservative peer, Lord Brooke of Sutton Mandeville, at Report Stage which would have prevented the City of London from being divided between two constituencies, but Lord Wallace indicated that the Government would consider the matter for Third Reading.[263] At Third Reading Lord Brooke moved an amendment to add a reference to the City into the interpretation of local government boundaries in the new Rules for Redistribution:

> I shall briefly explain the effect of the amendment. It adds a reference to the City of London as a whole into the interpretation of "local government boundaries" in rule 11 of Schedule 2, which is inserted by Clause 11 of the Bill. That, in turn, makes the City of London as an entity a factor for the Boundary Commission to take into account in any future review. Unlike a number of amendments with which your Lordships' House has been concerned, this is about keeping a small area with particular attributes but few parliamentary electors together in what will inevitably be a much larger single parliamentary

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[259] HL Deb 14 February 2011 c511
[260] HL Deb 14 February 2011 c518
[261] HL Deb 14 February 2011 c516
[262] HL Deb 14 February 2011 c515
[263] HL Deb 9 February 2011 c254

> constituency. That is why reference in the amendment to the City of London as a whole but not to its sub-divisions, such as wards, is so relevant.
>
> One point not covered in the amendment is the inclusion of a reference to the City of London in the name of the parliamentary constituency. Although I appreciate that the question is ultimately a matter for the Boundary Commission, it is, I think, in order for me to invite the Minister to express a view on the appropriateness of such a reference in any future constituency which includes the City.[264]

Lord Wallace said that the Government accepted the amendment and said that it provided 'the best way of including the boundaries of the City in the Commission's considerations'.[265] The amendment was passed without a vote.[266]

Turnout

Lord Philips of Sudbury moved an amendment to facilitate cooperation in encouraging turnout. The amendment requires the Chief Counting Officer to facilitate co-operation between himself and the Regional Counting Officers, the Counting Officers and the Registration Officers to take steps to encourage participation in the referendum. Lord Wallace urged the House to accept the amendment saying that it added useful clarification to the Bill. The amendment was agreed without a division.[267]

3.22 Westminster Hall debate on parliamentary representation 11 January 2011

This debate was initiated by the Liberal Democrat Andrew George and MP for St Ives. He protested against the proposal for strict numerical equality in the Bill, which would mean the creation of cross border constituencies in Devon and Cornwall. He queried the special protection for two constituencies. He was joined by Alan Reid, LD MP for Argyll and Bute, which contains 25 islands. The Conservative, Martin Vickers, also argued against limiting the House to 600 Members. These points were reiterated by Chris Bryant, and in response Mark Harper defended the rationale for the preserved constituencies and argued that Cornwall could be adequately represented if constituencies straddled the border with Devon. He reiterated that it was the role of the Electoral Registration Officer to decide if a second home owner met the test of residence for the purpose of electoral registration.[268] Baroness McDonagh moved an amendment to create flexibility of up to 7.5 per cent around the target of 72,000 and to respect county boundaries, but withdrew it without a vote. Lord Bach spoke to amendments on crossing the boundaries of counties or London boroughs and on limiting the territorial extent of a constituency Both were withdrawn.[269] In response to a final point from Lord Bach on the importance of wards, Lord Wallace referred to planned amendments which would specifically include wards in the definition of local ties in Rule 5.[270]

4 Joint Committee on Human Rights report

On 26 November 2010 the Joint Committee on Human Rights published its Sixth Report of 2010-11, on the *Superannuation Bill* and the *Parliamentary Voting System and*

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[264] HL Deb 14 February 2011 c522
[265] HL Deb 14 February 2011 c523
[266] HL Deb 14 February 2011 c523
[267] HL Deb 15 February 2011 c524
[268] HL Deb 11 January 2011 c25-45WH
[269] HL Deb 8 February 2011 c218
[270] HL Deb 8 February 2011 c220.

Constituencies Bill.[271] The Committee considered whether the Bill raised any significant human rights issues that required further scrutiny:

> 2.5 We have considered whether the introduction of the alternative vote system itself would raise any issues of compatibility with the right to free elections under Article 3 of Protocol 1 to the ECHR,[32] but we accept the view set out in the Explanatory Notes to the Bill that no compatibility issue arises because Article 3 Protocol 1 does not require any particular electoral system to be introduced.[33] Rather, states have a considerable degree of latitude as to the particular electoral system they use.[34]
>
> 2.6 We have also considered whether the review of constituency boundaries raises any human rights compatibility issues, but we are again satisfied with the explanation of the Government's view set out in the Explanatory Notes: bearing in mind the degree of latitude afforded to states in designing their electoral systems, there is no risk of incompatibility with Article 3 Protocol 1 in the absence of any clearly arbitrary or disproportionate effect of the proposed boundary reviews, or the effective disenfranchisement of any person or group. The case-law of the European Court of Human Rights makes clear that, although the principle of equal treatment is implicit in the right to vote in Article 3 Protocol 1, it does not follow that all votes must necessarily have equal weight as regards the outcome of the election.[35] We therefore accept the Government's reasons for its view that the review of constituency boundaries does not raise any significant human rights compatibility issues.[272]

However, the Committee asked whether the Government would use the Bill to remove the blanket ban on prisoners voting which was held to be incompatible with the right to participate in free and fair elections in Article 3 Protocol 1 ECHR by the Grand Chamber of the European Court of Human Rights:

> 6. The Bill defines the right to vote in a referendum by reference to the parliamentary franchise at a future date, namely the date of that referendum (5 May 2011). In our view Parliament is entitled to know, when considering this Bill, whether the Government intends to amend the parliamentary franchise by that date to remove the incompatibility identified by the Grand Chamber in *Hirst*. (Paragraph 2.15)

For further information about prisoners and voting see Library Standard Note, SN/PC/1764, *Prisoners' voting rights.*

5 House of Lords Delegated Powers and Regulatory Reform Committee Report

The House of Lords Delegated Powers and Regulatory Reform Committee examined the delegation of legislative power in the provisions of the Bill in its seventh report of 2010-11. The Committee commented on the Commencement/Repeal order which would be made under Clause 8 of the Bill:

> 2. If the referendum produces a "yes" outcome, the Minister must make an order under subsection (1) of clause 8 bringing the alternative vote provisions into force on the day determined under subsection (3); in the event of a "no" outcome, he must make an order under subsection (2) repealing those provisions. The orders are not subject to any parliamentary procedure. Subsections (1) to (3) afford the Minister no choice about making an order, or about what it must contain. But subsection (4)

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[271] *Superannuation Bill* and the *Parliamentary Voting System and Constituencies Bill*, Joint Committee on Human Rights sixth report 2010-11, HL 64 / HC 640

[272] ibid

enables the commencement order under subsection (1) to include transitional and saving provision. That in itself is not unusual; but, for an important constitutional measure of this kind, there is a judgement to be made about whether the additional delegation in subsection (4) is appropriate without any parliamentary control.

3. Paragraph 5 of the supplementary memorandum from the Cabinet Office explains that the government may wish, when bringing the alternative vote provisions into force for a proposed general election in 2015, to retain the existing voting arrangements for, say, any by-election that takes place between the commencement of the new provisions and that general election. But the power could be exercised to retain the present arrangements for other purposes too. In this particular case, therefore, the power to include transitional and saving provision may determine which form of voting system is to apply in the case of a particular parliamentary election. That is a significant power, which ought to be subject to Parliamentary control. **The Committee therefore recommends that an order under subsection (1) which includes transitional or saving provision made under subsection (4) should be subject to the negative procedure.**[273]

6 Other comment

Democratic Audit published a report in November 2010 which looked at the arguments on the number of MPs.[274] This argued that the fact that political representation in the UK (and particularly in England) was skewed towards the national level had barely featured in current debates about reducing the number of MPs. Strengthened representative bodies at the sub-national level would have reinforced the argument for reduction.

Democratic Audit also published two reports in December 2010. One dealt with the outcomes of a detailed projection of the impact of the proposed Rules for Redistribution. This concluded that the changes were unlikely to have much of a partisan effect. If anything, the key impact could be to enhance the overall bias of the electoral system against the Liberal Democrats.[275]

The other reviewed the case for further equalisation of size. It concluded that constituencies had already become more equal, noting that the standard deviation of constituency size in the UK was its lowest on record under the existing Rules.[276]

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[273] Seventh report of the House of Lords Delegated Powers and Regulatory Reform Committee, 2010-11.
[274] *How strong is the case for having fewer MPs?*
[275] *The new constituency map of Britain* Lewis Baston Democratic Audit December 2010
[276] *How pressing is the case for further equalisation of constituency boundaries?* Lewis Baston Democratic Audit December 2010