

A report to Labour Peers

A Programme for Progress

**The Future of the House of Lords and its Place in a
Wider Constitution**

**Labour Peers' Working Group
March 2014**

Foreword

The House of Lords needs urgent reform. The number of peers, growing fast, is too large. Its procedures creak. Its image is rendered antediluvian by flummery, and it falls short of what is required of an effective, modern second chamber.

On the other hand, the present House has many strengths. In particular, it facilitates the scrutiny of legislation by expert and experienced peers and contributes to the accountability of the government, without endangering the primacy of the Commons. It is a “think again” house, not a “yield or we veto” house. The task then is to find a model for reform that tackles the defects of the present House while preserving its strengths. Our group was set up by Labour Peers to contribute to the discussion of the future of the House of Lords, both within the Labour Party and more widely. This report sets out our conclusions.

In 2011-12, the present government tried to legislate for an elected second chamber; its proposals fell apart on detailed examination. We discussed but have not sought to resolve whether, and in what circumstances, the House of Lords should be elected. Some of us favour election as appropriate for a House of Parliament in a democratic era. Others amongst us – and we believe this view is shared by a majority of Labour peers – believe that election would lead inexorably to the Lords challenging the primacy of the Commons. We all agree it should be inconceivable to institute so fundamental a change to the constitution without submitting any proposal for the verdict of the people in a referendum.

We also agree that reform of the Lords is not an issue that can be tackled in isolation from other constitutional issues. For example, the future governance of Scotland and Wales has important implications for Lords reform. So do our future relations with the European Union. The issue of the use of referendums is not one that is confined to the Lords. Lords’ reform also has to be related to the wider question of tackling the apparent deterioration in public faith in our parliamentary institutions. We therefore propose a Constitutional Commission to examine these issues in the round during the next parliament. However, we do not think that the need to set up such a commission in the medium term should delay short term improvements to the way the House of Lords operates that do not cut across its remit.

We do not put forward our report as the last word in this debate. Rather, we believe we have provided a balanced framework in which it can be conducted, and a set of positive proposals for its eventual resolution. We commend the report to the Labour Party, to Parliament and to our wider civil society.

Julian Grenfell (Joint Chair)

Ann Taylor (Joint Chair)

Alf Dubs

George Foulkes

Joyce Gould

Philip Hunt (ex officio)

David Lipsey

Jenny McIntosh

March 2014

Background

Labour Peers felt that although strongly supportive of Labour's focus on jobs and growth, they wanted also to play their part in a widespread consideration across the House of Lords of further Lords reform. They wanted to ensure that the party gave full and careful consideration to the complex issues involved in Lords reform well ahead of the political rush of a general election campaign. Accordingly, a Working Group of Labour peers was established to consider further reform of the House of Lords.

Labour peers agreed the following terms of reference:

“To consider and report on short and long term proposals for the future development and reform of the House of Lords and its place in the wider constitution, including: its procedures and practices; the conventions applying to the House; the optimum size of the House and options for achieving such an optimum size; the future role of the House and options for its longer term reform.”

At its first meeting, the Working Group elected Lord Grenfell and Baroness Taylor of Bolton as co-chairs. It considered recent work on the issue including that by the Joint Committee of both Houses on the Government's withdrawn House of Lords Reform Bill 2012.

During the course of its deliberations, the Working Group was assisted by consulting a number of individuals with particular involvement in the issues. Informality was central to those discussions, and the individuals concerned gave their views on that basis. The Working Group extends its thanks to all those with whom it had such discussions, and is grateful to them for their time, views and advice.

The Working Group did not see its task as duplicating or revising the policy positions that Labour Peers had adopted in approving the Hunt Report in 2004 or the Grocott Report in 2010. It did recognise, however, that in some cases, circumstances had changed since that work was completed. In particular, it took the view that the Report of the Joint Committee on Conventions, chaired by Lord Cunningham of Felling, had substantially changed the conventions operating in the House of Lords and between the two Chambers when it was published in November 2006, two years after the Hunt Report.

The Working Group also took the decision that it wanted to consider the future of the House of Lords and its place in a wider constitution, including any further reform of the House of Lords, in two distinct but related ways:

- first, to consider areas of improvement and reform of the current House of Lords which, in the main, could be made without primary legislation.
- second, to consider areas of improvement and reform for a House of Lords early in the next parliament. Although this could include non-legislative changes, many of these reforms would require primary legislation.

The Working Group is a party political group, made up of Labour peers. We believe our report could be used in two ways: as a contribution to current debates, inside and outside the House of Lords, on the future of the second chamber following the collapse and withdrawal of the Coalition Government's Reform Bill, and as a contribution to the process of developing Labour's next General Election manifesto.

Recommendations

House of Lords reform in a wider constitutional context.

1. It is a matter of common agreement that there is widespread public disengagement from our parliamentary system. The problem has many causes and will require wide-ranging solutions far beyond any necessary to make the House of Lords function properly. The House of Lords is the wrong place to attempt to resolve those wider questions and they are beyond the scope of this report. Complex, seemingly intractable, constitutional issues do not find solutions quickly. Such solutions are usually the result of deliberation and reflection in order to find sufficiently broad support to be sustainable in the long term. For example, we discussed but have not sought to resolve the question of whether or not the House should be elected in whole or in part. **We recommend** that this, and other complex constitutional matters such as devolution, should be considered by a representative body such as a constitutional commission, which would embark on wide consultation and engagement, leading to a consensus that would make legislation in the next parliament possible.
2. In advance of agreement on wider constitutional reform, we believe there are some simple yet significant improvements to the working and reputation of the House of Lords that **we recommend** should be implemented without delay. Such short-term reform of the House of Lords could make a significant interim contribution to the wider process of political re-engagement. Our group has chosen, therefore, to make the following short and medium-term recommendations where appropriate to make the House of Lords more effective.

Composition: size, membership & appointment

3. **We recommend** that, as a principle, the House of Lords should have fewer members than the House of Commons.
4. **We recommend** that an appropriate goal for the size of the House of Lords, to be achieved over time, would be 450 members, which we believe would be sufficient to enable it to carry out its functions.
5. **We recommend** that the House of Lords Appointments Commission should be established in statute.
6. **We recommend** that the House of Lords Appointments Commission and the political parties adopt, as part of their published criteria in considering individuals for membership of the House of Lords, a commitment to give proper attention to the diversity of the United Kingdom.
7. **We recommend** that political parties seeking to nominate individuals for membership of the House of Lords should voluntarily adopt new, transparent criteria for the selection of all nominees. These should be based on those used by the Appointments Commission for non-political appointments, including:
 - The ability to make an effective and significant contribution to the work of the House of Lords, not only in their areas of particular interest, but across the wide range of other issues coming before the House.
 - A range of expertise, experience and skills, and the time commitment necessary to make an effective contribution to the work of the House of Lords.

- A strong personal commitment to the principles and highest standards of public life.
 - Residence in the UK for tax purposes and acceptance of the requirement to remain so.
8. **We recommend** that nobody, no matter how distinguished his or her public service up to that point, should be appointed to the House automatically. Instead, such appointments should follow a process as for all other appointments, against a set of transparent criteria

Abolition of remaining hereditary peers

9. **We recommend** that the hereditary principle be ended. This need not mean the disappearance of those remaining hereditary peers whose expertise could be retained by the House if their peerages were transformed into life peerages, provided the individuals concerned met the proposed revised age and participation criteria. In the meantime, we recommend the immediate ending of the system of by-election to fill vacancies in the hereditary peers' group. This would remove the last manifestation of the hereditary principle from the House. Accordingly, we recommend that Section 2(2)-2(4) of the House of Lords Act 1999 should be repealed.

Introduction procedure

10. **We recommend** that the House of Lords ends the practice of wearing robes.

Disqualification

11. **We recommend** that primary legislation should be enacted to align disqualification of members of the House of Lords with that covering Members of the House of Commons.

Political balance of the House

12. **We recommend** that in future no political party, and in particular no party or parties of government, should seek a majority in the House of Lords and that any creations of new peers should seek to sustain a broad political balance. Party leaders must work together to achieve this.

Working peers

13. **We recommend** that all members of the Lords should be "working peers" acknowledging that this is not necessarily a full-time role.
14. **We recommend** that organisations involved in proposing individuals for membership of the House of Lords, and individuals accepting nomination (apart from those currently proposed by the Church of England) should give written undertakings that they will be fully committed to their role as working peers.

Attendance

15. **We recommend** that the House of Lords introduces a minimum attendance level for Members of the House. This should be set at an average of three-fifths of Lords' sitting days in each session of Parliament, excluding exceptional circumstances.

Retirement

16. **We recommend** that the House of Lords agrees a retirement age of 80 years to apply at the end of the parliament in which the retiring peer reaches that age. If the

application of the retirement age and attendance criteria results in a party political imbalance, then mechanisms currently exist for the party leaders and the Appointments Commission to address this.

17. **We recommend** that the House of Lords considers more formal recognition of the contribution made by retiring members of the House of Lords.

Procedural reform

18. **We recommend** that all non-private members' legislation be introduced in the House of Commons for first reading. Bills could then proceed through Commons channels or be referred through a Commons motion for a second reading and further stages in the House of Lords before returning to the Commons. We believe that this procedure would underpin the primacy of the House of Commons and could make all non-private legislation subject to the Parliament Act.
19. **We recommend** that the House of Lords agrees proposals to enable the tabling of a motion deferring further consideration of a particular secondary measure for three months, which would require the Government to reflect upon the arguments against the measure, and if necessary to reconsider it. This would replace the present power to reject such legislation completely.
20. **We recommend** that further consideration be given to the modernisation of the working practices of the House of Lords building on the work of committees such as that chaired by Lord Goodlad. In particular, a Legislative Standards Committee could be established, preferably on a joint basis with the Commons.
21. In view of the widespread appreciation of the work of Lords' Select Committees, **we recommend** that there should be more use made of short-term ad hoc committees on issues where a single departmental approach is too narrow. We believe that this can be done without impinging on the remit of existing select committees.
22. **We recommend** a review of the role of Lords' Speaker should be undertaken.

1 Introduction

- 1.1 Labour's priorities as we head towards the next General Election due in May 2015 are clear. It is rightly concentrating on policies to return the country to prosperity for the many, not the few. We strongly support that agenda.
- 1.2 Like all members of the House of Lords, we come from a range of backgrounds and hold a wide range of opinions. As Labour peers, we work to that end, every day, scrutinising the Government's programme in precise detail, questioning Ministers, debating policies and practices, acting as part of a unique national forum in which we are privileged to participate.
- 1.3 Reform of the House of Lords has periodically been an issue for Labour over a very long time, although not necessarily amongst the British public. Those of us who were Labour MPs, for example, very rarely had the issue of constitutional reform, and specifically reform of the House of Lords, raised with us on the doorsteps.
- 1.4 Public opinion polls consistently bear this out, with constitutional reform low amongst people's concerns. That was, for example, the clear outcome of the referendum in May 2011 on changing the voting system for electing MPs to the House of Commons. As Professor Vernon Bogdanor, one of Britain's foremost constitutional experts, puts it:
- "The British people remain obstinately concerned with the substance of politics, not its procedures. That may perhaps be a sign of political maturity. What cannot be doubted is that constitutional issues do not lie very high on most people's list of priorities."*¹
- 1.5 Why then, given this low priority, are we putting forward proposals for parliamentary reform? We have three principal reasons.
- 1.6 First, our proposals should form part of a continuing debate about the future of Parliament. While this is not a prominent public issue, getting our governance structures right in the United Kingdom is important.
- 1.7 Second, they give voice to Labour peers' perspective on the issue. Many individuals and organisations put forward views on Lords reform; it is wholly legitimate, and indeed necessary, for Labour peers to do likewise. Of course, as members of the Lords, we are not disinterested observers. But our views are no less legitimate for that: in very many cases, Labour peers have long experience of politics and Parliament, including of both Houses, and it is legitimate for Labour peers to be putting forward their views on this important issue.
- 1.8 Labour peers as a group do not necessarily agree on every issue relating to the future of the House of Lords. The most important consideration for some is whether any proposed changes will help or hinder the Labour party, and especially a future Labour government, that anything to make a future Labour government less effective should not be countenanced. Others believe that Labour has an historic mission to continue its reform and modernise the constitution, including the House of Lords. Such a spectrum of views, with many points in between, often crystallises around the issue of whether the House of Lords should be elected. We know that opinions on

¹ *The New British Constitution*, Vernon Bogdanor (London, 2009) p7

this issue are very often passionately held, and that those holding such strong opinions are unlikely to be moved from them. Our judgement is that a majority of Labour peers do not support an elected House of Lords. However, we know too that a substantial number of Labour peers do support an elected Lords. We respect both views, and we recognise that on this issue, and no doubt others, there is unlikely to be clear agreement across the board.

- 1.9 Our third reason for putting forward proposals now is for Labour peers to make a contribution to the preparation of policy positions on Lords' Reform for the next General Election manifesto.

2 Historical context

2.1 Britain is a mature democracy, with a long history. That does not mean it is a country opposed to change, but many British values and institutions are now reasonably stable. Freedom, the rule of law and parliamentary democracy are central to our society. Fairness, tolerance and decency are universally admired. While many issues are contested from time to time, much has been settled for a long period: the relationship between executive and legislature, the size and role of the state, the reach of the judiciary.

2.2 Aspects of the House of Commons come under question from time to time and it continues to reform itself, including most recently a number of its procedures. The House of Lords has also seen change including:

- in 1911, with the removal of the fiscal powers of the House of Lords and the shifting of its right to veto to a right of delay (Parliament Act 1911);
- in 1949, with further changes to the House's delaying powers (Parliament Act 1949);
- in 1958, with the introduction of life peerages (Life Peerages Act 1958);
- in 1963, with changes to peerage succession (Peerage Act 1963);
- in 1999, with the removal of the majority of hereditary peers (House of Lords Act 1999); and
- in 2004, with the separation of powers between the legislature and the judiciary with the ending of the Lords as the final court of appeal, and the establishment of a new Supreme Court (Constitutional Reform Act 2005) and an elected Lord Speaker.

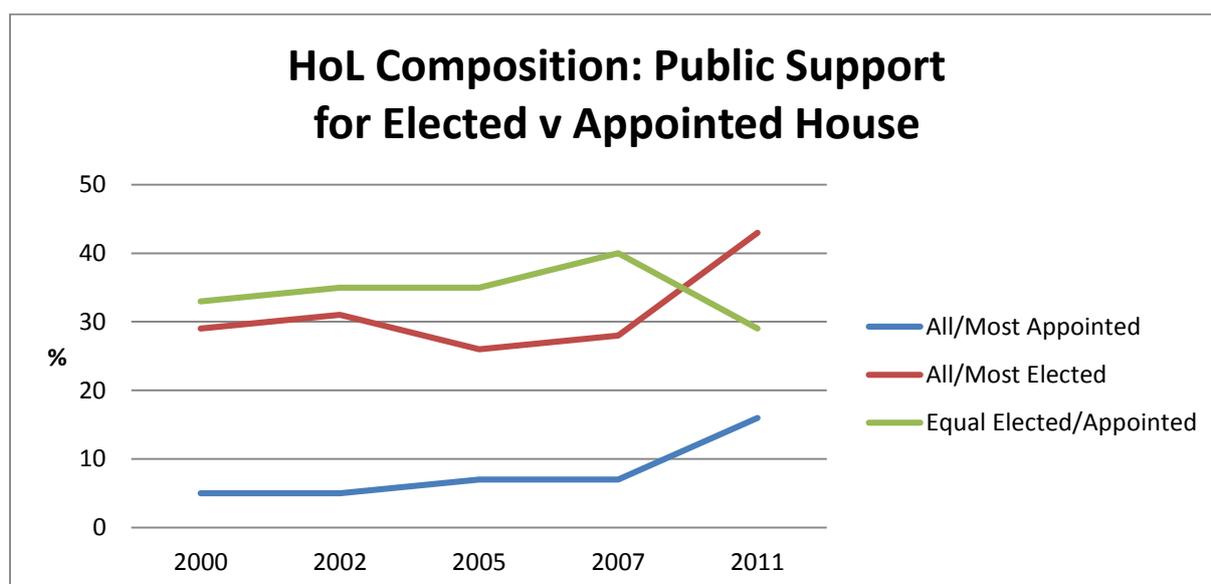
2.3 The impact and effect of some of these reforms – in particular, the 1958 Life Peerages Act – have been deep, and extensive. But for many, such reforms failed to address the central issue: the election of members of the House of Lords.

2.4 The argument, in essence, has remained constant. Those favouring the election, in part or in whole, of the House of Lords argue that in the 21st century, it is democratically outrageous for any part of a legitimate national assembly to be anything other than elected. They insist that the system of entering a chamber such as the House of Lords based on appointment, rather than election, is wholly undemocratic, outmoded, unacceptable and wrong. They maintain that those who make the laws of the land should be elected by those to whom the laws of the land

apply. The argument was put most recently by the coalition Government's Prime Minister and Deputy Prime Minister, in their joint foreword to the white paper containing the 2011 Bill:

*"In a modern democracy it is important that those who make the laws of the land should be elected by those to whom the laws apply. The House of Lords performs its work well but lacks sufficient democratic authority."*²

- 2.5 On the other side of the argument, opponents of an elected Lords also claim to hold the more democratic position. For them, the sovereignty of the people is vested in a democratic Commons giving it primacy over the Lords, and they believe that direct elections to the House of Lords, in whole or part, would undermine that primacy and be fundamentally anti-democratic.
- 2.6 Furthermore, opponents argue, the House of Lords is scrutinising government legislation in a way the House of Commons does not, and that it therefore provides a key forum for national debate and discussion. They claim it is more representative of society than is the Commons, and that the quality of its work would be severely impaired if its composition were changed and placed in closer thrall to the political parties.
- 2.7 The extent of public support for Lords reform is unclear. Research drawn together by the independent House of Lords Library suggests that there is strong evidence that the public do not regard reform of the House of Lords as a pressing priority for politicians to enact.³ Polling evidence suggesting that only 1 per cent of the public regard Lords reform as a "very important" issue.
- 2.8 On electing the Lords, again, public opinion is not clear. There is strong support for elections, but not unequivocal support. The authoritative British Social Attitudes Survey (BSAS) has been tracking attitudes to House of Lords reform for some years, and is the only long-run series to present public polling evidence over time:⁴



² *House of Lords Reform Draft Bill*, HM Government White Paper, May 2011, Cm 8077

³ *Public Attitudes Towards the House of Lords and House of Lords Reform*, HoL Library, Nov 2011, LLN 2011/034

⁴ *British Social Attitudes* survey reports, various: NatCen

2.9 Though the gap is clear between those supporting a House of Lords that is all or mostly elected and those supporting a House of Lords that is all or mostly appointed, support for both these contradictory options rose with the formation of the coalition Government. While there is no further evidence available yet from the BSA survey following the failure of the coalition's Bill, anecdotal evidence from MPs considering the Bill – especially from Conservative MPs opposed to it – suggested that many constituents found it all but incomprehensible why the Government should be focusing on such an issue as House of Lords reform at all, let alone at times of national economic austerity. The latest BSA survey, looking specifically at the coalition government's now-abandoned reforms, comments that⁵

“the principle of an elected chamber is widely supported, although not necessarily to the exclusion of some appointed members”

and goes on to say:

“While there is relatively little support for a wholly appointed House, as exists at present, there is no public consensus about what the alternative should be.”

2.10 We believe that the public's interest is far from fully engaged in an issue that is remote from their everyday concerns. Clearly, the advent of specific proposals in terms of the coalition's 2012 Bill both increased public awareness of the issue, and – according to many MPs – increased public opposition to the Government's proposals. Lords reform in previous attempts, as well as this last one from the current government, ran aground on the range of complex details at the heart of the issue, and in particular over the role and function of the House of Commons and MPs, and the Commons' relations with the Lords, rather than role and functions of the House of Lords and peers. There is little, if any, public engagement on those issues, leaving the fundamentals of the argument over Lords reform to continue. For those who regard the unelected House of Lords as a standing affront to democracy, little or nothing has changed in the argument; little or nothing, too, for those who regard the House of Lords as one of the key components, in terms of checks and balances, in our constitution, and a central – if subordinate – element of Parliamentary democracy in Britain.

3 Recent developments

3.1 Among Labour's achievements in Government from 1997 to 2010 was an extensive programme of constitutional and political reform, in particular:

- devolution to Scotland, Wales and Northern Ireland;
- referendums, especially on devolution, and on an elected Mayor and Assembly in London;
- directly-elected mayors in local government;
- Human Rights Act 1998;
- Freedom of Information Act 2000;
- regulation of political parties and establishment of the Electoral Commission; and

⁵ *British Social Attitudes 29*, 2012 Edition, NatCen, pp52

- proportional representation for the European Parliament.
- 3.2 As part of that programme of constitutional reform, Labour carried out three major reforms of the House of Lords:
- **House of Lords Act 1999:** this Act removed the right of the majority of hereditary peers to sit and vote in the House of Lords;
 - **Constitutional Reform Act 2004:** this Act reformed the office of the Lord Chancellor both as the presiding officer of the House of Lords and the head of the judiciary, and removed from the House of Lords the final level of appeal in the United Kingdom court system and instead for the first time in Britain established, entirely separate from Parliament, a new Supreme Court.
 - **The Constitutional Reform and Governance Act 2010,** passed in truncated form as its passage was interrupted by the General Election. It reformed the Royal Prerogative and put the civil service on a statutory footing.
- 3.3 In addition, Labour took a considerable number of steps towards further reform of the House of Lords, including:
- January 1999: White Paper: Modernising Parliament: Reforming the House of Lords
 - January 1999: Establishment of a Royal Commission on Future of the House of Lords (the Wakeham Commission)
 - January 2000: Royal Commission Report: A House for the Future
 - November 2001: White Paper: The House of Lords – Completing the Reform
 - May 2002: Establishment of Joint Committee on Lords Reform
 - December 2002: Joint Committee First Report: *House of Lords Reform: First Report*
 - February-March 2003: Votes in House of Commons and House of Lords on Lords reform
 - April 2003: Joint Committee Second Report: *House of Lords Reform: Second Report*
 - September 2003: Consultation paper: *Constitutional Reform: next steps for the House of Lords*
 - November 2003: Queen's Speech – Bill to remove remaining hereditary peers announced
 - March 2004: Bill abandoned
 - February 2006: Start of cross-party talks on Lords reform
 - July 2006: Creation of the Office of Lord Speaker
 - February 2007: White Paper: *The House of Lords: Reform*
- 3.4 Labour and the two other principal UK national political parties, the Conservative Party and the Liberal Democrat Party, went into the May 2010 General Election with commitments to further reform of the House of Lords, though the commitments were significantly different.
- 3.5 Labour's commitment was:
- "We will ensure that the hereditary principle is removed from the House of Lords. Further democratic reform to create a fully elected Second Chamber*

will be achieved in stages. At the end of the next Parliament one third of the House of Lords will be elected; a further one third of members will be elected at the General Election after that. Until the final stage, the representation of all groups should be maintained in equal proportions to now. We will consult widely on these proposals, and on an open-list proportional representation electoral system for the Second Chamber, before putting them to the people in a referendum.”

3.6 The Conservative Party’s commitment was:

“We will work to build a consensus for a mainly-elected second chamber to replace the current House of Lords, recognising that an efficient and effective second chamber should play an important role in our democracy and requires both legitimacy and public confidence.”

3.7 The Liberal Democrat Party’s commitment was:

“Liberal Democrats will... replace the House of Lords with a fully-elected second chamber with considerably fewer members than the current House.”

3.8 No single party won the May 2010 General Election and a Conservative/Liberal Democrat Coalition government took office on 15 May 2010, with a legislative programme which included a provision on House of Lords reform:⁶

“We will establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation. The committee will come forward with a draft motion by December 2010. It is likely that this will advocate single long terms of office. It is also likely that there will be a grandfathering system for current peers. In the interim, Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the votes secured by the political parties in the last general election.”

3.9 The Government has pursued two courses of action. First, it has continued to make appointments of working peers, including a number of Ministers, to the House. Second, the Deputy Prime Minister and Leader of the Liberal Democrats, called for the formation of a cross-party group to take forward further Lords’ reform. This committee, chaired by the Deputy Prime Minister, comprised representatives from the main political parties, and from both Houses of Parliament. It began meeting in July 2010, meeting seven times in all, but did not publish any report or conclusions. It did not meet after November 2010, and it did not produce a motion for Parliament by December 2010, in line with the coalition’s commitment. In effect, the cross-party approach of the Clegg Committee was abandoned.

3.10 Instead, the Government went ahead with its own proposals, and published them in May 2011 in the form of the draft House of Lords Reform Bill, and an accompanying White Paper (the ‘2011 Bill’). In summary, these proposals were:

- A size of 312: 240 elected, 60 appointed and 12 Bishops (ex officio);
- No change to scrutiny function;

⁶ *Programme for Government*, Cabinet Office, May 2010

- No change to powers: Commons' primacy and financial privilege intact;
- One 15 year term of office;
- Elected same day as General Election, with qualifications;
- Elected by Single Transferable Vote;
- Membership peerage link to end;
- Members' salaries and allowances; and managed by the Independent Parliamentary Standards Authority (IPSA);
- UK residence requirement
- Extension of the franchise to members of the reformed House of Lords;
- Single term of three normal parliaments.

3.11 The White Paper accompanying the draft Bill said:

*"We are both strongly persuaded that this is a unique opportunity for our country to instil greater democracy into our institutions and are fully committed to holding the first elections to the reformed House of Lords in 2015."*⁷

3.12 The coalition government proposed a Joint Committee of both Houses of Parliament to consider the draft Bill and white paper. It was formed of representatives of all the main political parties in both Houses of Parliament and published its report in April 2012.

3.13 The Joint Committee was sharply divided on many of the key issues in the Government's Bill, with many of its decisions being approved by only the slimmest of majorities. Its main conclusions – many times on only a majority basis – included:

- Supporting an elected House of Lords, though only with commensurate powers
- Agreeing that such an elected House would have a representative function
- Rejecting of the Government's simple assertion in the Bill of Commons primacy
- Agreeing to a House which would be 80 per cent elected, 20 per cent appointed
- Disagreeing with the Government's proposal of a House of Lords of only 300 members, and recommending instead a House of 450 members
- Supporting proportional representation, though with a particular favoured system
- Accepting 15-year-terms for elected members of the House of Lords
- Placing the Appointments Commission on a statutory footing
- Putting the issue of an elected House of Lords to the public in a referendum

3.14 Twelve of the 26 members of the Joint Committee produced an Alternative Report on the same day as publication of the Joint Committee's own report.⁸ Its main recommendations were:

⁷ Cm 8077 p6

⁸ *House of Lords Reform: an Alternative Way Forward*, by members of the Joint Committee of both Houses of Parliament on the Government's draft House of Lords Reform Bill, April 2012. Available from www.houseoflordsreform.com, and now published additionally by the Campaign for an Effective Second Chamber, at www.effectivechamber.com

- The establishment of a new Joint Committee of Parliament to re-examine the conventions between the two Houses of Parliament, as recommended by the Cunningham Committee on Conventions
 - The establishment by the Government of a Constitutional Convention to consider the next steps on further reform of the House of Lords and any consequential impact on the House of Commons and on Parliament as a whole.
 - The conclusions of the Constitutional Convention should be put to the British people in a referendum
 - The Government should take over and bring to the statute book the proposals for reform put forward by Lord Steel of Aikwood, together with other proposals such as those brought forward by Baroness Hayman, the former Lord Speaker, and proposals for reform of working practices in the House of Lords, brought forward by the Leader's Group on the issue, chaired by Lord Goodlad.
- 3.15 The Government announced it would take the Joint Committee's work into consideration, and published a further version of its House of Lords Reform Bill in June 2012 (the '2012 Bill'). This version abandoned completely Clause 2 of the original Bill, which sought to maintain the primacy of the House of Commons simply by asserting it on the face of the Bill.
- 3.16 The revised Bill was introduced in the House of Commons on June 27, 2012. Labour announced that it would support the Bill at Second Reading in the Commons, but would not support the Commons' programme motion, allocating time for consideration of the Bill. The Government attacked Labour's position, but several Conservative MPs began to make clear that they too would not support a programme motion on the Bill. On 9 July, the Government put forward both the Second Reading of the Bill and the programme motion. By 10 July, though, it became clear that the Government was going to lose the programme motion in the House of Commons and withdrew it. The Bill went to a vote on its Second Reading, which was carried – with Labour support – by a majority of 338. However, 91 Conservative MPs voted against their party's three-lined whip to support the Bill, while a further 19 Conservative MPs abstained.
- 3.17 The Deputy Prime Minister on September 3 made a statement to the House, withdrawing the Bill, and confirming there would be no further government attempts to reform the House of Lords ahead of the next general election taking Lords reform off the national political agenda until at least then.
- 3.18 Work by organisations such as the Constitution Unit at University College, London, continued, including the publication in autumn 2013 of a major new study by the UCL Constitution Unit of the modern House of Lords. Within the House itself, work continued by a range of individuals and groups including, but not limited to: the Lord Speaker; the former Lord Speaker, Baroness Hayman; the Leader of the House; the cross-party Campaign for an Effective Second Chamber, led by Lord Norton of Louth and Lord Cormack; the Clerk of the Parliaments, originally for the Campaign for an Effective Second Chamber but subsequently more widely; a group of peers, including former Cabinet Secretary Lord Butler of Brockwell and former Labour Minister Lord Filkin, seeking to promote procedural change in the Lords as proposed by a Leader's

Group chaired by the former Conservative Chief Whip in the House of Commons, Lord Goodlad; and by a range of individual peers, including Lord Steel of Aikwood.

4 Role & functions of the House of Lords

4.1 Parliament is the single representative body for the whole of the United Kingdom, and is the legislative body for UK-wide legislation and legislation for those parts of the UK not covered by separate representative and legislative assemblies in Scotland, Wales and Northern Ireland.

4.2 The gradual introduction of the universal franchise established the House of Commons as the principal representational, legislative and debating forum for the UK's Members of Parliament, elected by the people through common suffrage. Within Parliament, the House of Commons is the dominant chamber.

Commons Primacy

4.3 The primacy of the Commons mainly consists in:

- It being the means of formation of the UK government. The Monarch asks the leader of the largest party in the Commons to become Prime Minister and form a government. It stays in office for as long as it commands the majority support of Members of the House of Commons, or it resigns, although this has been made more complicated by the introduction of fixed term parliaments.
- Its ability to give final approval to legislation. Whilst the House of Lords can have an impact upon legislation started in either House, it has no ability to give final approval. The House of Lords can delay legislation but only by one year.
- Its right to raise taxes and vote money for expenditure. The powers of the House of Lords over financial matters were restricted by the Parliament Act of 1911. The Lords can delay the passage of a money Bill but only for a month, and can amend it, but the Commons is not obliged to consider such amendments.

4.4 While legislation can begin its parliamentary passage in the House of Lords and the upper House can impact upon legislation started in either House, it has no ability to give final approval to legislation.

4.5 We believe that this is and should remain the role of the House of Lords and, in legislative terms, the main powers of the House of Lords should remain constrained by the Parliament Acts with the main functions of the House of Lords remaining. They are the following:

- to scrutinise, consider and revise the work of the House of Commons;
- to hold the government of the day to account; and
- to provide an important national forum for matters of public debate, often on issues with an ethical dimension;
- In particular, the Lords has the power to delay a Bill into a subsequent parliamentary session, and until not less than 13 months has elapsed from the date of the Second Reading of the Bill in the first session.

Legislation

- 4.6 The House of Lords shares with the House of Commons responsibility in the UK Parliament for UK-wide legislation. The method of processing legislation in each House – with reading, committee, and report stages – is very similar, although the roles of the two Houses are distinct. Formally, the House of Commons can subject all legislation to close examination. In practice, the government majority and the scheduling powers of government business managers are such that the consideration of legislation in detail is often curtailed. In the Lords, as legislation makes its way through Parliament, it is subject to close consideration and scrutiny, with not just individual clauses but individual sentences and individual words examined and debated in depth. The House of Lords also has the ability to delay legislation, to ask the Government and the House of Commons to think again.

Scrutiny

- 4.7 As well as considering closely the components of the Government's legislative programme, the House of Lords scrutinises the work of the Government by asking oral and written questions of ministers, by responding to government statements, and by debating key issues of government policy. Oral questions in the House of Lords differ in their format and impact to those in the House of Commons. In the House of Commons, the Prime Minister answers a range of questions from members in the chamber every week as does the Leader of the Commons. There is no specific question time for the Leader of the House of Lords. In the House of Commons, questions to departmental Secretaries of State and their junior ministers come up on a rota basis, usually about every month. In the House of Lords, questions can be tabled for any day for any department, so that daily question time in the Lords will feature a range of questions, almost always to a range of different government departments and government spokespeople. Like the House of Commons, the House of Lords has a range of different select committees – in choosing which committees to maintain or introduce, the Lords tries not to replicate those in the Commons – which includes regular questioning of government.

Deliberation

- 4.8 The House of Lords is a forum for national public debate. Select committees of the House of Lords conduct inquiries into matters of public policy and produce reports on these issues that are then open to debate in the House of Lords. An example of this is the European Union Select Committee. Party and non-party groupings in the House of Lords have reserved, allocated time within the overall schedule of House of Lords in which they debate issues of government or public policy, or politics. Individual members of the House of Lords can table debates on matters of interest to them. The House of Lords is able to draw upon wisdom, expertise and experience from many walks of life providing a direct link to wider civil society. This allows its deliberations a depth and character that are not always evident in the more pressured environment of the House of Commons. This is not to say the House of Lords is a non-political chamber – indeed most of its members also have party affiliations, accept a party whip and may speak and vote on behalf of their parties.
- 4.9 This broader composition gives the House of Lords a further, more loosely-defined function – that of conduit to civil society. Direct elections by the people means that

the House of Commons is specifically representative of the people. The House of Lords, as an unelected chamber, has of course no such representativeness. Peers are members because they receive an individual Writ of Summons from the Monarch to attend the House. Accordingly, members of the House of Lords do not speak on behalf of anyone but themselves.

- 4.10 Except for a number of office holders, members of the House of Lords are not salaried. Many members have employment elsewhere; many retain connection with their professions and/or have connections with a range of organisations and people outside parliament. However, rules governing the conduct of members of the House of Lords mean that they are rightly prohibited from acting as paid advocates in the House for interests from beyond the House.

5 Powers of the House of Lords

- 5.1 All legislation must be passed by both Houses of Parliament. As second chamber, the House of Lords has many important functions, particularly proposing the amendment of legislation and making government think again. However, its powers to reject legislation outright are limited. Exceptions include legislation to extend the length of a parliament, and secondary legislation.
- 5.2 The House also has wider powers to delay legislation. Conscious of the primacy of the House of Commons, the Lords uses these powers sparingly and with discretion. The House of Commons can generally insist that such legislation is passed after a delay of one session. However the potential for delay can persuade the House of Commons to accept amendments passed by the Lords.

In regard to secondary legislation, we recommend that a power to delay is substituted for the present power to reject. Otherwise, we support the retention by the House of Lords of its current powers over legislation.

Legislation

- 5.3 The principal powers of the House of Lords in relation to vetoing legislation are:
- a veto over any legislation introduced into Parliament in the House of Lords. The Parliament Act 1911 can only apply to a Bill passed by the House of Commons and only then if the Commons has already approved it.
 - The consent of the House of Lords is required to extend the life of Parliament beyond five years. Though the Fixed Term Parliaments Act 2011 set a five year term for a Parliament, going beyond five years still requires the consent of the House of Lords.
 - The consent of the Lords is needed for a local and personal Bill.
 - The Lords possesses a veto over subordinate, secondary, legislation because the Parliament Act 1911 refers only to public bills.

Money Bills

- 5.4 The House of Lords can delay the passage of a money bill for a month, under the terms of the Parliament Act 1911. The Lords can amend a money bill, but the Commons is not obliged to consider such amendments. The powers of the House of

Lords in relation to money bills were particularly restricted by the 1911 Parliament Acts following a major crisis over a budget.

Delay

- 5.5 The House of Lords can currently delay the passage of a Bill, in strictly governed ways:
- If the Commons passes a public bill which is not a money bill or a bill to extend the life of a Parliament, in two successive sessions, whether in the same Parliament or not, and the House of Lords rejects the Bill in both of them, then on the second rejection the Bill can be presented for Royal Assent.
 - Such a Bill must be sent to the Lords at least one month before the end of each of those sessions.
 - A year must pass between the date of the Commons' second reading of the bill in the first session and the date on which it passes its Commons stages in the second session.
- 5.6 So the Lords is able to delay a Bill into a subsequent session, and until not less than 13 months have elapsed from the date of the second reading of the Bill in the first session.
- 5.7 Constitutional experts suggest that these provisions amount to significant powers for the House of Lords, but that the Lords, though retaining these powers, by a large chooses not to use them recognising the primacy of the House of Commons. The number of times the Parliament Act has been deployed, for example, is very small, and the number of times the Lords has rejected secondary legislation is also small.

We support the House of Lords retaining these powers, and accordingly, with the exception in paragraph 6.3 above on delegated legislation, we make no recommendation for change to the powers held by the House of Lords.

6 Composition of the House of Lords

Membership

- 6.1 The House of Lords is made up of two elements: the Lords Spiritual, and the Lords Temporal. The Lords Spiritual are the 26 Bishops of the Church of England, and the Lords Temporal are life peers under the Life Peerages Act 1958, together with the small number of hereditary peers who remain in the House as a result of a political agreement reached to secure the passage of the House of Lords Act 1999.
- 6.2 Most peers are members of the House by virtue of appointment – peerages granted to them, predominantly by the political party system. A small number of peers are appointed under a system independent of the political system. Amongst the remaining 92 hereditary peers, there is a provision in the House of Lords Act 1999 under which, following the death of an hereditary peer, there is an election for their replacement.
- 6.3 Peers in the House, whether life or hereditary, are in the House as individuals, but most are participants in the system of groupings which operate in the House: the main political parties and a substantial minority of peers who sit on the crossbenches

of the House, as independent non-party affiliates who have a limited degree of collective organisation.

Diversity

- 6.4 Britain has a long history of diversity, and of fairness and tolerance, though inevitably it has witnessed failures in all these areas as well. Parliament, and perhaps even more so the House of Lords, has long been seen as dominated by members who are overwhelmingly white, male and older. In recent years this has been changing with, for example, many more women MPs, but Parliament still has a long way to go to match the diversity of the country.
- 6.5 Attempts have been made to assess both Houses in terms of sex, religion, race, ethnicity, disability, culture, and previous or current employment⁹. Such assessments suggest the House of Lords is actually more diverse than is often imagined, that it is more diverse now than it has been in the past and that it is actually more diverse than the Commons.
- 6.6 We believe that greater diversity in the House of Lords should be pursued as a goal. Emphasis needs to be placed on diversity on grounds of gender, faith, race, ethnicity disability, culture and on occupation, expertise and experience too. Diversity criteria also need to be widened, for example by the introduction of geographical diversity, since membership of the House of Lords is heavily skewed towards the south east of England.
- 6.7 We believe, in common with the Joint Committee and the Alternative Report group, that the best means of increasing diversity is for diversity, very broadly defined, to be among the criteria used by the House of Lords Appointments Commission in considering individuals for membership.
- 6.8 We recognise, though, that there is a difficulty here. When the House of Lords Appointments Commission was first established, there were no particular restrictions placed on the number of individuals it was meant to recommend for appointment. Following a number of appointments recommended by the Commission to serve as independent crossbench peers, there was a feeling that too many peers were entering the House by this means. Some current crossbench peers in particular felt that their limited collective services were coming under strain. More recently the present Prime Minister has instructed the Commission to reduce the number of peers it recommends each year, and as a result the number has dropped back from an average of six a year to two a year. Such scaling back makes it difficult for the Commission to make progress on diversity when the numbers of individuals it is able to recommend is so small and should be reversed.

We recommend that the House of Lords Appointments Commission and the political parties, adopt as part of their published criteria in considering individuals for recommendations for membership of the House of Lords, the diversity of the United Kingdom.

⁹ See, for example, on employment background: *Analysis of Existing Data on the Breadth of Expertise and Experience in the House of Lords* – Report to the House of Lords Appointments Commission, by Meg Russell and Meghan Benton, UCL Constitution Unit, March 2010

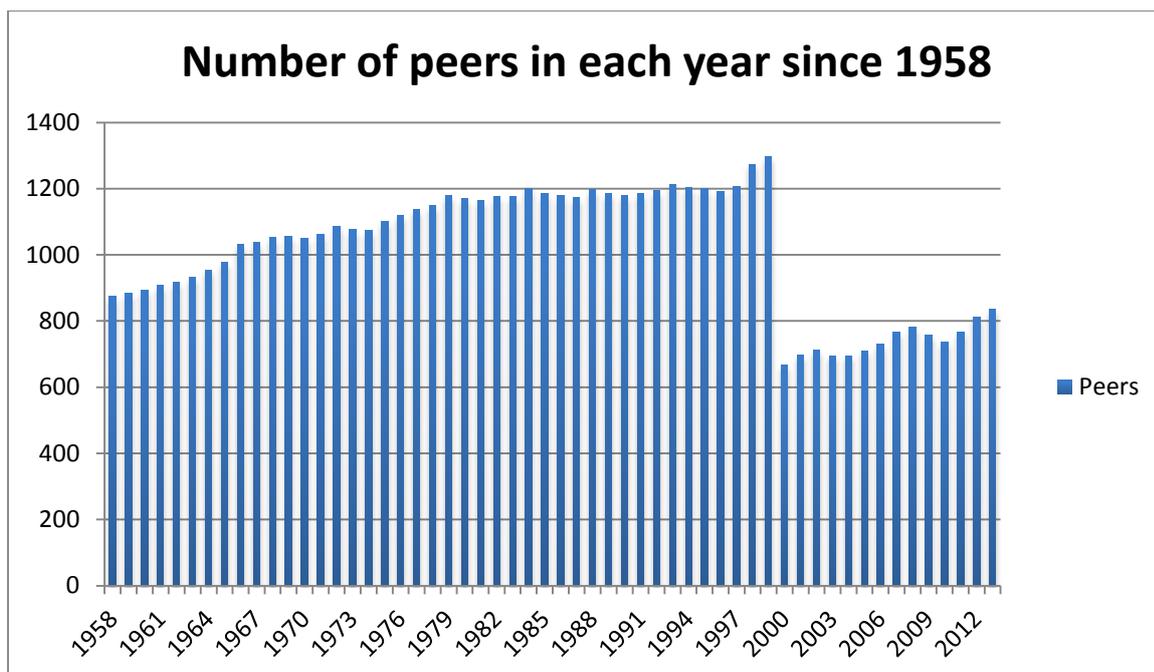
Lords spiritual

- 6.9 The Lords Spiritual are an historic and longstanding element of the House of Lords. Historically, the Church's place in the House of Lords stems from its part in the very first parliaments. Under the current arrangements, the established Church of England has 26 places in the House. The UK's other established church, the Church of Scotland, is not formally represented in the House of Lords, nor is any other faith, although leading figures in some other faith groups have received life peerages.
- 6.10 We recognise that there are strong arguments in favour and against the presence of Church of England bishops in the Lords. Indeed, they were expressed by different members of the Labour Peers' Working Group. We make no recommendation for any immediate action on a subject where there are such clearly divergent views, and believe that these are issues for further and deeper consideration in the future.
- 6.11 We do, however, believe that one change could and should be made. At present the independent House of Lords Appointments Commission does not explicitly include diversity, including faith diversity, in the published criteria it applies when considering individuals to recommend for membership of the House. We believe that this is a gap in the criteria, as did the members of the Joint Committee on the Government's 2011 House of Lords Reform Bill, and the members of the Joint Committee who produced the Alternative Report. Like them, we believe that diversity ought to be specified as one of the criteria.

Size of the House of Lords

- 6.12 At the time of publication, the House of Lords has a total of 835¹⁰ members, comprising 666 life peers, 87 hereditary peers, 26 bishops and 56 peers who are for a variety of reasons – mainly because they have taken voluntary leave of absence from the House – classified as 'ineligible' members: that is, members who are not eligible to scrutinise legislation, table questions and debates and carry out the normal functions of a member of the House.
- 6.13 The size of the House of Lords has varied over time. The current membership is far from the highest it has ever been and far from the lowest. The all-time peak was at 1,296, which was reduced immediately to 667 in 2000 following the passage of the 1999 House of Lords Act that removed the great majority of hereditary peers. Membership has been steadily increasing since then and its current 835 is 25% up from its 2000 level.

¹⁰ Figures supplied by House of Lords Library.



- 6.14 Following the failure of the coalition's Bill, and faced with the prospect of further inflows of party political peers, the Lord Speaker attempted to raise the issue of the size of the House and see if there might be prospect of a consensus on a way forward.¹¹ Some inside and outside the Lords have considered the issue of some kind of arrangement for members of the House akin to severance payments in business and industry. The Clerk of the Parliaments – the most senior official in the House of Lords – drew up a business case on this issue¹², including a system of modest subvention that would be self-financing within two years. There is a view that such a system would attract public hostility in current difficult economic circumstances; many believe such a scheme to be wrong in principle, whatever the circumstances. However, in the light of the considerable financial savings to be made by the House, and in order to achieve a reduction in its size, further consideration might be given to the business case outlined by the Clerk of the Parliaments.
- 6.15 While none of these approaches to reducing the numbers has so far found widespread favour, we believe there is a strong need to improve the House by reducing its size. Clearly, this could be done by legislation. But in the absence of such legislation, we believe that some steps forward could and should be taken in the meantime.
- 6.16 We believe that two main principles should govern the size of the House as follows:
- First, the House of Lords should always be smaller in number than the House of Commons. The House of Commons is the dominant House of Parliament, and its dominance rests primarily on the fact that, unlike the Lords, it is elected. We believe that while this remains the case it should be reflected in the relative size of the two Houses. The current House of Lords, at 812 members, is obviously considerably larger than the present size of the House of Commons, at 650

¹¹ *We're In Danger of Becoming a Place of Ridicule*, op cit

¹² *Membership of the House of Lords: Steps which the House might take*, by David Beamish, Clerk of the Parliaments, HoL December 2012

members. We believe that, over time, an objective for the House of Lords should be to reduce itself in size to a level below that of the House of Commons.

- Second, the functions of House of Lords should determine its size. The House needs a sufficient number of members to enable it to discharge its functions as a revising and scrutinising body.

- 6.1 Library figures for 2012 revealed that the House had some 680 backbenchers. The remaining members of the House comprise the frontbench teams for the main political parties. As well as serving and working in the chamber on legislation and on questions and debates, many backbench members of the House serve on committees of the House. In December 2012, there were 431 places on committees and sub-committees of the House. Of those 431 places, 54 were filled by frontbenchers, officeholders of the House and the Convenor of the crossbench peers. That meant there were 377 places on committees and sub-committees filled by backbench peers. One in four backbenchers were sitting on two or more committees or sub-committees. A total of 305 backbenchers held no committee or sub-committee places.
- 6.2 Various proposals have been put forward concerning an appropriate size for the House of Lords. In its House of Lords Reform Bill 2011, for example, the Government proposed a House of Lords of 300 members.¹³ The Joint Committee on the Bill, and the Alternative Report from a number of members of the Joint Committee, proposed a House of 450 members¹⁴, and accordingly, the Government in its revised House of Lords Reform Bill 2012 accepted that recommendation, and also proposed a House of 450 members.¹⁵
- 6.3 Second chambers around the world operate with a range of different sizes¹⁶, ranging from 60 in Ireland to over 320 in Italy. Perhaps the best known is the United States Senate, with 100 members. The size of the House of Lords, prior to the 1999 Act that removed the majority of the hereditary peers, dwarfed all other second chambers, and even now the House of Lords is still considerably larger than other second chambers.
- 6.4 The history of House of Lords reform over the past 100 years¹⁷ suggests that gradualist, rather than radical, reform tends to be the most successful, and we believe it to be the most fruitful again. We believe that gradualism is likely to prove the most fruitful again.
- 6.5 Accordingly, we believe it is right to indicate a desirable goal for the size of the House – a target to reach over a period of time. While there is an arbitrary element in any target selected, we believe that by applying the principles of the House of Lords being smaller than the House of Commons, and the House of Lords needing sufficient members to enable it to carry out the functions required of it, an appropriate goal to reach in terms of the size of the House would be a total of 450 members, as

¹³ House of Lords Reform Bill 2011

¹⁴ Joint Committee, *op cit*. Alternative Way Forward, *op cit*

¹⁵ *House of Lords Reform Bill 2012*, *op cit*

¹⁶ *Reforming the House of Lords: Lessons from Overseas*, *op cit*.

¹⁷ *House of Lords Reform Since 1911: Must the Lords Go?*, by Peter Dorey and Alexander Kelso (London, 2011); *The House of Lords 1911-2011: A Century of Non-Reform*, by Chris Ballinger (Oxford, 2012)

recommended by the Joint Committee. We believe that a membership at this level, while still larger than many second chambers around the world, would meet the clear need for a smaller House, while still allowing it sufficient members to carry out all its functions. Though a membership of 450 would require almost halving the present size, if reached over time by a range of measures such as we set out in this Report, then it would be a target that would be moderate, sensible and achievable.

We recommend that an appropriate goal to be adopted for the size of the House of Lords, to be achieved over time, would be a House of 450 members.

Political balance

- 6.6 At the time of publication, the parties of the coalition government in the House of Lords, taken together, have the largest number of seats – 302 compared with 222 for Labour. There are also 182 crossbenchers, 26 Bishops, and 33 others. Looking at the purely political seats, the coalition government has a clear majority: 58 per cent of the political vote, compared with 42 per cent for non-governing party members. The formation of the coalition government, operating as a single entity in both Commons and the Lords, reversed what had been for many years a clear convention in the House of Lords – that no single party should have a majority in the Lords.
- 6.7 This convention came into place because of a political commitment given by Labour. In its manifesto for the 1997 General Election, Labour said of the House of Lords:
- “No one political party should seek a majority in the House of Lords.”*
- 6.8 Labour believed that in order for the House of Lords to carry out properly one of its key roles as a vital element of the checks and balances in the British constitution, it was important that no single party should seek a majority in the Lords. The Labour Government elected in 1997 stood by that commitment as a point of principle, even though operationally it made the passage of its legislative programme more difficult. We support that principle, and believe that such a clear convention ought to be revived and applied in future.
- 6.9 While the current coalition government is not a single party, the nature of coalition means that, in the main – though with some very marked exceptions – the two parties in government are acting as a single entity. The effect of this has been clear: instead of the House of Lords acting as one of the important constitutional checks and balances on the Government, it has become something of a rubber stamp, with which the Coalition has been able to sweep legislation through the chamber, subverting the constitutional role of the House on a number of issues.
- 6.10 Labour and individual crossbenchers, working together, have occasionally combined to defeat the coalition, though in most cases such defeats have been reversed in the Commons when the coalition has applied its majority there. But in many cases, it has not needed to do so because of its combined voting strength in the Lords.
- 6.11 This problem is worsened by the declared policy of the coalition, as set out in its Programme for Government, that in advance of large-scale reform of the Lords:
- “Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the votes secured by the political parties in the last general election.”*

- 6.12 The net effect of pursuing this policy, as well as simply increasing the overall size of the House, as this Report discusses elsewhere, would be to increase the coalition's numbers by a further 179 peers. Such an increase would see the coalition with 481 peers in the House, compared with 222 for the Opposition – among the political peers, that would see the coalition with 68 per cent of the votes, compared with 32 per cent for the Opposition: more than double those of the Opposition.
- 6.13 The coalition's policy, applied in this way, distorts even further the political balance that we believe should apply in the House of Lords. We believe that a better balance is provided not by taking the position applying in terms of votes in the House of Commons at the last general election, but by taking a more balanced approach over time.

We recommend that in future, no one political party or governing combination of parties should seek a majority in the House of Lords.

Appointments to the House of Lords

- 6.14 Currently, there are four means of entry to the House of Lords:
- Appointment by the Prime Minister as an independent or party political peer, of which there are a number of sub-categories:
 - Working peers on a party list, appointed by the Prime Minister, from lists compiled by individual political parties, to a target number set by the Prime Minister
 - Individuals brought in directly as government Ministers
 - Non-political appointments, such as former Cabinet Secretaries
 - Peers on a resignation or dissolution honours list – a resignation list of a resigning Prime Minister, now by convention awarded by their successor; a dissolution list at the end of each parliament, given to resigning, or defeated, MPs
 - Appointment as an independent crossbench peer by the non-statutory House of Lords Appointments Commission
 - Appointment to the fixed number of 26 seats in the House for Archbishops and Bishops of the Church of England; five are ex officio (the Archbishops of Canterbury and York, and the Bishops of London, Durham and Winchester), with the remaining selected by the church on the basis of seniority
 - Election following the death of one of the 92 hereditary peers remaining in the Lords. For 75 of these places, the electorate is formed by the remaining members of the deceased peers party or grouping, while for a further 15 places the electorate is all members of the House, with a final two places reserved for Royal officeholders.
- 6.15 Individuals appointed to the House of Lords in the main regard their place in the Lords as both a privilege and as a priority: the priority being to contribute fully to the work and activities of the House. Indeed, many reshape their lives to ensure that membership of the House of Lords, and participation in its work becomes the dominant element of their lives.

- 6.16 Some do not see it in those terms. First, a small number regard membership of the House as either the culmination of their lives before they entered the House, or part and parcel of those lives. They see it as an honour and a privilege, but not necessarily as something to which they are either prepared, or are able, to devote a substantial amount of their time. For these Members of the House, attendance and participation, excepting key voting divisions, can be very low. Second, some on the cross benches see their membership as explicitly a means by which their particular experience and expertise can be brought into Parliament. Many in this position take the view that membership of the House does not give them the right to examine other issues, and they tend to constrain their own involvement to areas in which they believe their experience and expertise gives them a proper role.
- 6.17 We understand these and similar views. But we believe that membership of the House of Lords does indeed place obligations on individuals, and that all members should only consider accepting it on the basis that they will play a full part in the working and operation of the House. We believe that, leaving aside Bishops, nominating organisations should only put forward candidates on the explicit basis of their being working peers. Individuals accepting nomination on this basis should give an explicit undertaking to that effect.
- 6.18 Furthermore, there are a number of posts in public life that, by custom and practice at least, usually attract an automatic seat in the House of Lords on retirement. This is done by direct nomination by the Prime Minister to the Queen rather than through the Appointments Commission. Former Cabinet Secretaries and Chiefs of the Defence Staff are two examples.

We recommend that nobody, no matter how distinguished his or her public service up to that point, should be appointed to the House automatically. Instead, such appointments should follow a process as for all other appointments, against a set of transparent criteria.

We recommend that organisations involved in proposing individuals for membership of the House of Lords should do so only on the basis that their nominees should be working peers.

We recommend further that individuals accepting nomination for membership of the House of Lords, apart from those being proposed by the Church of England, should only accept nomination on the basis that they will be working peers.

We recommend that individuals accepting nomination for membership of the House of Lords give explicit, written undertakings to the organisation nominating them that they will be working peers.

Remaining hereditary peers

- 6.19 The method of entry for hereditary peers is set out in statute, in the House of Lords Act 1999. That provision was a political arrangement reached by the main political parties to cope with circumstances at the time. For some, this arrangement was an important guarantee because it ensured that the removal of the majority of hereditary peers was part of a process of reform, and not simply an end in itself. For them, the arrangement is a way of ensuring that what was called at the time ‘Stage Two reform’

would be completed. For others, the arrangement was a guarantee of the opposite: that is, they believed that in the House of Lords Act 1999 Labour was only interested in removing the hereditary peers, and that as a result. ‘Stage Two reform’ would in practice never go ahead.

- 6.20 We believe there is no longer any justification for the replacement election of hereditary peers; such an arrangement is unsustainable in the longer term. It has certainly not led to further reform. We believe that even though provided for in statute, it would not be impossible, if the will were there, for all those involved in this process to refrain from enacting it. But we accept that this is unlikely. We therefore believe that the provision should be repealed.
- 6.21 We believe that the hereditary principle should be ended. This need not mean the immediate loss of membership of those remaining hereditary peers whose expertise is of value to the House and its work. Such a contribution could be retained by the House if some of the remaining hereditary peerages were transformed into life peerages, provided the individuals concerned met the proposed revised age and participation criteria set out in sections 7 and 8 of this report.
- 6.22 These two measures, the transition of remaining hereditary peerages into (qualifying) life peerages, coupled with the immediate ending of the system of by-election to fill vacancies in the remaining hereditary peers’ group, would remove the last manifestation of the hereditary principle from the House, something supported by all parties.

We recommend that Section 2 (2) – 2 (4) of the House of Lords Act 1999 should be repealed.

House of Lord Appointments Commission

- 6.23 Appointments of independent, crossbench peers – apart from those non-political appointments made by the Prime Minister – are now primarily made through a system of recommendation by an independent panel, the House of Lords Appointments Commission (HOLAC). HOLAC is a non-statutory body, established by a former Prime Minister, Tony Blair, with the aim of bringing some transparency, clarity and openness to what had been at best a discreet process and one that was in practice remarkably opaque. HOLAC has representatives serving on it from all three major parties in the House of Lords, and is chaired by an independent, crossbench peer. Since its inception in May 2000, 63 new peers have been appointed by the Prime Minister of the day on the basis of recommendations from HOLAC.
- 6.24 HOLAC has two functions. The first is to recommend nominees for membership of the House of Lords. The second is to vet, on propriety grounds alone, nominees proposed by the political parties for membership of the Lords. Party nominees are tested with a small number of agencies, principal among them Her Majesty’s Revenue and Customs. HOLAC assesses nominees specifically on propriety issues, not on suitability for membership of the House.
- 6.25 We do not believe that HOLAC has been entirely successful in making appointments that fully reflect the diversity in society and the regional balance of the UK. It has, though, set clear criteria for its appointments.

- 6.26 HOLAC would like to be placed on a statutory footing and we would support measures to underpin its independence with appropriate terms of reference that ensure its visible independence.

We recommend that the House of Lords Appointments Commission should be established in statute with appropriate terms of reference that ensure its visible independence.

- 6.27 In advance of such a change, we believe there is scope for an extension of HOLAC's approach to the appointment of members of the House of Lords in order to improve the present method of appointment of political peers. Currently, HOLAC applies a set of clear and published criteria for its appointments. Though the criteria are limited, they are at least open and transparent. HOLAC seeks to recommend nominees:

- with the ability to make an effective and significant contribution to the work of the House of Lords, not only in their areas of particular interest and special expertise, but the wide range of other issues coming before the House;
- with a record of significant achievement within their chosen way of life that demonstrates a range of experience, skills and competencies;
- who are willing to commit the time necessary to make an effective contribution to the work of the House of Lords. The Commission recognises that many active members continue with their professional and other working interests and this can help maintain expertise and experience;
- with some understanding of the constitutional framework, including the place of the House of Lords, and the skills and qualities needed to be an effective member of the House – for example, nominees should be able to speak with independence and authority;
- who are able to demonstrate outstanding personal qualities, in particular, integrity and independence;
- with a strong and personal commitment to the principles and highest standards of public life;
- who are and intend to remain independent of any political party. Nominees and the Commission will need to feel confident of their ability to be independent of party-political considerations whatever their past party-political involvement. For this reason, all nominees are asked to respond to the questions on political involvement and activities which are similar to those used for most public appointments;
- who are resident in the UK for tax purposes and accept the requirement to remain so.

- 6.28 By contrast, the means by which party political peers are appointed is wholly opaque and closed. The first public appearance of any names comes at the conclusion of the process, when a list of new peers is published by the Prime Minister's Office. Before that happens, the process of selection, of lobbying for selection, of individuals being proposed or proposing themselves, of the need to make selections for party management or other reasons, is largely invisible.

- 6.29 We recognise the need for discretion in this process. Individuals might not wish the fact that they were being considered by their party, or that they wished their party to consider them, to be known either publicly or more widely in the party than the handful of individuals actually involved in the selection process. Not all individuals, when asked to consider going to the House of Lords, can or wish to do so.
- 6.30 But a high degree of discretion could still be maintained even with the introduction of a greater element of clarity. As we understand it, HOLAC itself would not wish to extend either their remit to include the system of political appointments to membership of the House of Lords. We respect that viewpoint, but believe that, short of such an extension, the HOLAC approach can still be extended in a way that would improve the present system.
- 6.31 We believe that political parties seeking to nominate individuals for membership of the House of Lords should voluntarily adopt new, transparent criteria for the selection of all nominees. These should be based on those used by the Appointments Commission for non-political appointments, including:
- the ability to make an effective and significant contribution to the work of the House of Lords, not only in their areas of particular interest, but across the wide range of other issues coming before the House;
 - a range of expertise, experience and skills, and a willingness to commit the time necessary to make an effective contribution to the work of the House of Lords;
 - a strong personal commitment to the principles and highest standards of public life;
 - residence in the UK for tax purposes and accept the requirement to remain so.
- 6.32 The voluntary introduction and application of such a set of criteria would give an unprecedented degree of rigour and openness to the selection of working political peers, without in any way compromising the integrity and independence of HOLAC. It would make public, open and transparent standards consistent across most appointments to the House of Lords. The application of the criteria to individuals would make it apparent that new peers would only be appointed on the explicit understanding that they would be working peers, willing and able to give the amount of time and participation that working in the House of Lords requires.
- 6.33 For individuals, being nominated on the explicit basis of such criteria would confirm their willingness to accept the disciplines of being a working peer.

7 Participation

- 7.1 Though the overall size of the House of Lords seems very large not all peers attend all the time. Some have other commitments, employment or voluntary activities, or are for other reasons not able to attend.
- 7.2 As discussed in paragraph 6.34, we believe that organisations nominating, and persons accepting nomination should only do so on the basis that the individual is willing to be a working Peer and participate fully.
- 7.3 Current levels of participation are markedly higher than they used to be. Most peers take their responsibilities seriously, attending and participating regularly. The

overwhelming majority of members are active, though with differing levels of participation. Many work hard in the Chamber where attendance is most visible. Many are highly involved in committee work. Members who accept a party whip are expected to attend and vote regularly.

- 7.4 Attendance figures, published by the House, on their own, do not give a true picture of participation. We believe that the emphasis should be on participation rather than attendance, which requires active intervention in the work and proceedings of the House and its committees, rather than merely on attendance. However one disadvantage of the large size of the House is that opportunities for full participation are somewhat limited.

8 Retirement

- 8.1 Bishops excepted, there has historically been limited provision for member of the House of Lord to retire. In principle, peers remain members unto death. They may take leave of absence from the House but retain the right to return even after a gap of some years. Since 2011, however, peers have been enabled to apply for permanent retirement under a voluntary retirement scheme (see chapter 1, para 32 et seq of the Companion to the Standing Orders). To date, however, only four peers have applied under this scheme.”
- 8.2 This leads to a large and comparatively elderly House. The average age of members is 70, the age at which judges in the UK are required to retire. More than one peer in 10 is more than 85 years old, though some of these do not attend regularly. Of course, many of these older peers bring wisdom and experience to the House but some may continue, out of a sense of duty, beyond the point that makes sense for them or for our national governance.
- 8.3 In the ten years to December 31st 2013, according to figures supplied by the House of Lords Library, 180 peers died (of whom 17 elected hereditary peers and one bishop were automatically replaced). This represents an average of 18 a year. But over the same period, new appointments averaged 33 a year. In other words, there were nearly twice as many new peers appointed as had died, driving up the size of the house.
- 8.4 We have proposed a two-pronged approach: a retirement age, and simultaneously, – reflecting our emphasis on the importance of participation in the work of the House – minimum levels of attendance. We believe those who fail to match up to those levels, save for good reason such as absence on parliamentary or other public business, or through illness, should cease to be members of the House.
- 8.5 So far as retirement is concerned, an appropriate age has to be decided. There is a balance to be struck between the desirability of preserving the qualities brought to the House by some older members and the need for renewal. We believe that the age of 80 strikes this balance. However, we do not think it would be right that all peers over 80 should instantly be asked to leave the House.
- 8.6 Accordingly, we believe peers should retire at the end of the parliament during which they attain the age of 80. This would have a significant effect on the size of the House. If this rule had applied at the last General Election then 90 peers would have left in May 2010. A further 96 would leave on the date of the next General Election,

7th May 2015. The combination of death and compulsory retirement would on its own mean that, even with the present rate of creation of new peers, the House would shrink in size.

- 8.7 Of course it should also be open to any peer who so chooses to retire before reaching the age of 80.
- 8.8 It may be that such a provision would affect the political balance of the House. If so, mechanisms already exist for the Prime Minister and the Appointments Commission to address it as we discussed earlier.
- 8.9 However a retirement age alone would not reduce the size of the House sufficiently. Moreover, it would be both unfair and unhelpful to the work of the House if some peers who continued to contribute actively to the work of the House were retired under this rule, while others who are not regular attenders remained as members.
- 8.10 We have therefore proposed a second rule: that those peers who do not participate sufficiently in the work of the House should no longer sit as members. Since participation cannot be easily measured, we propose attendance as an appropriate proxy measure.
- 8.11 In line with our emphasis that all peers should be working peers, we would set the bar quite high. We propose that, save in exceptional circumstances, any peer who fails to attend an average of at least three out of every five sittings over the course of a parliamentary session, should cease to be a member.
- 8.12 We do not propose that this rule should be introduced with retrospective effect. It would be unfair if peers who had proceeded according to present rules and expectations found they had ceased to qualify for membership under the new rules and expectations. New nominees for peerages will meanwhile be able to decide whether or not to accept in full knowledge of these new rules.
- 8.13 Our modelling suggests that this combination of a 60% attendance requirement and retirement at the end of the parliament at which a member attains the age of 80 should produce a House at or near the target size of 450 (see earlier section on size in paragraphs 7.15-7.24). This will, however, depend on prime ministerial restraint over new appointments.
- 8.14 Retired peers would keep their titles. Sympathetic consideration should be given to whether they should also retain visiting rights as former members, for example to use the library, as is the case for those hereditary peers who ceased to be members as a consequence of the 1999 reform of the Lords or retired permanently under the voluntary retirement scheme.

We recommend that early legislation should be enacted to introduce a combination of a retirement age of 80, to take effect at the end of the parliament in which a member reaches that age, and an attendance requirement of an average of 60% of sessions.

9 Disqualification

- 9.1 As with retirement, because most members of the House of Lords are members for life, there is no provision for outright disqualification. However, following adverse

publicity about expenses in 2009, the House took powers to suspend members for the length of a parliament. Previously, it had not been possible to suspend any member for longer than one parliamentary session.

- 9.2 We accept that the provisions of the Life Peerages Act 1958 and the force of the Writ of Summons mean that, without primary legislation, there can be no enforced disqualification. Members cannot, under present provision, be required to leave the House permanently.
- 9.3 The House of Commons has a provision for disqualification. MPs are automatically disqualified from membership of the House of Commons if they are sentenced to more than one year's imprisonment or detention for an offence committed in the UK or elsewhere. Though the Commons has not used this power for some years, it has in the past been applied for such offences as perjury, fraud, corruption and forgery.
- 9.4 We believe it appropriate to apply a similar provision to members of the House of Lords, accepting that it could not be applied retrospectively to any current members of the House.

We recommend that primary legislation should be enacted to align disqualification of members of the House of Lords with that covering Members of the House of Commons.

10 Constitutional Commission

- 10.1 The constitution is the UK's "hidden wiring"¹⁸: vital for the good governance of a healthy body politic and harmonious society, yet few people care how it works and fewer still actually understand it. Changes to the constitution are rarely a high priority for anyone save the most obsessed, especially during a time of economic strain. Fundamental Lords reform should not be a top priority for an incoming Labour Government.
- 10.2 Constitutional reform only works well, perhaps only works at all, when it is the product of consensus, conducted away from partisan political processes and electoral considerations. The very existence of the House of Lords, its role, its future place in the constitution, and especially how its membership should be determined, have been the subject of many decades of contention. Such issues will not be resolved quickly and they may never be resolved at all without the establishment of a Constitutional Commission to allow their consideration away from the political ferment.
- 10.3 Accordingly, we propose that such a Constitutional Commission be established. It should report within two years of inception in order to make legislation possible within the next parliament. There are various models including:
- One based on the Scottish Constitutional Convention that led to Scottish devolution with an independent chair and a membership drawn from all parties – and none – and with substantial civic society representation.

¹⁸ Coined by Peter Hennessy in *The Hidden Wiring: Unearthing the British Constitution*, (1996)

- An alternative, suggested by Lord Morris of Aberavon, would draw its membership from senior main party representatives to ensure high-level agreement, tempering this with sophisticated public consultation.
 - A hybrid option might balance senior politicians, independent representation and sophisticated public consultation.
- 10.4 The remit of the Commission would be to consider Britain's evolving constitutional settlement as a whole. This would include devolution; the outcome of Scotland's 2014 referendum on independence; questions concerning English governance in the contest of wider powers for the nations of the United Kingdom, and including regional government. These all provide the context within which wider questions of the place of the Second Chamber within the constitution will fall to be determined. These include its functions and composition, including the question of direct election (and the electoral system), indirect election or nomination; the relationship with all other UK chambers, especially the House of Commons and the implications for formation of governments; legislative activity; scrutiny of the executive, and representation of the people. The Convention should also consider what could be learned from international comparisons.

11 Referendum

- 11.1 Referendums are relatively rare in British politics. Only two full national referendums have taken place – on continued membership of the equivalent of the European Union in 1975, and on proposals in 2011 to change the voting system for the election of MPs to the House of Commons. But referendums are increasingly part of UK political life, such as the commitments given in enacting the EU Lisbon Treaty on further significant relationship changes between the UK and the rest of the EU.
- 11.2 In its 2010 General Election manifesto, Labour promised to put significant further reform of the House of Lords to the British people in a referendum. We strongly support that. Major constitutional change to British democracy and governance, not only merits but requires to be put to the British people in a referendum.
- 11.3 In pursuing its case in relation to the House of Lords Reform Bills 2011 and 2012, the coalition government sought to dismiss Labour's point about a referendum, saying there was no need to put the issue to the public because an elected House of Lords had been a feature of all three main parties' manifestos in the 2010 General Election. In fact, because no one party won the 2010 General Election, the manifestos of all three major parties were rejected by the British electorate. At the same time, the Liberal Democrats in particular believed that a change of the order of an alteration to the system used for electing MPs to the House of Commons should be put to the people of Britain in a referendum. If a move to an Alternative Vote system for one House of Parliament is deemed to require a referendum, we believe that a move to, for example, an elected House of Lords should also merit one.

We recommend that any major further reform of the House of Lords, and particularly of its composition, should be put to the people of the United Kingdom in a referendum, and only implemented if approved in a referendum.

12 Conclusion

- 12.1 The House of Lords is an invaluable component of the UK body politic yet in several regards it is in urgent need of improvement. Some of the larger questions surrounding the Lords and its place in the constitution can only be addressed in a wider forum such as a constitutional commission. We hope the political parties will be able to recognise such a need and address it collectively.
- 12.2 In the meantime, there are many ways in which the House can reform itself by introducing practical improvements to its working practices than can benefit the public. Not all will require legislation; many could be implemented quite quickly.
- 12.3 We believe that taken together these recommendations, long and short term, constitute a radical yet viable programme for reform of the House of Lords.