Propriety and Honours and Propriety and Peerages

Government response to the Public Administration Committee's Fourth Report of the session 2005-6 and Second Report of the session 2007-8

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice

By Command of Her Majesty
May 2008

This information is also available on the Ministry of Justice website at www.justice.gov.uk

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Government response to the Interim Report on Propriety and Honours

The Committee published 12 conclusions and recommendations in its Interim Report *Propriety and Honours" Interim Findings* (Fourth Report 2005-2006) on 13 July 2006, but the Committee accepted *Propriety and Peerages* (Second Report 2007-08) that it was understandable that the Government wished to await the Committee's further findings before responding to the points made in the Interim Report.

Political Honours

1. We welcome the Prime Minister's announcement of 23 March that he will no longer add his own names to the twice-yearly honours lists which have already been subject to scrutiny by the independent committees. This decision will help to reinforce the propriety and independence of the system. It is a practice which we trust will be continued by future Prime Ministers. (Paragraph 14)

The Government is pleased the Committee favours the change made by the then Prime Minister in March 2006. The Committee has also noted (Second Report 2007-8 para 40) that the new Prime Minister, Mr Brown has made the same commitment. The Committee believes that the commitment should be binding on all future Prime Ministers. The Government believes that it is unlikely that future Prime Ministers will wish to alter this convention; but it should be noted that no Prime Minister can bind his or her successors on such a matter.

2. We will review the law as it affects public life and corruption as part of a further report, once the police investigation is complete and the lessons from it are available. We have invited the police to contribute to this review. (Paragraph 21)

The Government notes the Committee's intention.

3. Making it explicit that nominations to the peerage entail appointment to the legislature rather than the award of an honour would make those nominated to be working peers more like those appointed to be ministers in the Upper House. This would make the credibility of members of a parliamentary party in the Second Chamber the direct responsibility of the parties concerned. It would be consistent with the case put to us that it has always been the convention that parties place supporters of their policies in the Upper House. As a consequence, it should also make the manner in which such nominees are chosen by the party leadership a matter of active interest and responsibility for the party itself. Such a shift would, of course, have to be modulated to reflect the eventual character of a reformed House of Lords, possibly elected in whole or in part. (Paragraph 30)

The Government notes the Committee's views. The Government believes that it is already well understood by the parties and those nominated by them that the purpose of nomination to the peerage is appointment to the legislature rather than the award of an honour. The transfer of responsibility for nominations for non-party peers to the House of Lords Appointments Commission from 2000 has already reinforced that understanding. As the Report notes, the way in which parties identify their candidates for nomination is a matter for them.

4. We welcome the Appointments Commission's announcement that it intends to make abundantly clear on their forms and other material their absolute requirement to be informed about any financial or other matter which might affect consideration of a nomination for the peerage. Political parties have a duty to follow the spirit, as well as the letter, of the law and ensure that they are open and honest about the information they provide. (Paragraph 34)

The Government understands that the House of Lords Appointments Commission has done this.

5. Scrutinising nominations for higher honours to assess the appropriateness of any financial connection or other valuable consideration which may exist between candidates and a political party should go beyond reliance on the Electoral Commission's register of donations even when the legislation is amended to require all loans to be declared. A declaration form, to be signed by the candidate, stating whether or not there are any financial or other connections with a political party which could affect the award of an honour should accompany a "sounding" letter which makes a conditional offer of an award to an individual. (Paragraph 36)

The honours committees, in assessing candidates, have before them information on the candidate's achievements and contribution to society. The Government does not believe that the introduction of a new form would be helpful. The honours committees are already informed of any significant donations by candidates for honours to political parties which are recorded on the Electoral Commission's database. It is difficult to see the grounds upon which a conditional offer of an award would be withdrawn. The Government believes that the fact that the Prime Minister and other senior Ministers no longer play an active role in the determination of the contents of Honours Lists meets the Committee's concerns.

6. We believe that an assessment of whether an individual is of sufficient merit for an award should include not just contributions to party funds but also whether a nominee has contributed to or supported government programmes in a material way. This might include, for example, sponsorship of city academy schools or a contract to supply government services. There may well be good grounds for honouring those who have contributed to government programmes, but the process for the assessment must be transparent. (Paragraph 37)

The process of scrutiny of a candidate for honours involves all government departments which might have an interest or knowledge of the candidate. Departments are being asked to pay particular attention to the need to report any involvement by honours candidates in Government programmes. The Government believes that this process should bring to the Honours Committees' attention light any relationship the candidate might have with Government and Government programmes. As noted above, the withdrawal of Ministers from the determination of the content of Honours Lists addresses with the Committee's major concerns.

7. Greater transparency in the process would, in our view, also help to allay doubts over certain awards. In our report in 2004 we recommended that citations for all honours should be published. Recent events have only added force to our argument. Once again we would strongly commend this approach, at least for the higher honours. (Paragraph 38)

The Government has explained in *Reform of the Honours System* (Cm 6479, page 8), that it does not accept this recommendation. It is one of the central tenets of the system that the person being considered for an award should not be approached before a decision to offer it is made. Publication of the long citation would need clearance by the recipient; the finalisation of the list is simply too compressed a process to allow this to be completed. Publication of the information without the consent – or the input of the individual concerned would be unwise since people are likely to have views on such personal information being made public. Consent could be obtained in the period after the list has been published but the obvious time for publication is when the award is announced, not several months later.

8. Consideration should be given as to whether the Appointments Commission or the honours committees should undertake this enhanced scrutiny process. (Paragraph 39)

The Government believes that the new honours committees, established in 2005, have shown themselves well able and fitted to exercise scrutiny of recommendations for honours.

9. The Prime Minister's vague assurances and the Appointment's Commission "understanding" that it will vet any resignation honours list are unnecessarily equivocal. The Appointments Commission is specifically charged with considering names which have not been subject to the normal assessment and selection processes. This body should be clearly and unequivocally responsible for vetting Prime Ministerial resignation honours lists. (Paragraph 46)

If a future Prime Minister were to have an honours list on the dissolution of Parliament or on his or her resignation, and the names contained had not been subjected to the normal process of scrutiny through the honours committees, then the expectation is that the names would be submitted for scrutiny to the House of Lords Appointments Commission or to the Main Honours Committee.

10. Wider party responsibility over the choice of candidates should also help to overcome concerns over MPs announcing their retirement from the Commons in the immediate run up to a general election and being subsequently ennobled in the dissolution honours list. The impression of peerages being offered as inducements in kind, rather than conferred in the expectation of future participation in the legislature, is damaging. To the extent that it happens, it should stop. (Paragraph 49)

The Government notes the Committee's view.

The House of Lords Appointments Commission

11. The Appointments Commission has shown that it can scrutinise nominations effectively and stand up to pressure from political parties. Nevertheless, its position should be reinforced by defining the Appointments Commission's role, powers and independence in statute as soon as possible, and certainly as part of any reform of the House of Lords which retains an appointed element of its membership. (Paragraph 53)

The Government has consistently made it clear that if there were to be an appointed element in a fully reformed House of Lords, then there would also be a statutory appointments commission to oversee the process of appointment. The Government does not, however, believe it is right to legislate on this issue in isolation, while there is no decision as to whether the future House of Lords will contain an appointed element and therefore whether an appointments commission will be required or, if so, what its role and functions might be.

The Appointments Process

12. The Appointments Commission is quite candid about the judgements it is required to make and how it interprets the criteria it has set for itself. However, because these are necessarily value judgements, we believe the Appointments Commission—and those responsible for the general honours system—should consult with the political parties and more widely about the criteria that ought to be applied in assessing propriety and how they should be interpreted. Ultimately decisions about the probity of individual nominees must rest with the Commissioners and the Committees but we believe that wider consultation about the basis on which judgements are made would help to reinforce the legitimacy of the process. It is also important that confidentiality is maintained in relation to individual names. (Paragraph 61)

The general criteria used by the honours committees in assessing candidates are published on the Cabinet Office web-site at www.honours.gov.uk. A copy is at Annex A. Those used by HOLAC are available on www.lordsappointments.gov.uk. The Government does not believe that a further formal process of consultation is required in either case.

ANNEX A

Criteria for the Award of Honours

The overriding principle is that awards should be made on merit. Merit for honours is defined as:

- Achievement
- Exceptional service

In each strand, the standard, and the consequent criteria, should be high. In terms of service, honours should not just go with a job well done or because someone has reached a particular level. They should be awarded because an individual has, in plain terms, “gone the extra mile” in the contribution they have made. For distinction the standard should be that someone stands out “head and shoulders” above his or her peer group in what has been achieved. In some individuals these strands are intertwined.

Specific attention is paid to people who:

- have changed things, with an emphasis on practical achievement;
- have delivered in a way that has brought distinction to British life and enhanced the UK’s reputation in the area or activity concerned or which has contributed in a distinctive way to improving the lot of those less able to help themselves;
- are examples of the best sustained and selfless voluntary service;
- have demonstrated innovation and entrepreneurship which is delivering results;
- carry the respect of their peers and are role models in their field; and
- have shown sustained achievement against the odds which has required moral courage in making tough choices and hard applications.

Government response to the report on Propriety and Peerages

This part provides the Government's response to *Propriety and Peerages*, the Committee's Second Report of Session 2007-8.

Honours and peerages

1. A peerage is more than an honour. An honour is a reflection of past achievement, whereas a peerage ought to be an appointment for future service. The procedures for appointing peers have grown organically out of the procedures for allocating honours, but it is time that a clean break was made. There is no reason for any surviving overlap between the two processes. (Paragraph 39)

The Government agrees that in the future there should be a separation between the peerage and the arrangements for membership of the second chamber. In its White Paper *The House of Lords: Reform (*Cm 7027*,* February 2007*)*, it said "If, in a reformed House of Lords, members (whether appointed or elected) were to serve for a fixed number of years rather than for life, it would seem odd for those individuals to be given a lifetime honour simply to enable them to do a job for a fixed period of time. The automatic link between the peerage and membership of the House of Lords should therefore come to an end. The peerage would continue as an honour but unconnected with a seat in Parliament".

2. The honours system itself is much improved in its independence since our predecessors' report in 2004. Some of this results from the new processes recommended by Sir Hayden Phillips' review, but the more important development may be the last Prime Minister's commitment not to put his own names forward, a commitment maintained by the current Prime Minister. It is our view that this commitment should be binding on all future Prime Ministers. (Paragraph 40)

As stated in the reply to the Interim Report *Propriety and Honours: Interim Findings* (HC1118), the Government is pleased that the Committee supports the change made by the then Prime Minister in March 2006. The Committee has also noted (Second Report 2007-8 para 40) that on appointment as Prime Minister, Gordon Brown made the same commitment. The Committee believes that the commitment should be binding on all future Prime Ministers. The Government believes that it is unlikely that future Prime Ministers will wish to alter this convention; but it should be noted that no Prime Minister can bind his or her successor in such a matter.

3. We have nothing further to add to the recommendations on changes to the honours system in our interim report. The Government understandably awaited this report before responding, but we expect a response to those recommendations now. (Paragraph 41)

The Government notes this recommendation. It has responded to the recommendations in the Committee's Interim Report.

4. There is a legitimate role for the police in investigating allegations that honours or peerages have been sold. Criminal offences serve no purpose if allegations that they have been committed cannot be investigated. (Paragraph 57)

The Government notes this recommendation which is principally a matter for the police and other appropriate authorities.

The legal framework

5. In order to avoid any possibility of prejudicing any prosecutions, we agreed to pause our original inquiry. This was on the understanding that, given the nature of the evidential test, the police investigation would be relatively brief. The fact that it turned out not to be brief meant that we were unable to carry out our inquiry in the way that we had originally intended to. In retrospect, it is not clear that the inability of a parliamentary committee to examine in public serious allegations of misconduct has served the public interest. (Paragraph 58)

The Government notes this recommendation which is a matter for Parliament and the police.

6. The Honours (Prevention of Abuses) Act still serves a purpose as a long stop. It defines behaviour which was totally unacceptable in 1925, and is totally unacceptable now. The failure of the police to secure a prosecution in recent years is not necessarily a failure of the Act - we do not know that anything illegal took place. We would therefore resist any proposals that suggested the Act should be repealed in the absence of more comprehensive legislation coming forward. (Paragraph 66)

7. It does appear, however, that the likelihood of securing prosecutions under the 1925 Act will always be very low even if peerages or honours are covertly traded. The behaviour which the Act criminalises is deliberately very limited. One effect of that limitation is that to secure a conviction in practice, the police would almost certainly have to catch someone red-handed. Given the nature of clandestine deals, this seems unlikely to happen. We must therefore look for ways to improve the law in this area. (Paragraph 67)

9. It is hard to see what would be gained from seeking to criminalise any additional forms of behaviour beyond those already caught by the 1925 Act. An offence of giving money in the un-stated hope of some reward would never be possible to prove. It is already illegal implicitly to agree an exchange of cash for honours or peerages; the difficulty lies in the low likelihood of proof. If the police cannot find evidence of an unambiguous agreement, we can hardly make an offence out of an ambiguous one. (Paragraph 72)

10. The legal advice we have received is that it is probably not compatible with the European Convention on Human Rights, and hence with the Human Rights Act, to change the burden of proof for offences under the 1925 Act. While we must ensure that corrupt behaviour is effectively prevented or, failing that, effectively punished, this has to be balanced against the human rights of those accused. In this case, we do not believe the case for changing the burden of proof is sufficient to justify the human rights implications. (Paragraph 78)

11. Consideration should be given to subsuming the specific law on abuses around honours and peerages into a new general Corruption Act. The need for such an Act is not disputed. The Law Commission is currently working on something along these lines, at least with regard to bribery. We recommend they should consider incorporating the behaviour outlawed by the 1925 Act in their new draft Bill, and give serious attention to the points raised in this part of our Report. (Paragraph 82)

The Government notes these recommendations and will consider them in the context of the Law Commission's final report on bribery which is expected this autumn.

The remit of the Law Commission's review is set out in the Terms of Reference which were announced to Parliament on 5 March last year. These are attached at Annex A. The review is focused on reviewing the various elements of the law on bribery (principally the offences in the Prevention of Corruption Acts 1889 – 1916 and the common law offence of bribery but which includes other specific statutory offences such as those in the 1925 Act) with a view to its modernisation, consolidation and reform. Whilst this is not a review into sanctions for abuse of the honours system, in making proposals for a new scheme of bribery offences the Law Commission will consider which existing offences can safely be repealed as a result of their proposals. The Government looks forward to considering their recommendations in due course and in doing so will also consider the points raised by the Committee.

8. What is rightly regarded as reprehensible is the idea that donors are seeking, and getting, something in return for their donation. It is impossible to legislate for motivations. However, while it would be desirable to prevent people from even trying to buy favour, it makes more sense to ensure that even if they do try, they cannot succeed. This must be the objective of any reform. (Paragraph 70)

The Government agrees with the Committee that it would be impossible to legislate on donors' motivations. The House of Lords Appointments Commission and the independent honours committees have available to them information on a candidate's donations. The Government believes that this process of scrutiny addresses the Committee's concerns.

12. When a Bill is produced, we hope the Government will soon find time for it in the parliamentary schedule. The last Corruption Act was in 1916—a modern law is overdue. We would also suggest that this Committee or its Members should be invited to play some part in giving pre-legislative scrutiny to the draft Bill. (Paragraph 83)

The Government notes this recommendation. Although the existing bribery law is fully functional and prosecutions are successfully made under these provisions, the Government agrees that the existing bribery law is complex and fragmented and would benefit from modernisation. As the Committee's report notes, the Government has asked the Law Commission to undertake as a priority a fresh, comprehensive review of the bribery law and to prepare a draft Bill. This review is underway, and the Law Commission issued a consultation paper on 29 November. Their consultation closed on 20 March. Their final report and draft Bill is expected this autumn. The Government will then need to consider their recommendations carefully and consider how best to take forward with the aim of presenting a draft Bill for pre-legislative scrutiny and subsequently legislation as soon as Parliamentary time allows. It remains to be seen what would be the best vehicle for scrutiny of any such draft Bill, but the Government recognises that the Public Administration Select Committee among others would have an interest in it.

13. However, corruption in the public sector remains very rarely prosecuted, and it may always be difficult to secure convictions. Any attempt to bribe or to solicit bribes of any kind ought to be effectively punishable; but our first priority ought not to be refining the law to punish offenders. It must be preferable to take steps to prevent offences from being committed. (Paragraph 84)

The Government agrees with this recommendation. Prevention must be the priority. The Government is confident that corruption in the public sector is very rare. In relation to specific aspects considered by the Committee: the Government asked Sir Hayden Phillips to review the funding of political parties, and is now considering the outcome of that review and the subsequent inter-party talks. The Government is considering what changes might be needed to the system of appointments to the House of Lords as part of its overall proposals to reform the second chamber.

Loans and electoral administration

14. In retrospect, it was a mistake for the Political Parties, Elections and Referendums Act 2000 not to require the declaration of all loans, whether commercial or otherwise. The Government was right to acknowledge that

mistake, and right to take swift steps to rectify it in the Electoral Administration Act 2006. (Paragraph 90)

The Government acted promptly in 2006 to change the law to bring greater transparency to loans, making their disclosure compulsory, as is the case for donations. The Government is pleased that the steps taken in the Electoral Administration Act 2006 to tighten regulations around loans to parties have been recognised.

15. Our understanding of the 2000 Act is that it did not give the Electoral Commission the power to publish binding guidance on what would constitute a commercial loan. Therefore, the Commission's decision not to give advisory guidance was quite defensible, as to do so would not have given helpful clarity over the legal position. Instead, it might even in some circumstances have prevented justified prosecutions. The Commission was damned if it did and damned if it didn't. The failure to define a "commercial loan" was in the drafting of the 2000 Act. (Paragraph 97)

16. The Electoral Commission's inability to give binding guidance was entirely consistent with the way the Commission was set up. There is now a striking consensus behind the need to make the Electoral Commission into a more effective, proactive regulator. We add our voice to that consensus. The Government is currently considering what steps to take next. One of these steps might need to be changes to legislation to give new powers to the Commission. (Paragraph 99)

17. The pattern of events is clear. While legal advice was taken to ensure that no law was broken, a deliberate attempt was made to stretch the loophole on commercial loans as far as it would go. Having agreed legislation to make party funding transparent, parties appear to have gone to some lengths to get around it. (Paragraph 106)

18. If there was any doubt about whether it was legally necessary to declare their loans, parties should have done so. If there was any doubt about whether it was legally necessary for candidates for peerages to disclose their loans, they should have done so. Even if there was no doubt on either of these matters, there is a strong ethical case that loans should have been declared. The letter of the law may not have been broken, but the spirit of the law was quite clear. (Paragraph 107)

In their response to the Eleventh Report by the Committee on Standards in Public Life (March 2007) the Electoral Commission committed to developing a protocol, to be published soon, which will seek to ensure that requests for advice are handled in a consistent manner. They have committed to ensuring that this protocol addresses the publication of advice in areas where they believe that law is open to misapplication or misunderstanding, even where no specific advice has been sought.

The Queen’s Speech on 6 November 2007 announced that the Government would bring forward proposals on party finance and expenditure. An effective system of

party funding depends on fair, consistent and robust enforcement of the rules by the regulator. The Government is committed to working with the Commission to ensure that it has the appropriate powers to effectively carry out its role, and will seek the Commission's views on the future role of guidance whilst considering taking forward reform of party finance. In taking forward new proposals on party finance the Government will seek to build a consensus that will help build greater public confidence in politics.

House of Lords appointments

19. Experience shows that the failure to find consensus on a comprehensive reform package can prevent progress on the running repairs that are needed now. We recommend that the next stage of Lords reform should not wait for a consensus on elections. (Paragraph 110)

We need as broad a degree of consensus as possible to achieve major constitutional reform. This is the aim of the cross-party group on Lords reform currently being chaired by the Secretary of State for Justice and with representatives from the Conservative Party, Liberal Democrats, crossbenchers and bishops. The group is building consensus around models based on either 80% or 100% elected. The talks are making good progress. Their tone is very positive. The group has reached preliminary conclusions on some key issues.

The Government believes that there is no advantage in bringing forward an interim Bill when a comprehensive package of reform is being worked up. Last year's White Paper and the outcome of the free votes shows that the cross-party approach is the best way to make progress. The White Paper we intend to publish will enable widespread consultation and debate. Following this, the Government intends to include a comprehensive package on reform in its manifesto for the next general election. We need consensus to achieve major constitutional reform.

20. The intention was always to create a Statutory Appointments Commission as part of the second stage of Lords reform. This inquiry has demonstrated why it is now important that this happens sooner rather than later. (Paragraph 115)

The cross-party group which the Government is chairing is working on the options for either an 80% or 100% elected House. If the House were to be 100% elected, there would be no place for an Appointments Commission. The Government agrees that, if the final outcome of its consultations is an 80% elected House and therefore that there will continue to be an appointed element in the House of Lords, then any Appointments Commission should be statutory. The cross-party group has discussed the question of the Appointments Commission in some detail. However, the Government believes that it would be premature to legislate for an Appointments Commission at this stage when we do not know if one will be needed for the reformed House, nor what its role and functions in that House might be.

21. It appears that the regulatory system for assuring the propriety of party nominees to the House of Lords had the right outcome, in that those who made undeclared loans to a party were blocked from becoming peers. It would certainly have cast the House of Lords in a very bad light if the four nominees had become peers and the loans had subsequently come to light after they had been ennobled. (Paragraph 121)

The Government notes the Committee's views.

22. We do not know on what grounds the House of Lords Appointments Commission advised against these four candidates being ennobled, or what the source of the leak of the names was, but we commend the Commission for the robust performance of its scrutiny role. (Paragraph 122)

The Government notes the Committee's views. The Government also appreciates the valuable work of the Commission.

23. We agree with Lord Stevenson that it is inappropriate for people who are not tax resident in the UK to serve in the legislature, and we understand that the Commission has had largely to make up the rules as it goes along, because it is operating in an area where there are no rules. We make no criticism of the House of Lords Appointments Commission. But it cannot be right that the rules for entry to one half of our legislature are made by just six people, whoever they may be, and can be unmade or re-made at any moment without any proper process. (Paragraph 126)

The Government notes the Committee's views. It agrees with the principle that those who are not tax resident in the UK should not serve in the legislature and has expressed its support for this principle in response to the Bills being promoted by Gordon Prentice and Lord Oakeshott to this effect. As part of the comprehensive package for reform on which the cross-party group is working, it will be looking in detail at the question of disqualifications for membership.

24. We believe there is a fundamental problem with the House of Lords Appointments Commission's aim to judge party nominees to the House of Lords on their credibility but not on their suitability. We do not see a difference of anything but degree between suitability and credibility. A candidate is credible if he or she is sufficiently suitable; we see no other means of measuring it. We cannot visualise a candidate who is credible but unsuitable. (Paragraph 129)

This is a matter for the Appointments Commission to consider. When the present Appointments Commission was set up, the intention was that its role in relation to party nominations should be to determine whether there are any grounds of propriety which would make the nominee an inappropriate member of the Lords. It is not to second guess the relevant party's assessment of whether the person would be able to make a contribution to the work of the House. However, there is a

separate element of the public interest, for example in ensuring that the House becomes more representative. The Prime Minister said on 19 December

> "I think it is right that two tests be applied, not just one test, the first test is of course probity and that test ought to be met in all circumstances, and the second test is what is the public interest concerned here. And of course there may be candidates that are very good but the public interest may suggest that other candidates should be chosen. So I have already said that this is a matter where the final decision would be made by an appointments commission but it should be made on two criteria, both probity and the public interest".

25. The House of Lords Appointments Commission seems to us to be judging party nominees for their suitability as well as non-party nominees. The difference would appear to be that the bar is set lower—whereas non-party peers have to be the most suitable candidate of many, party peers only have to be suitable enough to not diminish the workings and the reputation of the House of Lords and the appointments system. (Paragraph 131)

This is a matter for the Appointments Commission to comment on. But the Government sees no difficulty with the distinction, since the nominations in question have come from the parties, and not from the Government or the Commission itself, and the parties can therefore share in the responsibility for their impact on the workings and reputation of the House. The quality of party peers and their contribution to the work of the Lords is high; many party peers have considerable expertise in fields other than politics.

26. We are not surprised to find ambiguity in the Commission's rules. Rules need to be consulted on in draft; and rules of this nature ought to be made through proper Parliamentary processes. The criteria used in vetting prospective peers must be clarified. (Paragraph 132)

The Government notes the Committee's views. It made it clear in the February 2007 White Paper that it saw as one of the principal functions of any statutory Appointments Commission to establish the characteristics as to suitability which members of the House of Lords should possess and to publish these criteria. The Government will be considering, as part of its work with the cross-party group, whether, if the House is to become 80% rather than 100% elected, some at least of the characteristics by which the Appointments Commission will judge suitability should be included in the legislation establishing any statutory commission.

27. One of the major lessons to be drawn from the events of the last two years is that the rules for entry to the House of Lords are far too ad hoc. They must be clear; they must be widely agreed; and they must be of unquestionable legitimacy. In short, they must be statutory. We call upon the Government to legislate as soon as parliamentary time allows to put the House of Lords Appointments Commission onto a statutory footing. (Paragraph 135)

The Government is working through the cross-party group to draw up a comprehensive package of reform, looking at the options of both an 80% and 100% elected second chamber. The Government agrees that, if the final outcome of its final consultations is an 80% elected second chamber, and there is to continue to be an appointed element in the House of Lords, then any Appointments Commission should be statutory. The cross-party group has looked in detail at how such a Commission might be formed and might operate. However, the Government believes that it would be premature to legislate for an Appointments Commission at this stage when we do not know if one will be needed for the reformed House, nor what its role and functions in that House might be.

An interim House of Lords Reform Bill

28. One of the simplest ways to reduce the potential market value of peerages would be to separate the honour and the title from the seat in the legislature. The Government has already indicated it supports this, and that a cross-party group on Lords Reform has endorsed the principle. We recommend the inclusion of provisions along these lines in an interim House of Lords Reform Bill. (Paragraph 141)

As noted above, the Government is working with representatives of the front benches in both the Commons and the Lords, and with the Bishops and the crossbench peers, in a cross-party group looking at a comprehensive package of reform. The Government agrees with the separation of the peerage and membership of the House as part of the package of reform. It does not, however, believe that a reform on these lines should be introduced in advance of the comprehensive reform towards which it is working.

29. Consideration will have to be given to both the name of the House and how its members are referred to—clearly a linked question. We hope that the discussion will not get bogged down on this question of etiquette. The principle of the change is far more important than nomenclature. (Paragraph 142)

The Government agrees that when proposals for reform of the House of Lords are agreed, consideration will have to be given to the most appropriate name for the chamber. The Government has said that it will consult on this issue.

30. It is illogical that while HoLAC can require that a putative Member of the House of Lords should be a UK resident for tax purposes, there is no provision to enforce this once someone is an actual Member. (Paragraph 145)

The Government notes the Committee's views. At present, it requires an Act of Parliament to remove a member of the House of Lords. As indicated in the White Paper on Lords Reform (7 February 2007, CM7027) the Government is committed to the introduction of legislative provisions on disqualification, retirement and resignation. This is one of the issues on which it has been building consensus with

the cross-party group. It has also made clear that it supports the principle that members of the second chamber should be UK resident for tax purposes.

31. Even with the best appointments mechanism in the world, there will be occasions when the conduct of members of the House of Lords will be such as to warrant their removal from the House. The example of Lord Laidlaw shows that the Appointments Commission cannot enforce the undertakings given by prospective peers—it took the Commission years to persuade him to relinquish his position in the House, and even now he can change his mind at any time. Leave of absence provisions are clearly not sustainable in a modern second chamber. (Paragraph 146)

32. We do not suggest that the Appointments Commission should necessarily have the right to remove members of the reformed House. But it is surely right that as a general principle disqualification provisions are broadly consistent with the House of Commons. It is surely also right that there should be some mechanism for resignation from the House of Lords - on grounds of impropriety or on any other grounds. (Paragraph 147)

As noted above, the Government agrees that provisions on disqualification, retirement and resignation should form part of the overall reform package. We said in the February 2007 White Paper that Members of the House should be able to relinquish their membership, should they wish to do so. The Government has made it clear that in respect of those disqualified because of conviction for an offence, it sees a strong case for bringing the rules of the second chamber into line with those of the House of Commons.

33. The criteria to be used in deciding who sits in the House should be set out in the interim House of Lords Reform Bill. They should include criteria on both suitability and on propriety, to be applied equally to all prospective peers whether partisan or crossbench. On propriety, there should be enough detail to make it an objective judgement for the Appointments Commission and not a subjective one, in order to be fair to all candidates. (Paragraph 153)

The Government have already made it clear that, if the final outcome of the comprehensive package of reform is for an 80% elected House, and there is to be an Appointments Commission in the reformed House, it should establish the characteristics as to suitability which members of the House of Lords should possess and should publish these criteria. These characteristics should deliver high calibre appointees who will make a significant contribution to the work of the House of Lords. The Government will be considering, as part of its work with the cross-party group, whether some at least of the characteristics should be included in the legislation establishing any statutory commission.

34. The Bill should make it explicit that one of the criteria for appointment to the House will be residence in the UK for tax purposes. (Paragraph 154)

The Government has made it clear that it supports the principle that those who are not resident in the UK for tax purposes should not form part of the legislature.

35. On balance, we do not believe the Bill should put any kind of limit on donors to political parties being nominated by those parties to the House of Lords. Donating to a cause you believe in can be virtuous—it should not be stigmatised. The Bill should formalise the current stipulation that a donation is neither an advantage nor a bar towards being appointed. (Paragraph 155)

The Government notes and agrees with the Committee's position that donating to a political party should be neither an advantage nor a bar towards being appointed as a representative of that party in the House. It is premature, however, to consider legislation on this point when we do not know whether there will be any appointed members, whether crossbench or political, in the House in the future.

36. We recommend that the Bill introduces a longlist system for political party nominees to the House of Lords. Parties should publish a long list of candidates, explaining how they believe each one meets the criteria for membership. It should then be up to the Appointments Commission to choose those candidates from that list who they believe to be the most suitable against agreed criteria, as well as conducting the current propriety tests. All nominated candidates would then be chosen by the Appointments Commission. The scope for party patronage and hence sale of peerages is thereby dramatically reduced. (Paragraph 163)

37. However, this will not work if parties are asked to list their preferences in order, as in that scenario non-selection would be a public slur. We believe the objective of transparency is more important than allowing parties to rank their nominees in order of preference. We therefore recommend that this one element of the Government's proposal is reconsidered. (Paragraph 164)

As noted before, the Government is working towards a comprehensive package of reform which will produce a House which is either 80% or 100% elected. It is premature to legislate on how to handle party political appointments to the House when it is not known whether or not there will be any party political appointments in the reformed House.

38. The more robust and transparent the parties' nomination processes, the more credible and legitimate will be the names put before the Commission. (Paragraph 167)

39. How parties choose their candidates for nomination to the House of Lords is rightly a matter for them to decide. We note, however, the observations of our witnesses that it does not reflect well on the public perception of politics and of individual parties if their processes are seen to be less than fully transparent. (Paragraph 168)

These are matters for the parties to consider.

40. A House of Lords Reform Bill must ensure that the role of the Appointments Commission is no longer only advisory. There is no excuse for a remaining Prime Ministerial veto over the Commission's decisions, even if that veto is only theoretical. (Paragraph 173)

The Government is working towards a comprehensive reform package that will be either wholly or 80% elected. If the final outcome is for a wholly elected House, there will be no role for an Appointments Commission. If the House is 80% elected, there will be no Prime Ministerial role in relation to the elected members. For any appointed members in the reformed House, the separation of the seats from the peerage would open up the possibility of reducing the Prime Minister's role still further from even the very nominal role he presently has, as there would be no question of needing Ministerial advice to Her Majesty to exercise her prerogative power to create peerages. The Government set out in the February 2007 White Paper its belief that where members of the legislature are not elected, it was important that the constitutional principle that the Prime Minister should pass names to the Monarch should be preserved. However, the names that he passed on would be those he received from the Appointments Commission, without alteration.

41. The Bill should also remove the Prime Ministerial role in appointing members of the Appointments Commission, and the role of the executive in sponsoring and supporting the Commission. The statutory Commission should be entirely accountable to Parliament. (Paragraph 174)

The Government agrees that a statutory Appointments Commission, if it is still required in the reformed House, should be independent of Government and accountable to Parliament rather than Ministers.

42. Provision should be made to ensure that the Prime Minister no longer determines the size of the House of Lords and the party balance of the nominated element. The size and the proportion of non-partisan members may be determined in statute, but the party balance should be variable along with the prevailing mood of the nation. A formula should be devised, as the Government suggests. This formula should then be administered by the Appointments Commission. (Paragraph 175)

In a wholly or mainly elected second chamber, towards which the Government is working in its discussions with the cross-party group, the size and party balance of the House will be largely determined by the electoral system and the electorate. However, as the Cunningham Committee noted (2007-8 Joint Committee on Conventions, HL 265 and HC 1212) there is now a widely accepted assumption that in the future, no political party will have an overall majority in the House. The expectation is that any appointed members would be non-party, not party members. And with appointed members even in an 80% elected House constituting only 20% of the House, they would not in any case be able significantly to influence the overall composition. However, as the Committee notes, the

Government proposed in its February 2007 White Paper that if there were to continue to be appointed political members, the Appointments Commission would have to take account of the balance of the parties at the last General Election and appoint party-political members in line with the proportion of votes cast.

43. Lastly, we note that it has now been agreed in principle by the House of Commons that the remaining hereditary peers should be removed from the House of Lords. This should also be part of the Reform Bill. (Paragraph 176)

The Government's commitment is that the hereditary principle would be removed in the context of a second stage of comprehensive reform of the second chamber.

44. Although we have made legislative proposals, and believe this is the right way to proceed, it would be possible to achieve much of what we recommend without legislation. If there are problems about parliamentary time, or concerns on the part of the Government that a limited Bill might get derailed by wider issues of second chamber reform, there is a remedy to hand. Just as the last Prime Minister set up the House of Lords Appointments Commission without legislation, the current Prime Minister could make changes without needing Parliamentary approval. For example, he could implement tomorrow all the changes we suggest to House of Lords appointments procedures. He could call on all parties in future to submit longlists of nominees to the Appointments Commission, and give the Commission the formal power of selection. He could undertake never to veto or change any decision on either honours or peerages, effectively withdrawing himself from the process. He could allow the Commission to determine the size and party balance of the second chamber, on agreed principles. All of this ought to be formalised through legislation as soon as parliamentary time allows, but the point is that it could be done now if the Government wanted to. We believe that it should, as an immediate and proper response to the lessons to be learned from recent events. (Paragraph 181)

As previously noted, the Government is working with the cross-party group to develop a comprehensive package of reforms, based on either a 100% or 80% elected House. The Government does not believe it would be appropriate to attempt to legislate for a limited package of reforms when a comprehensive package is being worked up.

The Government has significantly reduced its role in relation to honours and peerages. The Prime Minister has already withdrawn from vetoing or changing any decision on honours and peerages. The only nominations over which he now has any influence are those which come from his own party, those which fall within the category of the 10 distinguished public servants per Parliament, and Ministerial appointments. The Government committed itself in the 1999 White Paper (Cm 4183) to principles on the balance of the House while it continued to be wholly appointed. The Government also does not accept the recommendation for the publication of long lists of potential nominees.

However, the Government sees some merit in the Committee's proposals to give some enhanced powers to the Appointments Commission by submitting shortlists of names, and is giving further consideration to them.

[Annex A]

Law Commission's Terms of Reference - Bribery

1. To review the various elements of the law on bribery with a view to modernisation, consolidation and reform; and to produce a draft Bill. The review will consider the full range of structural options including a single general offence covering both public and private sectors, separate offences for the public and private sectors, and an offence dealing separately with bribery of foreign public officials. The review will make recommendations that:

(a) provide coherent and clear offences which protect individuals and society and provide clarity for investigators and prosecutors;
(b) enable those convicted to be appropriately punished;
(c) are fair and non-discriminatory in accordance with the European Convention on Human Rights and the Human Rights Act 1998; and
(d) continue to ensure consistency with the UK's international obligations.

2. The process used will be open, inclusive and evidence-based and will involve:

(a) a review structure that will look to include key stakeholders;
(b) consultation with the public, criminal justice practitioners, academics, parliamentarians, and non-governmental organisations;
(c) consideration of the previous attempts at reform (including the recent Home Office consultation) and the experiences of law enforcement and prosecutors in using the current law; and
(d) comparing, in so far as is possible, the experience in England and Wales with that in other countries: this will include making international comparisons, in particular looking at relevant international conventions and the body of experience around their implementation.

3. The review will also look at the wider context on corrupt practices to see how the various provisions complement the law of bribery. This will provide the wider context in which the specific reform of bribery law can be considered. This part of the review will comprise a summary of provisions, not recommendations for reform.

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