



# Modernising Parliament Reforming the House of Lords

Presented to Parliament by the  
Prime Minister  
by Command of Her Majesty, December 1998

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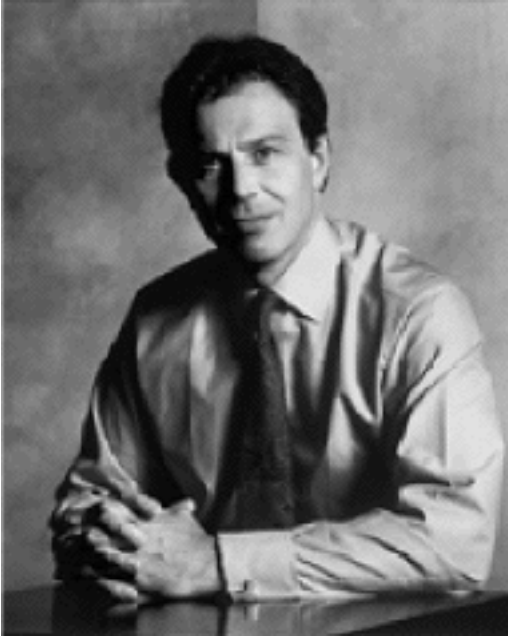
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## Foreword by the Prime Minister



**Britain is a vigorous, creative and dynamic country. Its people are inventive, talented and diligent. They deserve a framework for their country which reflects the unique character of the place and the people.**

I am convinced that many of the key institutions of Britain are amongst the best in the world. They have developed many of them over centuries in ways which catch the character of Britain and the British people: a character rooted in fairness, in decency and in democracy. They have changed throughout their history: they will continue to change, now and in the future.

Their pattern of change reflects the constant need to ensure that the framework of Britain is as good as it can be: as principled, as practical, as supple and as strong as is necessary. Modernisation is a constant element of that process. All institutions need to modernise to maintain their impact, their importance and their integrity.

New Labour was elected with a mandate to modernise. Our commitment to modernisation is clear and comprehensive. We are modernising and bringing closer to people representative arrangements in Scotland, in Wales and in

Northern Ireland; introducing new structures for the regions of England; bringing in a new capital-wide authority and Mayor for our great city of London; bringing forward measures to reform and renew the vital democratic strand of local government; and implementing a significant programme of modernisation of the House of Commons.

In line with this programme of renewal, the modernisation of the House of Lords is vital. The Government will be judged on the improvements we bring about on health, education, crime, jobs and the economy. But reforming the House of Lords is a key element of the Government's legislative plans, and proposals for further reform beyond that.

Reform of the House of Lords is long overdue. For too long, hereditary peers with no democratic legitimacy, whose role is based on birth and not merit, have been able to play a part in passing laws affecting everyone in Britain. For too long, Britain has got by with a second Parliamentary chamber which is less good than it could be. For too long, governments in Britain have shirked the responsibility of reform.

New Labour in government will, as we promised, carry out a careful and considered reform of the House of Lords: the immediate removal of the hereditary peerage, and longer-term reform of the House of Lords as a whole.

This is a radical and historic task. I believe it will be widely supported by the people of our country. I believe it will create a second chamber of Parliament of which both Parliament and the people can be proud. And I believe it will produce better government for Britain.

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# CHAPTER 1

## EXECUTIVE SUMMARY

The Government set out its approach to reform of the House of Lords in its manifesto:

*"The House of Lords must be reformed. As an initial, self-contained reform, not dependent on further reform in the future, the rights of the hereditary peers to sit and vote in the House of Lords will be ended by statute. This will be the first step in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House of Lords will remain unaltered.*

*"The system of appointment of life peers to the House of Lords will be reviewed. Our objective will be to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election. We are committed to maintaining an independent cross-bench presence of life peers. No one political party should seek a majority in the House of Lords.*

*"A committee of both Houses of Parliament will be appointed to undertake a wide-ranging review of possible further change and then to bring forward proposals for reform."*

This White Paper sets out how we intend to deliver on those promises, through a step-by-step process of reform.

### WHY REFORM?

Parliament is the central element of Britain's democracy. Britain needs a two-chamber legislature, with a distinct role for the second chamber which must not usurp that of the first.

For Parliament to carry out its purpose, it must act with authority and integrity. Each component part must also possess the legitimacy to support its role in the process. The present House of Lords suffers from a lack of legitimacy because of its anachronistic and unrepresentative composition.

The Government is committed to improving the effectiveness and balance of the House of Lords, with the aim of it playing a full and proper part in Parliament.

### HEREDITARY PEERS

As a first step in this process, the Government will introduce legislation to remove the right of hereditary peers to sit and vote in the House of Lords.

This is a real change in the way Britain is governed one of the most radical seen this century. It is a major reform of the House of Lords, and a significant step in the modernisation of Parliament.

### THE TRANSITIONAL HOUSE

Legislation being introduced in this Parliamentary session will create a transitional House of Lords. If, as has been proposed, an amendment to the legislation is supported to allow a small number of hereditary peers to sit temporarily in the transitional House, the Government is minded to accept this proposal at an appropriate stage. In fulfilment of the second part of our manifesto pledge, the Government will ensure that no one party can dominate the transitional House.

At present, a Prime Minister has sole power of patronage in nominating to The Queen those to be appointed to life peerages. The Prime Minister has made it clear that he is prepared for the first time ever to take steps to reduce this unfettered power of patronage in this area. The Government will establish an independent Appointments Commission to recommend non-political appointments to the transitional House. The Prime Minister will undertake not to veto either its recommendations or those of other party leaders which have received the Commission's vetting clearance.

### LONGER-TERM REFORM

The manifesto said that options for longer-term reform would be considered by a Joint Committee of both Houses. The Government has decided to build on this with a Royal Commission. This will allow an open and transparent deliberative and consultative process involving full and wide debate of all the issues. The Joint Committee will then be asked to examine in more detail the Parliamentary aspects of any proposed reform.

The Royal Commission is being set up immediately, unlike a Joint Committee which would have had to await the passage of the Bill on the hereditary peers. Its terms of reference allow it to examine a range of possible alternatives covering role and functions as well as composition. It is being asked to report by the end of 1999, to enable the Government to make every effort to ensure that the second stage of reform has been approved by Parliament by the time of the general election.

## **CONCLUSION**

These important and radical changes, which are part of the Government's programme of reform of the representative institutions in the United Kingdom, will renew the House of Lords as a modern, fit and effective second chamber of Parliament for the 21st century. The Government believes these changes will command widespread support across the country.

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## CHAPTER 2

# INTRODUCTION: MODERNISING THE HOUSE OF LORDS

1. Parliament is where the will of Britain's people is expressed: where the temper, direction and course of our country is set. Parliament is the core of political accountability in Britain, where the decision of the electorate to support a published programme of policies is transformed into legislation, into consideration of the opportunities and difficulties facing the nation, and into leadership in government.

2. But for Parliament to carry out these functions, it must rest on the assent of the people of Britain. To sustain that, it must carry out its work with authority, and with integrity. In recent years, both the authority and integrity of Parliament have been questioned, and its representativeness subject to ever-closer scrutiny. Parliament itself has taken steps to respond to this challenge to its role and performance, by improving its standards and examining its practices.

3. The Government is a strong supporter of these changes. But as part of its programme of renewal for Britain, the Government believes that there are a number of fundamental constitutional improvements which will enhance Britain's democracy, improve the connections between the people of Britain and those they put in place to represent them, and strengthen the framework and coherence of our country as a whole.

4. People across the country have made clear what they want. Referendums and subsequent developments in Scotland, Wales and Northern Ireland have shown a clear appetite for change, and a determination to achieve it. The result will be new democratic mechanisms: a new Parliament in Scotland, and new assemblies in Wales and Northern Ireland – the last a new way of bridging divides which offers the best chance of peace for more than a generation. In England, new development structures will improve regional accountability. The people of London have made clear how they want to be governed. Across the country, a programme of reform and renewal of people's local decision-making is being put into place in local government. All these developments will reconnect people with power in Britain: bringing power closer to people, decentralising power by moving the means of democratic accountability to where people want it to be.

5. Parliament is not exempt from this process of reform, nor should it be. In the House of Commons, a significant programme to modernise the procedures has already been agreed. This has included changes to strengthen the scrutiny of European legislation. The Independent Commission on the Voting System has reported, and its report has already been subject to debate in the Commons.<sup>1</sup>

6. The Government believes that Britain, like other large mature democracies, needs a two-chamber legislature. While other major democracies show a wide range of variation in how they form their second chambers, a second chamber is a feature of almost all of them. But the second chamber must have a distinctive role and must neither usurp, nor threaten, the supremacy of the first chamber.

7. Ensuring that the principal democratic mechanism of Britain – the House of Commons – works in the best possible way is important. The ability of the elected Government to fulfil its electoral contract with the British people and deliver what they have asked it to do primarily depends on the proper performance of the House of Commons, but it rests too on an effective and balanced second chamber – the House of Lords. While the House of Commons clearly reflects the wishes of the people, and so is the source of both legitimacy and power of the elected Government, the House of Lords has an important role as a significant element in the legislative process. The House of Lords cannot be immune from change. The House of Lords needs to adapt and modernise.

8. The House of Lords has a number of functions within Parliament – considering and amending legislation, questioning the Government through debates and questions to Ministers, debating matters of public interest and carrying out specialist investigations through select committees of the House. These are all important jobs for a second chamber, and the increasing volume and complexity of Government work and Government legislation means that both the workload of the House of Lords is increasing and its contribution to the legislative process is greater.

9. The most distinctive and important role of the present House of Lords is the specialist expertise and independent perspective it can bring to the scrutiny of legislation. But the House of Lords and the work it carries out suffer from its lack of legitimacy, because the presence of the hereditary peers creates a permanent, inbuilt majority for a single party. For its functions to be properly performed, the House of Lords needs a degree of legitimacy which it does not now enjoy. This limits the extent to which it can make a proper contribution as a second Parliamentary chamber. The anachronistic and unrepresentative nature of its own composition is at the root of this deficiency.

10. Institutions need to change if they are properly to reflect and serve the society which supports them. Institutions of government in particular need constantly to be examined for their continuing responsiveness to changing circumstances, to ensure that they fully carry out the functions they are designed to fulfil.

11. Historically, the House of Lords was the first chamber of Parliament and used to be the pre-eminent chamber. Its role, functions and powers have obviously diminished with the spread of suffrage throughout the 19th and 20th centuries but even in a country without a written constitution, evolutionary change does not always ensure that institutions naturally change in a way which matches demands made upon them by a developing society. Twice already this century legislative intervention has been needed to make the House of Lords better fitted for the functions it is now called upon to fulfil. The Parliament Act of 1911, further amended in 1949, circumscribed the powers of the House of Lords to ensure that, except in the case of a Bill to extend the life of a Parliament, the will of the House of Commons over primary legislation should always prevail. In 1958, the Life Peerages Act was passed, establishing a new form of membership of the House of Lords in a move which has significantly altered the composition of the House. These were important reforms, particularly in introducing to the House able and talented people from differing backgrounds and with different skills to bring to the House and its work. But though significant, these reforms did not wholly address the fundamental problems of the House the deficiencies in its legitimacy arising from its method of selection. The Government is not bringing forward any immediate proposals to modify the powers of the House of Lords. Such issues are for examination when considering longer-term reform of the House. But the Government does now want to move to fundamental reform of the make-up of the Lords.

## THE GOVERNMENT'S PROPOSALS

12. The Government is committed to ending the anachronisms of the composition of the House of Lords. The Government made its position clear in its election manifesto, when it proposed a step-by-step reform of the House of Lords.

13. We will now take the first steps towards the fulfilment of that commitment.

- **Hereditary peers** The Government will legislate to remove the right of hereditary peers to sit and vote in the House of Lords.
- **A transitional House** The Government is putting forward new proposals for a transitional House of Lords following the passage of the legislation.
- **Longer-term reform** The Government will appoint a Royal Commission to make recommendations for wide-ranging reform of the House of Lords.

The Government believes that a step-by-step process is the best way to proceed. It is consistent with the incremental approach which has characterised much constitutional development in this country. But at the same time, it is a radical approach one which, taken as a whole, will mark a fundamental transformation of a key part of the central democratic institution of Parliament.

### Hereditary peers

14. The Government will introduce legislation to remove the right of hereditary peers to sit and vote in the House of Lords. This is a radical change to the way Britain is governed one of the most radical seen this century. It is a major reform of the House of Lords, and a significant step in the modernisation of Parliament a step which reformers have been unable to secure for the whole of this century. This Government is determined to carry it through. We believe it will command the widespread support of the people of Britain.

15. The Government believes that the right of hereditary peers to sit and vote in the House of Lords is a significant factor in the lack of political effectiveness and balance of the House. We believe no individuals should have the right to be members of Parliament solely on the basis of the actions or position of their ancestors. A place in the legislature should be reserved for those who achieve it on their own merits. The continuing right of the whole hereditary peerage to sit and vote has been accepted as an anomaly for most of this century, even by the House of Lords itself.



16. The hereditary peerage numbers well over half the membership of the House of Lords. The presence in the House of this large number of hereditary peers constitutes an element of the Lords which is unresponsive to political and social change. No matter what the outcome of a general election, political control of the second chamber of Parliament never alters. It ensures that the Conservative Party has a 3 to 1 built-in majority over the Labour Party. Taken as a whole, the hereditary peerage is not representative of the country politically, socially, economically or above all by gender or ethnic origin. While the hereditary peers retain their dominant position, the House as a whole can never hope to be representative. In future, hereditary peers will have the same democratic rights as other citizens: no less but certainly no more. They will be able to vote for members of the House of Commons; they will be able to stand as candidates for the House of Commons; but they will no longer be members of the House of Lords by right of birth.

### **The Government's proposals for the resulting House of Lords**

17. The Government is proposing a far-reaching examination of the long-term future of the House of Lords following the removal of the hereditary peers. While that review is taking place, and until longer-term change is implemented, the ending of the right of hereditary peers to sit and vote in the Lords will change the composition and complexion of the House of Lords. Such a radical change will in itself amount to a marked improvement of the House, removing much of the cause of its deficit in both effectiveness and balance. But the reform will also create the need for a revised, transitional House.

18. The Government rejects suggestions that the removal of the hereditary peers creates a transitional house of unfettered patronage totally at the disposal of the government of the day. It has always been the case that any Prime Minister can ask the Sovereign to create new peerages to alter the balance of the House of Lords. This is a power governments have threatened to use in the past even at times when there were only hereditary peers in the House. The present members of the life peerage have been nominated by eight different Prime Ministers over forty years since the Life Peerages Act was passed in 1958. It is a myth that a House without hereditary peers thereby becomes the creation of a single administration.

19. Far from increasing the power of patronage of the Prime Minister, the Government's proposals for a transitional House will circumscribe it. For the transitional House, the Government will ensure that no one political party commands a majority in the Lords. The Government presently plans to seek only broad parity with the Conservatives. It will:

- maintain the cross-bench representation at around its present proportion of life peers;
- establish an independent Appointments Commission to recommend non-political appointments and vet all nominations of individuals to sit in the House of Lords;
- forward to The Queen without interference the agreed number of recommendations of the other party leaders and the Commission.

### **Longer-term reform**

20. The Government believes that the removal of hereditary peers is a necessary and a radical change to the House of Lords and to the way Britain is governed. Addressing the distortions created by the dominance of the hereditary peerage is the most pressing reform of the House of Lords. But it is far from the only reform necessary.

21. Previous attempts this century at reforming the House of Lords have failed. Because they have failed, the hereditary peers continue to sit and vote even as their claim to the right becomes increasingly tenuous. The continued question of the fate of the hereditary peers has in practice provided a distraction from full, dispassionate consideration of what the United Kingdom actually wants and needs in its second chamber. Full-scale reform of the House of Lords will require consideration of a large number of complex issues. This White Paper sets out many of them. But the Government does not believe that it is necessary to do nothing until it is possible to do everything. Resolving the issue of the hereditary peers first will free those considering reform to concentrate not on the past but on the future.

22. In its election manifesto, the Government said that a Joint Committee of both Houses of Parliament would be set up to consider longer-term reform. The Government acknowledges that those who understand how Parliament works can make a special contribution in refining the options before any legislation is introduced. But there is widespread and legitimate public interest in the question of the reform of the House of Lords. The Government wants to take full account of differing views about change to the democratic institution of Parliament. We want to make the process of examination of future reform of the Lords as open and transparent as possible. We want the process of examination and recommendation to be inclusive, and open to public involvement. We have therefore decided that the Joint Committee should be preceded by a Royal Commission which will do much of the preliminary work of examining the issues and analysing the options. We do not believe this will delay the

process of considering more fundamental reforms. The Royal Commission will be meeting outside the Parliamentary process. It can, therefore, begin work while the Bill concerned with the hereditary peers is still going through Parliament, which would not have been a practical possibility for the Joint Committee.

23. The terms of reference for the Royal Commission will be:

*"Having regard to the need to maintain the position of the House of Commons as the pre-eminent chamber of Parliament and taking particular account of the present nature of the constitutional settlement, including the newly devolved institutions, the impact of the Human Rights Act and developing relations with the European Union:*

- *to consider and make recommendations on the role and functions of a second chamber; and*
- *to make recommendations on the method or combination of methods of composition required to constitute a second chamber fit for that role and those functions.*
- *to report by 31 December 1999."*

The Royal Commission will be ready to begin its work shortly.

24. The Government believes that the Royal Commission can and should complete its work within the tight deadline we have set. This will allow the Commission's recommendations to be considered by the Government and the other political parties in advance of the next general election. It is for the Royal Commission itself to arrange its own programme of work. We wish it to consider all the options for reform, consistent with its terms of reference, without advance prescription.

25. The Government has itself considered the issues involved, and the final chapters of this White Paper detail some of this consideration.

## **CONCLUSION**

26. The Government wants to see the House of Lords as a modern, fit and effective second chamber of Parliament for the 21st century. We believe it can be that. The removal of the purely hereditary basis of the majority of the House – anomalous, unrepresentative and insupportable – will be a radical step in itself. But it will be followed by further reform. The Royal Commission is the right means to examine longer-term reform and to make recommendations for the Government to consider. A fully reformed second chamber will have a vital role in the renewed democracy of Britain.

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*1The Report of the Independent Commission on the Voting System, Cm 4090, ISBN 0-10-140902-8.*

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## CHAPTER 3

# THE PRESENT HOUSE OF LORDS

## ORIGINS

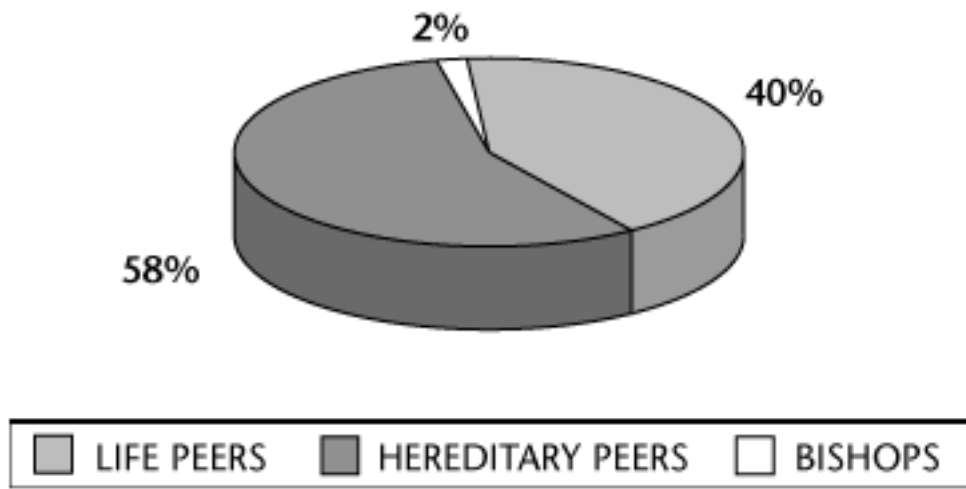
1. The House of Lords is the original chamber of Parliament, predating the Commons. Its origins can be traced back to Saxon times, when it was the custom of the king to call the leading men of the country to advise him at court. The pattern of the two-chamber Parliament was adopted by the 14th century. The first chamber consisted of those who had been summoned individually by the king as peers of the realm, who were his counsellors, officials and judges. They were also the chief landowners, who held their lands directly from the king and were responsible for providing the armies in time of war. The second chamber consisted of the representatives of the communities of the country: the knights of the shires and the burgesses.

2. Although the Commons established comparatively early its right to determine the resources the Government should have available to it, the House of Lords continued through the patronage of individual lords in other matters to be the dominant House into the 18th century. It was the consequences of the industrial revolution that finally established the pre-eminence of the Commons, as industry replaced land as the main source of wealth, the great cities came to dominate the countryside and changing patterns of society led to the gradual widening of the franchise. Although the most important offices of state were regularly held by members of the House of Lords well into the late 19th century, the Commons continued to establish its dominance as the elected chamber. The widening of the franchise in the 20th century, coupled with governments with a different political base, led to greater pressure for reform of the House of Lords. Two reforms of the House of Lords were carried, to its powers in 1911 and 1949, and to its composition in 1958 following the introduction of life peers. Throughout the 20th century there has been widespread support for further reform, and in particular for the abolition of the rights of hereditary peers to sit in the House of Lords, but four significant attempts at more wide-ranging reform have failed. Further reform of the House of Lords is now unfinished business as the 20th century reaches its end.

## STRUCTURE

3. The structure of the House of Lords is complex. The introduction of life peers, who now form about 40 per cent of the House, has had a marked effect on its composition. At 4 January 1999, the structure of the House of Lords was:<sup>2</sup>

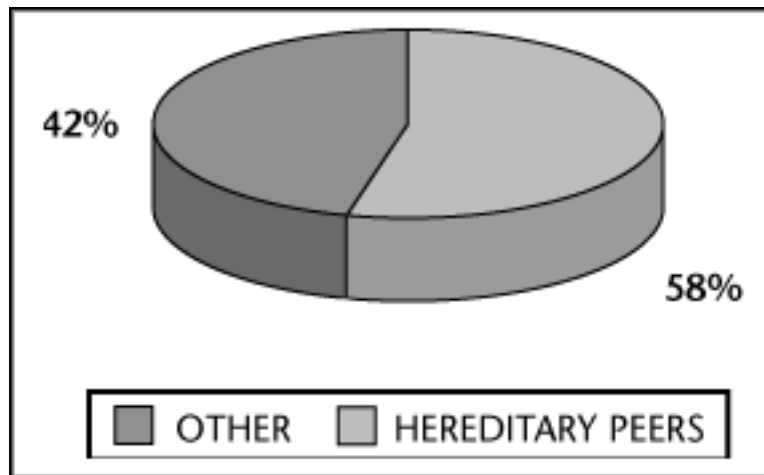
|                                    |   |
|------------------------------------|---|
| Life peers                         | 510   |
|                                    | (of whom 7 are on leave of absence)                                       |
| Hereditary peers of first creation | 9   |
| by succession                      | 750   |
|                                    | (of whom 67 are without a Writ of Summons and 56 are on leave of absence) |
| Archbishops and Bishops            | 26  |
| <b>TOTAL</b>                       | <b>1,295</b>  |



Only 103 peers are women, 16 of whom are hereditary peers. Nearly 40 per cent of the House (excluding those without Writs of Summons or on leave of absence) were born before 1930 about one-third of hereditary peers and nearly half of life peers.<sup>3</sup>

Hereditary peers, including those without a Writ of Summons and those on leave of absence, command a clear absolute majority in the present House of Lords:

|                                |     |
|--------------------------------|-----|
| Hereditary peers by succession | 750 |
| Others                         | 545 |



4. But the nominal membership of the House of Lords is misleading. It is perhaps not widely understood that membership of the House of Lords is not a salaried job. Peers may claim only reimbursement of expenses incurred in undertaking Parliamentary duties. Many members of the House attend only rarely. For example, in the 1997/98 session, only 40 per cent of life peers attended more than two-thirds of the House's sessions and 34 per cent attended less than one-third. The equivalent figures for the hereditary peers are 20 per cent and 67 per cent respectively. Nearly 200 hereditary peers never attended at all, not counting those on leave of absence. The average daily attendance in 1997 was around 400, and a division involving more than 300 peers is rare. The majority of the business of the House is carried out by peers who regularly attend the House, the majority of whom are life peers.

5. The only groups with a direct and legally guaranteed representation in the House of Lords are the Church of England and the Law and there are special constitutional reasons for both these. For every interest group, representation is a matter of chance. The landed interest, for historic reasons, is obviously strongly represented among hereditary peers. Some peers take seriously their local and regional roots. Others of the life peers know that they have been appointed because of work on behalf of groups to which they belong or in whose interests they have been active. But it is up to individual peers, once members of the House of Lords, to decide what interests they will promote.

### Bishops

6. Bishops have always been members of the House of Lords. Originally they were summoned in their dual role as major landowners and as the king's counsellors. In more modern times, the presence of the Bishops became increasingly associated

with the establishment of the Church of England, although in law the two are quite separate. The establishment of the Church of England rests upon Parliament's powers over its legislation and the requirement for the Sovereign as its Supreme Governor to be in communion with it. The Bishops and Archbishops now sit by virtue of the Bishops Act of 1878, which provides for the two Archbishops, the Bishops of London, Winchester and Durham, and the next 21 most senior diocesan Bishops to have a seat in the House of Lords. The Bishops are the only true ex officio members of the House of Lords, as they retire from the House on retirement from their see. Since clergymen of the Churches of England, Scotland and Ireland, and Roman Catholic priests, are not able to be members of the House of Commons, the presence of Bishops in the House of Lords was before the introduction of life peers the only significant non-lay representation of the principal religious denominations in Parliament.

### **Law Lords**

7. The position of the House of Lords as the supreme court of the realm also comes from the House's origins as the King's Council. Until 1876, the judicial functions of the Lords had to be provided by those who happened to be members of it, or hereditary peerages had to be conferred to bring suitably qualified men into the House. At that point, concern about the lack of available expertise led to the innovation of conferring life peerages specifically for judicial work in the Lords, so that those who did not feel they had the resources to maintain the estate and dignity of a peerage through future generations could still be appointed. There are 12 active Law Lords at any one time, but retired Law Lords are still able to act judicially up to the age of 75, and all Law Lords are members of the House for life.

## **POWERS AND FUNCTIONS**

8. The Parliamentary functions of the Lords are, broadly defined, fourfold:

- to generate, debate, amend and approve proposed legislation;
- to scrutinise government actions by Parliamentary Questions to Ministers and debates;
- to undertake specialist investigation through their select committees;
- to act as a general forum for debate on matters of public interest.

The House of Lords is distinct from the House of Commons in four key areas:

- the House of Lords has no influence over the choice of who is to form the government;
- the House of Lords has no powers over taxation and spending, which are the exclusive preserve of the House of Commons;
- the House of Lords has no constituency representative functions;
- the House of Lords' powers over legislation are constrained by the Parliament Acts.

9. The House of Lords functions in a different way from the Commons. Government business has no priority. Decisions about the conduct of business and debate are taken by agreement. Although the Lord Chancellor is the Speaker of the Lords, he does not have the powers vested in the Speaker of the House of Commons to select amendments, call members to speak and maintain order.

10. The House of Lords is a self-regulating body and as such is able to develop new procedures and committees to meet changing circumstances. Although the House of Lords has developed a select committee system to question government policies, it has no legislative standing committee procedure comparable to those of the House of Commons. Almost all Bills have their Committee stage on the floor of the House.

11. The powers of the Lords, like those of the Commons, are not precisely defined, although the limitations on them are. The main function which the Lords shares with the Commons is the scrutiny of primary and secondary legislation. For primary legislation, the usual role of the Lords is as a revising chamber, although some Bills can and do begin their Parliamentary passage in the Lords. Every year, the House of Lords passes a large number of amendments to Bills, the overwhelming majority of which are government amendments. The average number of amendments made by the House of Lords to Bills in each of the past ten years is nearly 2,000. The House of Lords therefore performs an important role in improving legislation, and in allowing further consideration of controversial issues.

12. The Lords' powers over primary legislation are constrained by the Parliament Acts. Under these, the Lords must pass

without amendment any Bill certified by the Speaker of the House of Commons as a Money Bill within one month of its being sent up to the Lords, otherwise the Bill can be presented for Royal Assent. For all other public Bills, except, importantly, one to extend the life of a Parliament, the House of Lords has only the power to delay a Bill into the Parliamentary session after that in which it was first introduced.

13. Such Bills can be presented for Royal Assent at the wish of the Commons alone if:

- the House of Lords rejects the same Bill sent up from the Commons in two successive sessions; and
- the Bill has been sent up to the Lords at least a month before the end of each of the sessions; and
- at least a year has passed between Commons Second Reading in the first session and the Commons passing the Bill in the second.

This power has had to be invoked very rarely. Although the House of Lords may sometimes fight hard for its amendments, it usually defers to the rights of the elected chamber, rather than forcing the use of the Parliament Acts. The European Elections Act was only the second time the Parliament Acts have been used since 1949. There are no constraints on the House of Lords' powers to delay a public Bill to extend the life of a Parliament.

14. The Lords' powers over secondary legislation are identical to those of the Commons. They may accept or reject it, but cannot amend it. The House of Lords has evolved procedures under which it can call on the Government to delay or amend delegated legislation without itself voting to reject it.

15. The House of Lords' use of its legislative powers is also subject to informal understandings about how far they can reasonably be exercised. A Labour Government has always been in a minority in the second chamber. However, under the so-called Salisbury convention, that "it would be constitutionally wrong when the country has expressed its view, for this House to oppose proposals which have been definitely put before the electorate" (the Marquess of Salisbury, speaking in the debate on The King's Speech in 1945), the House of Lords undertakes not to refuse a second reading to any measure which has been in the governing party's election manifesto. The House of Lords reserves the right to propose amendments to the detail of the Bill although it is generally accepted that the convention applies to wrecking amendments which are intended to be destructive of the purpose of a Bill for which there is manifesto authority. There is also an understanding that the House of Lords does not vote down statutory instruments, although this is less firmly based than the Salisbury convention.

16. The House of Lords also has a similar role in questioning the Government's actions and policies to that of the Commons. It does this through the use of Parliamentary Questions, and also through set-piece debates on the important issues of the day. These debates often draw on the detailed expertise and experience which are available in the Lords, especially among the life peers, and can be influential both within government and amongst groups interested in specialist issues.

17. The House of Lords also has a number of select committees, which can undertake enquiries into any subject of their choice within their terms of reference. Today the most important are those on European legislation and on Science and Technology. Select committee work is widely recognised as informed and influential in specialist areas. The Delegated Powers and Deregulation Committee also scrutinises Bills for the powers which it is proposed should be delegated to Ministers and considers Deregulation Orders (the latter function is paralleled by a Committee in the Commons).

## POLITICAL COMPOSITION

18. Political parties operate within the overall structure of the House of Lords. But unlike the House of Commons, there is a significant independent element the cross-bench peers. At 4 January 1999, the political make-up of the House, broken down by component group and excluding those on leave of absence or without a Writ of Summons,<sup>4</sup> was:

| Party            | Life Peers | Hereditary Peers  |               | Bishops | Total |
|------------------|------------|-------------------|---------------|---------|-------|
|                  |            | of first creation | by succession |         |       |
| Conservative     | 172        | 4                 | 300           |         | 476   |
| Labour           | 157        | 1                 | 17            |         | 175   |
| Liberal Democrat | 45         | 0                 | 24            |         | 69    |

|                    |                        |                |                        |           |              |
|--------------------|------------------------|----------------|------------------------|-----------|--------------|
| Cross-bench        | 119 <sup>1</sup>       | 0              | 198                    |           | 317          |
| Other <sup>2</sup> | 10                     | 4 <sup>3</sup> | 88 <sup>4</sup>        | 26        | 128          |
| <b>TOTAL</b>       | <b>503<sup>5</sup></b> | <b>9</b>       | <b>627<sup>6</sup></b> | <b>26</b> | <b>1,165</b> |

1 Includes 28 Law Lords

2 Peers who have not taken a party whip

3 Duke of Edinburgh, Prince of Wales, Duke of York, Earl Snowdon

4 Includes Duke of Kent, Duke of Gloucester

5 510 including those on leave of absence

6 750 including those without a Writ of Summons or on leave of absence

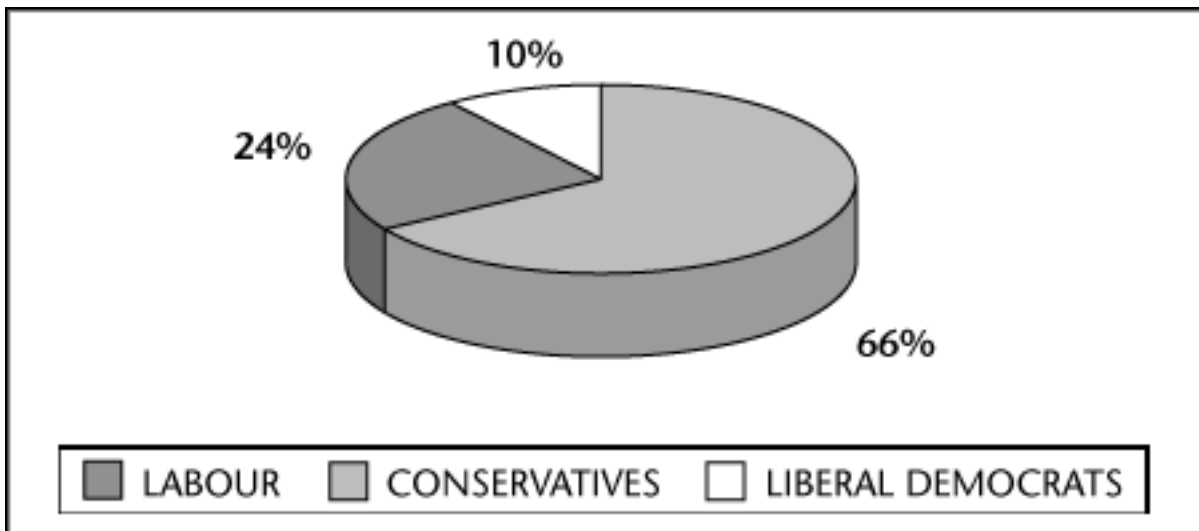
19. As can be seen, the Conservatives have a clear majority over the other parties overall, and an overwhelming majority among the hereditary peers. They constitute nearly 50 per cent of the total of hereditary peers, including the politically non-affiliated. They also form the largest single party among the life peers. The Conservatives' share of the House of Lords far exceeds the Party's vote in recent general elections:

|                  | <b>House of Lords</b>     | <b>General Election 1997</b> | <b>General Election 1992</b> |
|------------------|---------------------------|------------------------------|------------------------------|
|                  | (% of House) <sup>1</sup> | (% of vote) <sup>2</sup>     | (% of vote) <sup>2</sup>     |
| Conservative     | 66                        | 34                           | 44.5                         |
| Labour           | 24                        | 48                           | 36.5                         |
| Liberal Democrat | 10                        | 18                           | 19                           |

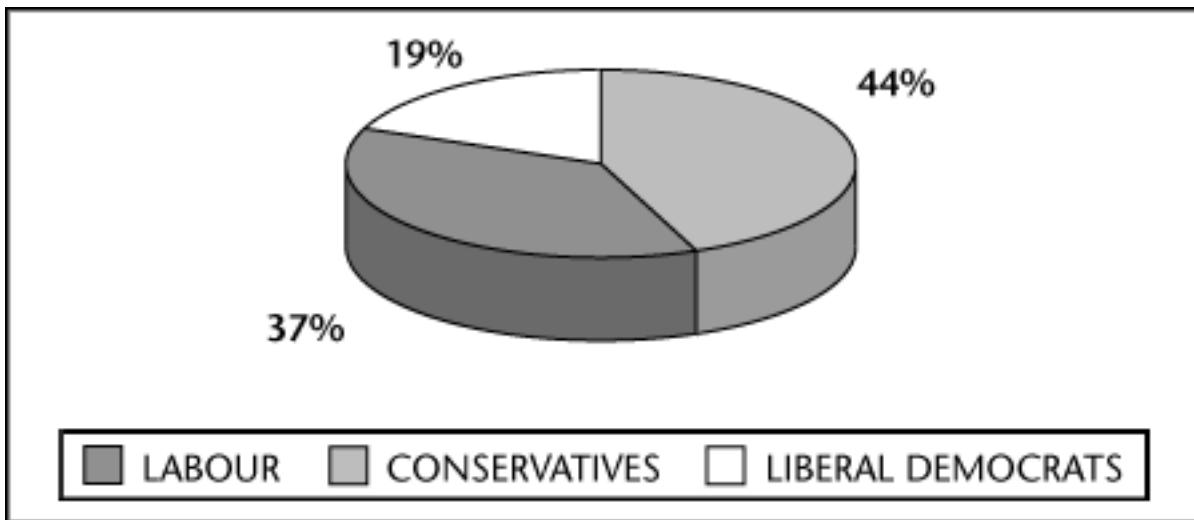
1 Of those taking a party whip

2 Excluding nationalist and regional parties

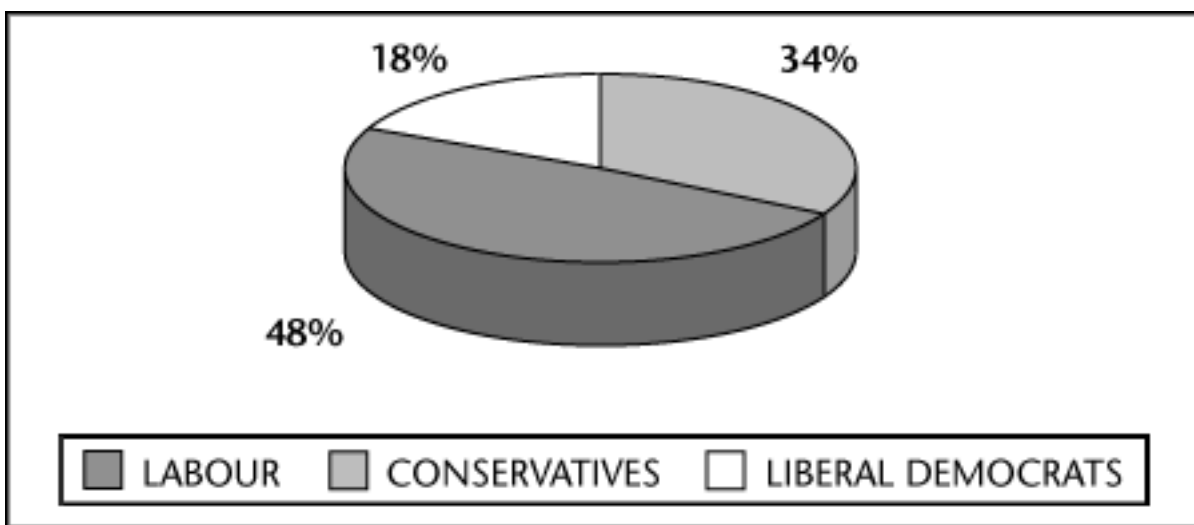
**House of Lords**



**General Election 1992**



**General Election 1997**



## EARLIER ATTEMPTS AT REFORM

20. Though the Life Peerages Act 1958 made a great difference to the House of Lords, it did not tackle the question which has been recognised as a constant issue ever since 1911: the position of the hereditary peers. Following a unilateral statement by the Liberal Government of an intent to reform in 1911, three cross-party attempts this century have looked, unsuccessfully, at this question. They have all, however, consistently agreed that the House of Lords can only do its job properly if the automatic hereditary basis for membership is removed, and along with it the inherent bias in favour of one party.

21. In 1911, the Government made its intentions clear in the preamble to what became the 1911 Parliament Act:

*"it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation."*

Though a Cabinet committee was set up by the Government of the day to put into place the intentions expressed in the preamble to this Act, it did not report back to the Cabinet on the issue.

22. The first cross-party attempt at reform came when in 1917 the Government appointed an inter-party conference of members of both Houses under Viscount Bryce, a former Chief Secretary for Ireland, to consider the powers of the Lords; its relation to the House of Commons; and "the changes which are desirable in order that the Second Chamber may in future be so constituted as to exercise fairly the functions appropriate to a Second Chamber".

The principles they drew up in response were:



- the Lords should be a revising chamber with limited powers to ask the Government to think again, but should not rival the House of Commons;
- the House should not be dominated by a single party; it should contain an independent element; and it should be made up of those of personal eminence.

23. To achieve these results, the membership of the hereditary peerage would gradually be phased out, with the present peers electing a reducing number of seats in the House. The bulk of the House would be indirectly elected, with MPs acting as an electoral college electing by proportional representation on a regional basis. Each term of office would be for 12 years, with one-third being elected every four years. No time was found during the 1920s to put these proposals before Parliament.

24. The second cross-party attempt at reform came when the 1948 Party Leaders' Conference agreed that:

- so far as possible, no party should be assured of a permanent majority;
- heredity alone should not be a qualification to sit and vote.

In addition, there were a number of other proposals which were eventually enacted in 1958. The Party Leaders' Conference was unable to agree changes to the powers of the House of Lords. The Government therefore proceeded unilaterally with the amendments to the 1911 Parliament Act to reduce the House of Lords' delaying powers from two years to one, which had already passed the Commons when the Conference was convened.

25. The third cross-party attempt came when the committee set up in 1967, whose driving force was Richard Crossman, then Leader of the House of Commons, agreed that:

- the main purpose of the House of Lords was to revise legislation, but without undermining the Government's expectation that it should get its legislation through. The balance between the parties should be informed by the results of the preceding general election;
- the hereditary peerage and the in-built Conservative bias which resulted undermined the legitimacy of the House;
- the House should retain both a non-party and an expert, part-time element; members of it should be free to vote without fearing for the consequences for their membership of the House;
- membership should be divided between voting and non-voting peers, with the former being selected on their own merits;
- there should be a retirement age which would allow for the introduction of new elements, especially after a general election, without inexorably increasing the size of the House.

26. These proposals were broadly welcomed by the House of Lords itself when it debated the White Paper in which they were set out. The White Paper was approved by nearly 5 to 1 (251 votes to 56). A majority of Conservative, Liberal and Cross Bench peers who voted (including Bishops and Law Lords) supported the proposals, as well as all Labour peers voting. However, the Bill never completed its Commons passage, not least because of a breakdown of co-operation between the party leaderships in both Houses, caused by the House of Lords' decision to vote down the Southern Rhodesia (UN Sanctions) Order, which left it vulnerable to back-bench rebellions on both sides of the House of Commons.

## CONCLUSION

27. The House of Lords is not an institution which has stood unaltered over time. In this century, it has changed significantly, but it has long been considered ripe for further reform. A number of attempts at reform have failed, but the structure and political composition of the Lords remain an overwhelming argument for reform to succeed at the start of a new century and a new millennium.

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2 Figures supplied by the House of Lords information office.

3 Information derived from House of Commons Research Paper 98/104, p.11.

4 The Standing Orders of the House of Lords require peers to attend and those who cannot do so are

expected to obtain 'leave of absence' from the House. This excuses a peer from attending for the rest of the Parliament, but can be rescinded at one month's notice.

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## *CHAPTER 4*

# THE ROLE OF A SECOND CHAMBER

1. Two-chamber legislatures are a feature of the vast majority of mature democracies. While some smaller countries such as New Zealand and some of the Scandinavian countries have decided to do without a second chamber, countries of the size and standing of the United Kingdom all have two chambers.

## THE HISTORIC PATTERN

2. Two chambers are also a feature of the history of parliaments. The original purpose of having two chambers at Westminster and other European assemblies was to allow for representation of different interests within the country. Typically, one chamber would represent the greater landed interest, while the other would represent the lesser landowners, merchants and traders. When parliaments were first established, the majority of the people would have had no representation.

3. As societies became more homogeneous and franchises were extended towards one person, one vote, parliaments continued to develop with two chambers. In some states, this was, at least in part, to give a specific voice to elements in the country which it was felt were inadequately represented in the main chamber. In federal states, for example, one of the chief purposes of the second chamber was to provide a forum for the individual states or provinces. Less populous or prosperous states would be given the same rights in the second chamber as the dominant states, as a counterbalance to the way population-based representation left them relatively vulnerable in the main chamber. Even some unitary states, such as France, look to their second chamber to represent territorial interests. Countries with significant geographical concentrations of ethnic or religious minorities also use the second chamber to give those minorities a voice in the legislature.

4. Such considerations have not been part of the case for a second chamber in the United Kingdom which, apart from the period of Cromwell's Protectorate, has had an unchallenged two-chamber system for 700 years. While in practice, individual members of the House of Lords can concentrate on particular interests or speak up for particular regions, peers are not appointed with these specific purposes in mind. In the case of the hereditary peers, the selection of interests which are covered is purely random.

## A REPRESENTATIVE FUNCTION

5. In a modern democracy, power must reside with those on whom it is conferred by the people for the formation of a government. In many countries, this is the party or parties that can command a majority in the primary chamber of parliament. That is, and will remain, the case in the United Kingdom regardless of the final form of the second chamber. The House of Commons will continue to be the more important chamber, with the final say on whether legislation is passed. On the basis of the outcome of a general election, the Commons will determine the party of government and it will be able ultimately to insist on the form in which legislation will be passed, except, as stated before, for a Bill to extend the life of a Parliament.

6. The modern legislative burden is immense. The number, size and complexity of Bills has increased enormously. The Government believes that there should continue to be a two-stage legislative process with Bills examined by differently composed bodies. A second chamber not only provides a longer process of scrutiny of legislation, it also allows it to be examined from a different point of view. A second chamber, whose members are assembled in another way from the first, brings different knowledge and experience to bear on proposals to change the law.

7. Moreover, issues are often raised during debate in the House of Commons which the Government needs to take away and consider. The existence of a second chamber enables the Government to give those issues proper attention, and the revised proposals to be debated properly in Parliament, without taking up inordinate time on the floor of the House of Commons. The existence of the second chamber enables the House of Commons to do its job more effectively.

8. The present House of Lords has the power explicitly to ask the Government and the House of Commons to look again at legislation and to delay its enactment. The Government accepts that power of this sort is a proper function of a second chamber. The American Senate, the second chamber of the US Congress, was described as having a function akin to that of

pouring tea into a saucer: to 'cool' matters which might be too hot to deal with sensibly when they are first brought forward.

9. The Government also believes that there is value in giving a voice in Parliament, and therefore the opportunity to question the Government, to those whose primary interests lie outside politics. Those who are still active in, or only recently retired from, other professions, can frequently make a significant contribution to debate. This is true not only in the examination of legislation, but also in more general, set-piece debates on topical issues. It is for this reason that the Government is committed to maintaining a significant independent presence in the second chamber.

## WHAT SHOULD SECOND CHAMBERS DO?

10. In many countries, the second chamber of the legislature is given a precise role under a written constitution. Some of its functions may be similar to those of the first chamber; other distinct functions may depend on the different composition of the second chamber. In the United Kingdom, the two Houses of Parliament have evolved in such a way that the House of Lords shares some of the functions of the House of Commons but has no separate tasks apart from its judicial work.

## SECOND CHAMBERS OVERSEAS

11. Second chambers in other countries conform to no single dominant pattern. They range from the wholly nominated to the wholly directly elected, although the majority have an element of either indirect or direct election. All have aspects that could be relevant to the second chamber in the United Kingdom, although they also reflect the history and character of their own countries.

12. The prime example of a wholly nominated second chamber is **Canada**. The Canadian Senate consists of 104 members appointed until retirement at the age of 75 by the Governor General on the advice of the Prime Minister. Ontario and Quebec both have 24 seats, as do the four western provinces between them and the three eastern provinces between them. The balance is made up of six from Newfoundland and one each from Yukon and the North West Territories. The provinces have no formal role in deciding who their representatives are, although they must be resident and own property in the province. Members of the Government can be drawn from the Senate, but it is rare these days to have more than one, comparatively minor, Cabinet Minister in the Senate.

13. The original rationale of setting up the system was to 'glue' the federal system together: hence the equality of representation between Ontario and Quebec. The Senate was intended to represent the regions and cultural diversity, and explicitly to provide a conservative counterbalance to a potentially radical Commons. Its main function is as a revising chamber for Bills. To help it in fulfilling this, it has developed the practice of beginning research and investigation, particularly into large and complex Bills, before they are sent up from the Commons. It also has a high reputation for its select committee-style investigations. Criticism of its lack of representativeness and of its role, however, has meant that for the last 60 years there have been proposals for its reform.

14. The **German Bundesrat** is an indirectly elected body. All its 69 members are delegates from the governments of the federal states, the Länder. Representation varies according to population, but the smaller states are comparatively over-represented. Votes are cast as a block vote according to the political instructions of the home government. Officials are allowed to act as alternates for elected politicians, because of the latter's commitments in their regional area. The primary purpose of the chamber is to represent the Land governments, which are responsible for the implementation of much policy, including that determined in principle at the federal level. It therefore has the power to approve all legislation directly relating to states' responsibilities, state boundaries, national emergencies and proposed constitutional amendments. This amounts to some 60 per cent of all federal legislation. In practice, the Bundesrat's influence is mostly exercised through the committee stages of the legislative process, in which officials particularly act as alternates.

15. The **Irish Senate** is largely indirectly elected, with a small appointed element. Unusually, it tries deliberately to find members outside the normal political classes. The 49 indirectly elected members are taken from six functional constituencies: culture and education (including law and medicine); agriculture; labour; industry and commerce; public administration and social service; and the ancient universities. Elections take place shortly after each election to the lower House, the Dail, and the Senate is dissolved at the same time as the Dail. The electorate for the first five functional constituencies is the Dail; the members of the outgoing Senate; and county and county borough councillors, while the electorate for the last constituency is graduates of the two universities. The practical effect of this is that the process has become highly politicised. The 11 nominated members are intended to enable people of special calibre to sit without election, although those seats too are usually filled by politicians. The powers of the Senate are very limited; although it can review legislation, it has no power of veto and rarely even suggests changes.

16. The **French Senate** is also indirectly elected, by an electoral college consisting of about 145,000 local *notables*, many of them local councillors. There are 321 members elected by thirds for overlapping nine-year terms. Its primary purpose is to represent territorial interests and, despite recent adjustments in favour of larger cities, rural areas are proportionately over-represented. Most Senators think that lobbying the Government is a more important function than playing a role as legislators. The Senate in theory has quite wide powers over legislation, and disputes with the National Assembly can reach a deadlock which has to be broken by the Government referring the Bill to a Joint Committee of both bodies. If the Government is content with what emerges from the Joint Committee, it becomes law. If it is not, or there is no agreement, the last version agreed by the National Assembly becomes law and the Senate is bypassed.

17. The **US Senate** is unique among second chambers in being as powerful as the lower House, the House of Representatives. The separate election of an executive president means of course that both Houses of Congress have a quite different relationship with the Government to that in the United Kingdom. The purpose of the Senate is to represent the states, so each state, regardless of size, elects two Senators. The Senate shares all the powers of the House of Representatives, except the initiation of Money Bills, although it can still consider and reject them. In addition, its approval is required for key federal appointments and for the ratification of foreign treaties.

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## CHAPTER 5

# MODERNISING THE LORDS: HEREDITARY PEERS

1. The Government believes that ending the right of hereditary peers to sit and vote in the House, although in itself a stand-alone change, not dependent on further reforms, will dovetail smoothly with any longer-term reform of the House. The Government does not underestimate the breadth or complexity of the issues involved in fundamental reform of one of the Houses of Parliament, but we believe that the present composition of the House of Lords is not defensible and the first element of reform will be significant and valuable in itself.

2. It is an assumption of our modern democracy that all adult citizens should play an equal role in the election of members of the House of Commons. There is no longer any qualification or discrimination on grounds of wealth or gender. The Government considers that it is, therefore, fundamentally wrong that membership of the other House of Parliament should be dominated by people whose presence is literally a birthright.

## WHY REFORM IS NECESSARY: AN ANACHRONISM

3. The Government believes that there is no justification in principle for the anachronism of hereditary membership of the House of Lords. As long ago as 1791, in *The Rights of Man*, Tom Paine said:

*"The idea of hereditary legislators is as inconsistent as that of hereditary judges, as hereditary juries; and as absurd as an hereditary mathematician, or an hereditary wise man; as absurd as an hereditary Poet Laureate."*

At the time Paine said that, the House of Lords did at least still arguably represent a distinct and important interest in the country – the landed classes. But the whole concept of identifying a number of families whose senior male or, very rarely, female representative is **always** entitled to a seat in the legislature only makes sense when those families uniquely represent a fundamental interest in the country: the Crown's tenants-in-chief. It is centuries since this was even partly true of the hereditary peerage in this country. It is manifestly absurd in society as it is constituted at the beginning of the 21st century.

## WHY REFORM IS NECESSARY: UNREPRESENTATIVENESS

4. The Government believes in the importance of having genuinely independent, disinterested and representative elements in the Lords. But it does not believe that this is provided by the hereditary peerage. There are those who do not seek to defend the appropriateness of the hereditary principle as such, but who nonetheless argue that the results of the presence of the hereditary peers in Parliament are beneficial. They suggest that because hereditary peers are not dependent on anyone living for the right to sit and vote in the Lords, they provide an independent and disinterested element. They also claim that the hereditary peerage is moving towards producing a cross-section of society chosen by lot. They suggest that both these factors are becoming increasingly important as politics generally becomes more specialist and professional.

5. It is true that succeeding hereditary peers are not selected on the basis of their political preferences and do not need to act with an eye to re-election. The latter is also true of all life peers, and the former is true of a significant proportion of them. But in the case of the hereditary peers as a group, the fact that they are not selected on this, or any other basis, is not the same as saying they are politically independent. As noted earlier, nearly half of the total number of hereditary peers (excluding those without a Writ of Summons or on leave of absence) and the overwhelming majority – 88 per cent – of those who take a party whip currently identify themselves with the Conservative Party. It is the number of hereditary peers that creates the huge in-built party bias in the House of Lords.

6. The Government believes that no one political party should seek a majority in the House of Lords. Any bias as marked as that of the hereditary peerage would be unacceptable whichever direction it favoured. So the dominance of hereditary peers in the House of Lords is untenable regardless of the party they support, both because it is based on an unsustainable principle, and because it produces undemocratic results. It gives a huge in-built advantage to one particular party, regardless of the result

of general elections. The Government is determined to ensure that in the future no political party should be able to enjoy such a disproportionate and permanent advantage as is currently enjoyed by the Conservatives as a result of the hereditary peerage. We do not seek to replace the current unfair balance with a mirror image which benefits the Labour Party but instead to replace it with a fair balance of representation for all political parties and for the Cross Benchers.

7. There is a genuinely independent element in the House of Lords: the independents who choose to sit on the cross benches. These peers take no party whip, though many have a significant voting record of consistently supporting one political party, in spite of their nominal independence. Around 100 life peers have made the choice to sit as Cross Benchers. We recognise that a genuinely independent voice such as this is one of the great strengths of the House of Lords.

8. There are some popular myths about the character of the hereditary peerage. There is, for example, an impression that the hereditary peerage is for the most part the representation of ancient noble families and is therefore part of Britain's history. In fact, more than 200 of today's hereditary peers owe their seats to titles created since 1918. The numerical predominance enjoyed by hereditary peers in today's House of Lords is not only a legacy from hundreds of years ago it is in part due to large numbers of relatively recently created peerages.

9. It is claimed that the hereditary peers constitute a random, representative sample and that for this reason they can speak for the people with particular authority. Once again, this claim cannot be borne out by the reality. The most recent substantial survey<sup>5</sup> of hereditary peers' occupations indicated that over 60 per cent of them claimed land management or farming as their occupational background. The figure for the country as a whole is less than 5 per cent. Twenty per cent had been in the armed services, 6.2 per cent had been in the Civil or Diplomatic Services and a further 14.2 per cent claimed undifferentiated public service and administration backgrounds. Industrialists accounted for 15.6 per cent and financial services for 11.6 per cent. Only 1.4 per cent claimed to have been workers. This is clearly not representative of jobs people do in the country as a whole, undermining the claim that the hereditary peers are a cross-section of society and thereby, whatever their other privileges, can speak with a popular voice.

10. Apart from the political bias, there are other notable imbalances in the House. Most peerages can descend only in the male line. As a result, only 16 out of 750 hereditary peerages are held by women. The House of Lords itself rejected as recently as 1994 a proposal that would have allowed the first born of either gender to inherit. It is also virtually impossible that the hereditary peerage as it is could ever become representative of Britain's ethnic minorities.

11. For all these reasons, the Government will act immediately to end the hereditary right to be a member of Parliament. A Bill to achieve this aim is being introduced. But if the cross-bench peers promote an amendment for the interim retention of 1 in 10 of the hereditary peers, 75 out of the existing 750, plus some hereditary office holders, until the second stage of House of Lords reform has taken place, the Government is minded to accept that amendment at an appropriate time as a prudent and sensible route towards the early termination of the right of all hereditary peers to sit and vote in the House. The Government is minded to take this view because those promoting the amendment have advocated it on the grounds that it would enable the first stage of reform to be agreed consensually, and without any threat of deliberate frustration of the programme of a government with a huge popular majority. Such a degree of flexibility, where it promotes the smooth evolution of our constitutional arrangements, is very much in the British tradition of reform. If there is consensus, the Government will make every effort to ensure that the second stage of reform has been approved by Parliament before the next election.

12. A development of this kind is consistent with the Government's commitments on reform of the Lords. The right of the hereditary peers to sit and vote by virtue of their birth alone will have been ended. The vast majority of them would leave immediately, with a small proportion remaining for a transitional period. The idea that certain people had an absolute right to a seat in the legislature on the basis of something an ancestor had done would be ended. The in-built political bias would be removed. The social and economic, as well as political, unrepresentativeness of the House of Lords could be tackled.

13. Under the proposals for the transitional period which have been suggested, those hereditary peers who remained in the House would do so because they had been chosen to do so by an electoral college based on the separate established groupings in the House of Lords.

## **CONSEQUENTIAL CHANGES**

14. The Government's proposals do not affect the institution of the peerage itself. Hereditary peers will retain their titles and their degrees of rank and precedence. Their heirs will inherit those titles according to the existing rules of succession, but they will not inherit the seat in Parliament. The very few remaining hereditary peers of first creation will all be offered life peerages.

15. Hereditary peers who leave the House of Lords will be able to vote in elections for the House of Commons, thus joining other adult citizens not otherwise disbarred in having a voice in general elections and in the selection of the party of government. They will be eligible to stand for election themselves without having to relinquish their titles. They will be eligible to serve on juries. The provision of the Peerage Act 1963 allowing the disclaimer of the title for life will however remain for those peers who wish to do this for other reasons.

16. Following consultation with the Royal Family, the Government proposes that the Royal Peers should, like other hereditary peers, relinquish their rights to sit and vote in the House of Lords.

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5 Nicholas Baldwin, quoted in *The House of Lords at Work*, eds Shell and Beamish, OUP, 1993.

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## CHAPTER 6

# MODERNISING THE LORDS: A TRANSITIONAL HOUSE

1. The Government's intention to remove the right of hereditary peers to sit and vote in the House of Lords will radically alter the complexion and composition of the House. Proposals for further reform of the Lords will flow from the Royal Commission the Government will shortly establish. In the interim, the House of Lords will be in a transitional stage. Even so, we are determined to ensure that even in transitional form, the House of Lords is a more modern and a fairer chamber.
2. The Government said in its election manifesto that in addition to taking action over the unrepresentative anomaly of hereditary peers, it would reform the way life peers are nominated. We believe that no political party should have a majority in the House of Lords. We will make the process of appointment transparent and fair. There is no truth to the assertion that we wish to create a 'house of patronage' as an abuse of the appointments system.
3. For the transitional House:
  - we presently plan to seek only broad parity of numbers with the main Opposition party; and
  - we shall maintain a significant independent, cross-bench element. We will establish an independent Appointments Commission to make nominations to the cross benches and to oversee the propriety of all recommendations of political peers, so that all peers are vetted to the highest standard.
4. The complexion and composition of the Lords will be different in a transitional chamber, but the Government is not proposing any changes in the House's functions in the transitional stage. The House of Lords is, and will remain, the second chamber of the legislature. Its functions, in the transitional House, will continue to be to question Ministers and to give its consent to and, where appropriate, revise the proposals for legislation.

## THE BALANCE OF THE TRANSITIONAL HOUSE

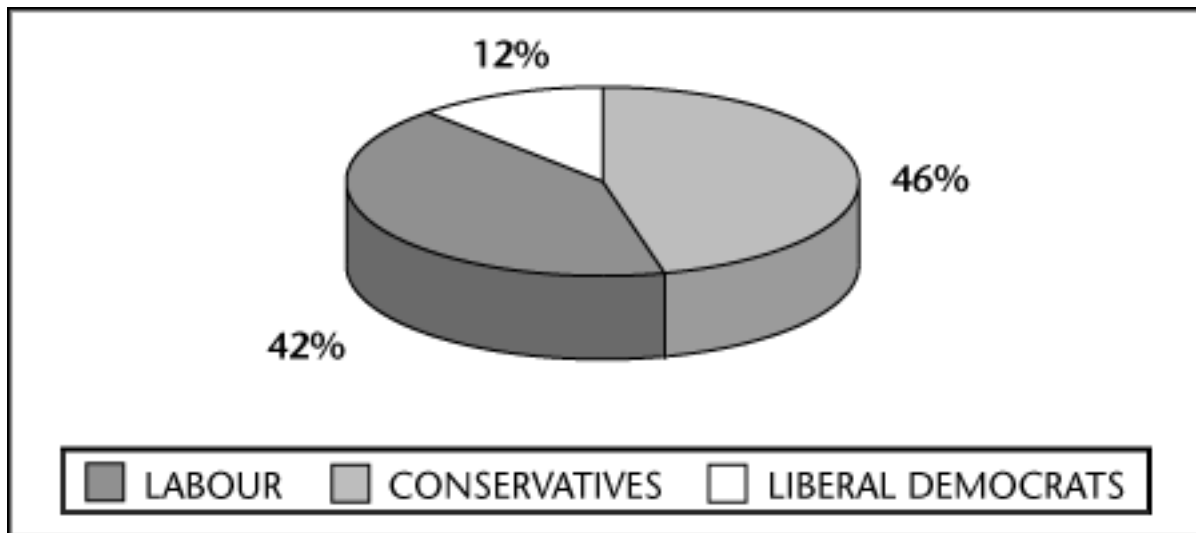
5. In our manifesto we said:

*"Our objective will be to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election. We are committed to maintaining an independent cross-bench presence of life peers. No one political party should seek a majority in the House of Lords."*

New members of the House of Lords will continue to be appointed in accordance with the Life Peerages Act 1958. There will be for the time being no changes to the conditions attached to life peerages. This means that making progress towards fulfilling the Government's pledges on the balance of composition cannot be done within the existing membership of the House; the adjustments must be largely carried out through new creations.

6. The present political breakdown of life peerages<sup>6</sup> is:

|                  |     |
|------------------|-----|
| Labour           | 157 |
| Conservative     | 172 |
| Liberal Democrat | 45  |



7. If some hereditary peers remain the majority of them will inevitably be Conservatives. This will have the effect of tilting the imbalance in the House which will still exist among life peers further away from the results of the last general election. We do not seek to replace the current enormous political imbalance with a mirror image which favours the Labour Party, but with a fair balance between the parties. We set out in our manifesto the broad principle which we believe should govern the appointment of life peers but our present intention is to move towards broad parity between Labour and the Conservatives. The principle of broad parity and proportionate creations from the Liberal Democrat and other parties would be maintained throughout the transitional period.

8. It is entirely reasonable that the parties should have the major say in the selection of those who represent them in the House of Lords. After all, they also decide who to put forward as candidates for election to the House of Commons. There must be proper safeguards to ensure that corruption or undue influence are not involved, but beyond that, this must be a matter for the parties, especially as the award of a peerage continues to shift from being an honorific award to being an appointment to undertake specific duties and the concept of the 'working peer' develops.

## THE APPOINTMENTS COMMISSION

9. We recognise and value the tremendous contribution made to the work of the House of Lords by the independent cross-bench peers. The Government proposes to set up an Appointments Commission to take over from the Prime Minister the function of nominating cross-bench peers. There is no reason why the Prime Minister of the day should control the nominations to the cross benches. Cross Benchers will become more important with the removal of the Conservative in-built majority. The Commission will be an advisory non-departmental public body. It will consist of representatives of the three main political parties, and independent figures who will comprise a majority, one of whom will become the Chairman. It will operate an open and transparent nominations system for cross-bench peers, both actively inviting public nominations and encouraging suitable bodies to make nominations. The general qualities being sought and the type of information required to support a nomination will be made public. It will seek to cast its net wider than the present system to achieve successful nominations.

10. The Appointments Commission will also take on and reinforce the present function of the Political Honours Scrutiny Committee in vetting the suitability of all nominations to life peerages. It will continue to include scrutiny on the grounds of propriety in relation to political donations, as endorsed by Lord Neill in his report on the funding of political parties.<sup>7</sup> (The Political Honours Scrutiny Committee will retain its role in respect of other political honours.) The Prime Minister will have no right to refuse a nomination the Commission had passed.

11. The Appointments Commission itself will be appointed in accordance with the rules of the Commissioner for Public Appointments. It will also seek his advice about best practice in the area of attracting and assessing potential nominees.

12. Awards of peerages will continue to be made by The Queen. In accordance with the normal conventions for the exercise of the prerogative, the names of those recommended will have to be submitted by the Prime Minister. The Prime Minister will decide the overall number of nominations to be made to The Queen and the Commission will be asked to forward to the Prime Minister the same number of recommendations. The Prime Minister will pass these on to Her Majesty in the same way as he will pass on the recommendations of other party leaders to fill the vacancies on their benches. Therefore, except in the most exceptional of circumstances, such as those endangering the security of the realm, the only nominations which the Prime

Minister will be able to influence are those from his own party.

13. As at present, creations would take place in batches once or twice a year. The Government believes it would be better to allow more scope for considerations of balance and representativeness by enabling all parties and the Appointments Commission to consider a number of nominations at a time.

14. Taking all the Government's proposals together the Prime Minister will in future have less influence than any of his predecessors over appointments and the composition of the House of Lords. The Government is not only removing the hereditary peers. It is accompanying this with a modernisation of the way the Lords are appointed and putting in place firm measures to ensure that this is done in a balanced way with no unfair party advantage and with a clear commitment to the independence of at least a significant proportion of the members.

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6 A small number of retired politicians from other parties also sit on the non-aligned benches.

*7Fifth Report of the Committee on Standards in Public Life: The Funding of Political Parties in the United Kingdom, Cm 4057, ISBN 0-10-140572-3.*

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## CHAPTER 7

# MODERNISING THE LORDS: LONGER-TERM REFORM WHAT SHOULD THE MODERNISED HOUSE DO?

1. The Government will remove the right of hereditary peers to sit and vote in the House of Lords as a self-contained reform. But this change will also be a prelude to further reform of the House. The Government is firmly committed to longer-term reform of the Lords aimed at producing a chamber which is more representative of the country as a whole.

2. The Government believes that longer-term reform of the House of Lords should take into account the widest possible range of views on the issues involved, which are of great constitutional importance and complexity. Successful proposals will have an impact on every part of our political structure. That is why we thought it appropriate to appoint a Royal Commission to analyse the options.

3. The terms of reference of the Royal Commission will be:

*"Having regard to the need to maintain the position of the House of Commons as the pre-eminent chamber of Parliament and taking particular account of the present nature of the constitutional settlement, including the newly devolved institutions, the impact of the Human Rights Act and developing relations with the European Union:*

- *to consider and make recommendations on the role and functions of a second chamber; and*
- *to make recommendations on the method or combination of methods of composition required to constitute a second chamber fit for that role and those functions.*
- *to report by 31 December 1999."*

4. Once the Royal Commission has reported, the Government will then establish the proposed Joint Committee of both Houses of Parliament to examine the Parliamentary implications of the Commission's work. It, too, will be asked to work speedily.

5. The Government wishes the Royal Commission to analyse a range of options. But there will be two guiding principles that the Government feels it appropriate to impose on the Royal Commission's deliberations. The first is the timetable. The tight timetable will provide for the Commission's recommendations to be completed in sufficient time for the Government to respond to the Commission's recommendations in advance of the next general election.

6. The second underlying principle is that the Royal Commission's proposals for the reformed second chamber must make it clear that it remains the subordinate chamber. The following elements of the constitutional settlement must therefore remain untouched:

- a general election to the Commons must determine who forms the Government, and the ability of the Government to retain the confidence of the House of Commons is alone crucial to its right to remain in office;
- the Commons must continue to have sole powers over the provision of financial support for the Government;
- the Government must ultimately have the right to secure any of its legislation introduced in the Commons with the consent of the Commons alone, except for a Bill to extend the life of a Parliament.

## ROLE

7. The role of the second chamber should continue to complement rather than duplicate the role of the House of Commons. The House of Lords provides a valuable function of scrutiny without which the burden on the House of Commons would be

greater and the quality of government legislation diminished. As has previously been noted, over the past ten years the House of Lords has made nearly 2,000 amendments a year to government legislation. These are most often government amendments, frequently brought forward in response to points made in both Houses. Legislative scrutiny will continue to be an important purpose of a reformed second chamber.

8. By the time a fully reformed second chamber can be put in place, there will be devolved institutions in Scotland, Wales and Northern Ireland. London will have its directly elected Authority. English regionalism will be increasingly recognised through Regional Development Agencies and regional chambers. Some regions may be working towards regional assemblies of their own. The relationship of the second chamber to those bodies will need to be a significant part of the Royal Commission's deliberations; it could have a marked impact on both the second chamber's functions and how its members are selected.

9. One question which therefore arises is whether the second chamber should have some overt role as the representative of the regions, or of the regional bodies. This is a very common role for second chambers overseas. The French Senate, for example, has a special function in representing the 'communities' of France, reflected in the make-up of the electoral college which selects members of the Senate. Using the second chamber in this way would give it a role distinct from that of the House of Commons, where the local links will continue to be the much more immediate one of the MP and his or her constituents. The second chamber could provide a forum where diversity could find expression and dialogue, and where such an expression could work towards strengthening the Union.

10. The European Union, in which the United Kingdom is a leading partner, also has its own democratic institution, the European Parliament. MEPs in the future will be elected on a regional basis, so a role for them in relation to the second chamber would therefore reinforce its regional links as well as improving links between Westminster and Strasbourg.

## **FUNCTIONS**

11. The functions of the present House of Lords have legislative, deliberative, interrogative and judicial elements. A key question for the Royal Commission on the future of the Lords, therefore, is whether all of these are necessary to make the second chamber a proper complement to the House of Commons. And if so, how should it best be constituted to deliver on all of them? The present House of Lords also has a role in giving a voice to organised religion at the highest levels of public deliberation.

### **Legislative**

12. Of the possible roles for the second chamber, the traditional one of legislative scrutiny and a new one as the hub of a representative institutional network are, in the United Kingdom setting, in some tension with each other. Although they are both roles which occur frequently, in combination, in overseas second chambers, the constitutional settlements in those countries usually mean that each of the regional bodies has the same relationship with the centre. Few countries face the situation which will be the United Kingdom's immediately after the devolved institutions take up their duties, of having a central Parliament whose powers are different in relation to different parts of their country. Spain, perhaps, comes the closest to recognising regional identities through devolution rather than federalism, but even in Spain the process of devolution is further advanced and the different stages reached are now less diverse.

13. Whatever the precise arrangements for the second chamber's legislative contribution in the future, the Government believes that a reformed House of Lords must have the legitimacy to ensure the value of its recommendations for improvements to legislation, and that it can offer a distinctive and informed view on the issues that come before it. A body that cannot fulfil these functions, whatever contribution it might make in other areas, would, in the Government's view, be less than successful.

### **Deliberative**

14. The present House of Lords' deliberative function has grown up alongside its legislative one. The House of Lords has always attached importance to its ability to provide general advice and to initiate a general debate on important issues of the day, in an atmosphere less pressurised than the House of Commons by party political issues. The likelihood that real expertise will be available in the Lords is an important factor in giving these debates an authority they might not otherwise have. The Government wants to see the future second chamber constituted so that it could continue to fulfil this function in a distinctive fashion.

15. The House of Lords' deliberative function through its select committee system is also, at present, distinct from that of the House of Commons. The Commons, partly because of the importance it attaches to being able to call the Government to

account for its use of public funds, devotes most of its select committee work to the monitoring of individual government departments. The House of Lords has chosen instead to concentrate its select committee work in a different way which does not directly overlap with Commons committees and may address issues that impinge on a number of different departments. This work is frequently regarded as one of the Lords' most valuable contributions to the business of government, in its wider sense. It is a function that the Government would hope the fully reformed second chamber would be equipped to continue and even to expand.

16. At present, the House of Lords committees carry out a valuable scrutiny function. For example, its Committee on Delegated Powers and Deregulation examines all government legislation for proposals to allow the executive to amend primary legislation through the use of secondary legislation.

17. The House of Lords has an important role in scrutinising European legislation. Legislation emanating from the EU already has a significant impact in the United Kingdom and the range of its impact will extend as the provisions of the Amsterdam Treaty come into force. It is therefore essential that the United Kingdom makes use of every available opportunity to scrutinise and influence EU legislation. But improving the United Kingdom's input into the EU decision-making process goes beyond the scrutiny of legislative proposals, important as these are. There is certainly scope for more considered and wider-ranging analysis of the effect of EU policies across a range of issues. The present House of Lords has made a well-regarded contribution in this area, and this scrutiny function is one which the Government thinks could usefully be retained and expanded in the reformed House. This is one of the areas where a specific role for MEPs in the second chamber might yield particular benefits, so that each chamber could take advantage of the particular expertise of members of the other, and thereby maximise the effectiveness of the United Kingdom's input.

### **Interrogative**

18. While the executive consists of the 'Crown-in-Parliament', the House of Lords has considered it a duty to question Ministers both in the House and in Committee. Most government departments are directly represented in the Lords, and those which are not have spokesmen appointed on their behalf. It would be difficult for the future second chamber to carry out its functions, in particular the revision of legislation, without direct access to Ministers.

### **Judicial**

19. It is a very important part of the House of Lords' work that it constitutes the highest court in the land. That function is carried out by the specially selected peers known colloquially as the Law Lords and does not involve other peers. However, the Law Lords' presence has a significant effect on the ethos and contribution of the House as a whole. They are full members of the House, even when not sitting in a judicial capacity, although by convention they do not become involved in politically contentious issues. The contemporary rationale for the Law Lords being life peers as opposed to ex officio members of the House is the major contribution they can make to the cross-bench element in the House. Thus they remain members, even after their retirement as Law Lords. The retired Law Lords play a particularly distinguished role in the examination of legislation, especially that with a highly technical or legal content. Most significant is their contribution to debates on the administration of justice, penal policy and civil liberties, where law and politics intersect.

20. Whilst therefore the judicial system is kept quite separate from the political process, it is unusual, compared to most major democracies, to have judges sitting as members of the legislature in this way. It would therefore be legitimate to consider, when looking at fundamental reform of the purpose and nature of the House of Lords, whether the present arrangements should continue. But consideration would also have to be given to what this would do to the nature of Parliament as a whole, and how the supreme judicial authority could be reconstituted elsewhere in the system and where it could be suitably accommodated. Detailed proposals on this would fall outside the scope of the Royal Commission's terms of reference.

## **RELIGIOUS REPRESENTATION**

21. The Government does not propose any change in the transitional House of Lords in the representation of the Church of England within the House. The Bishops often make a valuable contribution to the House because of their particular perspective and experience. To ensure that contribution remains available, the Government proposes to retain the present size of the Bishops' bench which we accept is justified, because the Church's official representation is made up of serving diocesan Bishops, who have duties which frequently call them away from the House. The present representation makes it possible for the Church to ensure its perspective is represented on all occasions when it would be particularly valuable.

22. The Government also recognises the importance of the House of Lords reflecting more accurately the multicultural nature of modern British society in which there are citizens of many faiths, and of none. We shall be looking for ways of increasing

the representation in the Lords of other religious traditions. In particular, there is a case for examining the position of the Church of Scotland which is an established church but has never had representation as of right in the second chamber. However, at least during the first phase of our reforms, other religious representation will not take the form of providing regular representation such as is enjoyed by the Church of England. Nonetheless, considering if there is a way of overcoming the legal and practical difficulties of replicating that regular representation for other religious bodies should form one of the issues for examination in longer-term reform of the Lords.

## POWERS

23. The present powers of the House of Lords are set out earlier in this White Paper. Only its legislative powers are presently constrained by statute. The Parliament Acts prevent the blocking of Money Bills and other public Bills introduced into the Commons. In other respects, the powers are theoretically the same as those of the Commons and spring from the House's character as a chamber of Parliament.

24. But as well as being constrained by the Parliament Acts, the House of Lords also observes self-denying ordinances in the use of its powers over legislation. The most important of these is, as has been noted, the Salisbury convention. But usually the Lords, conscious of their absence of a specific mandate, their political imbalance and the existence of inheritance as one of the qualifications for membership, have restrained themselves in other ways, going further than the actual legislative constraints on their powers.

25. The powers of the House of Lords, as normally exercised in practice observing the conventions, have most often produced a workable relationship between the two Houses of Parliament. It might be possible to replicate this situation with the reformed second chamber, perhaps by institutionalising the understandings under which the present House of Lords operates; leaving the powers intact but restricting the circumstances in which they might be used.

26. A better approach might be to reduce the theoretically available powers, recognising that they might as a consequence be used more frequently. Areas where the powers of the second chamber might be looked at include:

- the length of time the Lords should be able to delay legislation approved by the House of Commons;
- arrangements to give government Bills introduced first into the second chamber the same protection as those introduced first into the House of Commons, so removing an artificial restraint on the management of Parliamentary business;
- any special procedures where the second chamber wishes to insist on amendments which have been considered and rejected by the House of Commons;
- any scope for formal conciliation arrangements between the two Houses, rather than the somewhat adversarial shuttle of business which takes place at present;
- the second chamber's powers over secondary legislation, in particular whether a power of delay should be substituted for the present power of rejection.

27. The Government recognises that the procedures of the House of Lords are a matter for the House alone to determine. However, it would see advantage in the Royal Commission, as part of its examination of legislative powers, also considering whether it wanted to make any recommendations to the House on changes in procedure to accompany its recommendations on powers.

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## *CHAPTER 8*

# **MODERNISING THE LORDS: LONGER-TERM REFORM THE COMPOSITION OF A REFORMED HOUSE OF LORDS**

1. Central to the future House of Lords is its composition. For the House of Lords to act with legitimacy as an effective and balanced second chamber, it must have the right form to deliver the range of roles and functions it needs.
2. Within the principles laid down by its terms of reference, the principal task of the Royal Commission will be to make recommendations about the composition of the future House of Lords consistent with the role and functions it properly identifies.
3. Stable government, within a flexible and evolving constitutional framework, has been the hallmark of the British system since the end of the 17th century. Alone of all major European countries and of most other countries in other continents the United Kingdom has been able, at least on the mainland of Great Britain, to avoid violent constitutional convulsions for three centuries. It is essential that any reform of the House of Lords should be consistent with this important tradition of stability.
4. In drawing up its recommendations the Royal Commission will wish to take account of those characteristics of the present House of Lords which are widely regarded as among its more attractive features. These include the cross-bench element of the chamber, and the expertise and experience of individuals of distinction, from the professions, business and industry, the arts, and those who have given distinguished public service as politicians or public servants at a national or local level.
5. The Government considers that, with so many issues to be taken into account, there is no need for the Royal Commission to feel constrained to recommending a single method of determining the composition of the second chamber. It may very well be that a combination of sources is the best way of creating a body fitted for all the functions identified for it. Among overseas second chambers, several have a part nominated, part elected structure. For this reason, therefore, the terms of reference of the Royal Commission allow, as did those of the Independent Commission on the Voting System for the House of Commons, for the recommendation of a combination of proposals.
6. Numerous proposals have already been made for the best method of choosing the reformed second chamber. The Government's own view is that the best solution is likely to be found among the more conventional options of nomination and election.
7. The Government believes there are principally four models for the composition of a reformed House of Lords:
  - a nominated chamber
  - a directly elected chamber
  - an indirectly elected chamber
  - a mixed chamber.

## **A NOMINATED CHAMBER**

8. Selecting the whole second chamber through nomination is a possible future model, though among major modern western democracies, only the Canadian Senate and the present House of Lords, apart from succeeding hereditary peers, are replenished solely by nomination. In both cases, the process is wholly controlled by the Government. The transitional House of Lords will also continue to be a wholly nominated body, though under the terms of our proposals, the process of



appointments will no longer be controlled by the Government, perhaps suggesting a basis for an alternative model for a nominated House.

9. For the non-political cross-bench members, two routes might be considered. The first is to continue much as now, with a general trawl of suitable candidates for a central appointments process. Both self- and public nomination could be encouraged, alongside a positive search by whichever body was responsible for the appointments process. This could consult particular interest groups, or sponsors within the public service of particular professions. But those consulted would have no right directly to nominate to a seat in the second chamber. An Appointments Commission, on the lines of that being established for the transitional House, could take on this function.

10. The alternative approach is that frequently described as 'functional constituencies'. Under this, individual professions or groups of professions could be assigned a certain level of representation in the second chamber to which they would make direct nominations.

11. But there are difficulties in both approaches. One is that however the representatives are selected, those nominated might see themselves as delegates rather than representatives. They might feel obliged to serve the narrow interests of the body which sent them rather than the greater good, thus diminishing the central purpose of the House as presently conceived. Or they would feel unable to contribute on a personal basis to debates in which there is no functional interest and therefore on which they had not been mandated.

12. The system of functional constituencies is currently used, as the basis for an indirectly elected chamber, for the Irish Senate, and it is also the system used to determine half the membership of the Legislative Council of Hong Kong Special Administrative Region. But there are also potential disadvantages in such arrangements. In the Republic of Ireland in practice the elections are highly politicised. In Hong Kong the arrangements were criticised in some quarters. The introduction of a more restrictive franchise than that used for the 1995 elections and the use of corporate rather than individual voting led to concerns that the arrangements could not adequately reflect the spectrum of views of the working population.

13. For political appointments the most obvious approach would be nomination by the central party machinery. Further thought would have to be given, in the light of developments in other parts of the democratic process, to the question of whether central rules should be laid down about how this would be done or whether each party would have the right to determine its own processes, subject only to the agreement of its members, as is now the case. There would be a case for considering an enhanced role in overseeing this process for the Appointments Commission, if it continued to function.

14. A common factor, which would have to be taken into account in all possible nomination processes, is the length of time which members would serve and whether their terms would be renewable. At one extreme is the present House of Lords, where membership except for the Bishops is for life. At the other, one could have a body made up of ex officio members most of whose terms of office were less than three years. The advantage of long, and nonrenewable, terms is that the members of the second chamber would truly be independent in that nothing which they did could affect their continued membership. They would, however, be difficult to reconcile with a number of the possible methods of nomination (and, indeed, of election).

15. There are clear advantages and disadvantages to a nominated House. Among the advantages are:

- **Range of representation.** The range of experience of those who enter elected politics is becoming increasingly narrow. If the second chamber is to be fully representative of all sectors of the community and talents of the nation, there are advantages in even those taking a party whip being appointed, not elected.
- **Independence.** One of the main purposes of a second chamber is to allow considered revision of legislation. This process should be enhanced if there is a significant proportion of the membership for whom there is no presumption as to whether they support the Government. A nominated House retains the option that a significant element of the House is both selected and makes its judgements on a basis other than that of party allegiance.
- **Expertise.** The contribution of the second chamber would be enhanced by the presence of people with significant specialist expertise in some areas.
- **Status.** There would be no risk of the second chamber endangering the supremacy of the House of Commons.
- **Continuity.** Constitutional reform in the United Kingdom has normally been gradual and incremental. This has contributed to the basic stability of the United Kingdom's system. Continuing with a nominated system would be more of a gradual and incremental change.
- **Ex officio members.** The present ex officio membership of the House could be retained and even extended.

- **Cost.** A wholly nominated body, involving the least change from the present system, is also the least likely to make significantly increased demands for resources.

16. Among the disadvantages are:

- **Question of democracy.** Some will argue that a system which contains no element of election, even indirect election, cannot be democratic or even properly representative of society as a whole.
- **Fine-tuning.** The search for a perfect representative body would involve too much interference in the selection of members.
- **Delegates.** Too overtly representative a body might turn into an assembly of delegates.

## A DIRECTLY ELECTED CHAMBER

17. Two factors will help determine the worth and the value of an elected second chamber. First, the need to ensure that the supremacy of the House of Commons is not undermined by the House of Lords: a fully directly elected second chamber would inevitably have a significant impact on the relationship between the two Houses. Second, the political landscape within which the reformed second chamber will operate: at a time of fundamental change in many aspects of the United Kingdom's constitutional arrangements, this is of particular relevance more so, probably, than at the time of any earlier attempts at reform.

18. Under a system of direct elections, the whole electorate would be given the opportunity to vote. The Government has introduced new methods of voting for the devolved bodies and for elections to the European Parliament. The Independent Commission on the Voting System has reported on a possible alternative system for the House of Commons. (Its report contains a factual description of a number of possible methods of election.)

19. Many countries try to make their electoral systems for the second chamber as distinct as possible from those for the first chamber. Apart from the obvious distinction of having one chamber directly elected and the other indirectly elected, having a different electoral system is one method of achieving this. Two other variants which apply frequently are:

- holding the election on a different cycle; and
- electing only a proportion of members on each occasion, usually one-third.

Both these can be applied to either indirectly or directly elected second chambers, but they are of particular significance with direct elections because of the implications for the first chamber.

20. Phasing of elections in particular gives those elected a longer term of office. It also reduces the effect of swings in public opinion. Both factors can contribute to the stability of a second chamber and its ability to regard issues from a longer-term and wider perspective.

21. On the other hand, elections by different systems, or on different dates, or for different proportions of members for the second chamber than for the first, could be a recipe for conflict between the two chambers and therefore for constitutional instability, within a system substantially based on party political lines.

## AN INDIRECTLY ELECTED CHAMBER

22. About 30 per cent of overseas second chambers are elected by indirect methods, including France, the Netherlands and South Africa. Indirect elections can be found in both unitary and federal states. The electoral college often consists of members of local authorities or regional assemblies, and may include members of the primary chamber.

23. With regard to party political members, indirect elections to the future second chamber by bodies with specific local interests could work well alongside a system of UK-wide political appointments. The United Kingdom Parliament has now passed legislation establishing the devolved institutions of the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly. All are intended to begin to operate in 1999.

24. There is in addition the beginning of a process in England for a stronger voice for the regions, each of which is similar in population, or larger, than the other nations of the Union. Regional Development Agencies and voluntary regional chambers

based on existing networks of local authorities are already being established. A Bill to establish a Mayor and Assembly for Greater London is passing through Parliament with the intention of holding elections in May 2000.

25. Indirect election by these bodies would have two advantages. First, it would demonstrate a direct connection between these other bodies and the central institutions at Westminster. This is a common role for second chambers to play in other countries. Second, it would mean that in many cases those selecting the members had themselves been elected. It could therefore reinforce the democratic nature of an otherwise nominated House.

26. The Royal Commission may also wish to examine whether there is a possible role which could be played by MEPs in the second chamber, through a contribution to an indirect election system. The House of Lords already plays an important role in the examination of European legislation and it may be that there are reforms which can enable it to become even more effective in this task.

27. It would be for consideration whether those representatives had to be chosen from the institutions and the MEPs which formed the electoral college. If the Commission were attracted to this basic principle it would no doubt wish to take evidence, including from the devolved institutions themselves, as to how this part of the system might operate.

### **Advantages and disadvantages of the elected options**

28. As with a nominated House, there is a balance of advantages and disadvantages in an elected second chamber. Directly and indirectly elected bodies share in these, although the extent to which they do so varies considerably. The main advantages are:

- **Legitimacy.** There can be no doubt about the democratic mandate of an elected body. The people, directly or indirectly, would have given their consent to the formation of the whole of their legislature.
- **Status of members.** It would be made clear that membership of the second chamber was a job with specific and important duties attached.
- **Representation.** All parts of the country and all shades of political opinion could be represented.
- **Age.** An elected House is likely to have more younger people in it than a nominated one, especially on the political benches, where at present many life peers are ex-MPs past retirement age.
- **Entrenched bicameralism.** Setting up an elected second chamber would be an unequivocal sign that the Government was committed to a bicameral legislature.

29. The main disadvantages are:

- **Conflict with the House of Commons.** Extreme care would be necessary in devising an electoral system which did not set up a chamber with both the desire and the authority to use its powers to the extent that it actually challenged the supremacy of the House of Commons on the strength of its separate electoral mandate. This is of particular importance if the second chamber were to be directly elected.
- **Loss of independents.** A wholly elected second chamber would make it virtually impossible to retain any independent, non-party element in the House.
- **Loss of ex officio membership.** This would become much more of an anomaly and would probably be impossible to sustain.
- **Transitional difficulties.** The transition to a fully elected House is the most disruptive, especially if an electoral system were chosen where the whole House was elected at the same time.
- **Higher costs.** The costs of both the elections themselves and the need to provide proper salaries and research facilities for elected members would considerably increase the costs of the second chamber.

## **A MIXED CHAMBER**

30. Looking at the advantages and problems of both a wholly nominated and a wholly elected House of Lords indicates three main themes against which any form of the House is likely to be judged: its legitimacy and fitness for its purpose, its independence, and its relationship with the House of Commons.

31. A wholly nominated House of Lords may be regarded as lacking in legitimacy and independence from the executive. On the other hand, it does provide for the representation of views other than those of the political parties, it is significantly different from the House of Commons and it does not challenge the supremacy of the Commons.

32. A wholly elected second chamber would clearly have legitimacy and its membership would be independent of the executive. It would, however, be dominated by the political parties. Its relationship with the House of Commons could pose considerable problems, and its ability to perform a significantly different role in the constitution could be weak.

33. A mixed House would combine elements of nomination and election. This solution has been advocated in the past for example in the report prepared by the late Lord Home of the Hirsel in 1978<sup>8</sup> and has a number of champions in the present. Lord Home's report recommended a two-thirds directly elected and one-third nominated House, and several other more recent proposals have picked this up. There is, however, nothing peculiarly compelling about that balance. Up to two-thirds elected, especially if this were to be directly elected, could in terms of relationships with the House of Commons share many of the disadvantages of a wholly elected second chamber.

34. The most important consideration in judging the balance of membership would be what combination best fulfilled the functions the second chamber was being asked to perform. It may also be that more than two methods of selecting members of the second chamber would be appropriate.

35. The advantages of the right combination of a nominated and indirectly or directly elected chamber could be significant. It would combine some of the most valued features of the present House of Lords with a democratic basis suitable for a modern legislative chamber. In particular, the continued presence of nominated members, especially those who did not identify themselves with a particular party, would ensure that the second chamber retained these specific advantages of a wholly nominated House:

- **Independent scrutiny.** An independent contribution to the scrutiny and revision of legislation.
- **Wide range of interests.** Recruitment of members of the second chamber from a wider range of interests than those who are likely to be attracted to a career in politics.
- **Expertise.** Access to specialist expertise within the House itself. This could be particularly important if the scrutiny function of the second chamber were enhanced.
- **Broader representation.** The ability to correct for under-representation of particular groups, including women and ethnic minorities.
- **Ex officio members.** The ability to accommodate the existing ex officio membership of the House of Lords, if it were decided that no change in the relationship of the second chamber to the legal system or in the relationship of the Church of England to Parliament was desirable.
- **Distinctiveness.** A body that is clearly distinctive from the House of Commons, but yet with the ability to speak with the authority of expertise when necessary.

36. A mixed second chamber would also retain these specific advantages of an elected House:

- **Legitimacy.** The legitimacy that comes from an electoral mandate.
- **Status.** A clear message about the status of members.
- **Range.** An automatic way of ensuring a proper geographical spread of representation.
- **Age.** An enhanced likelihood of getting a significant number of younger people into the second chamber.
- **Two chambers.** A clear commitment to a bicameral system.

37. A mixed House, therefore, allows a variety and breadth of membership, and the combination of the best features of the present House with an indubitably democratic method of selection. It enables a number of factors which are regarded as important to be accommodated in a way which neither a fully elected nor a wholly nominated House would do.

## CONCLUSION

38. Britain needs a modern, balanced and effective second Parliamentary chamber. We are confident that the measures proposed in this White Paper on modernising the House of Lords will achieve:

- the removal of the purely hereditary basis of the majority of the House;
- improved arrangements for the nomination of life peers in the transitional House;
- further longer-term reform, following the recommendations of a Royal Commission.

Each of these steps is individually significant. But taken together, they amount to a comprehensive and radical programme of reform. We believe they will be widely welcomed and widely supported across the country. They will modernise the House of Lords. They will give the House a new legitimacy. They will reshape a key element of the United Kingdom's central democratic institution. They will create the modern second chamber of Parliament which Britain must have as we enter the 21st century.

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8*The House of Lords: Report of the Conservative Review Committee*, Conservative Central Office, 1978.

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