



## Chapter 13 – The Appointments Commission

**13.1** The arrangements for appointing life peers which the Government has proposed should apply during the interim stage of House of Lords reform (see Chapter 11) will leave considerable control with the Prime Minister of the day. He or she will be able to control the size and party balance in the interim House by virtue of having the power to set the number of nominations made by each party and the number of Cross Benchers selected by the proposed Appointments Commission. He or she will also retain an ultimate veto over all nominations, through being responsible for putting the final list to the Queen. The present Prime Minister has committed himself to seeking no more than parity between Labour and Conservative members of the interim House of Lords and has undertaken not to challenge other parties' nominations (save in wholly exceptional circumstances). It would, however, be unsatisfactory to base appointment to the reformed second chamber on these or equivalent assurances. The Prime Minister should no longer play a role in appointing members of the second chamber.

### Role

**13.2** Members of the present House of Lords have to be peers and are appointed by the Queen. The Monarch acts only on advice so all recommendations for appointment must be made by the Prime Minister. We are adamant that the link between the peerage and membership of the second chamber should be broken (Chapter 18) and that the Prime Minister should not have any role in the appointment of members of the second chamber. The current system of appointment cannot be retained. We therefore recommend that the Appointments Commission should be charged by the Crown with a general duty to appoint members to the second chamber and empowered to appoint individual members on its own authority. This approach would have parallels with the system used for the House of Commons, under which the Crown issues a writ to the returning officer to hold an election but plays no part in the choice of members.

**13.3** Precluding any scope for political patronage is a basic element of our scheme for the composition of the second chamber. The abolition of such patronage is essential if the chamber is to have the legitimacy and confidence required.

**Recommendation 80:** The Appointments Commission should be charged by the Crown with a general duty to appoint members to the second chamber and empowered to appoint individual members on its own authority.

**13.4** The role of the Appointments Commission for the reformed second chamber will therefore be much greater than that envisaged during the interim stage of Lords reform. The independent Appointments Commission should be the only avenue into the second chamber, whether individuals reach this point through selection as a regional member, through selection by the Commission or through appointment as a Lord of Appeal in Ordinary or representative of the Church of England. In this way, the differences between members of the second chamber would be minimised and the ability of the chamber to act as a cohesive body enhanced.

**Recommendation 81:** The independent Appointments Commission should be the only route into the second chamber, whether individuals reach this point through selection as a regional member, through selection by the Commission, or through appointment as a Lord of Appeal in Ordinary or representative of the Church of England.

**13.5** Although the Appointments Commission should be the sole mechanism for appointing members to the second chamber, there are three classes of member over whose appointment the Commission should actually have no discretion:

- regional members;
- Lords of Appeal in Ordinary;<sup>1</sup> and
- any representatives of the Church of England.

**13.6** In each of these cases, individuals will have been chosen through a specific process of selection and their legitimacy will rest on the established independence of this process. It would not, therefore, be appropriate for the Appointments Commission to intervene in the selection process and seek to substitute its own judgement. It should formally appoint those whose names emerge from these separate processes.

**Recommendation 82:** The Appointments Commission should have no discretion over the appointment to the second chamber of regional members, Lords of Appeal in Ordinary, or any representatives of the Church of England.

**13.7** The remainder of this chapter considers the means by which the independence of the Appointments Commission should be ensured and the arrangements for appointing individual members to the second chamber.

## Ensuring independence

**13.8** The Appointments Commission should not only be independent of the political parties in practice, but should also be seen to be so. A number of safeguards should therefore be set in place to ensure the independence of the Appointments Commission. These relate to its legal status, the means by which its members are appointed and their security of tenure, the procedures by which members of the second chamber are appointed and the reporting arrangements set in place.

**13.9** While the Appointments Commission would be without any direct parallel either in the United Kingdom or abroad, it would by no means represent an entirely new approach in the British constitution. The constitution already includes several bodies responsible for a number of very sensitive elements in the relationship between the Government and Parliament. These provide useful examples on which our proposals draw.

<sup>1</sup> It has been the practice for other holders of high judicial office to be appointed to the House of Lords as life peers under the Life Peerages Act 1958. Once appointed, they can serve as members of the Appellate and Appeal Committees alongside the Lords of Appeal in Ordinary. In future, any such appointments would need to be made by the Appointments Commission, and for 15-year terms. No doubt the Commission would pay due regard to nominations made for this purpose by the Lord Chancellor.

**13.10** The longest standing of the existing bodies is the National Audit Office (NAO), which audits the accounts of almost all Central Government bodies and undertakes some 50 value-for-money studies each year. The NAO, under the Comptroller and Auditor General, is not part of Government, but reports to the Commons Public Accounts Committee, by convention chaired by a senior Opposition MP. The Parliamentary Commissioner for Standards and the Commissioner for Public Appointments fall into the same broad category of organisations which play a vital role in ensuring the smooth running of the Parliamentary system. Finally, the Government has recently accepted the recommendation of the Committee on Standards in Public Life that there should be an Electoral Commission, which will have a number of functions relating to the conduct of elections and the funding of political parties. Since the Electoral Commission will be controlling the process by which individuals enter the House of Commons, it will occupy a broadly comparable position in respect of that House as will the Appointments Commission with regard to the second chamber.<sup>2</sup>



### Legal status

**13.11** The Appointments Commission could be grounded in statute, rely on a Royal Charter, or be entirely non-statutory, as will be the case for the Appointments Commission proposed by the Government for the interim House of Lords. A number of approaches have been adopted for other constitutional bodies. The NAO was established by statute and the Government proposes to do the same for the Electoral Commission. The posts of Parliamentary Commissioner for Standards and Commissioner for Public Appointments, by contrast, were both established through an Order in Council. This was done in the interests of speed and does not rule out the option of creating a firmer legislative basis for them in the future.

**13.12** Establishment of the Appointments Commission on a non-statutory basis would mean that its internal operation could be altered or it could even be abolished without reference to Parliament. Establishment on the basis of a Royal Charter, as is the case with the BBC, might give greater independence and permanence, but it could not guarantee its immunity from Government interference. While establishment on a non-statutory basis may be appropriate for wholly advisory non-departmental public bodies (NDPBs), which merely provide an input to Departmental policy development, it would not offer the level of independence and entrenchment required for the Appointments Commission. Most executive NDPBs, such as the Environment Agency, are founded through primary legislation.<sup>3</sup>

**13.13** We recommend therefore that the Appointments Commission should be established by primary legislation. Amendment of the legislation would require open debate in Parliament and the approval of the second chamber itself. Such amending legislation would also come under close scrutiny from the proposed Constitutional Committee of the second chamber. We doubt that any Government would risk the embarrassment of attempting to use the Parliament Acts to force through such legislation against the will

<sup>2</sup> Other similar constitutional bodies include the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman), the Health Service Commissioner (the NHS Ombudsman) and the Data Protection Registrar.

<sup>3</sup> The Environment Agency was created by the Environment Act 1995.

of a second chamber. Establishing the Appointments Commission through primary legislation would therefore offer considerable entrenchment. Since a number of our other recommendations would involve legislation, it would be relatively straightforward to include clauses and a schedule relating to the Appointments Commission.

**Recommendation 83:** The Appointments Commission should be established by primary legislation.

### Number of Appointments Commissioners

**13.14** The interim Appointments Commission will include representatives of the three main political parties and a number of independents. The latter will form a majority among the Commissioners and will provide the chairman, implying a total of at least seven Commissioners. Experience from other public bodies working in politically controversial areas, such as the Committee on Standards in Public Life, suggests that there would be significant merit in including nominees from each of the main political parties. While they would be expected not to behave in a partisan manner, their understanding of how Parliament and the political parties work and think would be of considerable benefit to the Appointments Commission. We therefore recommend that three of the Appointments Commissioners should be nominees from the main political parties. A Commissioner nominated by the convenor of the Cross Benchers would be a logical corollary. These four members should be balanced by four independent members, of whom one should be the chairman. The resulting total of eight<sup>4</sup> should allow scope for representation from Scotland, Wales or Northern Ireland, thereby ensuring that the Appointments Commission was not a solely English body.

**Recommendation 84:** There should be eight Appointments Commissioners. Three should be nominees from the main political parties, one a nominee of the Convenor of the Cross Benchers and four should be independents, of whom one should be the chairman.

### Selection of Appointments Commissioners

**13.15** Since the first report of the Nolan Committee in 1995, both Conservative and Labour Governments have committed themselves to filling the majority of public appointments according to what have become known as the ‘Nolan principles’, notably that appointments should be made strictly on merit and should be free of the taint of favouritism or bias. The appointments made on the basis of the Nolan principles include a number of key constitutional posts, such as the Commissioner for Public Appointments. The Government has committed itself to applying the Nolan principles in selecting the independent members of the Appointments Commission which will operate during the interim stage of House of Lords reform. The Home Office has taken the same view with regard to the membership of the new Electoral Commission. We recommend that this approach should also be adopted in connection with the independent members of the Appointments Commission. Such an approach does not, of course, preclude ‘head hunting’ and the taking of private soundings.

**Recommendation 85:** The independent members of the Appointments Commission should be selected according to the Nolan principles.

<sup>4</sup> An odd number of Appointments Commissioners would not be required, since the Appointments Commission should proceed by consensus rather than majority voting.

**13.16** One question that might arise is whether it should be permissible for Appointments Commissioners to be themselves members of either chamber of Parliament. On the one hand, none of the members of the other constitutional bodies is permitted to be a member of either chamber of Parliament. This rule is set in order to avoid any possible conflict of interest or the appearance of conflict. Conversely, a sound knowledge of the workings of the second chamber would be a very substantial asset when selecting new members for that chamber. The current members of the Political Honours Scrutiny Committee, for example, are all peers. On balance, we believe that it would be inappropriate for any Appointments Commissioner to be a member of the Commons: members of one chamber should not be involved in the selection of members for the other chamber.<sup>5</sup> However, there would be significant benefits if a number of Appointments Commissioners, though not a majority, were at the same time members of the second chamber.

**Recommendation 86:** A number of Appointments Commissioners, though not a majority, should be members of the second chamber. None should be an MP.

### Appointment of Commissioners

**13.17** For most public appointments, the decision will be taken by the responsible Minister. Such direct Ministerial control would be unacceptable in the case of the Appointments Commission for the second chamber. The most common approach for appointments of a constitutional nature is for them to be made by the Queen, on the advice of the Prime Minister. The process is subject to certain controls, designed to ensure that the Prime Minister's advice has cross-party support.

**13.18** The draft Bill to establish the Electoral Commission proposes placing a duty upon the Prime Minister to consult the leaders of all parties with more than two MPs and the chairman of the independent Speaker's Committee. This must be done before he or she moves a motion to present an Address to the Queen inviting her to appoint the proposed members of the Electoral Commission. Such safeguards are necessary in the Commons, because the governing party will normally enjoy an absolute majority and so could, in theory, impose its own nominees. By contrast, since no single party will ever have a majority in the second chamber, any such motion in respect of the Appointments Commission would by definition have to secure cross-party support. There is also a strong convention that the business of the present House of Lords proceeds by consensus and that procedural suggestions from the Leader of the House reflect prior consultation with the other party groupings. There is therefore no need for a second chamber equivalent of the Speaker's Committee. Since the Appointments Commission will operate in respect of the second chamber, it would be most appropriate for it to be that chamber whose approval is required, on a motion moved by the Leader of the House, following the normal consultation with the leaders of the other party groupings and the Convenor of the Cross Benchers.

**Recommendation 87:** Appointments Commissioners should be appointed by the Queen following an Address, on a motion moved by the Leader of the second chamber following the normal consultation with the leaders of the other party groupings and the Convenor of the Cross Benchers.

## Length and security of tenure

**13.19** All Appointments Commissioners, including party nominees, should have a long period in office with security of tenure in order to protect them against undue influence and encourage them to bring a long-term perspective to bear on their work. The Commissioner for Public Appointments has recommended that no one should hold a public office for more than ten years. The Government proposes to write such a limit into the legislation for the Electoral Commission. We recommend that the same limit should apply to Appointments Commissioners.

**Recommendation 88:** Appointments Commissioners should hold office for no more than ten years.

**13.20** While members should have security of tenure during their period in office, there should be a procedure for removing an individual whose behaviour has become inappropriate. Corrupt activity on the part of individual members would already be covered by the criminal law. The Government proposes that Electoral Commissioners should be removable only on a resolution of the House of Commons. Since the Appointments Commission will to some extent stand in the same position with regard to the second chamber, removal of an Appointments Commissioner should require a resolution of the second chamber.

**Recommendation 89:** Removal of an Appointments Commissioner should require a resolution of the second chamber.

## Scrutiny of reports

**13.21** An important aspect of the Appointments Commission's work will be the information given in its annual report. This report will act as the vehicle by which the Appointments Commission will set out the characteristics required of members of the second chamber and its strategy for ensuring that there is an appropriate balance of members from all parts of society and among the political parties. This strategy might include setting out the types of nomination that would be particularly welcome over the coming year. The report should also provide a detailed breakdown of the composition of the chamber, in terms of party, gender, ethnicity, age and region and the extent to which the chamber's membership as a whole reflects the characteristics set out in the Appointments Commission's published specification. An important element of this information would be to report on changes in the political and other balances which the Appointments Commission will be required to strike, arising from the departure of members at the end of their term of office, the characteristics of the regional members and the results of each general election.

**13.22** The report would provide the main means by which the Appointments Commission could be held to account. Such scrutiny should consider three aspects of the Commission's operation:

- whether the specification of the characteristics required of members of the second chamber was appropriate and whether the estimate of the number of members required was correct;

- whether the selection process was effective in identifying individuals with the required characteristics and whether the resulting composition of the second chamber, including the regional members, achieved the appropriate balances; and
- whether the Appointments Commission was using public funds efficiently and the expenditure involved had been made properly.

**13.23** Since the Appointments Commission would be a statutory body, its reports should be presented to Parliament. It should not be possible to enquire into individual cases, but it would be right for the Appointments Commission to be held to account on its fulfilment of its statutory duties.

**Recommendation 90:** The Appointments Commission should make an annual report to Parliament. This report should set out the characteristics required of members of the second chamber and the Commission's strategy for ensuring that there is an appropriate balance of members from all parts of society and between the political parties. The report should also provide a detailed breakdown of the composition of the chamber, in terms of party, gender, ethnicity, age and region and the extent to which the chamber's membership as a whole reflects the characteristics set out in the Appointments Commission's published specification.

## Size and balance of the second chamber

### Size of the chamber

**13.24** There has never been a limit on the total number of members of the House of Lords and the size of the chamber has therefore varied over the years. It has always been open to the Prime Minister of the day to recommend to the Monarch that additional peers be created in order to change the political balance and so secure the Government's legislation. Queen Anne created 12 new hereditary peers to ensure approval of the Treaty of Utrecht in 1712, and George V agreed to create up to 500 new peers if necessary to secure passage of the Parliament Act in 1911. In theory, any Government could create additional peers to secure a majority in the second chamber. The power to determine the overall size of the second chamber is therefore of considerable political importance. We have earlier set out our reasons for recommending that no one political party should ever be able to control the second chamber. To protect this vitally important feature of the reformed second chamber, we recommend that the power to determine the overall size and political balance of the second chamber should no longer lie with the Prime Minister of the day.

**13.25** It would be inappropriate to suggest a particular target size for the reformed second chamber in the longer term. Such a suggestion would, we believe, pre-empt careful consideration of the implications of our recommendations. Our proposals include the establishment of a Constitutional Committee with a number of Sub-Committees, a Treaty Committee and an enhanced procedure for the scrutiny of Statutory Instruments. These all seem likely to lead to an increase in the chamber's workload. At this stage, however, it is not possible to judge accurately how many members the reformed second chamber will need in order to meet these demands. The total number will also be affected by the average rates of attendance among members; our proposals are designed to encourage 'part-time' membership, with members able to remain active in other spheres of life.

On the other hand, it is possible that the introduction of fixed terms and the opportunity to retire will lead to a significant reduction in the average age of members and to an increase in their average rate of attendance. In the light of these factors, we conclude that it would not be appropriate to fix the total number of members of the second chamber in statute.

**13.26** Responsibility for setting the overall size of the chamber should fall to the Appointments Commission. It should also be required, in consultation with the Leader of the House and the other party leaders in the second chamber, to keep under review the workload of the chamber, levels of attendance and the implications of those factors for the total number of members required. Such reviews should be conducted on a regular basis. An initial assessment should be made by the interim Appointments Commission as soon as possible, to inform other preparatory work.



**13.27** When considering models for determining the composition of the reformed second chamber, we have had to make an assessment of the likely number of members required. Our estimate (it can be no more than an informed guess at this stage) is that the second chamber would need to have in the region of 550 members.<sup>6</sup>

**13.28** We have earlier recommended that the overall balance between the political parties in the second chamber should reflect the share of votes cast for each party at the previous general election. This will be achieved by appointing party-affiliated members to the various party groups in the numbers required to produce the appropriate balance. The Appointments Commission will have the central role in allocating the available places between the parties. Its task will be made easier by the fact that our other recommendations should ensure a sufficiently high turnover of members to enable the Commission to engage in these essential ‘rebalancing’ exercises without, in the great majority of circumstances, having to appoint an unduly large number of new members. In addition, the Commission will normally have in mind beforehand the names of a number of members of the main political parties who could be appointed at relatively short notice if the need arose. We do not, however, envisage the necessary rebalancing exercises taking place within days, or even necessarily weeks or months, of the results of any general election being declared. The Appointments Commission must be given considerable leeway in deciding how quickly to rebalance the new House and how arithmetically precise any rebalancing needs to be. It will always be the case that no one party will have an overall majority, even among the party-affiliated members, and that the Government of the day, even a newly elected Government, will have enough members to ensure that its business can be managed efficiently.

**Recommendation 91:** The size of the second chamber should not be fixed in statute, but should be set by the Appointments Commission. The Appointments Commission should regularly review the total number of members required, taking account of the chamber’s workload, levels of attendance and the need to achieve or maintain a balance between the political parties in the second chamber that reflects their shares of the votes cast at the previous general election.

<sup>6</sup> Made up of 65 (Model A)/87 (Model B)/195 (Model C) regional members serving for three electoral cycles, and about 500/450/350 other members, including Law Lords and representatives of religious faiths (see Chapter 15). This would produce an average of about 33/30/24 vacancies to be filled by the Appointments Commission each year.



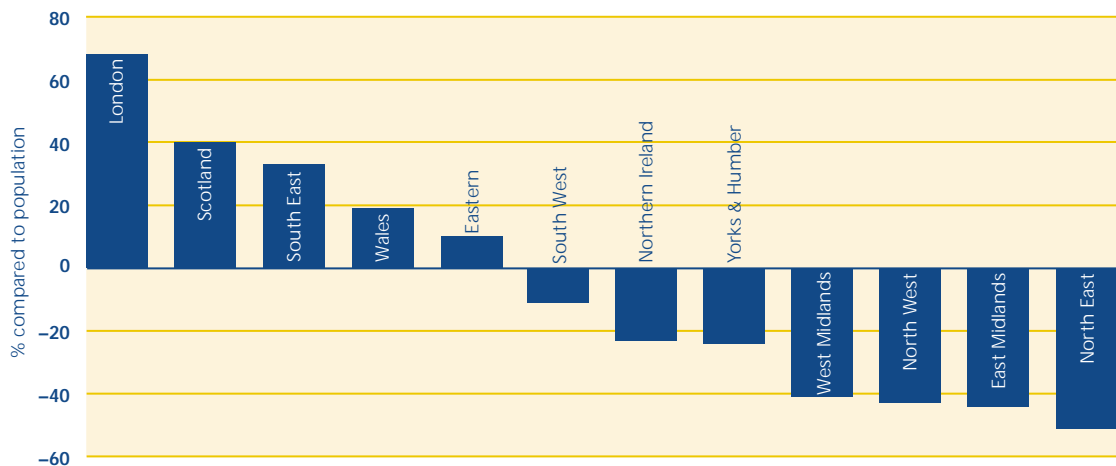
## Gender and ethnicity

**13.29** The second chamber should be broadly representative of British society. The Appointments Commission should, over time, seek to achieve gender balance and a fair representation for minority ethnic groups. It should therefore be required to encourage nominations from under-represented groups and to report regularly on progress in achieving an appropriate balance. This would be entirely consistent with its overall approach of working to achieve a second chamber which was balanced across a range of different dimensions.

**Recommendation 92:** The Appointments Commission should encourage appointments and nominations from under-represented groups and report regularly on progress in achieving gender balance and a fair representation for minority ethnic groups.

## Regional representation

**13.30** At present (see chart), life peers from London, Scotland and the South East of England represent a significantly higher proportion of the membership of the current House of Lords than might be expected on the basis of regional populations. Our proposal that regional members be selected on the basis of votes cast for parties in each region should go some way to redress the balance. However, the Appointments Commission should also be under a general duty to ensure adequate representation for each of the nations and regions of the United Kingdom among the membership of the second chamber as a whole.



**Regional distribution of life peers**

(Life peers' regional affiliations have been assessed by reference to the territorial title they have taken.)

**Recommendation 93:** The Appointments Commission should use its best endeavours to ensure that each of the nations and regions has an appropriate level of representation among the overall membership of the second chamber.

## Making appointments

**13.31** The Appointments Commission should have discretion in the appointment of all members of the second chamber, other than regional members, Lords of Appeal in Ordinary and any representatives of the Church of England as noted earlier (paragraph 13.5). This will require the Appointments Commission to:

- specify the characteristics members of the second chamber should possess;
- actively seek nominations;
- develop working relations with political parties; and
- vet nominations for propriety and security.

The Appointments Commission will need to ensure that the system it operates to carry out these functions is effective and so commands public confidence.

### Specification of characteristics

**13.32** The Appointments Commission should publish and keep up to date a statement specifying the broad characteristics which it would expect members of the second chamber, individually and collectively, to possess. This should build on our work, but it would be important to ensure that the Appointments Commission retained sufficient flexibility in determining the characteristics required that it could respond to changes in circumstances or in society as appropriate. Such a specification would be the foundation for any systems of inviting nominations or seeking out candidates and would also provide the benchmark against which individual appointments and the characteristics of the second chamber as a whole should be judged. The Appointments Commission's annual report should be used as a vehicle for setting out the characteristics for which it was looking and for reporting on the contribution which successive rounds of appointments had made to the achievement of that goal.

**13.33** The proposed specification should therefore be couched in fairly general terms and should not be exhaustive. It should simply indicate the range of skills and interests across the whole of the community of the United Kingdom that the Appointments Commission would like to see represented in the second chamber. It should emphasise the Appointments Commission's intention to ensure that, at any one time, various broad sectors of society would have an appropriate voice in the second chamber, while avoiding any commitments which could create inflexibilities. It should also make the point that the various sub-sectors of society could not all be represented all the time and that appropriate balances would need to be struck, allowing for variations over time. The specification might need to bring out the importance of striking the right balance between the need for members of personal distinction and relevant expertise on the one hand and securing people representative of a broad cross section of British society on the other. The Appointments Commission should emphasise that no one should be ruled out from consideration, but that successful candidates would need to be able to make a contribution to the work of the second chamber.

**13.34** The overall specification could be supplemented in the run-up to individual rounds of appointments by more specific descriptions of particular sets of characteristics which the Appointments Commission was particularly keen to strengthen at that time (e.g. to compensate for vacancies which had arisen). In considering what characteristics might need to be strengthened at a particular point in time, the Appointments Commission should take full account of the various characteristics of all the existing members of the second chamber, including regional members.

**Recommendation 94:** The Appointments Commission should publish and keep up to date a statement specifying the broad characteristics it would expect members of the second chamber, individually and collectively, to possess.

### Actively seeking nominations

**13.35** The Appointments Commission should systematically develop its knowledge of, and relationship with, the main individuals and organisations in a wide range of vocational areas and other sectors of society (business organisations, trades unions, voluntary groups, interest groups, cultural organisations, sporting organisations, faith communities, etc) across the nations and regions of the United Kingdom. It should maintain close ties with those sectors of society likely to produce people with characteristics appropriate to the constitutional and human rights roles of the second chamber, for example practising and academic lawyers, and academics specialising in a range of relevant disciplines.

**13.36** Such an approach would allow the Appointments Commission to identify potential candidates for appointment to the second chamber and to come to understand the considerations which might affect whether a particular appointment would be seen as appropriate and balanced. It would also give the various organisations the opportunity to suggest candidates.

**Recommendation 95:** The Appointments Commission should systematically develop its knowledge of, and relationship with, a wide range of vocational areas and other sectors of society.

**13.37** In addition to such direct contacts, the Appointments Commission should open up the nomination process to the widest possible range of candidates. We recognise that there might be some tension in doing this, given the reality that there will only be an average of about 20–30 vacancies per year. Nevertheless, the Appointments Commission should solicit nominations from members of the public and find imaginative ways of encouraging the emergence of candidates from unlikely quarters. As a minimum, it might advertise regularly and ensure that nomination forms were widely available, but some steps might need to be taken to avoid too many dashed expectations and too much nugatory work. In particular, people should be asked to substantiate their nominations against the broad criteria for membership and be reminded of the need to ensure that their candidates were willing to accept nomination and were in a position to make a contribution to the work of the second chamber.

**Recommendation 96:** The Appointments Commission should open up the nomination process to the widest possible range of candidates.

**13.38** The Appointments Commission should adopt a proactive approach to the identification of suitable appointees. It should do more than review the directly nominated potential candidates or those brought to its attention through its ongoing contacts with organisations and groups from various sectors of society. It should make specific efforts to identify and to encourage nominations or applications from suitable candidates with particular characteristics, for example from particular vocations or sectors of society.

**13.39** Having drawn up a provisional list of likely appointees by reference to the original specification, the Appointments Commission should invite the people concerned to indicate whether they would be prepared, if appointed, to devote at least a reasonable minimum amount of time to the second chamber. Such a system would minimise the risk that potential appointees would be put off from applying: people would only be approached by the Appointments Commission about their readiness to stand once they had been provisionally selected. It would reduce the amount of nugatory work which would inevitably be involved in an application-based system and probably produce a better result. However, it would be essential to ensure that the process itself was open and transparent. The appointments would be widely advertised, the body making the selection would be independent and take its decisions against clear criteria, candidates in the provisional list would all be aware that their names were being considered and the Appointments Commission should have a broadly comparable range of information on every candidate. The system of selection would be entirely in accordance with the Nolan principles, but would avoid the cumbersome bureaucratic procedures sometimes associated with the practical implementation of the principles.

**Recommendation 97:** The Appointments Commission should adopt a proactive approach to the identification of suitable appointees.

### Relationship with the political parties

**13.40** The second chamber, as part of the United Kingdom Parliament, will inevitably be a very political place. A large majority of members of the second chamber will be affiliated to a political party. It is therefore necessary to consider the Appointments Commission's role in filling these places.

**13.41** While the political parties will have an important role in suggesting names to the Appointments Commission, we see no reason why they should have total control over the selection of party-affiliated members of the second chamber. When suggesting names to the Appointments Commission, the political parties should make a case for the appointment of each individual. The Appointments Commission should then make the final decision, in the light of its published criteria, its judgement of the suitability of each nominee and the needs of the chamber. It is highly likely that individuals proposed because, for example, they were required as Ministers or Front Bench spokesmen or women would be well qualified and would therefore be strong candidates for appointment, but every case should be considered on its merits.



**13.42** The Appointments Commission should also be free to pursue the objective of a balanced second chamber, without being limited to the appointment of people who are politically neutral. Such a constraint would be artificial and might tempt people hoping for selection to suppress their political leanings. It might also require awkward questions to be asked about party affiliations, which could lead to the abrupt termination of the consideration of otherwise promising candidates, simply on the basis of their politics. We therefore recommend that the Appointments Commission should be responsible for making all discretionary appointments to the second chamber, not just Cross Bench appointments.

**13.43** We regard it as a very important point of principle that the Appointments Commission should be able to appoint people regardless of their party affiliations in the interests of achieving wider balances within the second chamber. The political parties should not be able to secure the appointment of their own party nominees to the exclusion of the Commission's. Neither should they be in a position to veto Appointments Commission appointments, even of members of their own party. We recognise that ultimately the parties have the right to offer the party whip to, or withhold it from, individual members of the second chamber. There is therefore no sense in which party-affiliated appointees can be 'foisted' on a party group in the second chamber.

**Recommendation 98:** The Appointments Commission should make all discretionary appointments to the second chamber and should make the final decision in all cases. The Appointments Commission should be able to appoint people with party affiliations, whether or not these have the support of their political party.

### Propriety and security

**13.44** We recommend that possession of a life peerage should be separated from membership of the second chamber (Chapter 18), but issues of propriety and security will continue to arise under an appointments system. At present, nominations for life peerages (like other political honours) are vetted for propriety by the Political Honours Scrutiny Committee. The issue of political donations and their connection with the award of places in the second chamber has attracted much attention recently. We therefore recommend that the Appointments Commission should vet all party nominations for propriety, following the practice established by the Political Honours Scrutiny Committee. Likewise, it would be appropriate that high-level security checks should be made on all candidates on the Appointments Commission's shortlist.

**Recommendation 99:** The Appointments Commission should vet nominations for propriety and high-level security checks should be undertaken on all shortlisted candidates.

### Approval of lists

**13.45** We considered whether it would be appropriate for the Appointments Commission to seek Parliamentary approval for its recommendations. That, however, would carry with it the implication that Parliament had the right to reject either the list as a whole or individual names on it. It would be undesirable for the merits of individuals on the lists to be subject to debate, or for there to be scope for names to be added or removed. This would undermine the original selection process and might put pressure on the

Appointments Commission to tailor its lists in order to find favour with Parliament. The House of Commons has no role in approving its new members. The second chamber should equally have no role in approving the Appointments Commission's appointments.

**Recommendation 100:** The Appointments Commission should not seek Parliamentary approval of its appointments.

### Frequency of appointments

**13.46** While it might be possible for the Appointments Commission to recommend a continuous trickle of appointments to the second chamber, such an approach would make its task of ensuring a balanced representation in the second chamber more difficult. A regular, perhaps half yearly cycle of appointments would be administratively easier. The Commission would be able to pursue particular themes in particular sets of appointments, which might make it easier to engage with relevant organisations or sectors of society in seeking suitable nominations. In making groups of ten or more appointments at a time, the Commission might also find it easier to demonstrate the achievement of a range of balances within the Chamber, than it would in making a series of individual nominations.

**Recommendation 101:** The Appointments Commission should normally make appointments on a half-yearly cycle.

## Conclusions

**13.47** The recommendations made in this chapter would result in the establishment of an independent system for appointing members to the second chamber. This system would assess each nomination on its individual merits and select members by means of an open and transparent process, against criteria that were widely publicised. This would produce a membership that consisted of individuals who represented all parts of British society, and who possessed the breadth of experience and range of skills required for them to undertake effectively the functions we believe should fall to the second chamber. The system would also ensure that the chamber included a strong independent element and the political balance of its members matched that of the electorate. These are radical proposals and would, over time, produce a major change in the second chamber's composition.