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# **House of Lords Reform**

**A Briefing Paper**

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## Executive Summary

The quality of debate about House of Lords reform is currently low:

- Many claims are being made about the effects that reforms would have. But rarely is there any attempt to base these claims in solid evidence.
- That is partly understandable: the House of Lords is a unique institution rich in history and conventions; how any particular reforms would interact with this history to produce outcomes cannot be entirely predicted.
- But we can do better than we are at present. We can seek out such relevant evidence as exists, both from the UK and internationally. We can judge what conclusions that evidence supports. We can be careful in gauging the degree of confidence we can have in these conclusions.

The evidence available suggests that **claims about the dangers posed by the government's reform proposals are often greatly exaggerated:**

- There is no reason to think that the largely elected chamber that is proposed would overturn the primacy of the House of Commons. The government would still be based in the Commons. The Lords would still be constrained by the Parliament Acts and would therefore have no more than a delaying power over most primary legislation. There is good reason to think that some conventional constraints on how the Lords exercised this power would remain.
- The proposed chamber could probably retain substantial independence, expertise, and experience. This would be achieved partly through the appointed element that the government proposes to keep. But there is good reason to think that many of the people who would run for and secure election under the proposed system would be very different from those who do so in the House of Commons.
- Of all possible electoral systems, the Single Transferable Vote (STV) system proposed by the government is probably the one most likely to encourage the second chamber to fulfil its intended functions. Majoritarian systems such as First Past the Post are unacceptable because they would often deliver single-party majorities. STV is more likely than any list system to facilitate the election of independents. Given the size of the proposed constituencies, fears that STV would promote undue constituency focus are probably unfounded.

Nevertheless, **a number of important questions need to be asked of the government's proposals.** It is upon these that debate should focus:

- Most participants in the ongoing debate agree that Commons primacy is desirable, but they rarely define what it means. Does it imply that the Lords should have no more than a tidying role, pointing out errors and weaknesses in government legislation? Or does it allow that the Lords should also have a delaying function through which it can force government either to rethink or to make its case afresh? If the latter role is sought, how wide-ranging should it be? Does the current House of Lords use its delaying power enough or does it leave governments too readily able to pass legislation without listening to others?

- The proposed reforms would not end Commons primacy, but they would almost certainly limit it by encouraging the Lords to use its delaying power more. Would this be desirable or not?
- What would be the effects of establishing the House of Lords as a full-time, salaried chamber? While much debate has concentrated on the proposals for election, much less has been said about this element of the government's scheme. We have little evidence as to the effects this move would have on the sorts of people who would seek election or accept appointment to the reformed House.
- The reform proposals create no accountability mechanism: members of the second chamber, once elected, would not be subject to re-election and would be free to do as they pleased for around fifteen years. This would have advantages in encouraging independence and giving individuals who are not professional politicians more reason to seek office. But it would also limit the democratic character of the chamber and may allow members who persistently fail to attend to go unpunished. Has the balance in this respect been struck in the right place?
- Should members of the reformed chamber be subject to recall procedures? The case for allowing voters to recall miscreant representatives is strong, but the practicalities of recall in the case of the House of Lords pose several significant problems.
- What would be the effects of electing members of the House of Lords in very large constituencies of around four million voters? There is good reason to think that such large constituencies would prevent excessive localism. But what would be the effects on the candidates likely to stand, the nature of election campaigns, the power of political parties, and the character of those elected?
- Would the hybrid membership create problems? Existing hybrid chambers – the House of Lords itself, as well as second chambers in, for example, Belgium and Spain – encounter few problems. But the specific form of hybridity proposed for the House of Lords is unique and its effects are somewhat uncertain.
- Should ministers continue to sit in the House of Lords? Greater democratic legitimacy would probably lead to some increase in the number of ministers coming from the second chamber, but the difference is unlikely to be large. There are both advantages and disadvantages in this link to the government.
- Specifically, should the Prime Minister have an unconstrained right, as proposed, to appoint “ministerial members” who would retain membership of the second chamber as long as they remain as ministers? Should there not at least be a cap on such appointments, as previous reform schemes have suggested?

## Introduction

On 17 May, the government published a White Paper and draft Bill setting out its proposals for reform of the House of Lords. Many commentators have since expressed scepticism as to whether ministers will be able to deliver on these plans in the face significant opposition from the current Lords and unease among some backbenchers. Nevertheless, Prime Minister David Cameron and Deputy Prime Minister Nick Clegg have already invested considerable political capital in the project: in their foreword to the draft Bill, they say, “We ... are fully committed to holding the first elections to the reformed House of Lords in 2015”.<sup>1</sup>

This briefing paper has two purposes:

- to indicate where the proposals come from, in terms of what the status quo is and what previous reforms and reform attempts have been made;
- to set out what we can say about the effects that the proposed reforms might have.

It must be emphasized that we cannot *know* what the effects of the reforms would be. We can look at international evidence on how similar measures have operated elsewhere. But the House of Lords is a truly unique institution, shaped by a broad range of conventions, habits, and expectations. We cannot be certain how these historical legacies would interact with the proposed innovations to produce the outcomes that interest us.

Nevertheless, it is possible to make well-grounded statements about likely effects or to make statements that are based in misunderstandings or in unrepresentative or irrelevant anecdotes. This paper seeks to encourage more of the former and less of the latter.

## ***Part One***

### ***Background to the Current Proposals***

We begin by outlining the House of Lords as it exists today: its powers on paper, its influence in practice, its composition, and the behaviour of its members. We then summarize past reforms and reform initiatives, the positions of the main parties, and the government's current proposals. Finally, we provide comparative perspective by outlining the nature of bicameralism around the democratic world.



# The House of Lords Today

## *The Role of the House of Lords: An Overview*

The House of Lords today has a secondary role in the UK Parliament compared to the House of Commons:

- First, the government's survival depends on support only in the House of Commons, not in the House of Lords. It is thus the composition of the Commons alone that decides who forms the government.
- Second, the House of Lords has almost no powers with respect to money bills – the bills through which the government's tax and spending plans are enacted.
- Third, with regard to almost all other primary legislation, the House of Lords can delay bills by one year, but it cannot block them. If the House of Commons passes a measure again after one year, it can be enacted without the approval of the House of Lords. These powers are set out in the Parliament Acts of 1911 and 1949, which are discussed further below, on p. 15.

In formal terms, there are only three exceptions to this limited role:

- Any extension of the term of a parliament beyond five years must be approved by the House of Lords as well as the House of Commons.
- Legislation that starts its parliamentary journey in the House of Lords is not subject to the Parliament Acts and must therefore be approved by both Houses.
- Secondary legislation – measures issued by ministers under authority delegated by Parliament – can in principle be blocked by either the House of Commons or the House of Lords.

Nevertheless, the House of Lords is widely seen as playing an important role within the British political system. In particular:

- The House of Lords scrutinizes all government bills and proposes amendments to them. It is said often to provide better quality scrutiny than the Commons, where pressures of time and party loyalty make effective scrutiny difficult. Sometimes it makes amendments against the wishes of the government. The government eventually accepts some such amendments because fighting the Lords would be too costly in terms of time or public support.
- The House of Lords has developed a particular role in scrutinizing the activities and proposals of the European Union.
- Like the House of Commons, the Lords scrutinizes the actions of government through questions and select committee inquiries.

In practice, the role of the House of Lords is shaped not so much by statute law as by convention:

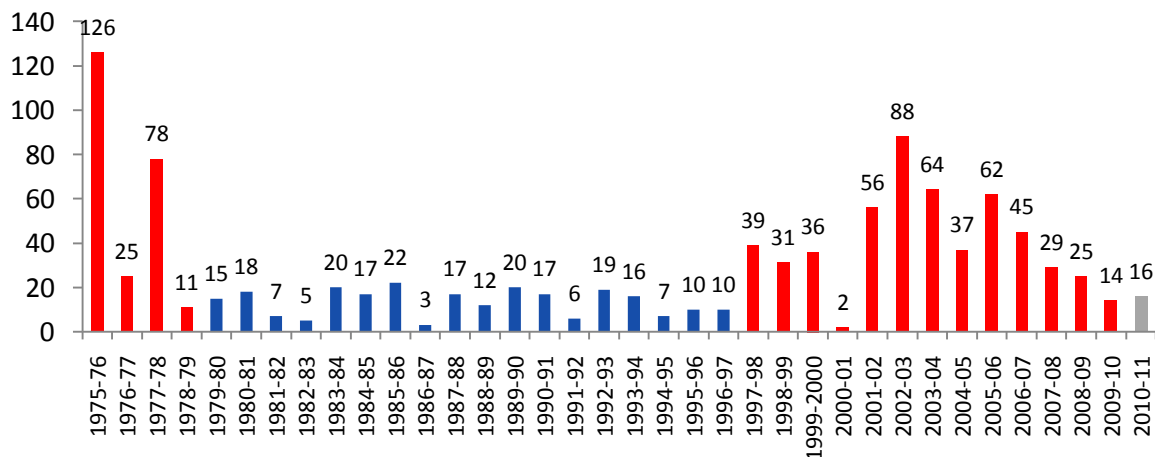
- The provisions of the Parliament Acts allowing a Lords veto to be overridden have been invoked only four times since 1949 (see Box 1).

- Instead, a more frequent constraint on the role of the House of Lords is the Salisbury convention, which was first developed in the late nineteenth century and reaffirmed in 1945. According to the Salisbury convention, the House of Lords does not oppose measures that were set out in the government’s election manifesto. Thus, for example, the Lords did not block the large-scale reforms introduced by the Labour government of 1945–51.<sup>2</sup> As will be discussed shortly, however, the status of the Salisbury convention in the current context of coalition government is less clear-cut.
- Though the Lords retains in principle full power to veto secondary legislation, by convention it uses this power very rarely. In fact, it has only ever vetoed three pieces of secondary legislation (in 1968, 2000, and 2007).<sup>3</sup>

### ***The Legislative Impact of the House of Lords before 2010***

One way of looking at how much the House of Lords uses its powers is to count how often it inflicts defeat upon the government. Figure 1 shows the number of government defeats in each parliamentary session since the mid-1970s. In the past, the Lords was much more likely to defeat a Labour than a Conservative government, for the simple reason that, before the removal of most of the hereditary peers in 1999, the Conservatives had a permanent majority in the Lords. That is no longer the case today: indeed, Labour is currently the largest party in the Lords (see below, p. 11). Taking the Conservatives and Liberal Democrats together, however, the coalition has a substantial majority over Labour. This may help explain the fact that the year to May 2011 saw the fewest government defeats of any full-length session since the mid-1990s.<sup>4</sup>

**Figure 1. Government defeats in the House of Lords**



Source: “Government Defeats in the House of Lords”, available at [www.parliament.uk](http://www.parliament.uk), accessed 30 June 2011. Note: Parliamentary sessions vary in length. The current session will be unique in lasting for two years. In order to maintain broad comparability with other sessions, a cut-off date of the end of May 2011 has been used. By the time of writing (30 June 2011), four further defeats had taken place.

## **Box 1. Use of the Parliament Acts since 1949**

Under the Parliament Acts of 1911 and 1949, legislation can pass into law without the consent of the House of Lords if it is passed by the House of Commons twice with a gap of at least one year between the first substantive debate on the bill (the second reading) in the Commons and the final vote. These powers have been invoked four times since 1949:<sup>5</sup>

### ***War Crimes Act 1991***

This act allows prosecutions for war crimes committed on German-held soil during the Second World War. Both sides of the Commons gave it strong support in a series of free votes, but the Lords opposed, mainly over concerns about the retrospective nature of the legislation. As Shell notes, “The use of the Parliament Act was perfectly straightforward, though surprising to many because it indicated a willingness on the part of the Conservative party leadership to ignore the opinion of the House of Lords even on a matter where principle and conscience were so heavily engaged.”<sup>6</sup> It is the only case in which the Parliament Acts have been used by a Conservative government.

### ***European Parliamentary Elections Act 1999***

This act changed the electoral system for European Parliament elections in Great Britain from First Past the Post to a closed-list form of proportional representation. The bill was passed in the Commons against opposition from the Conservatives, who advocated an open-list system. The Lords also repeatedly voted for open lists. Because Labour’s 1997 election manifesto had specified only the principle of proportional representation, not its specific form, Conservative leaders argued that the Salisbury convention did not apply on this point. The government refused to back down and the Bill was passed without Lords assent.

### ***Sexual Offences (Amendment) Act 2000***

This act equalized the age of consent for heterosexual and homosexual sex at sixteen years. The government had previously tried to enact this change as part of the Crime and Disorder Bill of 1997–98. The Lords had rejected it, however, and the government had chosen to proceed with the rest of that Bill without delay. It reintroduced the measure as separate legislation in the 1998–99 session, but again met Lords resistance. The Bill finally received royal assent at the end of the 1999–2000 session, in November 2000.

### ***Hunting Act 2004***

This act banned the hunting of wild animals with dogs and was the product of extremely lengthy debate. Labour’s 1997 manifesto had promised a free parliamentary vote on the matter. The Commons had first voted in its favour – in relation to a private member’s bill – in November 1997, by 411 votes to 151.<sup>7</sup> Commons support for a ban was maintained over the following years, but the Lords continued to insist upon amendments that would keep hunting legal. The government long sought compromise, but eventually agreed to enact a full ban through the Parliament Acts.

In order to gauge the significance of these defeats, however, we want also to know whether the government is able ultimately to overturn them and whether the issues on which defeats occur are, in themselves, of major or minor importance. Meg Russell and Maria Sciara have studied all defeats between 1999 and 2006 in order to address these points. They find:

- The government was ultimately able entirely to get its way in 42 per cent of the defeats. It largely got its way in a further 17 per cent. The House of Lords, meanwhile, was entirely victorious in 18 per cent of cases and largely so in a further 15 per cent. In the final 8 per cent of cases, the government and the Lords met each other halfway.<sup>8</sup>
- Just two of the 274 defeats over the period involved minor changes to minor policies. By contrast, 18 per cent involved major change to major policies and a further 30 per cent involve either major change to policies of medium importance or changes of medium importance to major policies. Thus, nearly half the defeats were on issues that can be called significant.<sup>9</sup>
- Among these defeats on significant issues, the Lords ultimately got at least half of what it wanted in 41 per cent of cases – that is, in 53 of the initial defeats.<sup>10</sup>

Russell and Sciara offer examples of some of the Lords' more significant victories:

- the Local Government Bill of 2000 was amended such that councils were not compelled to accept mayoral or cabinet structures;
- the offence of incitement to religious hatred was removed from the Anti-Terrorism, Crime, and Security Bill of 2001;
- restrictions on the right to trial by jury were removed from the Criminal Justice Bill of 2003.<sup>11</sup>

Thus, the House of Lords does have some significant impact over legislative outcomes.

### ***The Legislative Impact of the House of Lords since 2010***

As Figure 1 shows, the frequency of government defeats in the House of Lords since the current governing coalition was formed in May 2010 has been slightly lower than during the Blair/Brown years. This reflects the change in partisan balance brought by coalition government. Despite this apparent fall in activism, the willingness of the Lords to act with constraint in exercising its powers has been questioned on two grounds:

- The Salisbury convention is founded on the assumption that the manifesto of the party that wins a general election becomes the new government's programme. Its basis is the idea that the government has a popular mandate to deliver its manifesto commitments. In the case of coalition government, however, that is not always so: the current government's programme is the product of post-election negotiations between the Conservatives and the Liberal Democrats. As Baroness Hayman, the Lord Speaker, has put it, "The Coalition Document has at no point been anointed by the popular vote", and it is therefore less clear that the government has a mandate that the Lords should respect.<sup>12</sup>
- As detailed below, the House of Lords has seen an unprecedented influx of new members, many of them former MPs, since the 2010 general election. This is widely seen as having made the chamber more partisan and less respectful of conventions, as exemplified most

clearly in the protracted debate over the Parliamentary Voting System and Constituencies Bill in February 2011.<sup>13</sup>

It is still too early to assess how the effects of these changes will develop over time.

### **Composition**

There are currently three basic routes to membership of the House of Lords:

- The great bulk of current members have been appointed by the Crown as **life peers**. They are appointed on the recommendation of the Prime Minister. The Prime Minister has full discretion in appointments of peers representing his own party. He or she generally follows the advice of other party leaders in regard to their parties' representatives. Since 2001, most crossbench (that is, independent) peers have been proposed to the Prime Minister by the House of Lords Appointments Commission. As of 5 June 2011, there were 676 serving life peers.<sup>14</sup>
- There are also ordinarily 92 **hereditary peers** with positions in the Lords, 90 of whom are elected from among all hereditary peers and two of whom are royal officeholders.
- There are ordinarily 26 **bishops** of the Church of England. Five of these positions are held *ex officio* by the Archbishops of Canterbury and York and the Bishops of Durham, London, and Winchester. The remaining positions are filled by seniority.

The current membership is summarized in Table 1.

**Table 1. Membership of the House of Lords, as of 5 June 2011**

	Life Peers	Hereditary Peers	Bishops	Total	% of total
Conservative	170	47		217	27.5
Labour	239	4		243	30.1
Liberal Democrat	88	4		92	11.7
Crossbench	152	31		183	23.2
Bishops			24	24	3.0
Others*	27	2		29	3.7
<b>Total</b>	<b>676</b>	<b>88</b>	<b>24</b>	<b>788</b>	<b>100.0</b>

\*The 'others' include fourteen partisan members (4 UUP, 4 DUP, 2 UKIP, 1 Plaid Cymru, 2 Independent Labour, and 1 Independent Conservative), and fifteen unaffiliated members.

Source: "Lords by type and party of peerage", available at [www.parliament.uk](http://www.parliament.uk), accessed 23 June 2011.

As Table 1 shows, Labour is currently the largest party in the House of Lords. This situation is historically exceptional: Labour had never been the largest party before 2005.<sup>15</sup> The change has arisen partly from the removal of most of the hereditary peers (see p. 15) and partly from the large number of life peers created under Tony Blair.

The Coalition Agreement between the Conservatives and the Liberal Democrats states that "Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election."<sup>16</sup> Partly in pursuit of

this objective, an unprecedented number of new peers have been created since the May 2010 election: 117 within twelve months.<sup>17</sup> As Table 2 shows, this is a much faster rate of creation than at any other time since the introduction of life peerages in 1958. The previous annual peak was 70, in 1997.<sup>18</sup>

**Table 2. Creation of new peers since 1958**

	Number of creations	Annual average		Number of creations	Annual average
Macmillan	90	16	Thatcher	216	18
Douglas-Home	29	26	Major	171	25
Wilson I	143	25	Blair	386	38
Heath	48	12	Brown	34	12
Wilson II	83	38	Cameron	117	117
Callaghan	60	19			

Note: Excludes bishops. Annual averages also exclude law lords.

Sources: Alex Brocklehurst, "Peerage Creations, 1958–2008", House of Lords Library Note, LLN 2008/019, 24 July 2008, p. 11; Lucinda Baer and Alex Brocklehurst, "Peerage Creations since 1997", House of Commons Library Standard Note SN/PC/5867, 17 February 2011, p. 5.

Until 1958, the House of Lords was entirely male. Since that time, women's representation has improved only slowly: only 17.3 per cent of the 1,382 peers created since 1958 have been women.<sup>19</sup> Thirty-seven of the 117 peers created under David Cameron – 31.6 per cent – have been women. Today, women comprise 22 per cent of the total membership of the House of Lords.<sup>20</sup>

### ***Participation in the House of Lords***

The figures for composition above show the number of people who are entitled to sit in the House of Lords. But these figures give a misleading impression of the presence of the different groups in the Lords, as some groups are much more likely to attend than others. In particular, attendance among the cross-benchers is much lower than it is among the peers who take a party whip.

Table 3 (on the following page) therefore provides figures on the average number of peers voting in each division during the last two completed parliamentary sessions, broken down into the party and other groups.

The picture of the House of Lords told in Table 3 is very different from that seen in Table 1. Though the total membership of the House is now approaching 800, the number of lords actually voting in the typical division is just a quarter of that. As regards the partisan division, Labour is by far the largest party in terms of votes cast, while the Conservatives are much closer to the Liberal Democrats. The presence of the crossbenchers is much weaker than the figures for overall composition suggest, while the bishops almost disappear.

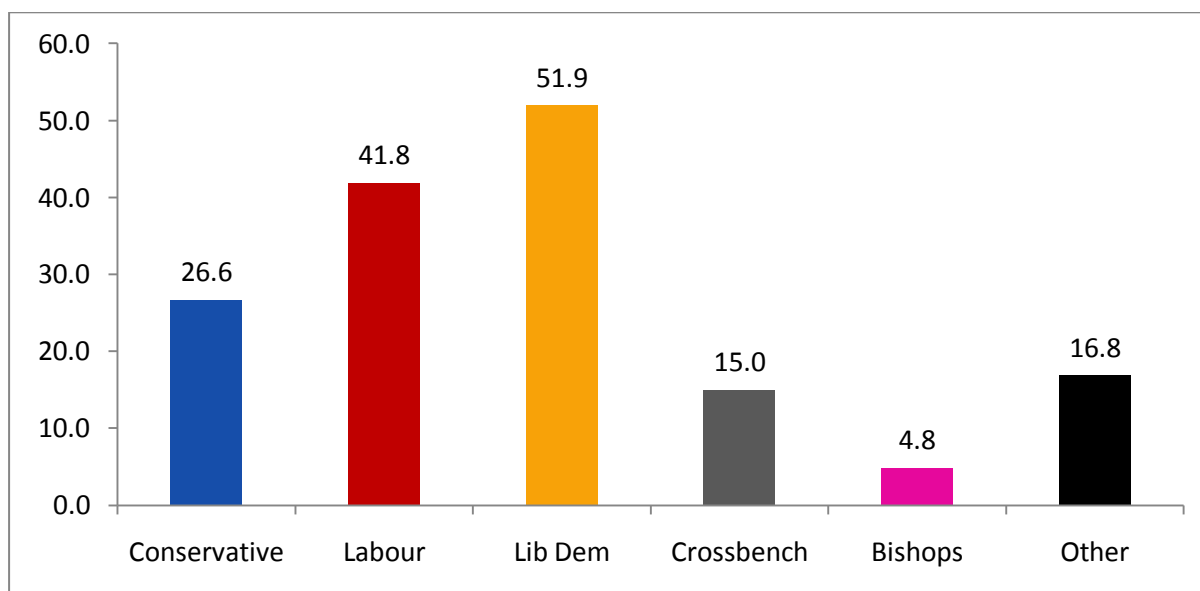
**Table 3. Average number of members voting in each division, 2008–9 and 2009–10**

	2008–09		2009–10	
	Number	% of total	Number	% of total
Conservative	43.3	22.9	37.1	19.1
Labour	88.3	46.8	87.2	44.9
Liberal Democrat	32.6	17.3	37.1	19.1
Crossbench	24.0	12.7	27.3	14.1
Bishops	0.6	0.3	1.2	0.6
Others	5.2	2.8	4.4	2.3
<b>Total</b>	<b>188.8</b>	<b>100.0</b>	<b>194.3</b>	<b>100.0</b>

Source: Calculated from data kindly supplied by the House of Lords Library.

These differences reflect varying rates of voting among the different groups. Figure 2 summarizes these participation rates for 2009–10. Liberal Democrat peers voted on average in just over half the divisions they could have voted in. Labour peers were not far behind. But Conservative peers voted on average in just a quarter of divisions, while crossbenchers voted in fewer than one in six and bishops in fewer than one in twenty.

**Figure 2. Voting rates (percentages) among peers, 2009–10**



Source: Matthew Purvis, “House of Lords: Party Groups Strengths and Voting”, House of Lords Library Note, LLN 2011/022, 21 June 2011, pp. 8–9.

### ***Partisanship in the House of Lords***

It is often said that the House of Lords is more independent-minded than the House of Commons. In part, this is clearly true: the crossbenchers ensure the presence of a large block of independents. But the claim also refers to the peers who take a party whip: it is said that they show greater independence from the whip than do their colleagues in the Commons.

Fully reliable data on this are not available: there is no official record of how Lords (or MPs) are whipped. Two sources do, however, give limited data:

- The House of Lords Library provides statistics in how often peers voted with or against the Government. From these data, we can see that Labour peers taking part in divisions voted with the government 98.1 per cent of the time in 2008–9 and 98.0 per cent of the time in 2009–10.<sup>21</sup> This suggests only a very limited degree of independence. The equivalent figures for the period since the 2010 election are not yet available.
- The website [www.publicwhip.org.uk](http://www.publicwhip.org.uk) provides statistics on how often peers vote against the position taken by the majority of their co-partisans. These show very similar rates of rebellion among peers of all three main parties: 1.43 per cent for Conservatives, 1.46 per cent for Labour peers, and 1.45 per cent for Liberal Democrats. The equivalent rates among MPs are 1.31 per cent for Conservatives, 0.55 per cent for Labour MPs, and 1.70 for Liberal Democrats.<sup>22</sup> It therefore appears that rates of rebellion are slightly higher among peers than among MPs, but still, on average very low. Caution is required, however, as these numbers may be misleading in several ways. Notably, the figures for peers are artificially deflated by the large number of peers who never vote at all.

Such imperfect evidence as we have suggests that peers are, indeed, slightly more independent of the party whips in their voting habits than are MPs. But the differences are not large: the whip is the overwhelming determinant of votes among party peers, as it is among MPs.



## Lords Reforms since 1900

The House of Lords at the start of the twentieth century was an overwhelmingly aristocratic and, at least in principle, powerful institution:

- The composition of the House was virtually the same as it had been for centuries, comprising the hereditary peers and 26 senior bishops of the Church of England. The only change had been the limited introduction of law lords in 1876.
- Except in respect of tax and spending, its legislative powers were equal to those of the House of Commons.
- With regard to tax and spending, it could not initiate or amend bills, though it retained, at least in principle, the power to reject the government's proposals outright.

Significant changes to the powers and composition of the Lords have taken place since then:

- **Parliament Act 1911.** Following the stand-off brought about when the Lords vetoed Lloyd George's "people's budget" of 1909, this Act abolished most of the Lords' veto powers. It allowed the Lords to delay "money bills" (that is, bills dealing solely with taxation or spending) by just one month and most other primary legislation by two years. It preserved the Lords' right to veto secondary legislation.
- **Parliament Act 1949.** The Attlee Labour government was concerned that, notwithstanding the Salisbury convention, the Conservative-dominated Lords could block key parts of its programme. Even by 1947, after several Labour supporters had been raised to the peerage, there were only 46 Labour peers, only fifteen of whom regularly attended.<sup>23</sup> This Act therefore reduced the Lords' delaying power from two years to one.
- **Life Peerages Act of 1958.** This allowed life peers other than law lords to be created for the first time. Over time, this progressively diluted the influence of the hereditary peers: by 1999, just before the reforms of that year, they comprised just under 60 per cent of the total membership of the Lords and rather less of the active membership.<sup>24</sup> It also allowed women to enter the House of Lords for the first time: four of the first fourteen life peers, announced in July 1958, were women.
- **Peerage Act of 1963.** This allowed hereditary peers to renounce their title, so that Viscount Stansgate could become plain Tony Benn again and return to the House of Commons. It also allowed women hereditary peers admittance to the House of Lords.
- **House of Lords Act 1999.** In what was always intended as an interim measure, this reduced the number of hereditary peers sitting in the Lords from 759 to 92.<sup>25</sup> Of these 92, 75 are elected by their own party group (or by the crossbenchers' group), and fifteen by the whole house, while two are holders of hereditary royal offices.
- **Appointments Commission, 2000.** Without primary legislation, the government established an Appointments Commission to oversee all appointments to the Lords and to recommend the individuals who should be appointed as crossbenchers.
- **Constitutional Reform Act 2005.** With effect from 2006, this transferred the Lord Chancellor's role as presiding officer of the House of Lords to the new Lord Speaker. With effect from 2009, it passed the Lords' role as the ultimate court of appeal to the new Supreme Court.

## Failed Reform Proposals since 1918

The Parliament Act of 1911 was never intended to be a final settlement. Its preamble famously said, “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”.<sup>26</sup> Many attempts to enact a comprehensive reform have been made since then, but none has yet succeeded:

- ***Bryce Conference, 1918.*** This was a cross-party committee of Lords and MPs. It proposed a chamber of 327 members, most of whom would be elected by MPs in thirteen regions using the Single Transferable Vote (STV) electoral system.<sup>27</sup> A third of the members would be elected to twelve-year terms every four years. The right of the Lords to veto non-financial bills would be restored and a new mechanism would be introduced to resolve disagreements between the two chambers.<sup>28</sup>

The government eventually put a series of resolutions before the House of Lords in 1922. But these found little favour among their Lordships, as they proposed that the Parliament Act restrictions should be retained. The government therefore dropped the issue. Several further initiatives followed over the ensuing years, but nothing came of them.<sup>29</sup>

- ***Cross-Party Talks, 1948.*** The Attlee government initially hoped to enact the reforms it wanted through cross-party consensus. The parties agreed that the hereditary principle should be ended in favour of a wholly appointed chamber, but not over the length of delay that the second chamber should be able to impose.<sup>30</sup> The government therefore abandoned the idea of comprehensive reform and passed only the Parliament Act 1949, noted above.
- ***Labour’s Failed Reform Attempt, 1966–70.*** The Wilson government published a White Paper on Lords reform in November 1968.<sup>31</sup> This proposed an entirely appointed house. The government of the day would be ensured a small majority among active members taking a party whip and members would be able to retire into “non-voting” status. It also proposed a reduction in the second chamber’s delaying power to six months.

The Conservative opposition refused to cooperate with the government on these proposals and was therefore able to draw out the process of parliamentary scrutiny. Fearing that the time required to secure Lords reform would endanger the rest of its programme, the government eventually abandoned the proposal.<sup>32</sup>

- ***Royal Commission on the House of Lords, 1999–2000.*** Reform discussions since 1999 have been long and tortuous. For those who want to know the details, the House of Lords Library has published a chronology spanning almost a hundred pages.<sup>33</sup> The first step was a Royal Commission established by the Blair government and chaired by Lord Wakeham. Reporting in January 2000, this recommended a house the majority of whose members would be appointed by an Appointments Commission, while the remainder would be elected directly using an open-list system of proportional representation (see p. 52) in regions. The chamber’s formal powers would remain unaltered.<sup>34</sup>

The government indicated broad acceptance of these proposals.<sup>35</sup> Labour’s 2001 election manifesto committed to “completing House of Lords reform”,<sup>36</sup> and the Queen’s Speech following the election announced legislation “to implement the second phase of House of

Lords reform".<sup>37</sup> A White Paper followed in November 2001, laying out reform proposals based largely on the Royal Commission's recommendations.<sup>38</sup>

- **Rejection of All Options: The Votes of February 2003.** The 2001 White paper was widely criticized. The government therefore allowed Parliament free votes on seven options, ranging from a wholly appointed to a wholly elected chamber; the Commons also voted on an eighth option of outright abolition of the second chamber. Infamously, the Commons voted against every one of these options, while the Lords voted by large margins for a wholly appointed chamber and against any element of election.<sup>39</sup> Little further progress was made thereafter.
- **Reforming the House of Lords: Breaking the Deadlock (2005).** Hoping to break this impasse, a report was published in February 2005 by a cross-party group of senior MPs, led by Kenneth Clarke, Robin Cook, Paul Tyler, Tony Wright, and Sir George Young, which set forth a reform package that has had considerable influence on later proposals.<sup>40</sup> It suggested that the Lords' powers should be unchanged, but that the membership should fall to 385. Around 70 per cent of these members (270) would be elected using the Single Transferable Vote (STV) system in regions. A third of these would be elected at the same time as each Commons election, producing staggered terms of twelve to fifteen years. Most of the remaining members would be chosen by an independent Appointments Commission, again to staggered terms. The Prime Minister would be able to appoint up to four members each parliament in order to serve as ministers, and sixteen Church of England bishops would remain.
- **2007 White Paper and Votes.** The government eventually published another White Paper in February 2007, which was followed by a second series of votes in Parliament. This time, the Commons voted for either an 80 per cent or 100 per cent elected chamber, while the Lords voted by huge margins against all but the fully appointed option.<sup>41</sup>
- **2008 White Paper.** Another White Paper – the third since 2001 – followed in July 2008.<sup>42</sup> This was in part the product of cross-party talks and showed substantial areas of agreement among the three main parties. Its proposals, like those of the 2005 all-party group, were similar in most respects to those of the current government. The House of Lords would be largely or wholly elected, though the choice of electoral system was left open. The elected members would serve staggered terms lasting for three Parliaments. If an appointed element were retained for the purpose of retaining crossbenchers, an independent Appointments Commission would be responsible for choosing them.

The White Paper also signalled, however, that the government did not intend to legislate before the next election. It said, "The Government has long held that final proposals for reform would have to be included in a general election manifesto, to ensure that the electorate ultimately decide the form and role of the second chamber."<sup>43</sup> Accordingly, no further significant progress was made.

# The Parties' Evolving Positions on House of Lords Reform

## *Conservatives*

Though it was responsible for the important reforms of 1958 and 1963, the Conservative Party opposed Lords reform from the late 1960s until 1997.<sup>44</sup> But it has proposed a substantially elected upper house at each of the last three general elections. In 2001, it proposed “a stronger House of Lords in the future, including a substantial elected element”. In 2005, it pledged to “seek cross-party agreement for a substantially elected House of Lords”. Its 2010 manifesto said:

We will work to build a consensus for a mainly-elected second chamber to replace the current House of Lords, recognising that an efficient and effective second chamber should play an important role in our democracy and requires both legitimacy and public confidence.<sup>45</sup>

## *Labour*

Labour advocated the abolition of the House of Lords without replacement in 1979 and 1983. In 1992 it supported an elected second chamber. Its 1997 manifesto promised to end “the right of hereditary peers to sit and vote in the House of Lords” as “the first stage in a process of reform to make the House of Lords more democratic and representative”. Beyond this, however, it pledged only a review of how life peers were appointed. The party’s 2001 manifesto backed the Wakeham Commission’s proposals for a largely appointed house, while that of 2005 said, “we will remove the remaining hereditary peers and allow for a free vote on the composition of the House”. In 2010, the party proposed a referendum on the creation of a fully elected second chamber:

We will ensure that the hereditary principle is removed from the House of Lords. Further democratic reform to create a fully elected Second Chamber will then be achieved in stages. At the end of the next Parliament one third of the House of Lords will be elected; a further one third of members will be elected at the general election after that. Until the final stage, the representation of all groups should be maintained in equal proportions to now. We will consult widely on these proposals, and on an open-list proportional representation electoral system for the Second Chamber, before putting them to the people in a referendum.<sup>46</sup>

## *Liberal Democrats*

The Liberal Democrats and their predecessors have long advocated a largely or wholly elected second chamber. In 2001, the proposal was to “replace the House of Lords with a smaller directly elected Senate with representation from the nations and regions of the UK”, while the 2005 manifesto promised “a predominantly elected second chamber”. The party’s 2010 manifesto pledged to “replace the House of Lords with a fully-elected second chamber with considerably fewer members than the current House”.<sup>47</sup>

Thus, by 2010, agreement had emerged across the major parties on a largely or wholly elected chamber retaining the same powers as the current House of Lords. As is clear from the current debate, however, significant opposition exists within each of the parties to this official line.

## The Government's Reform Proposals

The White Paper and draft Bill published by the government in May 2011 propose changes only to the composition of the House of Lords.<sup>48</sup> No changes are envisaged to the chamber's powers. The total size of the chamber would be reduced from the current 788 to a fixed number of 300 full-time members plus smaller numbers of bishops and ministerial appointees. This chamber would encompass the following elements:

- 240 members would be elected by popular vote. Elections would take place at the same time as general elections (unless a general election were to take place within two years of the previous Lords election). Eighty of the members would be elected at each election to serve for three parliaments. Given the Fixed-Term Parliaments Bill, the government therefore envisages that members would serve fifteen-year terms. These terms would be non-renewable. Elections would use the Single Transferable Vote (STV) form of proportional representation. Vacancies would be filled not through by-elections but by going back to the preceding election and identifying the candidate from the departing member's party who, among those not elected, had won most votes.
- Sixty members would be nominated by the independent Appointments Commission. Twenty would be appointed at the time of each election to serve for three parliaments. They would be independent of any party affiliation, thus maintaining the current practice of including "crossbenchers" in the chamber.
- The representation of Church of England bishops would be continued, but the number would be reduced from 26 to twelve. As now, bishops would serve until retirement.
- The Prime Minister would have the right to appoint an unspecified number of "ministerial members". These would retain membership of the House of Lords only so long as they remained government ministers.

All members except the bishops would receive a salary and a pension (whereas now they receive only expenses).

The government proposes a transitional period lasting for three parliaments. One third of the existing members would leave in 2015, 2020, and 2025 (assuming five-year parliaments) as the number of members elected or appointed under the new arrangements progressively built up. The number of bishops would also gradually be cut, from 26, to 21, to sixteen, and finally to twelve. The fully reformed chamber would be in place from 2025.

The government has indicated that it retains an open mind on some of these provisions. In particular:

- It is willing to consider a wholly elected chamber of 300 members, who would still be supplemented by ministerial appointees (though not by bishops).
- It is willing to consider that elections be held using Open-List Proportional Representation (the Labour Party's favoured option), rather than STV.
- It is willing to consider either faster or slower transition arrangements. The faster option is that all but 200 of the current members would be removed in 2015, reduced to 100 in 2020. The slower option is that all current members would remain, if they wished, until 2025.

## Second Chambers around the World

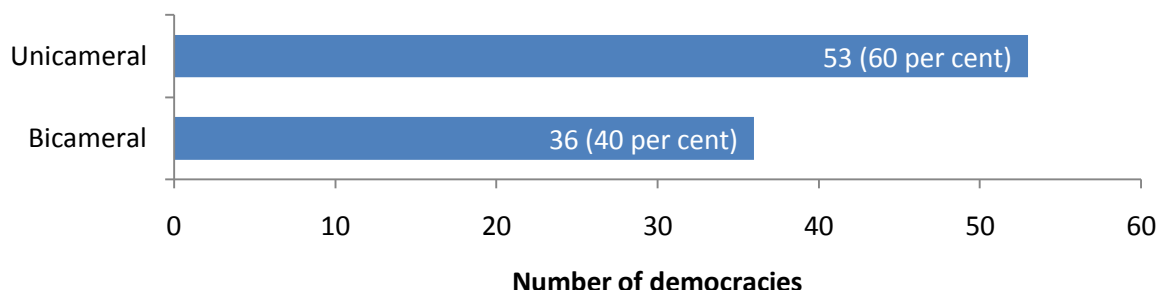
In order to bring perspective to the ongoing debates about House of Lords reform and the options available, it is essential to draw on evidence from around the world. This section summarizes the character of second chambers in all contemporary democracies, while the sections in Parts 2–6 draw on specific cross-national evidence to illuminate aspects of the government’s reform proposals.

### *Bicameralism versus Unicameralism*

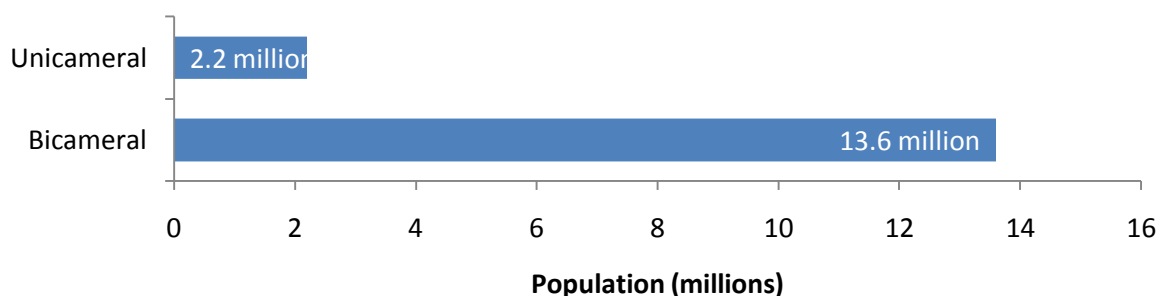
The most fundamental question concerning the second chamber is whether to have one at all: whether to have a bicameral parliament with two chambers or a unicameral parliament with only one. Of the 89 countries around the world rated by Freedom House in 2010 as “free”,<sup>49</sup> 53 (60 per cent) had a unicameral legislature, while 36 (40 per cent) had a bicameral legislature.<sup>50</sup> Thus, the case for having any kind of second chamber is far from being universally accepted around the world.

Bicameralism is, however, the overwhelming choice among larger democracies: of the ten democracies with a population over 50 million, only one (Indonesia) has a unicameral legislature. The median population among countries with unicameral legislatures is a little over 2 million; among bicameral countries, it is over 13 million.<sup>51</sup> The largest of the old democracies with only one parliamentary chamber is Sweden, whose population is less than 10 million.<sup>52</sup>

**Figure 3. Number of unicameral and bicameral democracies**



**Figure 4. Median population of unicameral and bicameral democracies**



Bicameralism is often linked with federalism: Ronald Watts, for example, notes that one of the structural features common to most federations is “representation of distinct regional views within

the federal policy-making institutions, usually provided by the particular form of the federal second chamber".<sup>53</sup> Indeed, of the sixteen democratic federations that Watts identifies, all but two – the micro-states of Micronesia and St Kitts and Nevis – have bicameral legislatures.<sup>54</sup> The link is not absolute, however. In several additional federations – most notably, Canada – the second chamber has no meaningful role in upholding the federal character of the system. And there are 22 bicameral legislatures among the democracies that Watts does not define as federal.<sup>55</sup>

### ***The Composition of Second Chambers***

There are three basic modes of entry into the democratic world's second chambers:

- appointment by the head of state;
- appointment or election by sub-national politicians or other groups;
- direct election by the people.

Two further modes are unique to the UK: inheritance; and entry through ecclesiastical office. Table 4 summarizes the incidence of these modes.

**Table 4. The composition of second chambers in democratic countries**

<b>Appointed by the head of state</b>	<b>Appointed/elected by sub-national politicians or groups</b>	<b>Directly elected by the people</b>	<b>Mixed</b>
Antigua and Barbuda	Austria	Argentina	Belgium
Bahamas	France	Australia	Ireland
Barbados	Germany	Brazil	Spain
Belize	India	Chile	United Kingdom
Canada	Namibia	Czech Republic	
Grenada	Netherlands	Dominican Republic	
Jamaica	Slovenia	Italy	
St Lucia	South Africa	Japan	
Trinidad and Tobago		Mexico	
		Palau	
		Poland	
		Romania	
		Switzerland	
		United States	
		Uruguay	

Sources: Inter-Parliamentary Union Parline Database ([www.ipu.org](http://www.ipu.org)) and national constitutions.

Outside the UK, **appointed** second chambers in democracies are limited to former British colonies:

- The seven Caribbean states all share the same basic model: senators are appointed for the duration of one parliament by the Governor General (in Trinidad, by the President); the majority are appointed on the recommendation of the Prime Minister; the remainder are recommended by the leader of the Opposition and, in some cases, by a range of other actors.
- Belize follows essentially the same pattern, though the Prime Minister now recommends only half of the twelve members.<sup>56</sup>

- In Canada, meanwhile, all appointments are made by the Governor General on the recommendation of the Prime Minister. As Meg Russell notes, “Unlike appointments in Britain there is no tradition in Canada for appointing from outside the governing party, and few independents are appointed.”<sup>57</sup> There is no fixed term, but a retirement age of 75 was introduced in 1965.

The cases where members are **appointed or elected by sub-national politicians or other groups** are quite diverse:

- In Austria, India, Namibia, and the Netherlands, members of the national second chamber are elected by provincial parliaments. In the first three countries, they create an element of regional representation. In the Netherlands, however, the members of the provincial parliaments combine to form a single electoral college, so “the members of the First Chamber in no way represent the various provinces”.<sup>58</sup>
- France also uses indirect election, but the electorate is wider, encompassing local, departmental, and regional councillors, as well as members of the National Assembly.
- In Germany, by contrast, Bundesrat members are direct delegates of the provincial governments. In practice, there are no permanent Bundesrat members: “the seats at each plenary session will be taken by the ministers most relevant to the topic of debate”.<sup>59</sup>
- South Africa’s National Council of Provinces (NCOP), like the Bundesrat, provides a direct link between the provincial and national tiers of government: “the NCOP is not as much a second national House as a House of direct representation of the provinces at national level”.<sup>60</sup> Unlike the Bundesrat, however, the NCOP represents provincial legislatures as well as executives. Members are delegates who receive instructions from the provincial legislatures on how to vote.
- Slovenia, finally, is unique in having a second chamber representing not geographical areas, but rather interest groups. It comprises twenty-two representatives of local interest groups, six of non-commercial activities, four of employers, four of employees, and one each of farmers, craftsmen, tradesmen, and independent professionals.

If bicameralism is to be meaningful, the composition of the second chamber must be different from that of the first. Where both chambers are **directly elected**, such a difference can be achieved by a variety of mechanisms:

- *Different electoral systems.* In six of the fifteen democracies with two directly elected chambers (Argentina, Brazil, the Czech Republic, the Dominican Republic, Poland, and Switzerland), a first chamber elected by proportional representation is complemented by a second chamber elected by some form of majoritarian or mixed system. Australia is the only country to reverse this pattern in the way proposed for the UK, with the majoritarian Alternative Vote system in the lower house and the proportional Single Transferable Vote (STV) system in the Senate. In the remaining eight cases, however, the basic electoral system type is the same in both chambers.
- *Different constituency structures.* Where the electoral system is basically the same, the basis of representation can nevertheless be very different with different constituencies. In the United States, for example, seats in the House of Representatives are distributed according to population – so California has 53 seats, while the smallest seven states have just one seat



each. In the Senate, by contrast, each state has two seats irrespective of size. Uruguay differentiates its chambers by a different route: both are elected by proportional representation, but the lower chamber elects members in nineteen constituencies, while the upper chamber uses a single national constituency.

- *Different terms.* Eight out of the fifteen directly elected second chambers have longer terms than the first chamber, the longest being eight years (in Brazil and Chile). None has a term approaching the fifteen years proposed for the UK. Many second chambers are also differentiated by having staggered terms: seven of the directly elected chambers are elected by halves or thirds (as are the indirectly elected second chambers in France and India).
- *Different eligibility rules.* The minimum age of members is higher in most elected second chambers than in the corresponding first chamber. In Italy, for example, the Senate and the Chamber of Deputies are in most respects very similar, but the minimum age threshold for the former is forty, compared to twenty-five for the latter. Only three democracies have two directly elected chambers with equal age thresholds.
- *Different sizes.* The House of Lords is the only second chamber in the democratic world with more members than the corresponding first chamber. Among directly elected second chambers, all but one are around half the size of the first chamber or smaller. They range in size from thirteen members (Palau) to 321 members (Italy).

The final category of second chambers are those with **mixed** composition. Besides the UK House of Lords, currently mixing hereditary peers, life peers, and bishops, three countries fall into this category: Belgium, Ireland, and Spain. In addition, the Indian and Italian second chambers, though overwhelmingly elected, also have some appointed members.

- The Belgian Senate comprises 40 directly elected members, 21 members indirectly elected by the parliaments of the Flemish, French, and German communities, and ten members who are co-opted by the other Senators.
- The Irish Senate also has three types of member. 43 senators are elected by the members of the Dáil (the lower house), the outgoing Senate, and local councillors. In theory they represent five different vocational groups, but in practice the elections are overwhelmingly partisan. In addition, eleven members are appointed by the Prime Minister and six are elected by the graduates of two of Ireland's universities.
- The Spanish Senate, finally, includes 208 members who are directly elected in the provinces and 56 members who are indirectly elected by the regional parliaments.

Table 5 compares first and second chambers in terms of size, term length, and membership eligibility for all thirty-six bicameral democracies.

**Table 5. Lower and upper houses compared**

	Number of members*		Term (in years)		Min. age of members	
	Lower House	Upper House	Lower House	Upper House	Lower House	Upper House
<b>Appointed chambers</b>						
Antigua and Barbuda	19	17	5	5	21	21
Bahamas	41	16	5	5	21	30
Barbados	30	21	5	5	21	21
Belize	32	13	5	5	18	18
Canada	308	105	4	to age 75	18	30
Grenada	15	13	5	5	18	18
Jamaica	60	21	5	5	21	21
Saint Lucia	18	11	5	5	21	21
Trinidad and Tobago	42	31	5	5	18	25
<b>Chambers appointed or elected by sub-national politicians or groups</b>						
Austria	183	62	5	5 or 6	18	21
France	577	343	5	6	23	30
Germany	598	69	4	varies	18	18
India	545	245	5	6	25	30
Namibia	78	26	5	6	21	21
Netherlands	150	75	4	4	18	18
Slovenia	90	40	4	5	18	18
South Africa	400	90	5	5	18	18
<b>Directly elected chambers</b>						
Argentina	257	72	4	6	25	30
Australia	150	76	3	6	18	18
Brazil	513	81	4	8	21	35
Chile	120	38	4	8	21	35
Czech Republic	200	81	4	6	21	40
Dominican Republic	183	32	4	4	25	25
Italy	630	321	5	5	25	40
Japan	480	242	4	6	25	30
Mexico	500	128	3	6	21	25
Palau	16	13	4	4	25	25
Poland	460	100	4	4	21	30
Romania	334	137	4	4	23	33
Switzerland	200	46	4	4	18	varies
United States	435	100	2	6	25	30
Uruguay	99	31	5	5	25	30
<b>Mixed chambers</b>						
Belgium	150	71	4	4	21	21
Ireland	166	60	5	5	21	21
Spain	350	264	4	4	18	18
UK	650	788	5	life	18	21

\* Except for the UK, these columns show the statutory size of the chamber. In some cases the actual number may be lower or higher at any particular time. The figure for the UK House of Lords is the actual number as at 5 June 2011.

Source: Inter-Parliamentary Union Parline Database: [www.ipu.org](http://www.ipu.org), accessed 29 May 2011.

## ***Part Two***

### ***Bases for Evaluating the Proposals***

Though the government does not propose to change the role of the second chamber, we cannot evaluate its proposals for the composition of that chamber without understanding its intended role. We begin by noting that broad consensus exists regarding most aspects of the appropriate role of the House of Lords, but that there is disagreement in at least one important respect. We then consider the features that may be necessary to allow the chamber to perform its role.

## The Roles of the Second Chamber

Discussion of the second chamber needs to start with the question of what role this chamber is to play in the political system. As Patterson and Mughan suggest, there are two basic ways of conceiving this role: the second chamber can be there to represent parts or aspects of society not otherwise represented; or it can be there to check and review the actions of the main power centre, comprising the government and the first chamber.<sup>61</sup>

### *The Representative Role*

Bicameral systems were originally conceived to represent distinct parts of society: in the UK, for example, the House of Commons represented the knights and burgesses, while the House of Lords represented the nobility and the clergy. Such class-based justifications for bicameralism clearly passed into history long ago.

But some modern second chambers do retain a representative role in providing a distinct voice for states or provinces within the national tier of government. This is clearest in Germany, where the members of the second chamber (the Bundesrat) are members of the provincial governments and are delegated to represent the views of those provincial governments. The notion of territorial representation is present in other federal systems too: in the United States, for example, each state has two Senators irrespective of size; as originally conceived, they represented the interests of the states as distinct from the popular interest found in the House of Representatives.

This distinct representative role plays little part, however, in debates about the House of Lords in the UK. It is sometimes suggested that the second chamber should represent the nations and regions. The Wakeham Commission, for example, suggested that “the reformed second chamber could have an important role in giving this country’s nations and regions a direct voice at Westminster which they currently lack”.<sup>62</sup> But it added, “we do not under present circumstances believe that the representation of the nations and regions should constitute one of the primary roles of the new second chamber in this country”.<sup>63</sup> Furthermore, as the idea of English regional government has slid down the agenda, so too has the notion of regional representation.

Rather, the debate about Lords reform in the UK presumes that it is the Commons that is the primary representative chamber and that the pre-eminence of the Commons that this implies should be preserved.

### *Commons Pre-eminence*

The notion of the House of Lords as legitimately representing a distinct group passed long ago into history. In consequence, as the democratic principle has prevailed, so too has the notion that the Commons is pre-eminent. The Bryce Conference concluded in 1918 that “a Second Chamber ought not to have equal powers with the House of Commons, nor aim at becoming a rival of that assembly”.<sup>64</sup> The conference of party leaders in 1948 agreed that “The Second Chamber should be complementary to and not a rival to the Lower House”.<sup>65</sup> All major proposals since then have maintained the same line. The 2011 White Paper, like all its predecessors, asserts that “the primacy of the House of Commons should be preserved”.<sup>66</sup>

The question of whether House of Commons pre-eminence really should be maintained – or whether a second chamber should be designed to act as its legitimate equal – is an issue that interests some. But it is not a major concern in the current debate and we will not therefore consider it here. We presume in what follows that the role of the second chamber is to remain subordinate to that of the House of Commons.

But we do need to consider what Commons primacy means. To what degree should the House of Commons be supreme? In order to answer this, we need to consider the second chamber's role as a check on the main centre of power.

### ***A Check on the Main Centre of Power***

Several checking roles are identified in the literature on second chambers and in the debates about the House of Lords:

- At its most basic, the second chamber should simply serve as a *forum for debate*: for “full and free discussion of large and important questions” (Bryce Commission, 1918);<sup>67</sup> for “full and free debate on matters of public interest” (White Paper, 1968).<sup>68</sup> Plenary general debates remain an important part of the Lords schedule: in June 2011, topics included the contribution of women in the Special Operations Executive during the Second World War, the sale of government shares in publicly owned banks, and the reform of the House of Lords.
- The Lords also supplements the role of the Commons in *holding ministers to account* through questions and committee inquiries.
- In terms of legislation, the Lords has two general functions. First, it is a *revising* chamber: it scrutinizes proposals, tidying them, identifying flaws, and recommending changes. According to the Wakeham Commission:

Having two legislative chambers facilitates the scrutiny of legislation and improves the quality of legislative drafting. It allows greater flexibility in the legislative timetable, more opportunity for interested parties to press for improvements to draft legislation and more time for second thoughts to develop and be reflected in the final form of legislation.<sup>69</sup>

- In addition to making uncontroversial improvements to legislation, the Lords can also encourage the government and the Commons to think again. The rationale for allowing the Lords to delay legislation for a full year is that it may thereby create space for further debate: as the Bryce Conference put it in 1918, the Lords should be able to interpose “so much delay (and no more) in the passing of a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it”.<sup>70</sup> As the Wakeham Commission puts the same point, the Lords has “the formal power to require those who initiate legislation to justify their proposals to the public and to both Houses of Parliament – if need be for a second time”.<sup>71</sup>
- The Lords has also developed specific functions in the scrutiny of secondary legislation and legislation deriving from the European Union. These are performed largely through the

detailed work of two specialist committees: the Merits of Statutory Instruments Committee and the EU Select Committee.

Thus, in sum, the House of Lords performs functions of *debate, scrutiny, revision, and delay*.

There is again broad agreement that these functions should be maintained under any revised structures. None of the four White Papers published over the past decade has proposed any significant change to the functions of the second chamber. The cross-party group that reported in 2005 concluded:

There has been a large extent of agreement on issues of powers and functions between the different groups that have previously considered Lords reform. We agree that there is no need, at least at this time, for a radical change to what the chamber does.<sup>72</sup>

### ***How strong should the check be?***

There is some ambiguity, however, within this consensus, and this has implications for the question raised above of what Commons primacy means:

- If the House of Lords were a forum merely for debate and uncontroversial revision, the primacy of the Commons would be total. The Commons would logically have the right to accept or reject Lords amendments as it wished and then to pass legislation without delay. This is the function performed by second chambers in, for example, Poland and the Czech Republic.
- But the House of Lords also has a delaying function. It can require the Commons to pause and force the government to restate its case. If this delaying function is accepted – and it has been accepted by all the main parties throughout the recent debates – it implies that the primacy of the Commons is not absolute: the Commons can ultimately get its way, but only after additional, potentially disruptive scrutiny.

The ambiguity arises because politicians and commentators are often unclear on just how great they think the delaying power should be:

- One view is that the appropriate limits of the delaying power are laid down by the Salisbury convention. If a proposal has gone before voters at an election, it can be deemed to have received adequate attention, and the Lords will not therefore use its delaying power against it.
- Another view sees the Salisbury convention as an expedient arising from the democratically indefensible composition of the chamber and, specifically, from the gross under-representation of the governing party in 1945. On this view, a second chamber with the authority to exercise its delaying power more widely would be desirable.

This ambiguity regarding what the role of the House of Lords should be will be important when we analyse the impact of the proposed reforms on the degree to which the chamber is likely to perform that role well.

## How Can the Second Chamber Best Perform Its Role?

In order to fulfil its functions effectively, the second chamber needs appropriate *powers* and an appropriate *composition*.

### ***Powers***

As we have seen, the House of Lords at present has the capacity to delay most primary legislation for one year. It can question ministers, launch committee inquiries, and hold debates. It scrutinizes secondary legislation and has the absolute power – very rarely exercised – to veto it.

There has been some debate over the past decade over whether the Lords should retain the power to veto secondary legislation: the Wakeham Commission and the White Paper that followed it in 2001 argued that replacing the Lords' veto power with a delaying power would facilitate its effective use;<sup>73</sup> but others disagreed with this line,<sup>74</sup> and subsequent White Papers have not repeated it.

Official documents have proposed no other significant reforms to the formal powers to the House of Lords in recent years. The current White Paper proposes no changes at all. There is, however, an important question over the degree to which changing the composition of the Lords – specifically, electing all or most of its members – would change the conventions that currently constrain the chamber from using its powers to the full. We consider this below in the section on the effects of election (pp. 35–8).

### ***Composition***

It has become common for Lords reform discussion papers to list principles of composition that may allow the second chamber to perform its functions effectively. A joint committee of the House of Commons and the House of Lords that reported in 2002, for example, suggested five: legitimacy; representativeness; no domination by any one party; independence; expertise.<sup>75</sup> We suggest that several more should be added to this list.

#### ***Legitimacy***

The most contentious of the qualities in the 2002 list is *legitimacy*. On the one hand, the second chamber needs legitimacy if it is to use its powers effectively to perform its functions: as John Stuart Mill observed as long ago as 1861, a chamber's efficacy "wholly depends on the social support which it can command outside the House".<sup>76</sup> Reasonable people can disagree over what such legitimacy requires. For some, it must be democratic legitimacy, which can be conferred only through election. In the Commons votes on Lords reform in 2007, 42 MPs voted for a wholly elected second chamber and against all other options.<sup>77</sup> One of them, Michael Wills, said:

The right to vote remains the most potent protection of the individual against the powerful. Democracy built on universal suffrage is the foundation of our nation. That principle, for which so many fought so hard and for so long, needs to be enshrined—not put aside.<sup>78</sup>

For others, however, legitimacy can come from other sources. Speaking in the Lords in December 2010, Lord Faulkner said, "The legitimacy of an assembly can be achieved in several ways. Elections

are certainly one route but they are not the only one.”<sup>79</sup> Lord Stewartby pointed out that judges, though they have a significant influence upon the law, gain legitimacy from sources other than election.<sup>80</sup> In a Lords debate on the government’s reform proposals on 21 June 2011, Lord Lawson made the same point in relation to the Monetary Policy Committee of the Bank of England.<sup>81</sup>

This position is certainly compatible with the role of the House of Lords as a revising chamber. It may also be compatible with the Lords’ delaying power. But if that delaying power is to be great, it might be argued that the legitimacy of election is required. Thus, all agree that legitimacy is necessary, but reasonable people can disagree on what should best confer it.

On the other hand, there is also a fear of too much legitimacy: if the House of Lords has equal legitimacy with the House of Commons, it might use its formal powers not merely to scrutinize or delay, but to frustrate the will of the government. This concern is discussed in detail below, in relation to the effects of election (pp. 35–8).

### *Representativeness*

In a democratic country, legitimacy does at least demand *representativeness*. The definition of this term is, of course, hotly contested. Some will argue that we can be represented in an appropriate sense only if we choose those who represent us. Others will say that is not the case. This is a disagreement over fundamentals that cannot be resolved here.

More specifically, the 2002 joint committee worried that peers were overwhelmingly male, white, elderly, and based in London and the South East, and it sought change in all these respects.<sup>82</sup> These concerns have been widely shared in other official publications.

### *No Party Should Hold an Overall Majority*

The principle that no party should hold an overall majority of seats (unless it has the support of a large majority of voters) is also now broadly agreed. The 1948 conference of party leaders offered the weaker proposal that “The revised constitution of the House of Lords should be such as to secure so far as practicable that a *permanent* majority is not assured for any one political Party”.<sup>83</sup> But by 2005, the cross-party report said, “No party should have a majority in the second chamber”.<sup>84</sup>

Single-party majorities could lead to two contrasting dangers. As the Wakeham Commission put it, “If [the second chamber] were to be controlled by the party of Government it might become nothing more than a rubber stamp. If the main Opposition party were to gain control, it could be used to produce legislative deadlock and so trigger a series of constitutional conflicts.”<sup>85</sup>

### *Independence*

*Independence* in Lords reform debates means independence from party whips: the second chamber should continue to include non-partisans (“crossbenchers”); and the power of party whips over partisan members should be weaker than in the Commons.<sup>86</sup> Inclusion of independents has been a constant across all major reform plans.<sup>87</sup> The Wakeham Commission also emphasized the importance of “independence of judgement” among members who are affiliated to a party.<sup>88</sup>



## *Expertise*

In terms of *expertise*, the House of Lords has long been praised for including, in the words of the 2002 joint committee, “a wide range of people who have achieved distinction in many fields”.<sup>89</sup> This is said to promote more elevated debate and to allow principled concerns a public airing. It was mentioned often in the Lords’ own debates on Lords reform in December 2010 and July 2011. The Marquis of Lothian (the former Conservative MP Michael Ancram), for example, argued, “In securing reform, it is vital that nothing is done that would reduce the breadth and depth of experience and expertise that epitomise this House.”<sup>90</sup>

There are, however, some who disagree. The Labour MP Michael Wills observed:

Distinction in one sphere of public life is not axiomatically a qualification to pronounce with authority, or contribute usefully, to debate on every issue that comes before a legislature. Experience and status do not always generate wisdom. They can also generate rigidity and self-righteousness. Of course all legislation and legislators benefit from guidance and advice from experts, but nothing has ever prevented members of either House from availing themselves of such advice as they need it. There is no need to compromise the precious principle of democracy in order to be able to do that.<sup>91</sup>

The SNP MP Pete Wishart went further, arguing that support for “expertise” in the Lords showed an anachronistic deference: “This belief that we should expect our betters to help us legislate suggests a throwback to a pre-democratic age, and it should have no place in a modern 21st-century legislature.”<sup>92</sup>

There is thus again legitimate disagreement over whether the emphasis of expertise should be welcomed. Nevertheless, belief in the value of such expertise in the House of Lords is widespread, so we analyse below the evidence on the contribution that the “experts” in fact make.

## *Distinctiveness*

Moving beyond the five principles listed by the 2002 joint committee, we propose that the composition of the House of Lords should be distinctive: specifically, that it should *differ from that of the House of Commons*. This is implied by the points above about independence and non-domination by any single party. If the two chambers are very similar in composition, they will merely duplicate each other, rather than performing distinct roles.<sup>93</sup>

## *Members’ Motivation*

In addition, the members of the second chamber should be *motivated to perform that chamber’s functions*. The second chamber is intended to scrutinize legislation and the actions of government. Its members are not intended to duplicate MPs’ role in serving constituency interests or helping out individual constituents. Nor are they intended to be motivated primarily by the goal of ministerial office. Rather, members need to be driven by a passion for careful scrutiny and debate.

## *General Principles*

The principles discussed so far are rooted in the specific roles performed by the House of Lords. Beyond these, several general principles should also be borne in mind:

- Any reforms to the House of Lords should not impose an excessive additional *cost*. At the same time, we should remember that our governing structures matter. The priority should be to get them right – even if that requires some additional spending – not to run from the danger of unfavourable headlines.
- Any electoral system should be *comprehensible to voters*. That does not require that voters should understand every aspect of the system: many voters, after all, do not understand key aspects of the First Past the Post system that is used to elect the Commons.<sup>94</sup> But it does require that, so far as possible, voters understand how best to vote in order to promote the outcome that they desire.
- Any systems of either election or appointment should be characterized by manifest *integrity*. They should not be open to abuse by those with money, power, or other resources.
- The system should be designed to encourage *connection between citizens and the political system*. The current detachment of voters from the political elite is a matter of widespread concern. The reformed second chamber should, in so far as it is possible, encourage greater linkage. But it should do so without replicating the constituency links maintained through the House of Commons.

### *The Question of Accountability*

One further principle might be advocated, but is open to considerable contestation. This is the principle of the *accountability* of individual members: that representatives can be held to account for what they do after election and can be punished if their performance is found wanting.

Democratic elections normally provide both representativeness and accountability. Initial election ensures that (in at least some sense) office-holders represent the electorate. Subsequent elections offer means by which voters can give a verdict on office-holders' performance and deny them continued tenure if they think that performance inadequate. If, by contrast, office-holders are term-limited, such that they cannot stand for re-election, any mechanisms of accountability become much weaker.

While accountability is normally thought desirable, it can generate problems. In particular, it constrains the independence of representatives, leading them always to think about what might promote their reselection or re-election. Where independence is a high priority – as it is in the House of Lords – the value of accountability can therefore be questioned.

In what follows, we consider the implications of the reform proposals for accountability, but do not presume that accountability is actually desired.

### *Principles that Do Not Apply*

Finally, it is important to note that some of the principles commonly used to judge methods of composing legislative chambers are not relevant in the case of the House of Lords. Notably:

- The desire to ensure that voters can determine the composition of the government is not relevant, since this is decided entirely through the House of Commons.
- For the same reason, the question of whether effective governance is better achieved through single-party or coalition governments is also not relevant.

- Members of the second chamber are not intended to perform constituency service, so the strong constituency link is not a concern. Indeed, there is a case for designing the system deliberately to discourage duplication of MPs' constituency activities.

### ***Criteria for Evaluating the Government's Proposals***

The preceding discussion leads to the following criteria, which will be used to evaluate the government's proposals in the pages that follow. There is legitimate disagreement over some of them, but these are the key criteria that will be used in the debates over the coming months:

- Any reforms should ensure the second chamber has sufficient **legitimacy** to perform its role effectively, but should not encourage the chamber to rival the House of Commons.
- Reforms should enhance the chamber's **representativeness**, having particular regard to the representation of women, ethnic minorities, and the different nations and regions of the UK.
- Reforms should ensure so far as possible that **the composition of the first and second chambers be different**.
- In particular, **no party should have an overall majority in the second chamber**.
- Reforms should encourage **independence** within the second chamber. This may involve the inclusion of independents or measures to promote independent-mindedness among party representatives.
- Reforms should facilitate the inclusion of individuals with **expertise and experience**.
- Members of the second chamber should be **motivated to pursue the second chamber's role** of scrutinizing the government and its policies and debating major national issues. They should not be concerned primarily with pursuing a ministerial career or providing constituency service.
- Reforms should **not impose undue extra cost**.
- Any electoral system should be **comprehensible to voters**.
- Any elections or appointments should be characterized by **integrity**.
- In so far as it is possible, the reformed chamber should **foster stronger ties between voters and their representatives**.
- The implications of the proposals for the **accountability of members** of the second chamber should be considered, but it should not be presumed that accountability is sought.

## ***Part Three***

# ***Fundamentals of Composition***

The government proposes a second chamber that will be largely elected but also partly appointed: if the plans go through, around three quarters of the members will be elected; the remainder will be appointed by the Appointments Commission or the Prime Minister, or will hold membership in their capacity as bishops in the Church of England.

Three principal questions need to be asked about these arrangements:

- What would the effects of electing the majority of the members of the second chamber be? What would be the effects, in particular, on the legitimacy of the chamber and, therefore, its relationship with the House of Commons? Would the second chamber threaten the pre-eminence of the first chamber?
- Is there still a case in a modern democracy for unelected members: that is, for members appointed by the Appointments Commission or the Prime Minister and for *ex officio* representatives of the Church of England?
- Is the hybrid model problematic? Is the coexistence of elected and unelected members likely to generate tensions or difficulties with legitimacy?

The following sections review the evidence that is available on these three questions.

## The Effects of Election

The principal argument against the election of the second chamber has long been that it would threaten the primacy of the House of Commons. As the 1968 White Paper put it:

whatever the system of election and whatever its powers, a directly elected second chamber would inevitably become a rival to the House of Commons. The second chamber would then also possess a mandate from the people, and it would therefore be inclined to make a claim for greater or even equal powers, and in particular to challenge the present control by the Commons of finance and supply.<sup>95</sup>

The Royal Commission chaired by Lord Wakeham, which reported in 2000, agreed:

A second chamber which was wholly or largely directly elected would certainly be authoritative and confident, but the source of its authority could bring it into direct conflict with the House of Commons. There would be a risk that the second chamber would have a different political complexion from the House of Commons. Such a divergence would, whatever the formal distinctions between the chambers in terms of their powers and pre-eminence, be bound to give rise to constitutional conflicts.<sup>96</sup>

And so too did Robin Cook when he was the minister responsible for Lords reform, speaking in the Commons debate on the Blair government's 2001 White Paper:

No written document would be strong enough to withstand the challenge to the supremacy of the Commons by a second Chamber that felt that it had equally good democratic legitimacy. Over time, a wholly elected second Chamber would seek to approach parity with the Commons—perhaps even, as in the case of the United States Senate, to achieve more than parity with the Commons.<sup>97</sup>

In recent weeks, the same view has been expressed, for example, by the former Liberal leader Lord Steel: "if we're going to have an elected second chamber it's going to be in competition with what I think should be the primacy of the House of Commons".<sup>98</sup>

All of these excerpts make the same point: whatever the formal constraints on the power of the second chamber, a directly elected chamber would have the legitimacy to break them – or at least to use all the powers available to it effectively to block the will of the Commons majority. Lord Steel points out that the primary constraints upon the Lords are not the formal constraints of the Parliament Acts, but the informal constraints of convention. An elected chamber could be expected, in his view, to discard these conventions.

Others have taken the opposite view. The Commons Public Administration Select Committee, reporting in 2002, dismissed such fears, arguing that the constraints of the Parliament Acts and the Commons' exclusive power to make or break the government were sufficient guarantees of Commons supremacy.<sup>99</sup> The current White Paper, while acknowledging that the current balance of power between the two chambers depends on convention as well as the Parliament Acts, implies that it will be possible to maintain the existing conventions even in an elected house.<sup>100</sup>

We can bring two sorts of evidence to bear on this issue: evidence from the UK and from experience in other countries.

***Evidence from the UK: The House of Lords since the Reforms of 1999***

If we wish to know how an increase in the legitimacy of the House of Lords might affect how peers choose to exercise their powers, we can look at the impact of the reforms of 1999. Those reforms removed most of the hereditary peers and so replaced a largely hereditary house with one whose members had largely been appointed on personal merit. In so doing, they increased the chamber’s legitimacy: no one defends the hereditary principle today, but many defend the principle of meritocratic appointment.

There is certainly a widespread *belief* that the 1999 reforms have emboldened peers and weakened the conventions that constrain the second chamber’s power. In a wide-ranging review of the impact of the 1999 changes, Meg Russell reports a 2007 survey of peers according to which 86 per cent of them believed that “peers’ confidence to demand policy change” had increased following the reform and that 85 per cent believed the House of Lords had “become more assertive”.<sup>101</sup>

But the evidence in Figure 1 (p. 8) might suggest that this is a misperception: though the House of Lords did indeed defeat the government more often during the Blair/Brown years than it had in the immediately preceding years, similar activism had already been witnessed during the previous Labour government in the 1970s.

Meg Russell’s detailed analysis gives ample evidence that the perception is in fact justified. Most notably, she shows that in those cases where the Commons has refused to accept Lords amendments, the Lords has become more willing to insist upon them. Table 6 reproduces and updates Russell’s evidence. Before 1999, even when Labour was in power, the Lords very rarely insisted upon amendments – and insisted several times on the same bill more rarely still. Since 1999, the Lords have insisted rather more often.

**Table 6. Number of bills per parliament where Lords has insisted on its amendments, 1974–2011**

Parliament	Number of insistences				Total
	1	2	3	4	
1974–79	2	1	1	0	4
1979–83	0	0	0	0	0
1983–87	1	0	0	0	1
1987–92	0	1	0	0	1
1992–97	1	0	0	0	1
1997–2001	3	1	0	1	5
2001–05	12	3	0	2	17
2005–10	10	1	0	2	13
2010–11*	1	0	0	0	1

Sources: Meg Russell, “A Stronger Second Chamber? Assessing the Impact of the House of Lords Reform in 1999 and the Lessons for Bicameralism”, *Political Studies* 58, no. 5 (December 2010), 866–85, at p. 874. Updated from the Constitution Unit’s database of Government Defeats in the House of Lords.

\*Up to 30 June 2011.

Still, the change is not overwhelming: much more often, the House of Lords still agrees to give way. Similarly, in respect of secondary legislation, we see a change, but not a large one: the Lords exercised its veto power over secondary legislation only once in the century before 1999 (in 1968), but has done so twice since then.

### ***International Evidence***

Eight of the fifteen countries with directly elected second chambers listed in Table 5 (p. 24) have presidential systems. In all of them, the two chambers are coequal with respect to legislation. So too are the two chambers in the hybrid Swiss political system. These cases have only limited lessons for the UK.

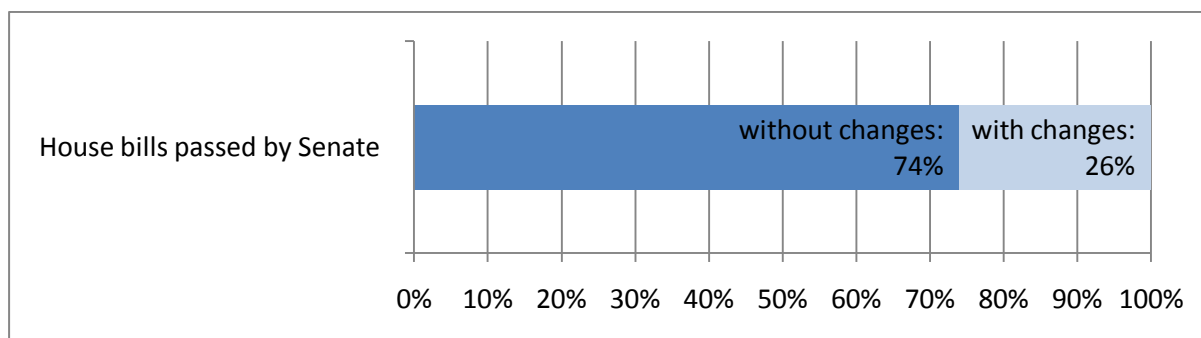
The remaining six countries have parliamentary systems, as in the UK. The powers of the second chambers in these countries cover the full range of possibilities. The Czech and Polish Senates are very limited: they can reject or amend bills, but these decisions can immediately be overridden by simple majority in the lower chamber.<sup>102</sup> The Japanese second chamber is stronger: it can be overridden only with a two-thirds majority in the first chamber.<sup>103</sup> The Australian second chamber is, at least on paper, stronger still: except in financial matters, it is essentially coequal with the lower house. Its veto can be overcome only through a cumbersome process involving a special election and a joint sitting of the two chambers – a mechanism so disruptive that it has only ever been used once.<sup>104</sup> The Romanian and Italian Senates, finally, are fully coequal with their lower chambers.<sup>105</sup>

The Czech and Polish cases show that it is possible to combine supremacy of one chamber with election of two. Some in the UK continue to suggest that the election of the House of Lords would inevitably require abandonment of the constraints imposed by the Parliament Acts. Speaking in the Lords debate on Lords reform in December 2010, for example, Lord Lea, referring to the 1911 Act, asked “would that survive an elected second Chamber?”, and answered, “I would say it clearly would not. I cannot think of any way in which it would.”<sup>106</sup> But the international evidence does not support this claim.

But what would be the impact of election on the conventions that presently constrain the Lords? The most relevant evidence on this comes from Australia. Despite its considerable formal powers, the Australian Senate is traditionally thought of as a “house of review”,<sup>107</sup> implying that it will not in practice seek to block the government’s programme. The question is, to what degree is this convention of constraint in fact followed, despite the Senate’s strong democratic legitimacy?

There have certainly been some major spats between the House of Representatives and the Senate. Most notable was the constitutional crisis of 1975, when Governor General Sir John Kerr dismissed the government of Gough Whitlam because of its failure to pass its budget in the opposition-controlled Senate. But such events have been exceptional: indeed, the 1975 crisis is unique in Australian history. The more general pattern is revealed in Figure 5: the Senate passes most of the bills sent to it by the House of Representatives without any amendments at all. Furthermore, most of the amendments that it does pass are backed by the government and immediately accepted when the bill returns to the House.<sup>108</sup> This is despite the fact that the Australian government rarely commands a Senate majority.

**Figure 5. Actions of the Australian Senate, 1996–2007**



Source: Stanley Bach, “Senate Amendments and Legislative Outcomes in Australia, 1996–2007”, *Australian Journal of Political Science* 43, no. 3 (September 2008), p. 407.

None of this is to suggest that the Senate does not sometimes make life difficult for the Australian government. It certainly does, and some prime ministers have complained bitterly as a result: Paul Keating once famously referred to Senators as “unrepresentative swill”.<sup>109</sup> But it does not render Australia ungovernable; in general, it allows the government to pass its programme unimpeded.

The Australian evidence thus shows that a chamber that is legitimated by election can nevertheless abide by conventions that limit the use of its powers. In the following sections, we will discuss various factors (beyond formal powers) that constrain the Senate. Some of these – such as staggered elections (p. 70–72) and the concentration of senior politicians in the lower house (see p. 80–81) – would apply also to the reformed House of Lords. Others – notably the malapportionment of Senate seats (p. 68–9) – would not. For now, we can conclude simply that some degree of conventional constraint is entirely compatible with direct election.

### ***Conclusions from the Evidence***

We cannot be certain how the UK’s second chamber would behave if it were wholly or partly elected. But the evidence suggests the following expectations:

- Greater legitimacy would increase the willingness of the House of Lords to use its powers more fully.
- But there is no reason to think the Lords would seek to exceed its powers or to overturn the Parliament Acts and other formal constraints.
- The Australian experience gives reason to expect that some conventional constraints would remain, because the House of Commons would continue to be the seat of government and, as discussed below, would continue to carry greater democratic legitimacy.

What we should make of these conclusions depends on the degree to which we think the House of Lords should exercise its delaying as well as its revising function. Those who believe the delaying function should be tightly limited will legitimately worry that an elected chamber would use it too often. Those who think that the current House performs the delaying function inadequately will welcome election as an opportunity to enhance it.



## Unelected Members

The government proposes that the reformed second chamber should retain three kinds of unelected member: crossbenchers who will be appointed by the independent Appointments Commission; ministerial members, who will be appointed by the Prime Minister to serve as government ministers and whose membership of the House would last only so long as they remained ministers; and bishops from the Church of England.

For some, appointing members to the legislature is anti-democratic and therefore wrong on principle. But most of the voices that have been heard in debates about House of Lords reform have taken the view that a case for at least some appointments can reasonably be made.

One of the arguments made in favour of including an unelected element is that this would weaken the claim of the second chamber to have democratic legitimacy on a par with that of the House of Commons. No evidence exists that would allow us to assess this argument empirically. But the argument does, nevertheless, make very clear sense.

Beyond this general point, a different case is made for the inclusion of each type of unelected member, and we therefore consider each in turn in the following sections. In addition, some argue that some or all of the partisan peers should continue to be appointed. We therefore consider this option as well at the end.

## Appointed Crossbenchers

The government proposes that 60 of the reformed House's members should be independents ("crossbenchers") chosen by an independent Appointments Commission. This amounts to slightly under 20 per cent of the chamber's total proposed membership. At present, 23 per cent of the members are crossbenchers, of whom 30 per cent are so called "people's peers", having been appointed by the Appointments Commission that was established in 2001. The vast majority of the other crossbenchers were appointed before 2001 by the Prime Minister. The Prime Minister has continued to appoint a small number of crossbenchers since then too.

There is widespread agreement that, if any crossbenchers are to be appointed, they should be chosen by an independent, statutory Appointments Commission: this is a necessary (though perhaps not sufficient) condition for ensuring the integrity of the system. The main questions that arise regarding crossbenchers are twofold:

- Should there be any appointed crossbenchers at all?
- If appointed crossbenchers are accepted in principle, what should be their share of the membership of the second chamber?

### ***Should there be any appointed crossbenchers?***

Two arguments are made for retaining appointed crossbenchers in the reformed House: the desirability of including independents; and the value of expertise.

Meg Russell and Maria Sciara point out that the House of Lords "contains by far the largest group of independent members in any parliament in the world".<sup>110</sup> The presence of such independents may be desirable from several perspectives. A number of speakers in the Lords debate on Lords reform in December 2010 argued that they help differentiate the Lords from the Commons, thereby underpinning the second chamber's distinct role.<sup>111</sup> The Wakeham Commission in 2000 argued that they ensure that, at least some of the time, issues are decided on their merits rather than as a result of party balance:

The fact that the Cross Benchers might hold the "balance of power" would encourage the parties' spokespersons to seek to win any arguments on their merits rather than by appealing to party loyalty or partisan interests. The authority of the second chamber would be reinforced if decisions were taken at least to some extent on the basis of an independent judgement of the merits of each case.<sup>112</sup>

Meg Russell and Maria Sciara make a further point: that the strong role of independents fits with the mood of voters:

Although a product of history, the presence of so many independent members is curiously fitting to our political times. With party membership and voter loyalty declining, there is renewed interest in how to maintain an independent element in parliament.<sup>113</sup>

The expertise and experience available within the current House of Lords is almost universally lauded. As the Wakeham Commission reported:

One of the characteristics of the present House of Lords which was widely applauded during our consultation exercise was that it contains a substantial proportion of people who are not professional politicians, who have experience in a number of different walks of life and who can bring a considerable range of expertise to bear on issues of public concern.<sup>114</sup>

The discussion of electoral systems below (p. 58–9) will consider the degree to which independents might find a way into the House even if it were wholly elected. There is good reason to think that some independents – perhaps even a significant proportion – would be elected. Equally, however, it is clear that no democratic electoral system can *guarantee* the presence of independents.

The main counterargument to the claim that the Lords benefits from the expertise and experience of crossbenchers is that most crossbenchers in fact very rarely turn up. Russell and Sciara find that crossbenchers voted on average in just 12 per cent of the divisions they could have voted in between 1999 and 2007, compared to 53 per cent of divisions among Labour members, 47 per cent for Liberal Democrat members, and 32 per cent for Conservative members.<sup>115</sup> This low turnout partly reflected very low levels of voting among the Law Lords. But even among those who had been appointed by the Appointments Commission, the turnout rate was only 15 per cent.<sup>116</sup> These “people’s peers” include some very active members – not least Baroness D’Souza, the convenor of the crossbenchers. But some of the most eminent are notable by their absence: Lord Browne, the former chief executive of BP, has voted just six times since his appointment in 2001; the psychologist Baroness Greenfield and the climate change economist Lord Stern have participated in only around 1 per cent of the votes they could have taken part in. Between them, these three have spoken just five times in the Lords since the 2010 election, while five of the people’s peers have not spoken at all.<sup>117</sup>

But the Appointments Commission has legitimately argued that such figures are open to misinterpretation:

Much has been made of the attendance and voting figures for the Commission’s nominees. The Commission feels that, taken on its own, this is too simplistic a measure of their contribution to the House of Lords. As the Commission makes clear in its published criteria, it expects those it recommends to contribute to the work of the House. It does not, however, expect its nominees to undertake the same time commitment asked of working peers. The Commission takes the view that its nominees are selected because of particular skills and expertise. Rather than expecting them to attend and vote across the board, it hopes that they will make their expertise available in relevant debates, select committees and legislative scrutiny. While the Commission cannot enforce attendance, it makes clear its expectation to all nominees at interview. Broadly speaking, the Commission believes that its nominees have met this commitment.<sup>118</sup>

Furthermore, in 2009, the Appointments Commission changed its selection criteria, such that it now requires nominees to “make an explicit commitment to devote the time necessary to make an effective contribution to the House of Lords, rather than, as previously, stating that they had ‘the time available’ to do so”.<sup>119</sup> The eight crossbench peers appointed on the Commission’s nomination since then have participated in, on average, 27 per cent of the votes they could have taken part in.

Despite this low attendance level, however, Meg Russell and Maria Sciara conclude that the crossbench peers do make a positive contribution. They rarely change the outcome of votes: between 1999 and 2007, only 7 per cent of votes would have gone the other way had no crossbenchers participated.<sup>120</sup> But they do change the character of debate:

It is often said that frontbench speeches in the chamber, from both government and opposition, are addressed to a large extent towards the Crossbenches—who act ‘like a jury’, sitting in judgement on the arguments made by opposing sides. This is a very different situation to that in the Commons, where leaders rely principally on party loyalty and rhetoric that appeals to their own backbenchers. Though they may not usually vote in great numbers, the presence of a large number of non-party aligned members in the Lords therefore has an important influence on the tone of debate.<sup>121</sup>

It is impossible to measure this perception using hard data. But the evidence supports the proposition that the crossbenchers’ influence is positive.

### ***How many appointed crossbenchers should there be?***

Even if the continued appointment of crossbenchers is accepted, the question may be asked of whether the government has got the proportions right: is the 20 per cent share that is proposed appropriate, or is it too high or too low?

It is not clear on what basis this question could be answered. It can be said, however, that the 20 per cent figure is not new. The Wakeham Commission proposed in 2000 that “at least 20 per cent of the members of the second chamber [should not be] affiliated to one of the major parties”,<sup>122</sup> as did the cross-party group that reported in 2005.<sup>123</sup> The Public Administration Select committee proposed a figure of 20 per cent in 2002.<sup>124</sup> The 2008 White Paper proposed that, if an elected element were to be retained, it should comprise 20 per cent of the chamber and be constituted entirely by crossbenchers.<sup>125</sup>

We can also compare the 20 per cent proposal to the current situation. As Table 1 on p. 11 shows, 23 per cent of current members of the House of Lords are crossbenchers. It therefore appears that the proposals would cut the guaranteed representation of independent voices. It should be remembered, however, that participation among crossbenchers is lower than that of party members. As Table 3 on p. 13 showed, only 14 per cent of the peers participating in the average vote in the 2009–10 session were crossbenchers. If one implication of the creation of a full-time, paid second chamber would be a rough equalization of participation rates among the various groups (see below, p. 78–9), the crossbenchers would make up a larger proportion of those participating in Lords business under the government’s proposals than at present.

## Ministerial Appointments

Prime Ministers have long used their right to nominate peers in order to appoint non-parliamentarians as government ministers. Recent examples are given in Box 2, below. In order to accommodate this possibility, the government's White Paper and draft Bill propose that the Prime Minister should be able to appoint "ministerial members" whose positions in the House of Lords will last only so long as they remain government ministers. Similar proposals have been made before: the government consultation paper of 2003 proposed that the Prime Minister be able to make five such appointments per parliament, while the 2005 cross-party report suggested four.<sup>126</sup> The 2008 White Paper asked for views on the subject.<sup>127</sup>

The current proposals differ from earlier ideas in two ways, however: first, they include no cap on the number of appointments that the Prime Minister can make; second, those who are appointed will serve only so long as they retain ministerial office. The former difference raises questions over whether the mechanism might be used to excess. The latter limits this concern, as those appointed by this route will not accumulate over time.

Nevertheless, at one time during the Brown government, nine of the ministers who had been appointed from outside Parliament were serving concurrently.<sup>128</sup> Such numbers could materially affect the balance of a chamber of 300 members. There is therefore a strong case for returning to the question of whether a limit should be introduced.

### Box 2. Ministerial Appointees since 2007

Gordon Brown came to office in 1997 promising a "government of all the talents". He immediately appointed five prominent non-parliamentarians to his government, granting them peerages in order to satisfy the convention that all ministers should be members of one or other house. These five were:

- Mark (Lord) Malloch-Brown, former Deputy Secretary General of the United Nations, who became Minister of State for Africa, Asia, and the UN;
- Alan (Lord) West, former First Sea Lord, who became Security Minister;
- Digby (Lord) Jones, former Director General of the CBI, who became Trade Minister;
- Shriti (Baroness) Vadera, an investment banker, who initially became a minister in the Department for International Development before moving to other roles.
- Ara (Lord) Darzi, a surgeon, who became a Health minister.

Gordon Brown made five further such appointments during his premiership. Some controversy was caused by the short-lived nature of some of these appointments: Lord Jones resigned from the government after only fifteen months; of the original five, only Lord West survived to May 2010.

The present government contains two external appointees:

- Jonathan (Lord) Hill, a government advisor during the Thatcher and Major years, who was appointed as a minister in the Department for Education
- James (Lord) Sassoon, a banking expert, who became a Treasury minister.

## Bishops

The UK is unique among democracies in granting a guaranteed place to a faith group in its legislature. The only other chamber in a democratic country that comes anywhere close is the Belize Senate, one of whose twelve members is appointed by the President “with the advice of the Belize Council of Churches and Evangelical Association of Churches”.<sup>129</sup>

The 2011 White Paper says, “The Government proposes that in a fully reformed second chamber which had an appointed element there should continue to be a role for the established Church.”<sup>130</sup> This appears to imply that the government views the established status of the Church of England as giving it a particular right to guaranteed representation. The White Paper of 2007 asserted this explicitly.<sup>131</sup>

There is, however, no basis for saying that establishment requires the continued presence of bishops in the Lords. The Wakeham Commission said, “there is no direct or logical connection between the establishment of the Church of England and the presence of Church of England bishops in the second chamber”.<sup>132</sup> The Church of Scotland is established (though its connections to the state are weaker than those of the Church of England) but has no special representation. Established churches elsewhere – for example, in Greece and much of Scandinavia – likewise have no right to seats in the legislature.

The Wakeham Commission went on to say, however, that removing the bishops “would be likely to raise the whole question of the relationship between Church, State and Monarchy, with unpredictable consequences”.<sup>133</sup> It is presumably to avoid raising this wider debate that the government proposes merely to reduce the number of bishops in proportion to the overall reduction in the size of the House. The 2005 cross-party report was even more explicit in this reasoning:

We have sought to build our proposals on consensus, and whilst there is no consensus on such a major issue we are inclined on balance to leave the principle of religious representation as it is. An attempt to upset the current arrangements could threaten the success of the package as a whole, which would be regrettable as there is so much agreement on other points.<sup>134</sup>

If the position of the Church of England bishops is regarded as anomalous, two questions can be asked. First, what are the possible means of overcoming the anomaly? Second, what are the effects of maintaining the anomaly?

The simplest way to resolve the anomaly would clearly be to end the special representation of the Church of England. This approach has many advocates: it is, for example, the unsurprising position taken by the British Humanist Association.<sup>135</sup> As just noted, however, it may be impracticable, and some would regret the loss of explicitly faith-based perspectives in the legislature. Two principal alternative mechanisms for overcoming the current anomaly have been proposed:

- One is to extend special representation to other faith groups. On this view, faith groups have a particular perspective that is often excluded from the short-termist, self-

interested world of politics. From this perspective, there is no justification for giving one faith group special representation, but guaranteed representation for a range of faith-based voices is desirable. This has long been the position of the Church of England itself, and a range of other faith organizations have expressed similar opinions.<sup>136</sup>

- The second alternative is to ask the Appointments Commission to seek the representation of a range of religious (and perhaps other) perspectives when making nominations. This view was argued by, for example, the Board of Deputies of British Jews in its submission to the Wakeham Commission.<sup>137</sup> The current Appointments Commission “has been asked to consider nominees who would broaden the expertise and experience of the House and reflect the diversity of the people of the UK”.<sup>138</sup> The 2011 draft bill, however, leaves the Appointments Commission entirely free to determine its own selection criteria.

Turning to our second question, even if the present position of the bishops is anomalous, it may be argued that the anomaly is insignificant, as the bishops very rarely make a difference to outcomes. Meg Russell and Maria Sciarra have analysed all 806 whipped votes in the House of Lords between 1999 and 2006 and found that the bishops’ votes changed the results just three times.<sup>139</sup> This is partly because the bishops comprise only a small part of the total membership of the House – currently just 3 per cent. In addition, the bishops very rarely vote: the average turnout among bishops in the period studied by Russell and Sciarra was less than one per division.<sup>140</sup> Figure 2 on p. 13 shows that this has continued to be the case in the most recent years.

Thus, there is room for principled disagreement over religious representation in the Lords, but the practical effects are in any case limited.

## Appointed Partisans

Except for the ministerial members, the 2011 White Paper proposes that appointed members of the second chamber should all be non-partisan. This reflects the votes in the House of Commons in February 2007 in favour of an 80 per cent or 100 per cent elected chamber: in the 80 per cent model, it is assumed that the 20 per cent non-elected component would be there to ensure the continued presence of crossbenchers. This was also the position laid out in the 2008 White Paper.<sup>141</sup>

Some other proposals have retained partisan appointees. For example:

- The Public Administration Select Committee argued in 2002 for a chamber in which 60 per cent of members would be directly elected. Of the remainder, half (20 per cent of the total membership) would be partisan appointees and half non-partisan appointees. The partisan appointees would be nominated by the parties but ultimately selected by the Appointments Commission.<sup>142</sup>
- The Wakeham Commission's proposals would have created a chamber up to 65 per cent of whose members would have been partisan nominees selected by the Appointments Commission.<sup>143</sup>
- Those who argue today for a wholly appointed House typically propose that the non-partisan element be kept around 20 per cent of the total membership. They therefore suggest that partisan appointees should comprise around 80 per cent of the House.<sup>144</sup>

Two main types of argument can be used to defend the inclusion of appointed partisans. One has already been discussed above: that an elected chamber would rival the Commons and should therefore be avoided. We suggested that such fears are often greatly exaggerated.

The second argument is that partisan appointees may add a particular dimension to the membership of the chamber that would otherwise be excluded. The Public Administration Select Committee argued in 2002 that it would be desirable to include both senior politicians who wish to retire from the House of Commons but remain active in politics and experts who are not professional politicians but who do have partisan affiliations. It pointed out:

Not all experts are non-political: to take examples from three recent appointments, Lord Winston, professor of gynaecology (Labour), Lord Wallace of Saltaire, professor of international relations (Liberal Democrat), and Lord Norton of Louth, professor of government (Conservative) are all distinguished experts in their respective fields who take the party whip.<sup>145</sup>

The following points should be borne in mind when evaluating such arguments:

- If politicians wish to retire from the Commons but remain politically active, it is not readily apparent why they cannot run for one more election. They could thereafter serve a fifteen-year term without the burdens of constituency business or electioneering. If appointment is to be defended, a case would need to be made that it is better for party leaders or the Appointments Commission to decide which of these retiring politicians should receive such offices, rather than for voters to do so. But it is not clear what that case could be.



- It is an interesting question whether individuals such as the partisan experts mentioned by the Public Administration Select Committee would be willing to stand for the type of election that is proposed for the House of Lords. That question cannot be answered with any certainty, but such relevant evidence as exists is discussed below at p. 58–61.
- Some of those currently appointed to the Lords are party workers or local councillors. It is not at all apparent why it is necessary that such people be appointed rather than elected.

There is some tendency among opponents of election to use the merits of a few of the current appointed members to justify the continued appointment of all. But this is fallacious reasoning. Many members of the present House of Lords are barely distinguishable from their colleagues in the Commons. If their continued appointment is to be justified, specific and relevant arguments are required, but these have not been heard in the debate to date.

## Hybrid Membership

Our third question concerning the basic composition of the second chamber relates to its proposed hybrid composition. Would the mixing of elected and unelected members generate problems?

The hybridity issue was raised to prominence in 2003 by Tony Blair. The key question, he argued, was, “Do we want an elected House, or do we want an appointed House? I personally think that a hybrid between the two is wrong and will not work.”<sup>146</sup> The purest adherents to this view support either a wholly elected or a wholly appointed House but oppose all intermediate options: thirteen MPs took this course in the Commons votes on Lords reform in 2003;<sup>147</sup> sixty did so in 2007.<sup>148</sup>

The Conservative MP John Maples explained his opposition to a hybrid chamber in 2007:

The proposal that the second Chamber should be 20, 30, 60 or 80 per cent elected is nonsense. Either it is elected, or it is not. ... We do not want two classes of Members, with the press and commentators calculating whether a measure was passed by Tony and David’s cronies, or whether the elected Members were against it. In such a system, some Members would have democratic legitimacy, and some would not.<sup>149</sup>

Are such fears justified? We can glean evidence from two sources: within the UK, several chambers with mixed memberships of one kind or another already exist; internationally, mixed chambers rather closer to the model proposed for the House of Lords can also be found.

### *Evidence from the UK*

The most obvious example of a mixed chamber in the UK is the current House of Lords itself. The House has always combined the Lords Spiritual and Lords Temporal. Between 1876 and 2009 it also included Law Lords (and it still includes retired Law Lords today). The Lords Temporal always included “peers of first creation”, who owed their positions to their own actions, and peers who had inherited their titles from ancestors. Since 1958, they have been supplemented by life peers. And since 2001, the life peers have encompassed those nominated by the Prime Minister (some on the recommendation of other party leaders) and those nominated by the independent Appointments Commission. None of this existing hybridity appears to cause any significant problems.

The Scottish Parliament and Welsh Assembly exhibit hybrid membership of a different type: they contain members elected by two different mechanisms. In both cases, the majority of members are elected by First Past the Post in constituencies, but a significant minority are elected from party lists. This has led to talk of “two classes” of representatives and to some difficulties in relations between the two types. After standing down as Presiding Officer of the Scottish Parliament in 2003, for example, Lord Steel observed that “Quite the most distasteful and irritating part of my job as Presiding Officer was dealing with complaints against list Members’ behaviour from constituency MSPs, Westminster MPs and local authorities.”<sup>150</sup>

But these cases do not accurately model what is proposed for the reformed second chamber. None has the particular mixture of elected and unelected members that is proposed for the House of Lords. In the Scottish case, problems arose, in Lord Steel’s view, because some regional MSPs were

rival candidates for the constituency MSPs' jobs – a situation that would not arise in the proposed second chamber.

Thus, the evidence that is available from the UK does not allow us to draw any firm conclusions in respect of the proposed House of Lords.

### ***International Evidence***

Further evidence comes from hybrid second chambers outside the UK. In particular:

- The Belgian Senate comprises 40 members who are directly elected, 21 who are designated by the Community Parliaments, and ten who are co-opted by the Senate itself.
- The Spanish Senate includes 208 members who are directly elected and 56 who are appointed by the parliaments of the autonomous communities.

In neither of these cases is hybridity an issue. As Professor Carlos Flores Juberías writes, “in the Spanish Senate there are not, and there have never been, any differences between the status of the directly elected members and those who are indirectly elected, neither in their legal status as members of the House, nor in the perception of public opinion regarding their democratic legitimacy”.<sup>151</sup> In Belgium, some tensions arise because the directly elected Senators work full-time in the Senate, while those who are indirectly elected, being also members of the community parliaments, are present only part-time. Otherwise, however, hybridity does not generate concerns.<sup>152</sup>

Again, however, neither of these cases helps much in making predictions for the House of Lords. In neither case do the distinct member types differ much in partisan terms: party loyalty is high among both directly and indirectly elected members, and differences in the partisan balance between the groups are small. Furthermore, the difference between direct and indirect election may be perceived as slight, as voters attach little importance to second chamber elections.

For the House of Lords, by contrast, the differences between the elected and unelected members are intended to be large: the elected members are expected mostly to be partisans, while the appointed members would all be independents. There is a bigger difference between direct election and appointment than there is between direct election and indirect election.

### ***Conclusions***

In this case, therefore, we have no relevant evidence: nothing comparable to the proposed hybrid exists anywhere else. It is possible that elected members would be perceived as more legitimate than appointed members, and that tensions would therefore arise if votes were swung by the latter. Equally, however, it is possible to imagine that the two groups would be seen as having different but equally valid perspectives. We simply cannot know.

## ***Part Four***

# ***The Electoral System***

The government proposes that 80 per cent of the reformed second chamber (excluding the bishops and ministerial members) should be directly elected. The nature of the voting system used to elect these members is crucial in determining the character of the overall chamber.

We begin by considering the options for the core of the electoral system. We then evaluate the government's preferred option of the Single Transferable Vote (STV) system against its principal rivals. Then we turn to a series of aspects of the system of elections that also have an important bearing on the effects that can be expected: the constituencies that are proposed; the terms of office; the procedures for filling vacancies; the design of the ballot paper; and the possibility that members of the second chamber could be recalled by voters.

## The Electoral System: The Alternatives

Electoral systems come in many shapes and sizes and it is not possible to consider them all here.<sup>153</sup> Figure 6 summarizes the main systems that have been mentioned in recent debates about reforming the House of Lords.

**Figure 6. Summary of principal electoral systems**

Majoritarian Systems		Proportional Systems		
First Past the Post	Alternative Vote	Closed-List PR	Open-List PR	Single Transferable Vote
single-member constituencies	single-member constituencies	multi-member constituencies	multi-member constituencies	multi-member constituencies
vote for single candidate	rank candidates by preference	vote for single party	vote for party and candidate	rank candidates by preference

Broadly speaking, we can divide electoral systems into majoritarian and proportional categories (as well as various intermediate types that have not been widely advocated for the House of Lords). Majoritarian systems emphasize the need for candidates to win a majority (whether relative or absolute) in a constituency and generally increase the likelihood that a single party will win a majority of seats nationwide. Proportional systems allocate seats in (rough) proportion to the votes cast, thereby typically allowing greater representation for small parties and making single-party majorities less likely.

### **Majoritarian Systems**

The two majoritarian systems that receive most attention in the UK are First Past the Post and the Alternative Vote.

*First Past the Post* is the system familiar from House of Commons elections. The country is divided into constituencies each electing one MP. Voters can vote for a single candidate. Whoever wins most votes wins the seat. The national result is simply the aggregation of all these local results.

The *Alternative Vote (AV)* is now also familiar from the referendum on the Commons voting system. Single-member constituencies are again used. But voters can rank the candidates in order of preference. Initially only first preferences are counted. If no one passes 50 per cent of these, the bottom candidate is excluded and his or her votes are redistributed according to second preferences. This process continues until a candidate passes 50 per cent (or until only two candidates remain, in which case the one with more votes is elected).

Full analysis of AV is given in the Political Studies Association's previous briefing paper, *The Alternative Vote*.<sup>154</sup>

### ***Proportional Systems Using Party Lists***

Three types of proportional system have been considered in debates about House of Lords reform, and two of these are based upon party lists. All systems of list proportional representation (list PR) share certain core features:

- Representatives are elected not in single-member constituencies, but in regions each of which elects multiple members. There may be a single region covering the whole country, as in Israel, or the country may be divided into multiple regions, as in elections for the British members of the European Parliament or the regional members of the Scottish Parliament and Welsh Assembly.
- Within each region, each party puts forward a list of candidates. Voters can vote for one of these lists. The votes for each list are added up. The seats are then allocated to the parties in proportion to their votes – so that a party winning 40 per cent of the votes will win roughly 40 per cent of the seats, a party on 10 per cent of the votes will win roughly 10 per cent of the seats, and so on. There are several possible formulas that can be used to work out the precise translation of votes into seats.

Beyond this core, list PR systems can incorporate a number of further features. Thresholds can be used to define the minimum share of the votes that a party must win before it can be included in the allocation of seats. Some systems allocate seats both regionally and nationally in order to combine the advantages of local representation and overall proportionality.

For our purposes, the most important distinction is that between closed- and open-list versions of list PR.

- Under *Closed-List Proportional Representation*, the parties determine the order of the candidates on their lists and candidates are elected from the top of the list down. So if a party secures a single seat, this is taken by the first person on the list. If it wins the right to three seats, these are filled by the first three people on the list. Voters thus determine how many of each party's candidates are elected, but not which these candidates are.
- Under *Open-List Proportional Representation*, by contrast, voters can influence the order of the candidates on the party's list by expressing preferences among their favourite party's candidates. The precise details vary between different versions: in some, voters can indicate a preference for just one candidate; in others they can support multiple candidates; in others still, they can rank their party's candidates in order of preference. In fully open-list systems, these personal votes entirely determine the order in which candidates are elected. In semi-open-list systems, the party's preferred order also has some weight.

### ***The Single Transferable Vote (STV)***

The third form of proportional representation – the *Single Transferable Vote (STV)* – is not based on party lists at all. It is essentially a proportional version of the Alternative Vote. The basic structure of the system is as follows:

- As under other proportional systems, the country is divided into multi-member rather than single-member constituencies. In order to maintain manageability, these constituencies are kept fairly small, typically electing three to six members each.
- Parties put up candidates. At least in pure forms of STV, the parties define no formal order among these candidates.
- As under AV, voters rank the candidates in order to preference. They can stick to one party or move from party to party however they please.
- In order to secure victory, a candidate must win a defined proportion (“quota”) of the votes. Under AV, with single-member constituencies, the quota is half the votes: a candidate must get more than half the votes in order to be sure of victory. The logic here is that there cannot be two candidates with more than half the votes, so once one candidate has passed this threshold, we know that she or he cannot be beaten by anyone else. Similarly, in a two-member constituency, candidates must exceed a third of the vote to be sure of victory: it is not possible for three candidates to get more than a third of the vote. In general, the proportion of votes needed is calculated by dividing one by the number one greater than the number of seats to be filled. Candidates must exceed this quota (known as the Droop quota) to be sure of election.
- As under AV, first preference votes are counted first. Any candidates who have passed the quota are declared elected. If, however, no one is elected, the candidate with fewest preferences is eliminated – again as under AV – and her or his votes are added to the piles of the remaining candidates according to the second preferences marked on them.
- STV has one complexity beyond those seen under AV. Under AV, once a candidate has been elected, the counting process ends. Under STV, by contrast, that process must continue until all the seats have been filled. In order to fulfil the principle that everyone’s vote should count equally, it is necessary to reallocate winning candidates’ surplus votes – the votes that they win in addition to those required to pass the quota. Consider a situation in which one candidate (Adrian) gets exactly enough votes to pass the quota once, while another candidate (Beryl) gets exactly double this number. If we didn’t reallocate Beryl’s surplus, her supporters’ votes would have only half the value of Adrian’s. Thus, we take Beryl’s vote pile, subtract the quota from it, and then reallocate the votes that remain according to the lower preferences. There are various ways of doing this, and the details are discussed below, at p. 63–4.

Box 3 on the following page gives an example of how STV works in practice.

### ***STV around the World***

STV in its pure form is used to elect two national parliamentary chambers: the Irish Senate and the single chamber of the Maltese parliament. It was also used between 1949 and 1984 to elect the Australian Senate. The electoral system for the Australian Senate was, however, modified in 1984 such that voters could choose between voting in the usual STV way or simply voting for one of the parties. If voters choose the latter option, their “preferences” are filled in according to that party’s pre-determined ordering. The vast majority of voters (96.1 per cent at the most recent election, in 2010<sup>155</sup>) choose this option, so the system has in effect been changed into one very close to Closed-List PR.

### Box 3. How STV works in practice

The mechanics of STV can sound forbidding when described in the abstract. To see them in practice, we can look at an example from local elections in Scotland, which have used STV since 2007. The table below summarizes the vote counting process in 2007 in the Aberdeenshire town of Turriff.

Candidate	Stage 1	Stage 2			Stages 3 and 4		Stage 5	
	1 <sup>st</sup> prefs	Duncan's 2 <sup>nd</sup> prefs	Transfers from Duncan	Total	Transfers from Raikes and Sheal	Total	Transfers from Strachan	Total
Sandy Duncan (SNP)	1916			1143.0		1143.0		1143.0
Alisan Norrie (Ind)	748	377	152.1	900.1	71.1	971.2	332.5	1303.7
Gary Raikes (BNP)	87	80	32.3	119.3				
Anne Robertson (Lib Dem)	790	391	157.7	947.7	123.6	1071.3	300.7	1372.0
Ann Marie Sheal (Lab)	232	94	37.9	269.9				
Alistair Strachan (Con)	796	213	85.9	881.9	50.3	932.2		
Non-transferable		761	307.0	307.0	144.2	451.2	299.0	750.2
Total	4569	1916	773	4569.0	389.2	4569.0	932.2	4569.0

Three seats were available for election, so the total number of valid votes had to be divided by four to find the quota. 4569 divided by four is 1142.25. Candidates had to exceed this – to win 1143 votes – in order to secure election.

The SNP candidate, Sandy Duncan clearly passed this quota on first preferences and was therefore declared elected. But he had a large surplus of votes: he won 773 votes more than the quota. In order to ensure that each vote had equal value, 773 of his votes were therefore transferred to other candidates according to second preferences. As noted in the text, this can be done in several ways. The method in Scotland is to look at all of Duncan's votes, counting up second preferences, and then scale these down so that the transfers total 773. For example, 377 of Duncan's second preferences went to the independent candidate, Alisan Norrie. 377 as a share of 1916 is the same as 152.1 as a share of 773, so 152.1 votes were transferred to Norrie. The same was done for all the candidates. 761 of Duncan's supporters expressed no second preferences, so these votes were non-transferable.

The remaining candidates' totals were recalculated. Still no one else had reached the quota, so the bottom candidate, Gary Raikes, was eliminated and his votes were transferred according to the next preference marked. Eliminating Raikes means that no votes remain in his pile, so this transfer was done without scaling the numbers down. Transfers from Raikes could not push any remaining candidate over the quota, so the next lowest candidate had also to be eliminated (these steps are shown together in the table. This was the Labour candidate, Ann Marie Sheal.

Still, no one but Duncan had passed the quota, so the lowest candidate at the end of Stage 4 – the Conservatives' Alistair Strachan, was eliminated. The transfer of his votes pushed both Alisan Norrie and Anne Robertson over the quota, so both were elected.



STV is also used in some sub-national assemblies. Closest to home, it is used to elect the Northern Ireland Assembly, as well as Northern Ireland’s members of the European Parliament and local councillors in both Northern Ireland and Scotland. In Australia, the pure form of STV is used to elect the lower house of the Tasmanian parliament and the single chamber of the parliament of the Australian Capital Territory. The form of STV allowing list voting is used for the upper houses of four further state parliaments. Information about these is summarized in Table 7.

**Table 7. STV in national and sub-national assemblies around the world**

Chamber	Year STV introduced	No. members	Term of office
<b>Full STV</b>			
Irish Dáil (LH)	1922	166	5 years
Malta	1921	65	5 years
Northern Ireland Assembly	1998	108	4 years
Australian Capital Territory	1995	17	4 years
Tasmania (LH)	1907	25	4 years
<b>STV with the option of voting for party lists</b>			
Australian Senate	1949	76	6 years; ½ elected every 3 years
New South Wales (UH)	1977	42	8 years; ½ elected every 4 years
South Australia (UH)	1981	22	8 years; ½ elected every 4 years
Victoria (UH)	2003	40	4 years
Western Australia (UH)	1989	34	4 years

Sources: Inter-Parliamentary Union Parline Database, at [www.ipu.org](http://www.ipu.org); Elections in Malta, at [www.maltadata.com](http://www.maltadata.com), Colin A. Hughes, “STV in Australia”, in Shaun Bowler and Bernard Grofman (eds.), *Elections in Australia, Ireland, and Malta under the Single Transferable Vote* (Ann Arbor: University of Michigan Press, 2000), pp. 155–177; and the websites of the respective chambers and electoral commissions.

## Evaluating STV against the Alternatives

The coalition agreement negotiated following the 2010 election said the government would “bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation”.<sup>156</sup> The White Paper published in May proposes specifically that STV be used, though it also expresses a willingness to consider the option of Open-List PR.<sup>157</sup>

In this section, we briefly consider the majoritarian options, which have been advocated in the past, but which have now – for good reason – been dropped from serious attention. We then move on to considering STV’s merits against those of the proportional alternatives.

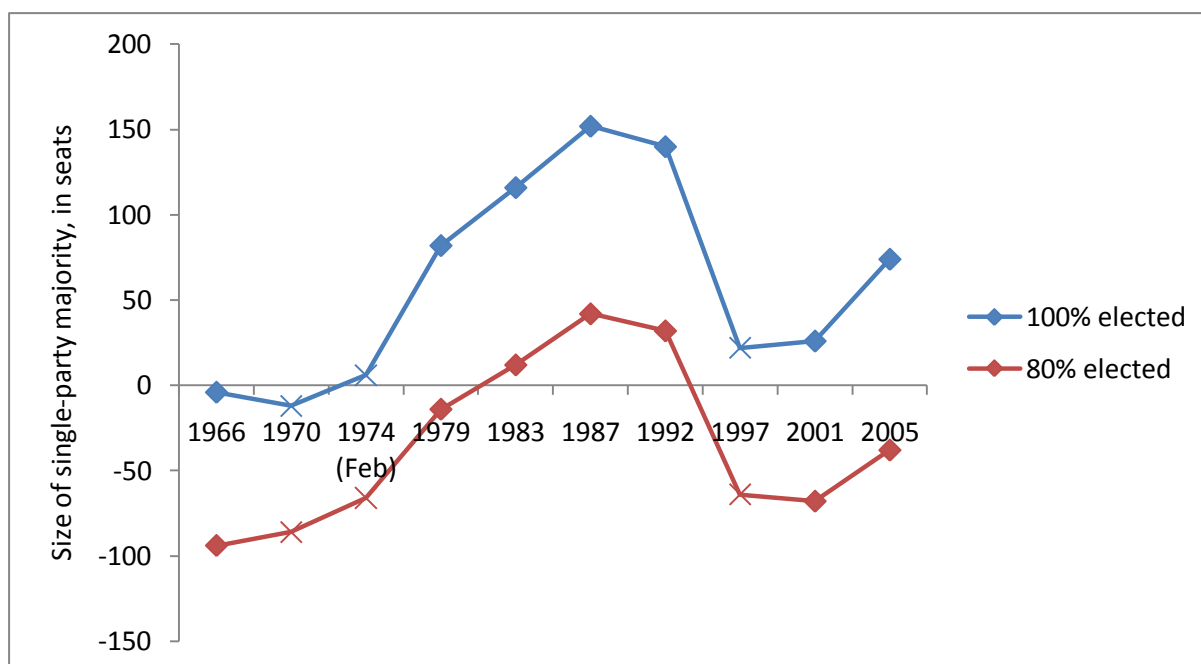
### *Majoritarian Systems and the House of Lords*

Majoritarian electoral systems have occasionally been proposed for the reformed second chamber. In particular, the 2008 White Paper reports that the Conservative Party at that time supported a chamber of 300 members, 240 of whom would be elected in thirds in 80 constituencies using First Past the Post.<sup>158</sup>

In terms of the generally accepted criteria for the character of the House of Lords, however, majoritarian systems are fatally flawed. One of those criteria is that no party should have a majority in the chamber: this is essential if the House is to avoid the twin dangers of being no more than a rubber stamp (if the majority is the same as in the Commons) or being a persistent, unconstructive delaying force (if the majorities in the two chambers are different). But majoritarian systems – whether First Past the Post or the Alternative Vote – tend to generate such majorities. That is particularly so where there are a small number of large constituencies, as it then becomes much harder for small parties to win seats. The Green Party, for example, was able in 2010 to win in Brighton Pavilion, but it would stand very little chance of winning in a constituency covering the whole of East Sussex.

It is true that the proposal to elect only a third of the members at each election would militate somewhat against this effect: the majority winner would be different at different elections. But detailed modelling done for the 2008 White Paper showed, nevertheless, that overall majorities would sometimes emerge. Figure 7 reproduces the key findings. In a wholly elected chamber of 420 members a third of whose members were elected by First Past the Post at each general election, the Ministry of Justice estimated that one or other of the main parties would have held a majority in the second chamber throughout the period from 1974 to 2010. For most of that period (1979–97 under the Conservatives and 2001–10 under Labour), the governing party would have been in the majority in the second chamber. For two parliaments (1974–79 and 1997–2001), the Conservatives would have held majorities in the Lords while forming the opposition in the Commons. The Ministry also simulated results for an 80 per cent elected House. The presence of 84 crossbenchers in this model makes it far harder for any party to win an overall majority. Even with this raised hurdle, however, the Conservatives would have held an absolute majority between 1983 and 1997.

**Figure 7. Simulated single-party majorities under First Past the Post in 80 per cent and 100 per cent elected chambers**



Source: *An Elected Second Chamber: Further Reform of the House of Lords*, Cm. 7438 (July 2008), Annex 2, pp. 92 and 96.

Note: Where points are marked with a diamond, the largest party in the second chamber is the governing party. Where they are marked with a cross, the largest party is the main opposition party.

The Ministry of Justice simulated only one election (that of 2005) using the Alternative Vote. This confirmed what we already know about AV: in most constituencies, the results would have been the same as under First Past the Post; but the Liberal Democrats would have won some more seats overall. It would therefore have been somewhat harder for either of the main parties to win a majority under AV than under First Past the Post. But under the wholly elected model, majorities would still have been very likely between 1979 and 1997 and between 2005 and 2010. The Conservatives may also have achieved majorities under the 80 per cent elected model for some time in the 1980s and 1990s.

Thus, if it is accepted that no party should hold a majority in the second chamber, majoritarian systems – whether First Past the Post or the Alternative Vote – must be rejected.

This conclusion may cause concern among those who oppose proportional systems for the House of Commons: they may worry that adopting proportional representation in the second chamber would threaten the future of First Past the Post in the first chamber. But two considerations should quell such fears:

- There are perfectly good reasons for favouring First Past the Post for the Commons but proportional representation for the Lords. The strongest argument for First Past the Post is that it tends to enhance government accountability by facilitating single-party majorities.

This is a consideration that applies only to the Commons. First Past the Post is also widely favoured because it supports the constituency link; no one has suggested that this function should be replicated in the Lords.

- Australia has maintained a proportional system for its upper house alongside a majoritarian system for its lower house for over 60 years without any significant pressure to extend the proportional principle to the latter. Similarly, seven of the fifteen democracies with two directly elected chambers use a majoritarian or similar system in the upper house in tandem with a proportion system in the lower house.

### ***Comparing the Proportional Systems***

Given the need to avoid single-party majorities, a proportional system is essential. The Ministry of Justice's simulations in 2008 found that neither list PR nor STV would have produced a single-party majority at any point between 1966 and 2005, even if the entire chamber were elected and cross-benchers were thus excluded.<sup>159</sup>

There are no fundamental differences between the three forms of proportional representation in terms of their degree of proportionality – the degree, that is, to which they accurately translate parties' vote shares into shares of seats. Rather, differences in proportionality among the proportional systems are shaped mainly by the *district magnitude* – that is, the number of representatives elected from each constituency – which is discussed below, at p. 67.

But there are important differences between these systems in terms of the degree to which political parties can influence the election process. These differences have important implications, in turn, for several of our criteria relating to the House of Lords, including:

- the number of independents who are likely to be elected;
- the strength of the relationship between members and voters;
- the degree of independence of party representatives from the party line;
- the representation of women and minorities;
- the basis on which candidates compete with each other and, therefore, the sorts of people who are likely to run for and secure election.

At the end of this section, we also look at the question of how much STV elections are likely to cost.

### ***The Election of Independents***

List proportional systems – whether they use open or closed lists – are designed to represent political parties. The STV system, by contrast, is designed to accommodate independents as well as parties. It is possible under list PR to allow independents to run as one-person “lists” or to allow them to combine in lists of independents. In the latter case, however, the candidates cease to be truly independent of each other. In the former case, voters for a popular independent candidate may go badly underrepresented: a candidate who wins enough votes to secure three seats, say, can still occupy only one seat. There will thus be pressure on such a candidate to include followers on their list, in which case, again, they are no longer truly independent. Under STV, by contrast, if an

independent candidate is elected, their surplus votes will be transferred according to their voters' second (or lower) preferences.

In theory, therefore, we should expect the election of genuine independents to be much more likely under STV than under either form of list PR.

This is borne out by the evidence. Across the 89 free democracies in the world today, there are 106 national legislative chambers whose members are wholly or largely elected directly. A total of 197 independents were elected to these chambers at the most recent elections. Excluding five Pacific island states with no political parties, there are 102 independents in 100 chambers. Clearly, therefore, the election of independents is a rare phenomenon: in fact 79 of the 100 chambers contain no independents at all. With regard to specific electoral systems:

- Of the 102 independents, the great majority – 81 – were elected under majoritarian systems of one kind or another.
- By contrast just five were elected under list proportional systems of any kind, despite the fact that these systems are used to elect some or all of the members of almost two thirds of the chambers. Furthermore, all of these five were in Chile, which has a very limited form of PR in which just two members are elected from each constituency.
- STV, as we have seen, is used to elect just three of the chambers: the lower houses in Ireland and Malta and (in modified form) the upper house in Australia. The Maltese parliament contains no independents and the Australian Senate just one. But the Irish Dáil contains fifteen independents from a total membership of 166.<sup>160</sup>

Thus, while STV is far from guaranteeing the election of independents, it is the only proportional system under which significant independent representation is at all likely.

It is, of course, impossible to predict how many independents would in fact be elected to a reformed second chamber in the UK under STV. We do know that voters value the presence of independents in the House of Lords. On the other hand, they are likely to vote for independents only if they know them and respect them. The nature of voters' knowledge of candidates will depend in turn on the size of the constituencies, a point to which we turn shortly (p. 65–9).

### ***The Relationship between Members and Voters***

Concerns have been expressed by some that electing the second chamber by proportional representation would inevitably turn the members of that chamber into anonymous placemen, lacking any individual relationship with the electorate. The example of Britain's MEPs, elected using closed-list PR is sometimes cited. Speaking in the House of Lords in December 2010, for example, Lord Bilimoria asked,

do we want to vanish into anonymity via the route of proportional representation, as has been suggested, in the European mould? As I have said before, how many members of the public know their MEPs? The MEPs are out of touch with their constituencies and their constituents. This is a road to ruin, not the road to reform.<sup>161</sup>

Such fears are entirely reasonable in relation to Closed-List PR. A study by David Farrell and Roger Scully has found that, since this system replaced First Past the Post for electing British MEPs, the volume of those MEPs' constituency work has fallen sharply and MEPs' sense of connection to their constituents has greatly diminished.<sup>162</sup> Similarly, those members of the Scottish Parliament and Welsh Assembly who are elected from party lists are often seen as unaccountable and unrepresentative.<sup>163</sup>

But Closed-List PR, as we have seen, is only one of the forms of proportional representation. Under Open-List PR and STV, whether a candidate is elected depends not only on the popularity of their party, but also on their own personal popularity, so candidates have much more incentive to go out and build up their relationship with voters.

There is some disagreement among political scientists as to whether it is Open-List PR or STV that is most likely to encourage candidate–voter links.<sup>164</sup> This reflects the fact that the relationship can be looked at from two angles:

- the degree to which candidates have an incentive to build their personal reputations;
- the degree to which voters are able to determine who is elected rather than just which parties win how many seats.

From the voters' perspective STV clearly goes further: a vote for a candidate under STV helps only that candidate; under Open-List PR, by contrast, a voter can support a candidate only by supporting his or her party as a whole and might therefore assist the election of candidates he or she does not support. From the candidates' perspective, however, there is a case for saying that the incentive to build relations with voters is greatest under Closed-List PR – specifically, under systems of Closed-List PR in which voters can indicate support for only one of their favoured party's candidates. Under this system, candidates must capture voters' first preferences; under STV, they can also benefit from second and lower preferences.<sup>165</sup>

What all agree on, however, is that both Closed-List PR and STV offer voters substantial capacity to choose among candidates and thus give candidates a strong incentive to build their personal appeal rather than just rely on the popularity of their party.

Yet a proviso is needed here. These mechanisms will operate only if voters do in fact have a range of candidates to choose from and, specifically, if their preferred party puts up more candidates than it is likely to win seats. If parties nominate only as many candidates as they win seats, then voters in fact have no influence over which of the parties' candidates are elected. This is, indeed, precisely what has often happened where STV has been used in local elections in Scotland and in a range of elections in Northern Ireland. In the example used in Box 3 (p. 54), each of the parties stood only one candidate. In general, in the Scottish local elections in 2007, "the major parties clearly calculated that their chances of winning seats would be improved if they nominated only as many candidates in a ward as they thought could win seats."<sup>166</sup> The mechanisms that the government proposes for filling vacancies in the second chamber – though they may appear extremely esoteric – may provide an important corrective here. We discuss this point below, at pp. 73–4.

### ***The Relationship between Parties and Individual Representatives***

Parties have more control over who represents them under Closed-List PR than under either Open-List PR or STV. Candidates have less incentive to develop their individual profile in Closed-List PR than under the alternative forms of proportional representation. It may therefore seem obvious that members of the second chamber would be more controllable by their parties – and hence less independent-minded – under the former system than under either of the latter. Given the clear value in a revising chamber of independent thinking, even among partisan members, this would be undesirable.

Reviewing the literature on this subject, however, John Owens finds the evidence to be mixed: while there is some tendency for party cohesion to be higher under closed-list than other systems, there are also many exceptions: for example, parties in several Latin American countries are much more united than would be expected given the use of open lists.<sup>167</sup>

There are also several reasons for doubting that the expected pattern would necessarily emerge in the reformed House of Lords:

- Closed lists encourage party loyalty in part because they make a legislator's re-election depend upon party rather than popular backing. Given the plan for long, non-renewal terms, however, this mechanism would not apply to the House of Lords.
- It is not clear that parties would be any less likely to choose independent-minded individuals for positions high up their lists than are party leaders to nominate such individuals under the current system of appointments. Indeed, parties might become *more* likely to choose such people: knowing that voters value independence in the second chamber, parties might select individuals with a valued reputation outside politics in order to attract votes to their lists.
- Such individuals might be more likely to accept nomination under a closed- than an open-list or STV system. It is generally assumed that the experts whose presence in the second chamber is widely praised would not wish to put themselves through the indignities of an election campaign.<sup>168</sup> But they would need to do much less personal campaigning under a closed-list than an open-list or STV system.

Thus, though it seems obvious on the surface that Closed-List PR would lead to party domination, this becomes less clear when we dig deeper.

### ***The Representation of Women and Minorities***

There is abundant evidence that the representation of women and ethnic minorities (at least, minorities that are not geographically concentrated) is better under proportional than under majoritarian systems.<sup>169</sup> In addition, it has conventionally been argued that, among proportional systems, those giving voters more choice between individual candidates weaken the representation of women and of minorities. This may be for several reasons:

- First, voters, on this view, carry in their minds an image of an ideal candidate that is predominantly white and male. Even if voters do not consciously hold discriminatory views,

they are more likely to vote for candidates who more closely approximate to this ideal, leading in practice to discrimination against women and minorities.

- Second, systems that limit voter choice among candidates facilitate measures such as gender quotas that are designed to overcome historical underrepresentation. The “zipping” of party lists, where female and male candidates alternate throughout a party’s list, is particularly effective, but only fully compatible with closed-list systems.

On this view, therefore, closed lists are better than either open lists or STV. Some research backs this intuition: for example, one recent study covering 57 countries during the period from 1980 to 2005 finds women’s representation is significantly higher in systems with closed rather than open lists.<sup>170</sup>

Other recent research casts doubt, however, on at least some of this analysis. One study finds no clear effect of list openness once a range of other factors are controlled for.<sup>171</sup> Another finds that open lists have a significant negative effect on women’s representation only in countries where, according to survey evidence, many people think men make better leaders than women – and points out that the UK is not such a country.<sup>172</sup> If the people who select candidates within parties are more biased against women than are ordinary voters, open lists or STV may actually benefit women.<sup>173</sup>

On the other hand, these studies do still find that strong quota systems – such as zipping systems – make a significant difference to women’s representation. Closed lists may no longer benefit women in themselves, but they do have an indirect beneficial effect by facilitating such positive action. Politicians in the UK remain wary of legally binding requirements for gender or minority representation,<sup>174</sup> and such mechanisms do not form part of the current government’s policies. But those who support them have reason also to support closed lists over either open lists or STV.

### ***The Basis of Electoral Competition***

We have found that the relationship between voters and representatives is likely to be stronger with either STV or open lists than with closed lists (though a final judgement on this point depends on the discussion of mechanisms for filling vacancies, below). Several questions can be raised, however, as to the effects this would have on the sorts of person elected.

One point has already been touched upon: individuals who have not been professional politicians may be less willing to stand for election if they must engage in intense personal campaigning in order to win a seat. We return to this point below when looking at terms of office.

A second point is that concerns are often raised that STV and Open-List PR encourage an excessive focus upon servicing local constituents rather than debating and scrutinizing national issues. Under these systems, candidates win election in part by differentiating themselves from their co-partisans. They can do so on policy grounds to only a limited degree, so other grounds must be found, including local constituency activity.

There are at least two reasons for taking this concern seriously:

- Many argue that excessive constituency focus is already a problem in the House of Commons. A recent Hansard Society report found that new MPs are spending on average



59 per cent of their time on constituency business,<sup>175</sup> leaving just 41 per cent of their time for Westminster matters. Other things being equal, election by STV or open lists would be expected to encourage constituency activity even further than First Past the Post, since it requires candidates to compete against their co-partisans as well as candidates from other parties.

- Ireland's experience of STV is often seen as exemplifying the problem. Ireland is well known for the politics of the "parish pump": for excessive parochialism in the activities of national politicians.<sup>176</sup> And STV is often seen as a cause: it is said that STV "generates a political system which is inherently local in outlook".<sup>177</sup>

But there are also reasons to question this:

- Several senior scholars doubt whether STV is a significant cause of parochialism in Irish politics. Michael Gallagher, for example, writes, "STV may cause deputies to be responsive to the voters' wishes, but it does not cause the voters' wishes to concern deputies' 'availability' rather than their legislative ability, ministerial potential or ideological soundness. The causes of this must be found in other aspects of Irish politics and society."<sup>178</sup>
- Similarly, if UK voters want an upper house that focuses on scrutiny of national matters, they can vote for candidates whose focus is the same.
- Much of the incentive to engage in constituency activity comes from the desire for re-election. But re-election will be impossible under the proposals for the reformed House of Lords. We discuss this point further below, at p. 70–72.
- Constituency service is harder the larger is the constituency. The constituencies proposed for the Lords will be much larger than those in the Commons, as discussed below, at p. 65–9. A member of the House of Lords who must cover the whole of Scotland, for example, or the whole of the South West, is unlikely to attempt to concentrate her or his efforts on individual constituents.

These considerations point towards the overall conclusion that undue constituency focus among members of the proposed House of Lords is unlikely.

### ***The Cost of STV***

Considerable debate developed during the referendum on the Alternative Vote as to whether a switch to AV would increase the cost of running elections. The "No" campaign argued that AV, by making vote counting more complicated, would necessitate the introduction of expensive counting machines.

In the case of AV, this argument was demonstrably wrong: most of the elections held around the world under AV use neither voting nor counting machines.

Counting under STV is more complicated than counting under AV. Because there are more places to be filled and hence more candidates, the average number of counts is higher. Furthermore, it is necessary to transfer not only the votes of losing candidates who are eliminated, but also the surplus of winning candidates.

Exactly how complicated the STV count is depends on how these surplus votes are transferred. Suppose the quota is 9,000 votes and one candidate has secured 10,000. This means that the surplus for transfer is 1,000 votes. But which of the 10,000 votes should these be?

- Towards the simple end of the spectrum of possibilities, 1,000 ballot papers are simply drawn at random from the candidate's pile. The next preferences are examined and the ballot papers are redistributed to the remaining candidates accordingly. It is perfectly feasible to use this method in conjunction with manual counting, though it can be time-consuming. The problem is that it introduces an element of chance to the overall result: in a close election, it might be that a different random selection of 1,000 ballot papers would have yielded a different result.
- In order to avoid randomness it is necessary to use what is called the *inclusive Gregory method*. Here, all of our candidate's 10,000 ballot papers are examined and the next preferences are counted up. These totals are then divided by ten, since our candidate's surplus amounts to one tenth of her total vote. For example, suppose that 6,000 of candidate A's voters gave their next preference to candidate B, 3,000 to candidate C, and 1,000 to candidate D. These candidates would then receive, respectively, 600, 300, and 100 of A's surplus of 1,000 votes. The calculations needed here can become extremely complicated: as votes are transferred several times, it is necessary to keep track of multiple fractions of fractions. When STV was introduced for Scottish local government elections in 2007, the inclusive Gregory method was adopted and it was decided, in consequence, that automated counting machines were essential.

The government's draft Bill does not specify which of these methods will be used: this point will need to be clarified in the coming months.

## Constituencies

As we have seen, the government proposes that eighty members of the reformed House of Lords should be elected at each election. In order to achieve proportional representation, these need to be elected in multi-member districts. The government proposes that most districts should elect between five and seven members at each election, with a minimum of three members in Northern Ireland.

The details of these districts are still to be worked out. But it is certain that Scotland, Wales, and Northern Ireland will each form one district. In England, the nine standard regions (used for elections to the European Parliament) will be used as a starting point, but some deviations from them will be essential if the government's parameters are to be met: the North East region is too small, while the North West, London, and the South East are all too big.

Table 8 summarizes one possible way of dividing up the country. It is emphasized that this is offered for illustrative purposes only and that neither the number nor the boundaries of the districts within England have yet been determined.

**Table 8. Illustrative scheme of electoral districts**

District	Electorate (2011)	Number of seats in each electoral round	Number of voters per seat in each round
North of England*	3,473,411	6	578,902
Manchester, Merseyside, and Cheshire	3,750,857	6	625,143
Yorkshire and Humberside	3,848,942	7	549,849
West Midlands	4,115,668	7	587,953
East Midlands	3,361,089	6	560,182
East of England	4,280,707	7	611,530
London North and Central**	3,898,638	7	556,948
Thames and Solent†	3,639,834	6	606,639
South East‡	4,031,860	7	575,980
South West	4,042,475	7	577,496
Scotland	3,928,979	7	561,283
Wales	2,281,596	4	570,399
Northern Ireland	1,190,635	3	396,878
<b>Total</b>	<b>45,844,691</b>	<b>80</b>	<b>573,059</b>

Sources: Calculated from data for the electorate in 2011 published by the Boundary Commission for England, 31 March 2011, available from <http://boundarycommissionforengland.independent.gov.uk/2011/03/electoral-figures-published/>. Data for Scotland, Wales, and Northern Ireland taken from Boundary Commission for England, *Newsletter*, 2/2011 (4 March 2011), p. 2.

\*The North East standard region plus Cumbria and Lancashire.

\*\*All London boroughs except those included in the Thames and Solent or South East regions.

†Buckinghamshire (including Milton Keynes), Oxfordshire, Berkshire, Hampshire, the Isle of Wight, and the London boroughs of Hillingdon, Hounslow, Richmond, and Kingston.

‡ Kent, Surrey, East and West Sussex, and the London boroughs of Bexley, Bromley, Croydon, and Sutton.

### ***Implications of the Proposed Constituency Structure***

The most notable feature of these districts is their size: in terms of population, they are much larger than anything UK voters have been used to, except for elections to the European Parliament. They are also vastly larger than the districts used for any other full STV elections around the world today. Table 9 compares the illustrative House of Lords districts with those in other assemblies elected using STV. The largest districts in assemblies elected by full STV systems – systems that do not give voters the option of voting for a party list – are forty times smaller than those likely to be adopted for the House of Lords. Several of the assemblies that do allow list voting are, however, more comparable: the New South Wales Legislative Council, for example, is elected in a single, state-wide district, with well over four million eligible voters at the most recent election.

**Table 9. Comparison of STV districts around the world**

<b>Chamber</b>	<b>Average district electorate</b>	<b>Average no. seats per district</b>	<b>Average no. voters per seat</b>
<b>Full STV</b>			
UK House of Lords (illustration)	3,526,515	6.2	573,059
Irish Dáil (LH)	74,634	3.9	19,333
Malta	24,258	5	4,852
Northern Ireland Assembly	67,223	6	11,204
Australian Capital Territory	81,157	5.7	14,322
Tasmania (LH)	71,463	5	14,293
<b>STV with the option of voting for party lists</b>			
Australian Senate*	2,286,312	6 at each election	381,052
New South Wales (UH)	4,635,810	21 at each election	220,753
South Australia (UH)	1,093,316	11 at each election	99,393
Victoria (UH)	419,231	5	83,846
Western Australia (UH)	221,733	6	36,956

Sources: Inter-Parliamentary Union Parline Database, at [www.ipu.org](http://www.ipu.org); Elections in Malta, at [www.maltadata.com](http://www.maltadata.com),; and the websites of the respective chambers and electoral commissions.

Note: all figures relate to the most recent election for each chamber, except those for the House of Lords, which are based on 2011 electorate data (see Table 8).

\*Figures for the Australian Senate exclude the two territories, which elect two members each.

We can consider the implications of this constituency structure for three key sets of outcomes:

- the proportionality and the representativeness of election results;
- the character of campaigning and of the candidates who are elected;
- the legitimacy of the second chamber compared to the first.

### ***Proportionality and Representativeness***

The proportionality of election outcomes and the degree to which they are representative of women and minorities is influenced primarily by what political scientists call *district magnitude* – the number of seats filled in each district.

The district magnitude determines the electoral quota: the number of votes that a candidate needs in order to be sure of election (see p. 53 for details). In the state-wide 21-seat district in New South Wales, for example, this quota is 4.5 per cent of the vote, whereas in those Irish constituencies that return just three members the quota is 25 per cent. The constituencies of five, six, or seven members that are proposed for the UK imply quotas of, respectively, one sixth, one seventh, and one eighth of the vote (16.7 per cent, 14.3 per cent, and 12.5 per cent). Thus, the more seats available in the district, the easier it is for small parties to win representation.

It should be noted that the quota is the share of the *final* distribution of votes (after transfer of preferences) needed to *guarantee* election. A candidate can win significantly fewer *first preference* votes and still secure election, if they pick up sufficient lower preferences. And some candidates may be elected without securing the quota even in terms of the final distribution: just as under AV, if some voters choose not to fill in all their preferences, the counting process may end without the quota being met.

Many studies have shown a positive relationship between district magnitude and the election of women and minorities.<sup>179</sup> The more seats are up for election, the more candidates each party will stand, and the harder will it therefore be to justify a ticket full of white men.

### ***The Character of Campaigns and the People Elected***

At least in theory, STV should encourage candidates to seek to differentiate themselves from their co-partisans and build a personal reputation. This would serve the purposes of the House of Lords if it encouraged members to be independent-minded or to campaign on the basis of particular expertise or experience. But it would not aid fulfilment of the Lords' role if it encouraged a heavy emphasis on constituency service.

We noted above that STV has some reputation for generating the less desirable of these consequences: for leading to excessively parochial politics. We also saw, however, that, even in the case of Ireland, the connection between STV and politicians' localist orientation has been questioned.

We now see that the STV constituencies proposed for the House of Lords are far less local than those used in any other full STV system: it is much harder to see how localist politics could arise in constituencies of three or four million voters than in those of, say, fifty thousand. None of the cases in Table 9 are truly comparable to the proposed House of Lords: though some of the chambers in the bottom half of the table have very large districts, their elections operate in effect under closed-list rules, such that personal reputation matters very little.

More relevant evidence may come from earlier cases. The option of casting a list vote in many Australian elections is a relatively recent innovation: it was introduced in 1984 for the Australian

Commonwealth Senate and in 1988 in New South Wales. In both these cases, voters before the reforms in fact overwhelmingly followed their party's preferred order of candidates: personal reputation was already of little value.<sup>180</sup> As a *Sydney Morning Herald* editorial observed in 1943, "no candidate can hope to make himself personally known in so vast an electorate, and in consequence the party machine rules all."<sup>181</sup> This might suggest that such large constituencies will prevent desirable independence as well as undesirable parochialism.

But there is no clear reason for expecting the same outcome in the UK as was seen in past decades in Australia. Much has changed since the *Sydney Morning Herald's* 1943 editorial. Modern means of communication mean that high-profile candidates can build a personal profile among voters without ever meeting them face-to-face. Voters' attachments to political parties are much weaker than in past decades. In relation specifically to the House of Lords, voters have an avowed liking for independence. All of these factors might encourage parties to seek out candidates who already have a strong, independent media profile.

Thus, none of the existing cases give us solid grounds on which to form expectations regarding the sorts of candidate who would be elected to the House of Lords under the proposed rules. We can speculate that parties will seek out strong regional personalities or individuals with professional backgrounds likely to appeal to voters. But this would be speculation only: in truth, we do not know.

### ***The Legitimacy of the Second Chamber***

When discussing the effects of election, we noted that the Australian Senate is constrained in using its full powers, despite being directly elected. One of the sources of this constraint was that the Australian Senate is extremely malapportioned. That is, seats in the Senate are not distributed around the country in proportion to population, with the result that the principle that all votes should have equal value is not respected. As Table 10 shows, each of Australia's six states has twelve Senators (six elected at each ordinary election), irrespective of population, while the territories have two Senators each. That means that, using 2010 figures, each Senator represents fewer than 30,000 eligible voters in Tasmania, but more than 380,000 in New South Wales.<sup>182</sup>

**Table 10. Malapportionment in the Australian Senate**

<b>State/Territory</b>	<b>Eligible voters, 2010</b>	<b>No. Senators</b>	<b>Voters per Senator</b>
New South Wales	4,610,795	12	384,233
Victoria	3,561,873	12	296,823
Queensland	2,719,360	12	226,613
Western Australia	1,362,534	12	113,545
South Australia	1,104,698	12	92,058
Tasmania	358,609	12	29,884
Australian Capital Territory	247,941	2	123,971
Northern Territory	121,059	2	60,530
<b>Total</b>	<b>14,086,869</b>	<b>76</b>	<b>185,354</b>

Source: Australian Electoral Commission, "Election 2010: Enrolment by State", available at [www.aec.gov.au](http://www.aec.gov.au).

As one book on the Australian constitution observes, “Whatever may be the situation *within* each State, the principle of ‘one vote, one value’ is not respected in Senate elections, since each State elects the same number of Senators: how can a chamber be truly democratic, it is said, when a Queenslander’s vote for it is worth four times that of a Victorian, or a Tasmanian’s ten times that of a New South Welshman!”<sup>183</sup>

But this factor would not be present in the UK: representation across the regions is designed to be as equal as possible. Thus, one of the factors that constrain the Australian Senate would not constrain the House of Lords.

## Terms of Office

The terms of office proposed for the House of Lords deviate from previous British practice in three ways:

- they will be long, extending for fifteen years so long as intervals between Commons elections are five years;
- they will be staggered: only one third of the elected seats will be contested at any one time;
- they will be non-renewable: once a member of the Lords has served a full term, she or he will not be able to serve again.

Analogue to all these proposals can be found in other countries, but some aspects remain unusual:

- It is common for second chambers to have longer terms than first chambers: this practice is followed in eight of the fifteen countries where the second chamber is directly elected, as summarized in Table 5 on p. 24. But none has a term as long as fifteen years. The longest legislative term among elected legislative chambers today is eight years.
- Seven of the fifteen directly elected second chambers have staggered terms, as do the indirectly elected chambers in France and India.
- Term limits are fairly common in presidential systems: the US president, for example, can serve only two consecutive terms. Legislative term limits are rarer, but some do exist. Members of both houses of the Mexican legislature are barred from serving consecutive terms.<sup>184</sup> A wave of popular animosity towards career politicians in the United States in the early 1990s led to the adoption of term limits for state legislatures in twenty-one states. These limits generally impose maxima of two to four terms (eight to twelve years).<sup>185</sup>

The intentions behind the government's proposals in this area appear to be two-fold:

- to weaken the second chamber's claim to equal legitimacy with the House of Commons;
- to influence the sorts of people likely to stand for election and the nature of their behaviour once elected.

### ***Effects on Legitimacy***

By holding Lords elections at the same time as Commons elections and by staggering elections such that only a third of members are elected at any one time, the proposals are intended to ensure that the legitimacy claim of the second chamber is always weaker than that of the Commons: at no point would any members of the second chamber have a newer mandate than those in the Commons; at all times, two thirds of those members would have an older mandate.

This reasoning was explicitly mentioned by the 2008 White Paper, which said, "Elections for the second chamber that were staggered over a number of electoral cycles could help ensure continued primacy of the House of Commons, as the latter would always have a more recent mandate than the second chamber taken as a whole."<sup>186</sup>

What is the evidence on whether the staggering of terms in fact weakens a chamber's legitimacy claims? In most of the seven directly elected chambers with staggered terms, there is in fact no



evidence of such an effect at all. The most famous case is the US Senate: there is no perception that the Senate has less right to press its view than the House of Representatives by virtue of its staggered terms. The same applies to the three Latin American chambers with staggered terms: those in Argentina, Brazil, and Chile.<sup>187</sup> Nor is there any such discourse in the Czech Republic or Japan.<sup>188</sup>

Staggered terms are, however, sometimes said to delegitimize Senate activism in Australia. L. F. Crisp, writing in 1965, observed, “Since a Senate majority hostile to the Government of the day is usually made up, as to more than half, of Senators whose return occurred at an election three years earlier than that which yielded the Government and its House majority their mandate, the moral authority behind the Senate majority is open to serious question.”<sup>189</sup> Writing in 1940, Edwin Tyler Brown went even further, saying “there is never any point of time at which the Lower House has not twice as good a claim to represent the people as the Senate has”.<sup>190</sup> John McMillan and co-authors made a similar point in the 1980s.<sup>191</sup> Richard Mulgan cites an example from the 1990s when one of the minor parties justified its decision not to block government proposals in the Senate on the basis that “Senators have less democratic legitimacy than Members of the House of Representatives because they do not face the voters every three years”.<sup>192</sup>

On the other hand, such mentions of the effects of staggered terms in Australia are quite rare: there is no generally accepted view that staggering has any delegitimizing effect.<sup>193</sup> Rather, as noted above, the Senate is constrained by other factors, such as malapportionment in the distribution of seats and the concentration of most prominent politicians in the lower chamber.

So there is in fact very little evidence that staggered terms have the effects that reformers in the UK hope for. On the other hand, there are reasons to think that their effects in the case of the House of Lords might be different:

- First, there is a general belief that staggering will have a delegitimizing effect – and in such matters it is largely the belief that constitutes the reality. The expectation is likely in large part to be self-fulfilling
- Second, as we have seen, the terms proposed for the House of Lords are much longer than those used anywhere else in the democratic world: nowhere else are mandates of more than eight years. Though we cannot know for certain, it appears unlikely that a member of the second chamber elected in 1987, for example, would have had much more claim to legitimacy in interfering with the core manifesto policies of the Blair government between 1997 and 2001 than did those who had in fact been appointed around the same time.

Evidence on this point is therefore limited, but there is nevertheless good reason to think that the long, staggered terms will have the desired effect of limiting the second chamber’s claim to equality with the first.

### ***Effects on the Character of Members and Members’ Behaviour***

The government hopes that the proposed long, non-renewal term will encourage those who are not professional politicians and do not want to be bound by electoral imperatives to stand for office. It also hopes that the non-renewable terms will encourage ongoing independence among those who are elected. As the 2011 White Paper states, “The Government considers that serving a single term,

with no prospect of re-election would enhance the independence of members of the reformed House of Lords.”<sup>194</sup> This echoes the 2008 White Paper produced by the previous government, as well as many earlier documents.<sup>195</sup>

Much research has been done over the last few years into the effects of the term limits introduced in the United States in the 1990s. Some scholars find that members of state legislatures who cannot run for office again do become less focused on appealing to their constituents, though they find no evidence that they use the time freed up to scrutinize legislation more carefully.<sup>196</sup> Others find very few effects at all.<sup>197</sup>

Unfortunately, however, this evidence tells us little about likely effects in the UK. The states with term limits all apply them to both houses, so there is no opportunity for career politicians and non-career politicians to divide between the chambers. None of the term limits applies after one term, so members learn the ropes in the legislature while they are susceptible to re-election pressures. None of the states differentiate between the chambers by giving the upper house a limited, revising role.

All of these factors increase the likelihood that the proposed long, non-renewable term would, at least to some degree, have the effects intended in the House of Lords. It is an interesting question how many of those who are not professional politicians but who currently agree to take a seat under a party label in the Lords would be willing to run for election once. This question is impossible to answer. But it is not unreasonable to expect that a significant number would be willing.

### ***The Question of Accountability***

A non-renewable term provides no mechanism by which members of the House of Lords might be held to account by voters. Furthermore, a non-renewable term of fifteen years provides ample time for voters and representatives to diverge in their views. We should be clear, therefore, that any claim that the proposed system would enhance accountability is simply incorrect: a single election provides representation; but it does not provide accountability.

As we noted above, there is no obviously correct answer to the question of how far accountability of members of the reformed House of Lords should be sought. Greater accountability would certainly tend to limit members’ capacity to speak independently, so holding members to account for the views they express or the votes they cast would bring disadvantages as well as advantages.

On the other hand, it is not clear there is any argument against a different form of accountability: accountability for simply doing the job and acting according to the rules. The question of whether and how members should be held to account for non-attendance or for misconduct is an issue that we address further below when looking at recall (p. 76) and the proposal that members of the chamber should be paid a salary (p. 78–9).

## Filling Vacancies

In this section and the next, we deal with two aspects of the electoral system that, though seeming to be of interest only to election nerds, are actually of considerable importance to how the system would be likely to operate in practice. These are the procedures for filling vacancies and (in the next section) for ordering the names of candidates on the ballot paper.

The government proposes that vacancies for the elected positions in the House of Lords should be filled not through by-elections, but by reference back to the election in which the departing member was elected. As the White Paper explains,

if the departing member stood for election from a particular party, the substitute would be the candidate from the same party in that Electoral District, who, at the point the final seat in that district was awarded, had achieved the highest number of votes (whether first preferences or transferred votes) at the most recent election without gaining a seat.<sup>198</sup>

If the departing member were an independent, meanwhile, the seat would go to whoever had won most votes without being elected at the last election in the district. These substitute members would serve only for the remaining part of the original member's term.

The government explains this provision partly on the basis that by-elections for single positions cannot maintain the principle of proportional representation and partly on grounds of cost: a by-election in a region covering four million voters would be prohibitively expensive.<sup>199</sup> Both of these points are reasonable.

But there is an additional reason for favouring the arrangement proposed. On the face of it, avoiding by-elections reduces voter choice. In fact, however, it is likely to increase it.

The issue here is the number of candidates that the parties put up in elections. As noted above (p. 60), STV gives voters considerable choice if parties put up more candidates than are likely to secure election: it is then the voters who decide which of the party's candidates are victorious. In some countries, that does happen. Most notably, in Malta the main parties routinely put up more candidates than there are seats available: on average, they stand over three times more candidates than actually win.<sup>200</sup> In elections held under STV in both Scotland and Northern Ireland, however, the parties have avoided excess nominations. Denver and Bochel report that in the Scottish local elections of 2007 a party put up as many candidates as there were seats available in just two of the 353 wards.<sup>201</sup> Given such practice, voter choice is much more limited than STV's advocates suggest.

If, however, vacancies are to be filled by the parties' losing candidates at the previous election, the parties have a strong incentive to run more candidates than they expect to win seats. How strong this incentive is depends on how likely it is that vacancies will arise, so we need to do a brief exercise in estimation.

There were 73 Commons by-elections between 1987 and 2010: almost exactly three per year.<sup>202</sup> This implies that we should expect about fifteen by-elections in the House of Commons in a five-year parliament: a by-election in roughly 2.3 per cent of the constituencies. If we assume a similar vacancy rate in the House of Lords, we should therefore expect about 7 per cent of the seats –

sixteen or seventeen seats – to fall vacant before the end of the fifteen year term. We should thus expect more than one vacancy in each of the thirteen regions during each fifteen-year cycle, implying a significant incentive to put up extra candidates who can fill these positions if necessary. In fact, this is very much a minimum estimate for the number of vacancies. In reality, the vacancy rate would almost certainly rise considerably over time across such a long term, so the total number of vacancies would be significantly higher.

It should be noted that such methods are not unusual for filling vacancies under STV. Ireland holds by-elections for the Dáil, as does Scotland for local elections, but other assemblies elected under STV do not. Some form of reference back to the previous election results is used in Malta, the Australian Capital Territory, Tasmania, and Western Australia. Vacancies in the Australian Commonwealth Senate, the upper houses in New South Wales and Victoria, and local councils in Northern Ireland are filled by appointment or co-option. Parties can nominate substitutes for the Northern Ireland Assembly.<sup>203</sup>

## The Order of Names on the Ballot Paper

Provided the parties put up sufficient candidates, STV gives voters considerable choice. Which of the candidates are elected should then ideally depend on the voters' evaluations of those candidates' merits.

But there is a potential flaw here: what if the candidates' chances of success depend, at least in part, upon where they appear on the ballot paper? In fact, there is considerable evidence – from Ireland, Malta, Scotland, and (before the 1984 reforms) Australia – that, if candidates are simply listed in alphabetical order by name, those who come earlier in the alphabet and thus higher on the ballot paper do better.<sup>204</sup> In the Scottish local elections of 2007, Denver and Bochel, looking at cases where a party stood more than one candidate, find that the candidate whose name came first on the ballot paper got more votes than the other 85 per cent of the time.<sup>205</sup> Clearly, surnames have nothing to do with what voters think of the candidates, so such outcomes are unfair towards candidates and unrepresentative of the public's wishes.

But this is an entirely soluble problem. There are four main ways of ordering the names of a party's candidates on the ballot paper: alphabetically; according to the party's preferred order; randomly; or by rotation. Using the parties' preferred order does not sit easily with the idea that it is voters' preferences that should matter. Randomization spreads the unfairness around, but does not remove it. But rotation (or "Robson rotation", as it is sometimes known) provides a solution. Here, multiple versions of the ballot paper are printed using different orderings and these are distributed randomly to the voters. Each candidate is first on some ballot papers, second on some more, and so on. The danger that ballot order affects the result is eliminated.

Robson rotation is used in Tasmania and the Australian Capital Territory, as well as some jurisdictions within the United States. The argument against such rotation might be that it generates additional costs: extra printing costs and some extra administrative costs. In fact, however, modern printing techniques appear to mean that such costs are minimal. The cost of rotation is not an issue in either of the Australian jurisdictions where it is used.<sup>206</sup>

Thus, rotation provides a solution to what would otherwise be a clear flaw in the STV system.

## Recall

Recall procedures allow voters to revoke an elected representative's mandate and demand a fresh election. The most famous case of recall was the replacement of Gray Davis with Arnold Schwarzenegger as Governor of California in 2003. Until that time, recall had barely ever been mentioned in British politics – though it had been a (rarely used) fixture in parts of the United States since the early twentieth century. Even after 2003, the idea did not catch on: the Californian episode was widely portrayed as unedifying in the British press. Following the scandal over MPs' expenses in May 2009, however, the idea suddenly took off. Within days, all three main party leaders had committed to introducing recall procedures in the new parliament.<sup>207</sup>

The coalition agreement maintains this commitment, saying,

We will bring forward early legislation to introduce a power of recall, allowing voters to force a by-election where an MP is found to have engaged in serious wrongdoing and having had a petition calling for a by-election signed by 10% of his or her constituents.<sup>208</sup>

The White Paper on House of Lords reform reaffirms that “The Government is committed to bringing forward legislation to introduce a power to recall MPs where they have engaged in serious wrongdoing.” It continues, “The Government will also consider whether elected members of the reformed House of Lords should be subject to a similar system.”<sup>209</sup>

The principle that voters should be able to remove miscreant MPs or Lords could hardly be contested. There might be a concern that, in the case of members of the House of Lords, recall would be incompatible with non-renewability, the intention of which is partly to discourage pandering to the whims of the electorate. But the government proposes to draw up the rules of recall tightly, such that it would be possible only in cases of wrongdoing, not where voters merely disagreed with a representative's policy decisions.

There are, however, a number of serious practical issues to resolve:

- What exactly would be the definition of wrongdoing and who would decide whether the rules had been breached? Could wrongdoing include persistent non-attendance?
- Does the government intend that the 10 per cent threshold for a petition would apply in the House of Lords as in the House of Commons? If so, the hurdle would be very high: around 400,000 signatures in most constituencies. It is difficult to imagine that sufficiently many voters would be sufficiently exercised by the actions of a member of the second chamber to meet such a threshold.
- If a recall petition did gather sufficient signatures, what would happen then? The normal procedure would be to hold a by-election, but by-elections are not planned for the second chamber. To remove the sitting member on the basis of a petition without reference to the electorate as a whole could allow a minority of voters to subvert the will of a majority. But the government's reasons for avoiding by-elections are sound: they would be very expensive in such large regions; and they could violate the principle of proportionality.

Recall in the House of Lords would thus raise significant difficulties. The government would need to find solutions to these before it could proceed with the idea.

## ***Part Five***

### ***Further Aspects of the Proposals***

Several important aspects of the government's proposals remain to be considered. These concern the presence of ministers in the reformed chamber, the effects of establishing a full-time, paid second chamber, and the process of transition from the current House to the new one. We also look briefly at the processes involved in enacting reform.

## A Full-Time, Salaried Chamber

At present, members of the House of Lords are unpaid, though they do receive allowances for the days on which they attend the House. It is clearly only in an unpaid chamber that the very low rates of attendance among many members could be thought acceptable. The government proposes to change this: the House of Lords will become a full-time, salaried chamber, just like the House of Commons.

Perhaps the most obvious question raised by this change is its cost: how much additional public expenditure would the government's proposals entail? But there are also important implications for the sorts of person likely to seek membership of the House. And the question should be raised of whether the salary would be paid irrespective of attendance levels. We consider these three points in turn.

### *The Cost of the Proposals*

As just noted, peers are not currently paid, but can claim allowances. As a result of changes that came into effect in October 2010, they can claim a fixed rate of £300 for each day they attend the House, plus travel expenses if they live outside Greater London.<sup>210</sup> This fixed, non-taxable allowance is intended to cover overnight and subsistence costs as well as secretarial or research support. Thus:

- The average number of sitting days per year between 2005 and 2010 was 143. Under the new allowances scheme, therefore, a peer who attended every sitting could receive a total payment of £42,900 a year.
- The average daily attendance at the House between 2005 and 2010 was 406 peers. If each of these claimed the full allowance (though they are allowed to opt for the half-rate of £150 if they wish), the total cost across an average year of 143 sitting days would be £17.4 million.

The government proposes that members of the reformed second chamber (except the bishops) should receive both a salary and expenses. Specifically:

- It proposes that the salary should be less than that of MPs (currently £65,738) but more than that of members of devolved assemblies (of whom members of the Scottish Parliament currently receive the highest salary, of £57,520).<sup>211</sup> If we assume a salary of £60,000 for 300 members, the cost would be £18 million.
- Members of the House of Lords would receive allowances, but the White Paper gives no details on their extent. If members are to work full-time, they will presumably need more staff than at present. Equally, however, they will not be expected to carry out constituency work, so their staffing needs will be much lower than MPs'.
- Lords members would also, for the first time, receive pensions. Details are again to be worked out.
- Despite the reduced size of the House, the move to a full-time chamber would generate extra pressures upon accommodation and services such as the House of Lords Library.

It is thus clear that the reformed chamber would cost more than the current chamber. It is impossible to calculate from the information available how great the additional cost would be. Still,



the change should not be exaggerated. The total cost of the House of Lords in 2009–10 was £111.7 million,<sup>212</sup> while that of the House of Commons was £445.8 million.<sup>213</sup> The Lords would remain considerably cheaper than the Commons under the proposed changes. Many may think this expenditure worth while if it delivers a more democratic and effective political system.

### ***Effects on the Character of Members***

The government proposes that members of the House of Lords should become “full time Parliamentarians”.<sup>214</sup> Yet it also wants the chamber, as at present, to contain individuals who are not professional politicians and who retain close contact with their areas of outside expertise. It must be asked whether these goals are compatible.

Unfortunately, we have very little evidence to go on in answering this: no comparable arrangements exist anywhere in the world.

As we noted above, the House of Lords Appointments Commission has since 2009 required its nominees to “make an explicit commitment to devote the time necessary to make an effective contribution to the House of Lords”,<sup>215</sup> yet the eight peers it has nominated since then have participated in only 27 per cent of the votes they could have taken part in. This may suggest that it is simply not possible to find the people of the calibre sought who are willing or able to devote the bulk of their time to Lords business.

On the other hand, the Appointments Commission also continues explicitly to state that it does not expect its nominees to work full-time in the House.<sup>216</sup> In addition, the introduction of salaries would allow some who cannot currently give up their other jobs to do so – or to reduce substantially the time that they devote to those jobs.

Thus, no clear evidence on this point is available.

### ***Should salaries depend on attendance?***

In the House of Commons, MPs are paid whether they attend regularly or not. The presumption is that voters will hold MPs to account if they persistently fail to perform their duties. But this accountability mechanism would not operate in the Lords (unless, as mentioned above, non-attendance could trigger recall). It is thus conceivable that a person could be elected and then never participate in the business of the House. It is difficult to argue that such a person should be allowed to continue drawing a salary. Thus, if a salary is to be paid, it would appear reasonable to set a minimum level of attendance required.

Indeed, there is a case for going further and saying that a member who does not reach the minimum level of attendance (and cannot provide evidence of illness or other mitigating circumstances) should automatically be disqualified from the House.

## Ministers in the Second Chamber

At present, two of the 23 full members of cabinet are members of the House of Lords. These are Lord Strathclyde (the Leader of the House of Lords) and Baroness Warsi (Chair of the Conservative Party). Ministers with departmental responsibilities are sometimes appointed from the House of Lords, notable recent examples including Lords Mandelson and Adonis in the government of Gordon Brown. But the absence of such ministers from the House of Commons creates questions of democratic accountability and their numbers are therefore always low.<sup>217</sup> A rather greater proportion of junior ministers come from the Lords: 22 of the 96 non-cabinet ministers appointed after the 2010 election came from the second chamber.<sup>218</sup> Under present arrangements, they are needed to answer departmental questions in the Lords and to guide government business through the Lords.

Two principal questions can be asked about the position of ministers in the reformed second chamber:

- Would constraints on the appointment of senior ministers from the Lords be weakened if the Lords were elected?
- How would the prospect of ministerial office affect the nature of the people likely to seek membership of the reformed chamber?

We discuss these questions in turn.

### ***More Ministers from the Lords?***

Countries vary widely in their rules on the relationship between the executive and the legislature. In some – principally, in presidential systems – simultaneous membership of both the executive and the legislature is not permitted. In some others, ministers can also be members of parliament but do not have to be. This means that few relevant points of comparison to the UK – where convention demands that all ministers should be members of Parliament – are available. Australia does provide some relevant evidence. Five of Australia's current twenty cabinet ministers are Senators (as are seven of its 22 non-cabinet ministers), suggesting that, indeed, barriers to the appointment of ministers from the upper house may indeed be lower where the upper house is directly elected.<sup>219</sup>

But caution is needed for several reasons:

- There is still a clear presumption in Australia that most ministers – including the Prime Minister – should come from the lower house. It is to the lower house that the government is accountable and therefore from the lower house that it should principally derive its membership. It is very likely that such a convention would continue in the UK too.
- Members in the revised second chamber in the UK, unlike Senators in Australia, would not be subject to re-election. In consequence their accountability to voters would be very limited. The appointment of government ministers from the Senate has sometimes been criticized in Australia on the grounds that they are less accountable to the electorate than their counterparts in the House of Representatives.<sup>220</sup> This perception would be all the stronger in the UK.

Thus, while election might cause some increase in the number of senior ministers coming from the House of Lords, the change is unlikely to be very large.

### ***Effects on the Character of Members***

We might formulate two expectations regarding the effects that the prospect of ministerial office might have on those who seek membership of the reformed House of Lords:

- It might increase the calibre of members. While highly able people may be reluctant substantially to scale back all their other activities for the opportunity to be backbenchers in a weak chamber, more may consider standing for election or seeking nomination if the possibility existed of a position in government at some stage.
- On the other hand, if members are interested in pursuing ministerial careers, they may pay more attention to climbing the greasy pole than to fulfilling the purposes of the second chamber in scrutinizing the government.

There is no way of knowing the precise extent to which either of these mechanisms would operate. We can say, however, that they would be tempered by the fact that the House of Commons would still provide the only real route to a lasting ministerial career:

- As we have noted, most ministers, especially senior ministers, would continue to come from the Commons.
- Members of the House of Lords could build their careers for no more than fifteen years. At the end of that time, their terms would expire and would not be renewable. Furthermore, the government proposes that departing members would be barred from running for the House of Commons for a period of four years and one month, making the Lords an unpromising launching pad for further office.<sup>221</sup>

Thus, while the Lords might be attractive to people interested in spending some time in government, it would not be attractive to careerist politicians whose primary personal goal is high political office.

## Transition

The government proposes a period of transition to the reformed House of Lords spanning three elections. At the first election, planned for 2015, 80 members would be elected and an additional 20 appointed. A further 80 members would be elected and 20 appointed at the second and third elections, in 2020 and 2025. Thus, the new chamber would achieve its full complement of members only after the third election.

Over the same period, the existing membership would be phased out. Up to two thirds of the existing members would be allowed to stay on after 2015 and one third after 2020. After 2025, none of the existing members would remain (unless they had been elected or appointed as members of the reformed House). The total membership of the House would thus gradually fall from its total immediately before the 2015 elections to 300 in 2025.

The White Paper also allows for faster and slower options in phasing out the current members. The faster option is to create a chamber of 300 members from 2015. Only 200 of the existing members would be allowed to stay on after 2015 and 100 after 2025. The slower option is to allow all existing members to remain if they wish until 2025.

There are plausible arguments in favour of both fast and slow transitions:

- In favour of speed, if the composition of the House can be improved, this is good reason simply to make the change, rather than delay for a further decade. Those current members who wish still to contribute could seek election or appointment to the new chamber.
- In favour of gradualism, if it is hoped that the reformed chamber will retain some of the conventions and customs of the current chamber, a slow process of handover has merit. A slow transition may also be thought fairer to current members.

One unresolved issue concerns whether the “transitional members” – the members of the existing chamber who retain membership until 2020 or 2025 – should be paid. The White Paper says:

The draft Bill provides for salaries to be paid to transitional members. The final decision on whether this was appropriate would be taken in the light of the transitional scheme and therefore the number of transitional members.<sup>222</sup>

It is difficult to see how paying all current members could be justified. This would be costly: paying all of the current 788 members a salary of £60,000 would cost over £47 million; paying two thirds of them would cost £31.5 million. Much of this money would go to people who rarely or never attend.

This raises the question of whether the transitional members would be expected to serve as full-time members. The implication of paying them is that they would. This would require a mechanism for selecting those existing peers who were willing to affirm their intention to give full-time service. It would presumably lead to a much faster reduction in the numbers of existing peers than the figures above suggested. It would also substantially change the terms of service.

If, by contrast, the government wants to retain an element of the old chamber as the new chamber is gradually built, then transitional members should remain unpaid and retain their current terms of service.

## The Politics of Enacting Reform

All three main parties supported a largely or wholly elected second chamber in their 2010 election manifestos (see p. 18). It might therefore be expected that the government's proposals could be enacted with little difficulty. As is well known, however, there is widespread opposition to the proposals on the backbenches, particularly in the House of Lords. And the Labour frontbench has refused to endorse the plan. The reality is, therefore, that the government will succeed in enacting the reforms only if it is willing to invest very considerable capital in them.

This is not the place to discuss the politics of the reform process in detail. But the following points should be borne in mind:

- David Cameron and Nick Clegg have already invested significant capital in pushing the reforms through. As the introduction to this paper noted, they say in the Foreword to the draft bill that they are “fully committed to holding the first elections to the reformed House of Lords in 2015”.<sup>223</sup> Given such strong words, failure to deliver would do them both harm
- It is difficult, however, to imagine how the support of the House of Lords for the proposals – or anything broadly based upon the proposals – could be gained. A survey of peers conducted by ComRes in January and February 2011 found very strong opposition both to a wholly elected House and to a partly elected, partly appointed chamber.<sup>224</sup> In a two-day debate on the government's reform proposals in the House of Lords on 21 and 22 June, speakers who opposed the reform plans outnumbered those who favoured them by around six to one. Even many of those who said they supported a fully elected House indicated that they would not back the draft Bill.<sup>225</sup>
- This being the case, the Bill could pass only through the use of the Parliament Acts.
- Some continue to question whether it is constitutional to use the Parliament Acts in order fundamentally to alter the relationship between the two chambers.<sup>226</sup> But there is no basis for such suggestions. The Law Lords clearly ruled in 2005 that the Parliament Acts could be used to pass any public bills except those that it explicitly excluded.<sup>227</sup>
- The question is, rather, whether the will exists among ministers – particularly, Conservative ministers – to invoke the Parliament Acts on such an issue, when large numbers of their backbenchers and supporters are, at the least, either lukewarm about or downright hostile towards the proposals.

## ***Part Six***

# ***Conclusions***

We have looked at the likely impact of many aspects of the government's reform proposals. These aspects often interact with each other in generating their effects, such that understanding the impact of one is difficult without looking at the impact of several others. In this final section we therefore draw together the distinct elements to draw overall conclusions. We begin by considering each of the criteria identified in Part Two. We then offer reflections on what we can say about how the proposed reforms would affect the second chamber overall.

## How the Proposals Perform against the Criteria

Part Two (p. 33) identified a series of criteria by which the Lords reform proposals might be judged. There is disagreement regarding some of these criteria. But it is primarily upon these criteria that the debate will focus. We need, therefore, to know how the proposals measure up against them.

### ***Legitimacy***

The most hotly contested criterion is that of legitimacy. The creation of a largely or wholly elected second chamber would enhance that chamber's democratic legitimacy and would therefore encourage it to use its powers more fully. But there is no reason to think the reformed second chamber would begin to challenge the Parliament Acts. And it is likely that some conventional constraints would remain. The Commons would still be the seat of government. It would also retain greater democratic legitimacy: it would always have a fresher mandate and would have a closer connection to voters.

Whether one thinks somewhat enhanced legitimacy for the House of Lords desirable depends on the degree to which one thinks the Lords should be able to delay government legislation. Those who think it should impose delay no more often than at present may be wary of direct election. Those who think a stronger check on the Commons – without violating the Commons' ultimate primacy – would usefully strengthen Parliament *vis-à-vis* the executive may take the view that direct election would in fact enhance the second chamber's performance of its intended role.

### ***Representativeness***

The current second chamber is unrepresentatively white, male, and focused upon London and the South East. The government's proposals would most clearly address the last of these points, by providing that all parts of the country would be represented by elected members in proportion to their population.

As electoral systems go, proportional systems such as STV or the list systems are better than majoritarian systems such as First Past the Post or AV in representing women and minorities, while the evidence is mixed on the relative effects of the various proportional systems. More interventionist measures – quotas for either appointments or elections – could guarantee more precise numerical representation but have often caused other concerns among British politicians and are not currently proposed.

### ***Avoiding Single-Party Majorities***

The proposals would very rarely (if ever) give one party a majority of seats in the Lords. This contrasts with the Commons, in which single-party majorities are the norm. Governments could thus rarely hope to get their business through simply by whipping their supporters: they would need either to persuade others to support their proposals or rely on others' willingness to accept the will of the Commons.

### ***Independence***

There is good reason to think the proposals would retain substantial independence in the reformed House. First, a substantial group of crossbenchers would continue to be appointed by the Appointments Commission. Second, the STV electoral system could well facilitate the election of significant numbers of independents. Third, the electoral system and the long, non-renewable terms would be likely to allow considerable independence of spirit among those elected under a party label.

### ***Expertise***

There is good reason to think that much expertise and experience would also be retained. This would partly occur, again, through the continued appointment of crossbenchers. In addition, the STV electoral system might well encourage parties to seek out prominent candidates with established reputations (whether in politics or in other walks of life). The particular character of these elections and the fact that each member would need to go through election only once might encourage individuals with expertise and experience to seek election.

In fact, the greater impediment to retaining the experts whose presence is so often praised may be not a move to direct election, but rather the proposed move to a full-time, salaried chamber. Most of the current experts contribute rather rarely to Lords proceedings. It is not clear how many would accept a full-time role for fifteen years.

### ***Distinctive Composition***

Following on from the previous points, the government's proposals would typically produce a second chamber very different in its composition from the House of Commons: the fear that the two chambers would become clones is unfounded.

### ***Members' Focus on the Second Chamber's Role***

While the STV electoral system is often associated with a localism that would not fit with standard views on the functions of the second chamber, the large constituencies proposed in the White Paper would make this very difficult.

Allowing ministers still to be chosen from the House of Lords might encourage some members to focus more on pursuing a ministerial career than on rigorously scrutinizing government initiatives. But the limits on the second chamber's democratic legitimacy, the fact that terms would be non-renewable, and the bar on switching immediately from the Lords to the Commons would all make membership of the reformed House of Lords unattractive to determined careerists.

### ***Accountability***

Whether the members of the House of Lords should be accountable to the electorate is contested. The government's proposals, as they stand, would create no accountability at all: once elected, members of the second chamber would be free to act just as they pleased. This would change



somewhat if the proposal to introduce recall were followed. But there are severe practical hurdles to doing so.

The government might also consider whether a certain level of attendance should be required for members to be paid or even to retain their membership of the House.

### ***Comprehensibility***

The details of the STV voting system are famously difficult for voters to grasp. But voters in Australia, Ireland, Malta, and Northern Ireland have been successfully using it for many years without great difficulty.

### ***Integrity***

There is widespread agreement that, if an appointed element is to be retained, nominees should be selected by an independent Appointments Commission and that this should be placed (unlike now) on a statutory footing in order to guard against executive interference.

### ***Cost***

The government's proposals would increase the cost of the House of Lords. Elections would cost money to administer (though these costs would be minimized by holding Lords and Commons elections concurrently). Paying members salaries and pensions would increase the chamber's running costs. A move to a full-time chamber would likely create pressures for higher allowances and might also, despite the large reduction in the number of members, add to pressures on accommodation and resources such as the House of Lords Library.

While few would welcome such cost increases in themselves, it is important to consider whether they could be justified by improvements to the functioning of the political system that they might allow.

## What Should We Make of the Government's Plans?

The dangers posed by the government's proposals are often greatly exaggerated. The proposals, if implemented, would not end the primacy of the House of Commons. The reformed second chamber would probably continue to be characterized in significant part by independence, expertise, and experience. The electoral system that the government proposes is probably the one most likely to create a second chamber that is focused on performing its intended functions.

Many issues of detail have been discussed in the preceding sections, but evaluations of the heart of the government's proposals should concentrate on three key questions:

- What is the precise role for the second chamber that is sought? While there is general agreement that the Commons should remain the primary chamber, there is often ambiguity regarding the meaning of this primacy. It does not imply that the Lords should simply be ignored entirely. But how great should the role of the second chamber be? At present, the Lords performs a revising function and a limited delaying function. Under the government's proposals, it would probably come to use its delaying powers more extensively. Would this constitute a welcome strengthening in the power of Parliament *vis-à-vis* the executive? Or would it unacceptably hinder the capacity of the government to implement its programme?
- How important is it that the second chamber should carry democratic legitimacy? The House of Lords does exert significant influence over legislation, which might imply that, in a democracy, it should be elected. But there is no significant pressure to elect others who make important official decisions, such as judges and members of the Monetary Policy Committee of the House of Lords. Further, democratic election implies both representation and accountability, but the government's proposals provide only for the former. Should mechanisms of accountability also be established?
- How can the best candidates be encouraged to seek election or appointment and how can their focus on the functions of the second chamber best be ensured? We have seen many reasons for thinking the government's proposals are well designed in this respect. But questions remain. What would be the effects of establishing the House of Lords as a full-time, salaried chamber? Would individuals who are not professional politicians be willing to stand for the sorts of election that are proposed? What would election campaigns be like?

In pursuing answers to all these questions, claims about the likely effects of the reform proposals need to be rooted to a far greater degree than they have been so far in a fair assessment of solid evidence.

## Further Reading

Two sources of research on the House of Lords are invaluable:

- The first is UCL's Constitution Unit, which has conducted research into the House of Lords for some years, led by Meg Russell. Full details of publications and other resources are available at <http://www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords>.
- The second is the House of Lords Library, which produces reports into many aspects of the House of Lords, including its history, membership, powers, and behaviour. These reports are available at <http://www.parliament.uk/business/publications/research/lords-library/>.

Useful books on the House of Lords or on second chambers world-wide include:

- Samuel C. Patterson and Anthony Mughan (eds.), *Senates: Bicameralism in the Contemporary World* (Columbus: Ohio State University Press, 1999).
- Meg Russell, *Reforming the House of Lords: Lessons from Overseas* (Oxford: Oxford University Press, 2000).
- Donald Shell, *The House of Lords*, 3<sup>rd</sup> edition (Manchester University Press, 2007).

The government's proposals can be found in

- *House of Lords Reform: Draft Bill*, Cm. 8077 (May 2011). Available at <http://www.official-documents.gov.uk/document/cm80/8077/8077.pdf>.

## Notes

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- <sup>1</sup> *House of Lords Reform: Draft Bill*, Cm. 8077 (May 2011), p. 6.
- <sup>2</sup> For detailed discussion of the development of the Salisbury convention, see Glenn Dymond and Hugo Deadman, “The Salisbury Doctrine”, House of Lords Library Note LLN 2006/006, 30 June 2006. This and all other publications of the House of Commons and House of Lords Libraries are available at [www.parliament.uk](http://www.parliament.uk).
- <sup>3</sup> *An Elected Second Chamber: Further Reform of the House of Lords*, Cm. 7438, July 2008, p. 42, note 51. I am grateful to Matthew Purvis from the House of Lords Library for confirming that this information is up to date.
- <sup>4</sup> The sessions of 1996–7, 2000–1, 2004–5, and 2009–10 were cut short by elections.
- <sup>5</sup> For further details on the Parliament Acts and their use, see Donald Shell, *The House of Lords*, 3<sup>rd</sup> edition (Manchester University Press, 2007), pp. 19–30, and Richard Kelly, “The Parliament Acts”, House of Commons Library Standard note SN/PC/675, 23 March 2007.
- <sup>6</sup> Shell, (note 5), p. 24.
- <sup>7</sup> “How hunting ban went to the dogs”, *BBC News Online*, 9 July 1999.
- <sup>8</sup> Meg Russell and Maria Sciara, “The Policy Impact of Defeats in the House of Lords”, *British Journal of Politics and International Relations* 10 (2008), 517–89, at p. 575.
- <sup>9</sup> *Ibid.*, p. 577.
- <sup>10</sup> *Ibid.*, p. 577.
- <sup>11</sup> *Ibid.*, p. 578.
- <sup>12</sup> Rt Hon Baroness Hayman, “The House of Lords – A Hundred Years On”, The Mr Speaker’s and Mile End Group Lecture Series to Commemorate the Centenary of the 1911 Parliament Act, Westminster, 2 March 2011, p. 8.
- <sup>13</sup> Meg Russell, *House Full: Time to Get a Grip on Lords Appointments* (The Constitution Unit, April 2011), p. 9.
- <sup>14</sup> “Lords by type and party of peerage”, available at [www.parliament.uk](http://www.parliament.uk), accessed 23 June 2011.
- <sup>15</sup> Matthew Purvis, “House of Lords: Party and Group Strengths and Voting”, House of Lords Library Note LLN 2011/022, 21 June 2011, p. 6.
- <sup>16</sup> *The Coalition: Our Programme for Government* (HM Government, May 2010), p. 27.
- <sup>17</sup> Lucinda Maer and Alex Brocklehurst, “Peerage Creations since 1997”, House of Commons Library Standard Note SN/PC/5867, 17 February 2011, p. 5.
- <sup>18</sup> Russell (note 13), p. 6.
- <sup>19</sup> Alex Brocklehurst, “Peerage Creations, 1958–2008”, House of Lords Library Note LLN 2008/019, 24 July 2008, p. 13; Lucinda Maer and Alex Brocklehurst (note 17), pp. 15–18.
- <sup>20</sup> “Lords by type and party of peerage”, available at [www.parliament.uk](http://www.parliament.uk), accessed 23 June 2011.
- <sup>21</sup> Matthew Purvis (note 15), p. 8.
- <sup>22</sup> Calculated from data at [www.publicwhip.org.uk](http://www.publicwhip.org.uk), accessed 24 June 2011.
- <sup>23</sup> Information kindly supplied by Adam Ross, University of Sheffield.
- <sup>24</sup> House of Lords, *Annual Report and Accounts 1999–2000*, Appendix B. This figure includes peers without writs of summons and peers on leave of absence.
- <sup>25</sup> *Ibid.*
- <sup>26</sup> For the Parliament Act of 1911, see <http://www.legislation.gov.uk/ukpga/Geo5/1-2/13/contents>.
- <sup>27</sup> Ireland was excluded from the conference’s proposals, pending resolution of the island’s position in the UK.
- <sup>28</sup> *Conference on Reform of the Second Chamber: Letter from Viscount Bryce to the Prime Minister*, Cd. 9038 (1918).
- <sup>29</sup> For a useful summary, see the House of Lords Library briefing “Reform and Reform Proposals since 1900”, May 2006, p. 3, available at [www.parliament.uk](http://www.parliament.uk).
- <sup>30</sup> *Parliament Bill, 1947: Agreed Statement on Conclusion of Conference of Party Leaders, February–April 1948*, Cmd. 7380 (May 1948).
- <sup>31</sup> *House of Lords Reform*, Cmnd. 3799 (November 1968).
- <sup>32</sup> For detailed discussion of the relationship between government and the House of Lords during this period, see Janet P. Morgan, *The House of Lords and the Labour Government, 1964–1970* (Oxford: Clarendon Press, 1975).
- <sup>33</sup> Chris Clarke and Matthew Purvis, “House of Lords Reform, 1997–2010: A Chronology”, House of Lords Library Note LLN 2010/015, 28 June 2010.
- <sup>34</sup> Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000.
- <sup>35</sup> Clarke and Purvis (note 33), p. 4.

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- <sup>36</sup> Labour Party, *Ambitions for Britain* (May 2001), p. 35.
- <sup>37</sup> HL *Hansard*, 20 June 2001, col. 6.
- <sup>38</sup> *The House of Lords: Completing the Reform*, Cm. 5291, 7 November 2001.
- <sup>39</sup> For detailed analysis, see Iain McLean, Arthur Spirling, and Meg Russell, “None of the Above: The UK House of Commons Votes on Reforming the House of Lords, February 2003”, *Political Quarterly* 74, no. 3 (July), 298–310.
- <sup>40</sup> Paul Tyler, Kenneth Clarke, Robin Cook, Tony Wright, and Sir George Young, *Reforming the House of Lords: Breaking the Deadlock* (February 2005).
- <sup>41</sup> Richard Cracknell, “Commons Divisions on House of Lords Reform: March 2007”, House of Commons Library Standard Note SN/SG/4279, 13 March 2007, p. 2; “Lords Reform Votes, March 2007”, UCL Constitution Unit, available at [www.ucl.ac.uk](http://www.ucl.ac.uk), accessed 27 May 2011. These sources provide detailed analysis of the votes.
- <sup>42</sup> *An Elected Second Chamber: Further Reform of the House of Lords*, Cm. 7438, July 2008.
- <sup>43</sup> *Ibid.*, p. 3.
- <sup>44</sup> The three main parties’ manifesto statements on the House of Lords between 1979 and 2005 are usefully excerpted at Shell (note 5), pp. 176–9. All quotations in this section from manifestos, except those from 2010, are taken from this source.
- <sup>45</sup> Conservative Party, *Invitation to Join the Government of Britain: The Conservative Party Manifesto 2010*, p. 67.
- <sup>46</sup> Labour Party, *The Labour Party Manifesto 2010: A Future Fair for All*, p. 9:3.
- <sup>47</sup> Liberal Democrats, *Liberal Democrat Manifesto 2010*, p. 88.
- <sup>48</sup> *House of Lords Reform: Draft Bill*, Cm. 8077 (May 2011).
- <sup>49</sup> Freedom House is a Washington-based democracy advocacy organization. Every year, it rates all countries in the world in terms of political rights and civil rights, giving scores of 1 to the freest and 7 to the least free. It classifies as “free” those countries with an average score across the two scales between 1 and 2.5. See Freedom House, *Freedom in the World, 2010*, available at [www.freedomhouse.org](http://www.freedomhouse.org).
- <sup>50</sup> Information on legislatures is taken from the Inter-Parliamentary Union’s Parline Database, at [www.ipu.org](http://www.ipu.org), last accessed 27 June 2011.
- <sup>51</sup> The mean populations are 10.7 million in unicameral countries and 71.3 million in bicameral countries, but these figures are skewed by a few very large countries.
- <sup>52</sup> Old democracies are those with continuous democratic experience dating back before the 1970s.
- <sup>53</sup> Ronald L. Watts, *Comparing Federal Systems*, 3<sup>rd</sup> edition (McGill-Queen’s University Press, 2008), p. 9.
- <sup>54</sup> *Ibid.*, p. 17.
- <sup>55</sup> For further discussion of this point, see Ronald L. Watts, “Federal Second Chambers Compared”, paper presented at a conference on “Federalizing Process in Italy: Comparative Perspectives”, Rome, 17–19 February 2010, pp. 1–4.
- <sup>56</sup> “Belize Senate”, at <http://belize.mybelize.net/index.php?section=28>, accessed 28 May 2011.
- <sup>57</sup> Meg Russell, *Reforming the House of Lords: Lessons from Overseas* (Oxford: Oxford University Press, 2000), p. 54.
- <sup>58</sup> Rudy B. Andeweg and Galen A. Irwin, *Governance and Politics of the Netherlands*, 2<sup>nd</sup> edition (Basingstoke: Palgrave Macmillan, 2005), p. 148.
- <sup>59</sup> Russell (note 57), p. 61.
- <sup>60</sup> Raenette Taljaard and Albert Venter, “Parliament”, in Albert Venter and Chris Landsberg, *Government and Politics in the New South Africa*, 3<sup>rd</sup> edition (Pretoria: Van Schaik, 2006), pp. 17–39, at p. 28.
- <sup>61</sup> Samuel C. Patterson and Anthony Mughan, “Senates and the Theory of Bicameralism”, in Samuel C. Patterson and Anthony Mughan (eds.), *Senates: Bicameralism in the Contemporary World* (Columbus: Ohio State University Press, 1999), pp. 1–31.
- <sup>62</sup> Royal Commission on the Reform of the House of Lords (note 34), p. 31.
- <sup>63</sup> *Ibid.*, p. 30.
- <sup>64</sup> Bryce Conference (note 28), p. 5.
- <sup>65</sup> *Agreed Statement on Conclusion of Conference of Party Leaders, February–April 1948* (note 30), p. 3.
- <sup>66</sup> *House of Lords Reform: Draft Bill*, Cm. 8077 (May 2011), p. 11.
- <sup>67</sup> Bryce Conference (note 28), p. 4.
- <sup>68</sup> *House of Lords Reform*, Cmnd. 3799 (November 1968), p. 2.
- <sup>69</sup> Royal Commission on the Reform of the House of Lords (note 34), p. 29.
- <sup>70</sup> Bryce Conference (note 28), p. 4.
- <sup>71</sup> Royal Commission on the Reform of the House of Lords (note 34), p. 29.

- <sup>72</sup> *Breaking the Deadlock* (note 40), p. 14.
- <sup>73</sup> Royal Commission on the Reform of the House of Lords (note 34), pp. 76–9; *The House of Lords: Completing the Reform*, Cm. 5291, 7 November 2001, para. 31–33.
- <sup>74</sup> See especially Public Administration Select Committee, *The Second Chamber: Continuing the Reform* (5<sup>th</sup> report of 2001–02 (February 2002), HC 494-I, para. 77–80.
- <sup>75</sup> Joint Committee on House of Lords Reform, *House of Lords Reform: First Report*, December 2002, HL Paper 17/HC 171, p. 5.
- <sup>76</sup> John Stuart Mill, *Considerations on Representative Government* (London: Everyman, 1993; first published 1861), chapter 13, p. 354.
- <sup>77</sup> Calculated from figures available at [www.publicwhip.org](http://www.publicwhip.org).
- <sup>78</sup> HC *Hansard*, 7 March 2007, col. 1565.
- <sup>79</sup> HL *Hansard*, 3 December 2007, col. 1710–11.
- <sup>80</sup> HL *Hansard*, 3 December 2007, col. 1727.
- <sup>81</sup> HL *Hansard*, 21 June 2011, col. 1203.
- <sup>82</sup> Joint Committee on House of Lords Reform (note 75), pp. 15–16.
- <sup>83</sup> *Agreed Statement on Conclusion of Conference of Party Leaders, February–April 1948* (note 30), p. 3. Emphasis added.
- <sup>84</sup> *Breaking the Deadlock* (note 40), p. 21.
- <sup>85</sup> Royal Commission on the Reform of the House of Lords (note 34), p. 102.
- <sup>86</sup> Joint Committee on House of Lords Reform (note 75), pp. 16–18.
- <sup>87</sup> See, e.g., *An Elected Second Chamber: Further Reform of the House of Lords*, Cm. 7438, July 2008, p. 14, para. 3.6.
- <sup>88</sup> Royal Commission on the Reform of the House of Lords (note 34), p. 102.
- <sup>89</sup> Joint Committee on House of Lords Reform (note 75), p. 18.
- <sup>90</sup> HL *Hansard*, 3 December 2010, col. 1700.
- <sup>91</sup> HC *Hansard*, 7 March 2007, col. 1565.
- <sup>92</sup> HC *Hansard*, 6 March 2007, col. 1460.
- <sup>93</sup> Cf. *An Elected Second Chamber* (note 87), p. 14, para. 3.3.
- <sup>94</sup> See, e.g., David Farrell and Michael Gallagher, “British Voters and Their Criteria for Evaluating Electoral Systems”, *British Journal of Politics and International Relations* 1, no. 3 (October 1999), 293–316, at pp. 299–300.
- <sup>95</sup> *House of Lords Reform*, Cmnd. 3799 (November 1968), pp. 10–11, para. 22.
- <sup>96</sup> Royal Commission on the Reform of the House of Lords (note 34), p. 104, para. 11.5.
- <sup>97</sup> HC *Hansard*, 10 January 2002, col. 707.
- <sup>98</sup> Lord (David) Steel, interviewed with Baroness (Helena) Kennedy by Emine Saner, “Should we have an elected House of Lords?”, *Guardian*, 4 June 2011.
- <sup>99</sup> Public Administration Select Committee (note 74), para. 51–3.
- <sup>100</sup> *House of Lords Reform: Draft Bill*, Cm. 8077 (May 2011), p. 11, para. 7–11.
- <sup>101</sup> Meg Russell, “A Stronger Second Chamber? Assessing the Impact of the House of Lords Reform in 1999 and the Lessons for Bicameralism”, *Political Studies* 58, no. 5 (December 2010), 866–85, at p. 876.
- <sup>102</sup> Constitution of the Czech Republic of 16 December 1992, Article 47; Constitution of the Republic of Poland of 2 April 1997, Article 121.
- <sup>103</sup> Constitution of Japan of 3 November 1946, Article 59.
- <sup>104</sup> Commonwealth of Australia Constitution Act, 9 July 1900, Articles 53–7. Stanley Bach, “Senate Amendments and Legislative Outcomes in Australia, 1996–2007”, *Australian Journal of Political Science* 43, no. 3 (September 2008), pp. 395–423.
- <sup>105</sup> Constitution of the Italian Republic, Article 70; Constitution of Romania, Article 75.
- <sup>106</sup> HL *Hansard*, 3 December 2010, col. 1719. See also Lord Bilmoria in the same debate, col. 1702.
- <sup>107</sup> E.g., Anthony Fusaro, “The Australian Senate as a House of Review: Another Look”, *Australian Journal of Politics and History* 12, no. 3 (1966), 384–99; Richard Mulgan, “The Australian Senate as a ‘House of Review’”, *Australian Journal of Political Science* 31, no. 2 (1996), 191–204.
- <sup>108</sup> Bach (note 104), p. 409.
- <sup>109</sup> Parliamentary Debates, 5 December 1992, quoted in Meg Russell (note 57), p. 74.
- <sup>110</sup> Meg Russell and Maria Sciarra, “Independent Parliamentarians En Masse: The Changing Nature and Role of the ‘Crossbenchers’ in the House of Lords”, *Parliamentary Affairs* 62, no. 1 (2009), 32–52, at p. 32.
- <sup>111</sup> E.g., Lord Faulkner, HL *Hansard*, 3 December 2010, col. 1711.

- <sup>112</sup> Royal Commission on the Reform of the House of Lords (note 34), p. 102, para. 10.26.
- <sup>113</sup> Russell and Sciara (note 110), p. 33.
- <sup>114</sup> Royal Commission on the Reform of the House of Lords (note 34), p. 99, para. 10.14.
- <sup>115</sup> Russell and Sciara (note 110), p. 41.
- <sup>116</sup> *Ibid.*, p. 50.
- <sup>117</sup> Figures from [www.theyworkforyou.com](http://www.theyworkforyou.com).
- <sup>118</sup> House of Lords Appointments Commission, *Annual Report 2004–5 and 2005–6*, p. 15, para. 44.
- <sup>119</sup> House of Lords Appointments Commission, *Annual Report October 2008–March 2010*, p. 7, para. 31.
- <sup>120</sup> Russell and Sciara (note 110), p. 43.
- <sup>121</sup> *Ibid.*, pp. 45–6.
- <sup>122</sup> Royal Commission on the Reform of the House of Lords (note 34), p. 114, recommendation 70.
- <sup>123</sup> *Breaking the Deadlock* (note 40), p. 35.
- <sup>124</sup> Public Administration Select Committee (note 74), para. 129.
- <sup>125</sup> *An Elected Second Chamber* (note 87), p. 48, para. 6.15 and p. 49, para. 6.18.
- <sup>126</sup> Department for Constitutional Affairs, *Constitutional Reform: Next Steps for the House of Lords*, CP 14/03 (September 2003), p. 52, para. 67. *Breaking the Deadlock* (note 40), p. 23.
- <sup>127</sup> *An Elected Second Chamber* (note 87), p. 50, para. 6.23.
- <sup>128</sup> Public Administration Select Committee, *Goats and Tsars: Ministerial and Other Appointments from Outside Parliament*, HC 330, 11 March 2010, p. 8.
- <sup>129</sup> “Belize Senate”, at <http://belize.mybelize.net/index.php?section=28>, accessed 28 May 2011.
- <sup>130</sup> *House of Lords Reform: Draft Bill*, Cm. 8077 (May 2011), p. 22, para. 92.
- <sup>131</sup> *The House of Lords: Reform*, Cm. 7027 (February 2007), p. 28, para. 6.22.
- <sup>132</sup> Royal Commission on the Reform of the House of Lords (note 34), p. 152, para. 15.8.
- <sup>133</sup> *Ibid.*
- <sup>134</sup> *Breaking the Deadlock* (note 40), p. 23.
- <sup>135</sup> Submission of the British Humanist Association to the Royal Commission on the Reform of the House of Lords (submitted by Robert Ashby), 26 April 1999.
- <sup>136</sup> “The Role of Bishops in the Second Chamber: A Submission by the Church of England” Church of England submission to the Royal Commission on the Reform of the House of Lords (submitted by Philip Mawer), 6 May 1999, p. 9, para. 22. See also the submissions of the Baptist Union of Wales, the World Congress of Faiths, the Christian Socialist Movement, the Presbyterian Church in Ireland, the Methodist Church in Ireland, the Church of Ireland, the Free Churches’ Council, the Churches Agency for Inter Faith Relations in Scotland, and the Scottish Episcopal Church.
- <sup>137</sup> Board of Deputies of British Jews, submission to the Royal Commission on the Reform of the House of Lords (submitted by Neville Nagler), 30 April 1999.
- <sup>138</sup> House of Lords Appointments Commission, *Annual Report October 2008–March 2010*, p. 4, para. 15.
- <sup>139</sup> Meg Russell and Maria Sciara, “Why Does the Government Get Defeated in the House of Lords?: The Lords: the Party System, and British Politics”, *British Politics* 2 (2007), 299–322, at p. 311.
- <sup>140</sup> *Ibid.*, p. 311.
- <sup>141</sup> *An Elected Second Chamber* (note 87), p. 49, para. 6.18.
- <sup>142</sup> See especially Public Administration Select Committee (note 74), para. 130 and 132.
- <sup>143</sup> Royal Commission on the Reform of the House of Lords (note 34), pp. 113–4, para. 11.38.
- <sup>144</sup> See, for example, the *House of Lords Reform Bill* (HL 2011–11), introduced by Lord Steel, section 8(2)(a), available at [www.parliament.uk](http://www.parliament.uk).
- <sup>145</sup> Public Administration Select Committee (note 74), para. 131.
- <sup>146</sup> *HC Hansard*, 29 January 2003, col. 877.
- <sup>147</sup> Iain McLean, Arthur Spirling, and Meg Russell (note 39), p. 306.
- <sup>148</sup> Calculated from voting tables available at [www.publicwhip.org.uk](http://www.publicwhip.org.uk).
- <sup>149</sup> *HC Hansard*, 6 March 2007, col. 1435.
- <sup>150</sup> Lord Steel, Donald Dewar Memorial Lecture, Edinburgh International Book Festival, 18 August 2003, available at <http://www.nls.uk/events/donald-dewar-lectures/2003>. For discussion of the operation of the Scottish Parliament’s voting system, see Thomas Carl Lundberg, *Proportional Representation and the Constituency Role in Britain* (Basingstoke: Palgrave Macmillan, 2007).
- <sup>151</sup> Personal communication.
- <sup>152</sup> Personal communication with Dr Jean-Benoit Pilet.

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<sup>153</sup> For more comprehensive discussion of different electoral systems, see David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2<sup>nd</sup> edition (Basingstoke: Palgrave Macmillan, 2011); Pippa Norris, *Electoral Engineering: Voting Rules and Political Behavior* (Cambridge: Cambridge University Press, 2004); Alan Renwick, *A Citizen's Guide to Electoral Reform* (London: Biteback, 2011); Andrew Reynolds, Ben Reilly, and Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (Stockholm: International Institute for Democracy and Electoral Assistance, 2005).

<sup>154</sup> Alan Renwick, *The Alternative Vote: A Briefing Paper*, Political Studies Association, March 2011, available at [www.psa.ac.uk](http://www.psa.ac.uk).

<sup>155</sup> Australian Electoral Commission, "Senate Group Voting Ticket Usage [in 2010]", available at [www.aec.gov.au](http://www.aec.gov.au).

<sup>156</sup> *The Coalition: Our Programme for Government* (HM Government, May 2010), p. 27.

<sup>157</sup> *House of Lords Reform: Draft Bill*, Cm. 8077 (May 2011), p. 14, para. 34.

<sup>158</sup> *An Elected Second Chamber* (note 87), p. 37, para. 4.77.

<sup>159</sup> *An Elected Second Chamber* (note 87), Annex 2, pp. 104–19.

<sup>160</sup> All of the numbers in these paragraphs are calculated from the Inter-Parliamentary Union's Parline Database, available at [www.ipu.org](http://www.ipu.org). The "most recent elections" include the most recent full cycle of staggered elections. The case of Panama was clarified through the website of that country's Tribunal Electoral ([www.tribunal-electoral.gob.pa](http://www.tribunal-electoral.gob.pa)).

<sup>161</sup> HL *Hansard*, 3 December 2010, col. 1702.

<sup>162</sup> David M. Farrell and Roger Scully, *Representing Europe's Citizens? Electoral Institutions and the Failure of Parliamentary Representation* (Oxford: Oxford University Press, 2007), pp. 163–96.

<sup>163</sup> Lundberg (note 150).

<sup>164</sup> The case for saying this incentive is greatest under Open-List PR is made by John M. Carey and Matthew Soberg Shugart, "Incentives to Cultivate a Personal Vote: A Rank Ordering of Electoral Formulas", *Electoral Studies*, 14, no. 4 (1995), 417–39. The opposite view is taken by David M. Farrell and Michael Gallagher, "Submission to the Independent Commission on the Voting System", *Representation* 35, no. 1 (1998), pp. 53–62; and David M. Farrell and Ian McAllister, *The Australian Electoral System: Origins, Variations and Consequences* (Sydney: University of New South Wales Press, 2006).

<sup>165</sup> Carey and Shugart (note 164), p. 427.

<sup>166</sup> David Denver and Hugh Bochel, "A Quiet Revolution: STV and the Scottish Council Elections of 2007", *Scottish Affairs*, no. 61 (autumn 2007).

<sup>167</sup> John E. Owens, "Explaining Party Cohesion and Discipline in Democratic Legislatures: Purposiveness and Contexts", *Journal of Legislative Studies* 9, no. 4 (2004), 12–40, at pp. 21–3.

<sup>168</sup> See, e.g., comments by Lord Taverne, HL *Hansard*, 3 December 2010, col. 1716–17.

<sup>169</sup> For overviews of this subject, see Pippa Norris, *Electoral Engineering: Voting Rules and Political Behavior* (Cambridge: Cambridge University Press, 2004), pp. 179–229; Richard E. Matland, "Enhancing Women's Political Representation: Legislative Recruitment and Electoral Systems", in Julie Ballington and Azza Karam (eds.), *Women in Parliament: Beyond Numbers*, revised edition (Stockholm: International Institute for Democracy and Electoral Assistance, 2005), pp. 93–111, available at [www.idea.int](http://www.idea.int).

<sup>170</sup> Frank C. Thames and Margaret S. Williams, "Incentives for Personal Votes and Women's Representation in Legislatures", *Comparative Political Studies* 43, no. 12 (December 2010), 1575–1600.

<sup>171</sup> Gregory D. Schmidt, "The Election of Women in List PR Systems: Testing the Conventional Wisdom", *Electoral Studies* 28, no. 2 (June 2009), 190–203.

<sup>172</sup> Melody Ellis Valdini, "Democracy or Diversity: The Effect of the Personal Vote on the Representation of Women", paper presented at the Annual Meeting of the Western Political Science Association, San Francisco, 1–3 April 2010.

<sup>173</sup> Matland (note 169), p. 105.

<sup>174</sup> See, for example, the discussion in Speaker's Conference on Parliamentary Representation, *Final Report*, HC 239-I (11 January 2010), pp. 45–62.

<sup>175</sup> Hansard Society, *A Year in the Life: From Member of Public to Member of Parliament*, interim briefing paper, June 2011, p. 6.

<sup>176</sup> E.g., R. Kenneth Carty, *Party and Parish Pump: Electoral Politics in Ireland* (Waterloo, Ont.: Wilfrid Laurier University Press, 1981).

<sup>177</sup> Mary C. Murphy, "Reform of Dáil Éireann: The Dynamics of Parliamentary Change", *Parliamentary Affairs* 59, no. 3 (2006), 437–53, at p. 441.



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- <sup>179</sup> See Norris (note 169); Matland (note 169)
- <sup>180</sup> Jack F. H. Wright, "Australian Experience with Majority-Preferential and Quota-Preferential Systems", in Bernard Grofman and Arend Lijphart (eds.), *Electoral Laws and their Political Consequences* (New York: Agathon Press, 1986), pp. 124–38, at p. 134; Colin A. Hughes, "STV in Australia", in Shaun Bowler and Bernard Grofman (eds.), *Elections in Australia, Ireland, and Malta under the Single Transferable Vote* (Ann Arbor: University of Michigan Press, 2000), pp. 155–177, at p. 167.
- <sup>181</sup> *Sydney Morning Herald*, editorial, 18 September 1943, quoted in L. F. Crisp, *Australian National Government* (Croydon, Victoria: Longmans, 1965), p. 295.
- <sup>182</sup> Calculated from the Australian Electoral Commission's figures on "Enrolment by State", Election 2010, available at [www.aec.gov.au](http://www.aec.gov.au), accessed 25 June 2011.
- <sup>183</sup> John McMillan, Gareth Evans, and Haddon Storey, *Australia's Constitution: Time for a Change?* (Sydney: Law Foundation of New South Wales and George Allen & Unwin Australia, 1983), pp. 227–8.
- <sup>184</sup> Constitution of Mexico, Article 59.
- <sup>185</sup> John M. Carey, Richard G. Niemi, and Lynda W. Powell, *Term Limits in the State Legislatures* (Ann Arbor: University of Michigan Press, 2000), p. 4.
- <sup>186</sup> *An Elected Second Chamber* (note 87), p. 17, para. 4.13.
- <sup>187</sup> Personal communications with Alan Angell, Mariana Llanos, and Timothy Power.
- <sup>188</sup> Personal communication with Petr Kopecký.
- <sup>189</sup> Crisp (note 181), p. 302.
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- <sup>191</sup> McMillan *et al.* (note 183), p. 228.
- <sup>192</sup> Richard Mulgan, "The Australian Senate as a 'House of Review'", *Australian Journal of Political Science* 31, no. 2 (1996), 191–204, at p. 195.
- <sup>193</sup> Personal communications with Antony Green and Malcolm Mackerras.
- <sup>194</sup> *House of Lords Reform: Draft Bill*, Cm. 8077 (May 2011), p. 13, para. 24.
- <sup>195</sup> *An Elected Second Chamber* (note 87), p. 17, para. 4.11.
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- <sup>208</sup> *The Coalition: Our Programme for Government* (HM Government, May 2010), p. 27.
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- <sup>212</sup> House of Lords, *Annual Report 2009/10*, p. 34.
- <sup>213</sup> House of Commons, *The House of Commons: Members: Annual Report, Resource Accounts, and Audit Committee Annual Report, 2009/10*, p. 13; House of Commons, *The House of Commons: Administration: Resource Accounts, 2009/10*, p. 10.
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- <sup>221</sup> *House of Lords Reform: Draft Bill*, Cm. 8077 (May 2011), p. 29, section 55.
- <sup>222</sup> *House of Lords Reform: Draft Bill*, Cm. 8077 (May 2011), p. 24, para. 109.
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- <sup>227</sup> For a summary of this judgement and the background to it, see Richard Kelly, “The Parliament Acts”, House of Commons Library Standard Note SN/PC/675, 23 March 2007.