



RESEARCH PAPER 00/60
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Lords reform: major developments since the *House of Lords Act 1999*

The House is due to debate Lords reform on Monday 19 June, following the publication of the report of the Royal Commission chaired by Lord Wakeham (*A House for the future*, Cm 4534, January 2000). The report was debated by the House of Lords on 7 March.

The issue of Lords reform has been considered in a number of Research Papers, most recently in RP 99/88, *The House of Lords Bill: Lords Amendments*, November 1999. This present Research Paper seeks to highlight major developments in the last six months, especially

- The creation of the Appointments Commission for the interim House, and
- the Wakeham Report and initial reaction to its analysis and proposals.

It should be read with its companion Research Paper 00/61, *Lords reform: the interim House – background statistics*.

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Summary of main points

The House of Commons is due to debate on Monday 19 June 2000, the issue of Lords reform and the Royal Commission report. The House of Lords itself held a similar debate on 7 March. This Research Paper seeks to provide some background briefing for Members, by noting major developments which have occurred since the last Research Paper on Lords reform last November.

The white paper on Lords reform of January 1999 proposed the creation of a non-statutory Appointments Commission which was to nominate independent members to the interim House of Lords and to vet the suitability of all nominations to life peerages, taking over the functions in this area of the Political Honours Scrutiny Committee. This Commission was appointed in May 2000 and will shortly begin work. The Wakeham Commission (see below) has proposed a statutory Appointments Commission which would have a wider remit, notably with responsibility for reviewing the total number of members required in the reformed chamber and the need to maintain a balance between the political parties reflecting their share of the votes cast at the previous general election.

The other main development has been the publication, in January, of the report of the Royal Commission on the Reform of the House of Lords. The Report (Cm 4534) is a substantial document, covering the many issues set out in its terms of reference. This Research Paper does not seek to summarise the whole report, or to discuss each and every particular issue addressed by it, but to set it in the context of the continuing issue of, and debate on, Lords reform. The 7 March Lords debate provided the first, and, to date, only formal opportunity for the Government and the other parties to set out their reaction to the Report in detail.

Several related themes have arisen in the aftermath of the Report's publication. Some highlight aspects which have been common in the Lords reform debate for much of the last century, while others relate more directly to the contemporary constitutional situation. These include the relationships between a reformed second chamber and the House of Commons as the other House of Parliament, and the Government of the day; the second chamber as a mechanism in the changing constitutional scene (including devolution and human rights); the meaning and relevance of concepts such as 'democracy', 'legitimacy' and 'representativeness' to issues of composition of the second chamber; the role and functions of a second chamber of Parliament in the overall work of Parliament, especially in the legislative and scrutiny contexts.

Not all these themes are considered in this Research Paper, whose focus is on developments in the ongoing debate, but they may form a significant part of the 19 June debate. These will be tracked in future Research Papers on the subject of Lords reform, as appropriate.

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I The Appointments Commission for the Interim House of Lords

This paper examines developments in the interim House of Lords and proposals for further reform. It highlights in particular the role of the Appointments Commission and initial reactions to the Wakeham proposals. Part I examines the Commission which will have a key role in the composition of the interim House. It is due to begin work shortly. This Part also describes the proposals for a new Commission with a significantly extended remit contained in Wakeham. Part II examines the Wakeham proposals as a whole.

A. The Non-Statutory Commission

The white paper of January 1999¹ envisaged a non statutory Appointments Commission which would be a key mechanism in the control of patronage for the transitional House. The Commission would nominate cross-bench peers and take over the function of the Political Honours Scrutiny Committee in relation to other life peerages:

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

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

However, the Prime Minister was to decide the overall number of nominations to be made to the Queen, and the Commission would be asked to forward the same number of

¹ *Modernising Parliament: Reforming the House of Lords* Cm 4183 Chapter 6

nominations, which would be passed on in the same way as the recommendations of other party leaders to fill the vacancies on their benches.² Therefore the number of cross benchers will depend on the actions of the Prime Minister. The white paper expected, however, that the Government would maintain a significant independent cross bench element in the transitional House. Lord Falconer of Thoroton has recently confirmed the Government commitment that the number of 'non-political peers' would form a fairly constant percentage of the House during the lifetime of the transitional House.³

The Appointments Commission is established as a Non Departmental Public Body (NDPB) and consists of representatives of the three main political parties and four independent figures, one of whom would chair the Commission. The posts are part time and receive a small remuneration. Members of the current House of Lords are eligible for appointment.⁴ During the passage of the *House of Lords Bill* last session an Opposition amendment was passed in the Lords which would have placed the Commission on a statutory basis. The amendment read as follows:

3. - (1) There shall be an Appointments Commission ("the Commission") which shall make proposals to the Prime Minister for recommendations to Her Majesty for the conferment of life peerages in accordance with the Life Peerages Act 1958.

The Commission shall be an advisory non-departmental public body and shall –

- (a) be appointed in accordance with the rules of the Commissioner for Public Appointments and may seek his advice about best practice in attracting and assessing potential nominees;
- (b) operate an open and transparent nominations system for peers not belonging to, or recommended by, any political party ("the Cross Bench peers");
- (c) actively invite nominations by the general public and encourage nominations from professional associations, charities and other public bodies that it judges appropriate;
- (d) publish criteria under which it will determine a candidate's suitability for nomination;
- (e) reinforce the present function of the Political Honours Scrutiny Committee in vetting the suitability of all nominations to life peerages by the political parties; and

² Para 13

³ HL Deb 14 April 2000 vol 612 c 439

⁴ HL Deb 8 February 2000 vol 309 WA78

(f) scrutinise all candidates for life peerages on the grounds of propriety in relation to political donations, as proposed in the 5th Report of the Committee on Standards in Public Life.

(3) The Commission shall appoint its own Chairman.

(4) It shall, at most, every 6 months, and at least every year, make proposals to the Prime Minister for nomination as Cross Bench peers, sufficient at least to fill any vacancies among Cross Bench peers that may occur through death, disqualification or a decision to join a political party represented in the House of Lords.

(5) The Prime Minister may not refuse to submit to Her Majesty the names of those recommended as Cross Bench peers by the Commission, and shall not seek to influence such nominations, save in exceptional circumstances, such as those endangering the security of the realm.

(6) The Commission, in considering nominations as Cross Bench peers, shall not give any additional weight to recommendations from the Prime Minister or the Leaders of other political parties.

Following the passing of this Act the Commission shall make a report annually to Parliament on the recommendations made to Her Majesty by the Prime Minister for the conferment of life peerages, in which it will declare if the following criteria are being observed, namely that –

(a) no one political party commands a majority in the House of Lords;

(b) the Government has broad parity of numbers with the main opposition party; and

(c) the proportion of the Cross Bench peers to the total number of peers in the House remains the same as the proportion of Cross Bench life peers to the total number of life peers in the House on the day before the passing of this Act.

(8) The Commission shall consist of eight members of the Privy Council, of whom four shall be appointed by a special Commission of the Prime Minister, the Speaker of the House of Commons, and the Lord Chairman of Committees of the House of Lords.

(9) One Commissioner shall be appointed from each of the three largest parties in the House of Commons on the nomination of the Leader of each such party, and one shall be appointed from the Cross Bench peers on the nomination of the Convenor of the Cross Bench Peers.

Baroness Jay said that the Government had no quarrel with the underlying purpose of the amendment, but that it would be unnecessary and damaging to smooth progress in establishing the Commission.⁵ On third reading some drafting amendments were made to Clause 3⁶ and Lord Carter, for the Government, complained that the insertion of Clause 3 and its defective drafting had delayed the setting up of the Commission. The clause was deleted during Commons consideration of Lords amendments by 353 votes to 133.⁷ This was agreed to when the Bill returned to the Lords.⁸

In the current 1999-2000 session the Conservative peer Lord Kingsland has introduced a bill to establish a statutory Commission to recommend life peerages.⁹ It is not expected to receive royal assent. The Bill provides that members of its proposed Appointments Commission should be privy counsellors.

The white paper proposed that the members of the Appointments Commission be appointed in accordance with the rules of the Commissioner for Public Appointments.¹⁰ Price Waterhouse Coopers were appointed to assist in the recruitment of the Chairman and independent members of the Commission.¹¹ In response to queries about the role of the firm, Baroness Jay emphasised that Price Waterhouse Coopers would not be choosing members of the Commission.¹² The selection panel for the final shortlist for chairman and independent members was chaired by Sir Richard Wilson, the Cabinet Secretary and consisted of five people, including an independent assessor.¹³ There were Opposition protests that the chairman of the Commission should be chosen by the members of the Commission, not by the Cabinet Office.¹⁴

⁵ HL Deb 22 June 1999 vol 602 c 845

⁶ HL Deb 26 October 1999 vol 606 c 196-9

⁷ HC Deb 10 November 1999 vol 337 c 1238

⁸ HL Deb 11 November 1999 vol 606 c 1460

⁹ HL Bill 34. The second reading of the bill was on 14 April 2000 HL Deb vol 612 c 413-444

¹⁰ These principles are currently contained in *the Commissioners' Guidance on Appointments to Public Bodies* – issued July 1998 from the Office of the Commissioner for Public Appointments, available from its website at <http://www.ocpa.gov.uk/code/cop.htm>

¹¹ HL Deb 25 January 2000 vol 608 c 179WA

¹² HL Deb 31 January 2000 vol 609 c 10. Neither would they have a role in the nomination of life peers by the Commission

¹³ HC Deb 10 March 2000 vol 345. The names of the selection panel were set out in 10 Downing St Press Notice 4 May 2000 'Prime Minister Announces Members of the House of Lords Appointments Commission'. They were: Sir Richard Wilson, Lord Fellowes, Herman Ouseley, Ann Abraham, and Paula Grayson

¹⁴ See speech by Lord Strathclyde, Leader of the Opposition in the Lords HL Deb 14 April 2000 vol 612 c 433

The members of the Appointments Commission were announced on 4 May 2000.¹⁵

Ms Moran: To ask the Prime Minister if he is in a position to announce the membership of the House of Lords Appointments Commission promised in "Modernising Government: Reforming the House of Lords" (Cmnd 4183).

The Prime Minister: Following an open recruitment exercise conducted in accordance with the principles of the Commissioner for Public Appointments, I have decided to appoint the following people, on the recommendation of the selection panel, as the independent Chairman and members of the Interim House of Lords Appointments Commission.

The Chairman will be Lord Stevenson of Coddanham, the Chairman of the Pearson Group and Halifax plc and a cross-bench peer in the House of Lords. The leaders of the Conservative and Liberal Democrat parties have been informed and are content for Lord Stevenson to be appointed as Chairman.

The independent members, chosen from a strong field of candidates, will be Mrs. Angela Sarkis CBE, the Chief Executive of the Church Urban Fund; Dame Deirdre Hine, previously Chief Medical Officer at the Welsh Office and Chairman of the Commission for Health Improvement; and Ms Felicity Huston, Chairman of the Northern Ireland Consumer Committee for Electricity and Deputy Chairman of the General Consumer Council of Northern Ireland.

In addition, the Commission will contain a member nominated by each of the three main political parties. The Labour Party member is the right hon. Baroness Dean of Thornton-le-Fylde. The Conservative Party member is the right hon. Lord Hurd of Westwell CH, CBE. The Liberal Democrat member is Lord Dholakia OBE, DL.

The seven members of the Commission will combine knowledge of the existing House of Lords with a diverse range of personal backgrounds. They will be well-qualified to take forward the process of appointing non-political peers to the House of Lords on a more open and transparent basis and to take on responsibility for vetting all nominations for peerages.

Lord Hurd and Baroness Dean were members of the Wakeham Commission and are currently members of the Political Honours Scrutiny Committee (PHSC). The PHSC will have a continuing and separate role in scrutinising nominations for honours other than life peerages. The Neill Committee recommended in October 1998 that the PHSC's remit be extended to cover all honours, not just those granted for political services.¹⁶

¹⁵ HC Deb 4 May 2000 vol 349 c 181W

¹⁶ For further detail on the work of the PHSC see the fifth report of the Committee on Standards in Public Life *The Funding of the Political Parties in the UK*, Cm 4057 paras 14.22-14.40

The remit for the Appointments Commission in the interim House will therefore cover:

- Selection of candidates for ‘independent’ peers¹⁷
- Vetting of all life peerages for propriety in relation to political donations.¹⁸

The Commission is expected to have regard to the principles on public appointments contained in guidance from the Commissioner for Public Appointments. The white paper envisaged an open and transparent nominations system.¹⁹ The Information Pack for applicants to serve on the Commission from Price Waterhouse Coopers stated:²⁰

In assessing nominations, the Commission will take account of:

- The merits of the individual and their capacity to make an independent contribution which will enhance and sustain the effectiveness of the House within the constitutional framework; and
- The impact of an individual’s nomination on the composition and balance of the House as a whole, in relation to the range of expertise, experience and outlook and the spread of gender, age, ethnic background and geographical representation.

The Pack also stated that the Commission would actively invite the public and suitable organisations to submit names and that the Prime Minister would only refuse a nomination from the Commission on ‘exceptional cases, such as those endangering the security of the realm’. Although the Commission is to select candidates to serve as independent peers there do not appear to be any sanctions available, should an appointee subsequently decide to take a party whip in the interim House or indeed not to participate in House proceedings. Appointments are to be on the same basis as other life peerages.

The following answer to a parliamentary question gives further details as to the appointments which the Commission will be expected to make:²¹

Lord Craig of Radley asked Her Majesty’s Government:

Whether the interim Appointments Commission will be asked to recommend four or five individuals twice a year (as foreshadowed in the Price Waterhouse Coopers Executive Search advertisement in *The Sunday Times* of 6 February) for

¹⁷ These will presumably sit on the cross benches, although there are some members of the Lords who do not take the party whip or associate themselves with the cross party grouping. These are classified as ‘Other’ and as at June 5 2000 there were 8 in that category. See House of Lords Briefing: Analysis of Composition. For background on the crossbench grouping see Part V:C of Research Paper 99/6 *The House of Lords Bill: Options for ‘Stage Two’*

¹⁸ The white paper stated that the Commission would in addition vet the suitability of all nominations to life peerages. See above extract from Chapter 6

¹⁹ Cm 4183 Chapter 6, para 10. The Information Pack from Price Waterhouse Coopers provided for applicants to serve on the Commission

²⁰ *Chair and Independent Members, House of Lords Appointments Commission: Information Pack* February 2000. This is available in the Library

²¹ HL Deb 13 March 2000 vol 610 c 194-95WA

life peerages; whether these will be created as independent Peers to sit in the Upper House for life; and whether those peerages recommended by the interim Appointments Commission will be in place of the life peerages awarded by Her Majesty in the Birthday and New Year Honours Lists on the recommendation of the Prime Minister, commencing with the Birthday Honours list this year.

The Lord Privy Seal (Baroness Jay of Paddington): The Government will maintain the Cross-Bench representation at approximately the present proportion of life Peers. We envisage that this means it will be necessary to create approximately the same number of peers as has been the case at the same time as the Birthday and New Year Honours Lists in the recent past.

The non-political persons recommended for peerages by the Appointments Commission will be expected to sit as independent life Peers in the House of Lords.

The peerages recommended by the interim Appointments Commission will replace the life peerages awarded by Her Majesty in parallel with the Birthday and New Year Honours Lists on the recommendation of the Prime Minister. The commission itself will have to consider whether it can properly produce recommendations for peerages to coincide with the publication of the Birthday Honours List in June.

The secretariat is being provided by the Cabinet Office, which also services other bodies such as the Office of the Commissioner for Public Appointments, the Civil Service Commissioners and the Business Appointments Committee. No information is yet officially available on the exact date on which the Commission will make its first recommendations, but it seems very unlikely that it will be operating by the end of June 2000. It normally takes some months for the nominations process to be completed. The Commission will need to agree and publicise its procedures before starting work, including procedures for dealing with conflicts of interests held by Commission members. No official terms of reference have been issued since the white paper proposals.²² Press comment on the membership of the Appointments Commission was sparse.²³

In response to a private notice question in the Lords, Baroness Jay said that the Government had agreed in principle to adopt the Wakeham recommendation for a statutory commission but resisted proposals to implement those recommendations in advance of the implementation of the whole report.²⁴

Lord Rodgers of Quarry Bank: My Lords, from these Benches I welcome the announcement made by the noble Baroness of a commission of real quality and

²² The Price Waterhouse Coopers Information Pack provided to applicants to the Commission gives some further background. This was issued in February 2000

²³ But see *Spectator* 27 May 2000 'The Blair Witch Project'

²⁴ HL Deb 4 May 2000 vol 612 c 1131-4

experience. The noble Baroness is right to say that there is a significant concession by the Prime Minister on the question of patronage. As she has made clear, there is a distinction between this commission and that proposed in chapter 13 of the report of the noble Lord, Lord Wakeham. However, can she undertake to consider carefully that, irrespective of how long it may take to make a major further change in the composition of this House, there is a great deal to be said for extending the remission of patronage by implementing at a very early date, ahead of other changes, chapter 13 of the report of the noble Lord, Lord Wakeham, and to make all the appointments to your Lordships' House the responsibility of an independent commission?

Baroness Jay of Paddington: My Lords, I am very grateful to the noble Lord, Lord Rodgers, for underlining what I said in my original Answer, which is to lay great stress on the quality of the individuals appointed to this commission. I agree with him that they form a very strong panel. They were chosen from a strong field of candidates, which, in itself, was very encouraging.

On the noble Lord's second point, as I said in my original reply to the noble Lord, Lord Strathclyde, the Government accepted in principle that the proposal of the noble Lord, Lord Wakeham, on the statutory commission for membership of your Lordships' House should very much form part of the final reform of your Lordships' House, or the next part of the reform. However, the noble Lord will also be aware that I have said on many occasions that the Government do not believe it appropriate to give a commitment to cherry-pick individual recommendations of the Royal Commission.

In comments to the press Lord Strathclyde said:²⁵

This is a smokescreen. The Prime Minister appoints the majority of the members of the commission and its chairman. He will continue to decide the size of the House and he will continue to decide the number of peers each party gets.

B. The Wakeham Commission Proposals

The Wakeham Commission report was published in January 2000.²⁶ Chapter 13 dealt with proposals for a new type of Appointments Commission. Members of the Wakeham Commission were not persuaded that the interim arrangements were satisfactory in the longer term:

13.1 The arrangements for appointing life peers which the Government has proposed should apply during the interim stage of House of Lords reform (see Chapter 11) will leave considerable control with the Prime Minister of the day. He or she will be able to control the size and party balance in the interim House by virtue of having the power to set the number of nominations made by each

²⁵ *Conservative Party News* 4 May 2000 'Strathclyde attacks Blair's 'smokescreen commission'

²⁶ *A House for the Future* Cm 4534 January 2000

party and the number of Cross Benchers selected by the proposed Appointments Commission. He or she will also retain an ultimate veto over all nominations, through being responsible for putting the final list to the Queen. The present Prime Minister has committed himself to seeking no more than parity between Labour and Conservative members of the interim House of Lords and has undertaken not to challenge other parties' nominations (save in wholly exceptional circumstances). It would, however, be unsatisfactory to base appointment to the reformed second chamber on these or equivalent assurances. The Prime Minister should no longer play a role in appointing members of the second chamber.

A key Wakeham recommendation was the creation of a Commission which would be responsible for all appointments to a second chamber:

Recommendation 70: An Appointments Commission, independent of the Prime Minister, Government and the political parties, should be responsible for all appointments to the second chamber.

Therefore the Wakeham Appointments Commission represents a considerable extension of the Commission's role in the interim House. The key points are:

- It would not only nominate all appointed peers – not just cross benchers - on Nolan principles, but also ensure that overall balance between the political parties in the House reflected the share of votes cast at the most recent general election. This would be implemented by appointing party-affiliated individuals to the appropriate party group. It would ensure that at least 20 per cent of the House were cross benchers.
- The Prime Minister's role in patronage for the Lords would disappear. Political parties would submit names to the Commission, but there would be no guarantee that the Commission would decide to accept these nominations. In addition, the Commission would vet all political nominations for propriety. Appointees would serve for 15 years and would not be eligible to stand for the Commons until 10 years after retiring from the Lords.
- The Commission would be set up under an Act of Parliament and Commission members would have statutory protection from interference, in a similar way to the Electoral Commission currently being set up under the *Political Parties, Elections and Referendums Bill*.²⁷

The full recommendations on the Appointments Commission are as follows:

Recommendation 80: The Appointments Commission should be charged by the Crown with a general duty to appoint members to the second chamber and empowered to appoint individual members on its own authority. (Paragraph 13.3.)

²⁷ See Research Paper 00/1 for details on the creation of the Electoral Commission

Recommendation 81: The independent Appointments Commission should be the only route into the second chamber, whether individuals reach this point through selection as a regional member, through selection by the Commission, or through appointment as a Lord of Appeal in Ordinary or representative of the Church of England. (Paragraph 13.4.)

Recommendation 82: The Appointments Commission should have no discretion over the appointment to the second chamber of regional members, Lords of Appeal in Ordinary, or any representatives of the Church of England. (Paragraph 13.6.)

Recommendation 83: The Appointments Commission should be established by primary legislation. (Paragraph 13.13.)

Recommendation 84: There should be eight Appointments Commissioners. Three should be nominees from the main political parties, one a nominee of the Convenor of the Cross Benchers and four should be independents, of whom one should be the chairman. (Paragraph 13.14.)

Recommendation 85: The independent members of the Appointments Commission should be selected according to the Nolan principles. (Paragraph 13.15.)

Recommendation 86: A number of Appointments Commissioners, though not a majority, should be members of the second chamber. None should be an MP. (Paragraph 13.16.)

Recommendation 87: Appointments Commissioners should be appointed by the Queen following an Address, on a motion moved by the Leader of the second chamber following the normal consultation with the leaders of the other party groupings and the Convenor of the Cross Benchers. (Paragraph 13.18.)

Recommendation 88: Appointments Commissioners should hold office for no more than ten years. (Paragraph 13.19.)

Recommendation 89: Removal of an Appointments Commissioner should require a resolution of the second chamber. (Paragraph 13.20.)

Recommendation 90: The Appointments Commission should make an annual report to Parliament. This report should set out the characteristics required of members of the second chamber and the Commission's strategy for ensuring that there is an appropriate balance of members from all parts of society and between the political parties. The report should also provide a detailed breakdown of the composition of the chamber, in terms of party, gender, ethnicity, age and region and the extent to which the chamber's membership as a whole reflects the characteristics set out in the Appointments Commission's published specification. (Paragraph 13.23.)

Recommendation 91: The size of the second chamber should not be fixed in statute, but should be set by the Appointments Commission. The Appointments Commission should regularly review the total number of members required,

taking account of the chamber's workload, levels of attendance and the need to achieve or maintain a balance between the political parties in the second chamber that reflects their shares of the votes cast at the previous general election. (Paragraph 13.28.)

Recommendation 92: The Appointments Commission should encourage appointments and nominations from under-represented groups and report regularly on progress in achieving gender balance and a fair representation for minority ethnic groups. (Paragraph 13.29.)

Recommendation 93: The Appointments Commission should use its best endeavours to ensure that each of the nations and regions has an appropriate level of representation among the overall membership of the second chamber. (Paragraph 13.30.)

Recommendation 94: The Appointments Commission should publish and keep up to date a statement specifying the broad characteristics it would expect members of the second chamber, individually and collectively, to possess. (Paragraph 13.34.)

Recommendation 95: The Appointments Commission should systematically develop its knowledge of, and relationship with, a wide range of vocational areas and other sectors of society. (Paragraph 13.36.)

Recommendation 96: The Appointments Commission should open up the nomination process to the widest possible range of candidates. (Paragraph 13.37.)

Recommendation 97: The Appointments Commission should adopt a proactive approach to the identification of suitable appointees. (Paragraph 13.39.)

Recommendation 98: The Appointments Commission should make all discretionary appointments to the second chamber and should make the final decision in all cases. The Appointments Commission should be able to appoint people with party affiliations, whether or not these have the support of their political party. (Paragraphs 13.42 and 13.43.)

Recommendation 99: The Appointments Commission should vet nominations for propriety and high-level security checks should be undertaken on all shortlisted candidates. (Paragraph 13.44.)

Recommendation 100: The Appointments Commission should not seek Parliamentary approval of its appointments. (Paragraph 13.45.)

Recommendation 101: The Appointments Commission should normally make appointments on a half-yearly cycle. (Paragraph 13.46.)

In a Lords debate on the Wakeham proposals on 7 March, Baroness Jay said:

We also agree that a statutory appointments commission should form part of any permanent arrangement. This proposal again builds on what we have already undertaken, on a non-statutory basis, for the transitional House. We shall want to

consider carefully exactly what the statutory appointments commission's powers and functions should be. Those who recall the debates on what was then the House of Lords Bill in the previous Session know that this is a complex issue. We had a variety of proposals at different stages of the Bill for a statutory body, none of which attracted universal support, and none of which, I believe, is the same as that proposed by the Royal Commission. But for long-term reform the Government accept the principle that a statutory commission is the way to proceed.

For the Opposition, Lord Strathclyde queried whether it was necessary to wait for the full implementation of Wakeham before establishing a statutory commission (c 922). The Liberal Democrat peer Lord Rodgers of Quarry Bank had some concerns about the role of the Commission in selecting political members of the House:²⁸

I shall say no more about the appointments commission except that it makes good sense. It will help to rebalance the House after each election. My only doubt is whether it is wise and in keeping with the hard-headed nature of the report to expect the nominations of party representatives, party nominations, in this House to be chosen by the commission. Although it is attractive outside the House, it is unrealistic to believe that those who are not members of a party should play any part in choosing who should come here.

Lord Hurd, a member of the Wakeham Commission (and subsequently of the non-statutory Appointments Commission) defended the proposals, saying that he believed it important to appoint people out of favour with the party leadership at the time, but who were nevertheless part of the party (c952). The comments of Lord Rodgers were echoed by Lord Norton of Louth, a Conservative, who advocated a wholly appointed House, with two separate commissions, one to deal with political nominees, and the other for independents (c980). Lord Wakeham cautioned against 'cherry picking' certain conclusions of the Commission.²⁹ The Liberal Democrat peer Lord Goodhart was concerned that the selection of members of the Commission would be highly politicised, and that the Commission would lack the authority and independence to appoint political members (c 1023-24).

Lord Richard, the former Leader of the House, expressed reservations about the acceptability of an independent commission and the possibility of an ever-enlarging second chamber:³⁰

The flaw in the proposition of an appointments commission is that it is highly unlikely, to put it at its lowest, that any government would accept an independent appointments commission of such comprehensiveness and independence. That would involve a renunciation of patronage by the government of the day and the

²⁸ HL Deb vol 610 c 927

²⁹ HL Deb vol 610 c 936

³⁰ HL Deb vol 610 c 983-84

acceptance by that government that, however popular they may be in the country, they can no longer control the composition of the second Chamber in the way in which they could previously....

First, it is asking governments to accept that an independent commission should be responsible for securing an overall political balance. That is an extremely doubtful proposition. Secondly, it is accepting a mechanism whereby when governments change, there will be an almost automatic ratchet effect. The Royal Commission obviously thought of that because the one thing that is missing in its report is any cap on the size of the second Chamber. If we had a succession of general elections at which there were changes at fairly short intervals, the ratchet effect on the membership of this House would mean that it would be far too overpopulated and far too unwieldy.

The Royal Commission dealt with the problem of lack of legitimacy by seeking to use the independence of the appointments commission as justifying a system of appointment and not election. It is a very British approach in which we say, "Do not bother too much about this. Trust the appointments commission to do democracy's job for it". That is really not very good.

The Wakeham proposals on composition in general did not receive a positive press reaction. In relation to the Appointments Commission, there was criticism that the Prime Minister would retain control over the appointments to the Commission, and that the members of the Commission themselves would not themselves necessarily be subject to the perceived need to promote membership from underrepresented groups, such as ethnic minorities.³¹ However, there was support for a statutory and independent Appointments Commission.³²

II ‘Stage Two’ Reform: The Wakeham Report

A. Introduction and Summary

“... our proposals will leave the country with a moderately powerful second chamber, capable of exerting a significant influence on primary and secondary legislation and the general development of public policy.”

*Lord Wakeham, 8 March 2000*³³

In its white paper on Lords reform, published in January 1999, the Government formally announced, as part of its step-by-step approach, the establishment of a Royal Commission

³¹ Charter 88 20 January 2000 ‘Royal Commission updates status quo’ *Independent* 31 March 2000 ‘This deeply corrupt system is undermining our constitution’

³² See above for general responses to the Wakeham proposals

³³ “The Royal Commission’s thinking”, Speech to Constitution Unit conference on the future of the House of Lords, Church House, transcript, p 8

to examine longer-term reform of the House of Lords.³⁴ The establishment and work of the Royal Commission, chaired by Lord Wakeham, were considered in earlier Research Papers,³⁵ and so these issues are not reconsidered here.³⁶

The Report of the Royal Commission was published in January 2000, as Cm 4534, *A House for the future*,³⁷ and the executive summary set out the Commission's vision and proposals.³⁸ That summary is far too long to be reproduced in this Paper, but Lord Wakeham's detailed statement on the publication of the Report is a convenient and adequate overview of its main points, for the purposes of this Paper:³⁹

"Our recommendations build on the strengths of the present House of Lords, but incorporate a number of radical new features. For the future, we recommend that the link between possession of a peerage and membership of the second chamber should be broken and that every sector of society should be represented in the new House of Lords."

Having reviewed the roles, powers and functions of the second chamber, the Commission concluded that the reformed House of Lords should, above all, be authoritative, confident and broadly representative of the modern United Kingdom.

"Our proposals would produce a chamber with the authority and confidence to carry out a vital role at the heart of the United Kingdom's system of parliamentary democracy. It must have the authority to force the Government and the House of Commons to think again and the confidence to use its powers wisely and effectively.

However, the second chamber should not just be another home for professional politicians - there would be no point in having a second chamber identical to the House of Commons. The new second chamber should bring a far wider range of experience and expertise to bear on the consideration of proposed legislation and other policy issues. Its members should come from all walks of life and be representative of the whole of British society."

The Royal Commission recommends:

- *a significant minority of "regional members" chosen on a basis which reflects the views of the regional electorates;*

³⁴ [Modernising Parliament: reforming the House of Lords, Cm 4183, January 1999](http://www.official-documents.co.uk/document/cm41/4183/4183.htm) (also at <http://www.official-documents.co.uk/document/cm41/4183/4183.htm>). The Royal Commission option had been foreshadowed by the Government in the previous months, including in the Queen's Speech

³⁵ In particular, Research Papers [99/6, The House of Lords Bill: options for 'Stage Two', 28 January 1999, chap 3](#), and [99/88, The House of Lords Bill: Lords Amendments, 9 November 1999, chap 7](#)

³⁶ Full details, including relevant documentation, are available through the Royal Commission's own website: <http://www.lords-reform.org.uk/>

³⁷ <http://www.official-documents.co.uk/document/cm45/4534/4534.htm>

³⁸ http://www.official-documents.co.uk/document/cm45/4534/exec_sum.pdf

³⁹ *Report on reforming the House of Lords is published*, CoI PN, 20 January 2000

- *a totally independent appointments system with a remit to bring in representatives from all sectors of society;*
- *a statutory minimum proportion (30 per cent) of women, and of men;*
- *fair representation for members of ethnic minority groups; and*
- *a broader range of religious representation.*

On the proposals for a statutory Appointments Commission, Lord Wakeham said:

"We want to ensure that the reformed second chamber will no longer be a source of political patronage. The Prime Minister will no longer be able to control the size, political balance or individual membership of the second chamber. Another key feature of our report is that the new second chamber should be free of the risk of domination by any one party. A statutory minimum (20 per cent) of members would be independents who would not take a party whip. Most importantly, the overall balance among the party-affiliated members would be set by reference to the votes cast in the most recent general election. This means that while the governing party will normally be the largest, no one party could secure a majority. This is vital if the reformed House of Lords is to add value to the Parliamentary process and contribute to constitutional stability. If it were controlled by the governing party it would become a compliant rubber stamp. If it were controlled by the Opposition, it would give rise to endless constitutional conflict."

On powers, the Commission's report argues that the new second chamber should be at least as powerful as the present House of Lords, and recommends significant new roles on the constitution and human rights issues:

- *no changes in the House of Lords' powers over primary legislation, with powers to delay the passage of a Commons Bill being retained;*
- *a new procedure for challenging secondary legislation. In place of the existing, but largely unused, power of veto, the second chamber should have a much more potent mechanism to force the Government and the House of Commons to reconsider secondary legislation, where necessary;*
- *authoritative new committees on the constitution and human rights;*
- *better scrutiny of Ministers and of European Union business.*

Lord Wakeham said:

"Protecting the constitution and human rights are two areas where the new second chamber can play a distinctive role. Its power to veto any Bill to extend the life of a Parliament should be reinforced and a Committee established to identify, and draw attention to, possible changes in the constitutional landscape. The reformed House of Lords will contain people with the skills and knowledge to scrutinise legislation for human rights implications, so that points of concern are identified and dealt with during the legislative process. This will reduce the need for the courts to be involved at a later stage. Finally, we want to increase the opportunities for the second chamber to hold Ministers to account, in particular, in the handling of European Union business. We recommend that a mechanism

should be developed to expose Ministers to the wider perspectives and relevant expertise of members of the new second chamber."

Lord Wakeham concluded by saying:

"The Royal Commission was not set a simple question and our report does not provide a simple answer. We believe our recommendations provide a solid basis for the successful reform of the House of Lords. The Queen's speech at the opening of the current session of Parliament included these words: "My Government are committed to further long-term reform of the House of Lords". We very much hope that it will prove possible to move rapidly to the next stage. But, if interested parties chose to hold out for what they would ideally like, the opportunity may pass for another generation, maybe another century. If they are prepared, like us, to go back to first principles, and ask the same questions, we believe they will recognise the force of our arguments and that these will provide a firm foundation on which to build a House for the future - authoritative, confident and broadly representative of the United Kingdom."

B. Initial Reaction to the Report

This section records the immediate response of the main players, including the two main constitutional reform 'think tanks' which have been involved in Lords reform issues.

The Government: The Leader of the Lords, Baroness Jay of Paddington said, on publication:⁴⁰

"The Royal Commission was set a complex and difficult task to be completed within a demanding timetable. I am grateful to Lord Wakeham and to all the Commissioners for their hard work and commitment in producing this carefully considered and thoughtful report and for meeting the Government's tight deadlines.

The Government will need time to consider the recommendations made by the Royal Commission. However, it is very welcome that the Commissioners have produced a unanimous report as this provides a sound platform for moving forward on a genuine cross party basis."

The Opposition: The Conservative Leader in the Lords, Lord Strathclyde, said:⁴¹

"We welcome the report from Lord Wakeham. In particular we are pleased that he has emphasised the need to control Tony Blair's rampant use of patronage and cronyism. The question we want to put to the Government is this: when are they going to act and repair the damage they have already done to the House of Lords? There is talk of months elapsing before a Joint Committee is set up to consider

⁴⁰ <http://www.cabinet-office.gov.uk/index/news.htm>

⁴¹ Strathclyde urges Blair to follow Wakeham and end cronyism, Conservative Party PN, 20 January 2000

the report's recommendations. It would be an insult to Lord Wakeham if the government were to go slow now. Tony Blair must not be allowed to kick this report into the long grass. Conservatives won't. We will be studying the report carefully and making a detailed response. We are likely to favour a larger number of elected peers than has been proposed, in order to build the authority of the House. We will support any measures that end the culture of cronyism that has been dominating the second chamber. The common sense approach to reform of the House of Lords is to move promptly to stage two and find a way out of the Government's constitutional bungling."

The Liberal Democrats: Robert Maclennan, spokesperson on constitutional affairs, issued the following statement on the day of the Report's publication:⁴²

"Lord Wakeham's Committee has missed an historic opportunity. It had the chance to bring the British Constitution into the twenty-first century. It could have proposed a properly democratic body with real and much-needed additional powers to control and scrutinise the Government. Instead, it has decided to seek to shore up the decaying edifice of the old House of Lords with a few cosmetic democratic changes at the edges.

"This report cannot form the sole basis of the discussions which will now start about the future of the second chamber. Liberal Democrats have proposed a wholly elected House, with greater powers than the present one. The all party committee of the two houses of Parliament must give due consideration to these proposals which, unlike those of the Wakeham Committee, would further the cause of democracy in Britain.

"The Wakeham proposals would perpetuate a system under which most members of the House of Lords owe their position to patronage. There should be no place for cronyism in this new millenium. A fully elected Upper House need not in anyway diminish the authority of the House of Commons. It could, however strengthen the oversight of government by Parliament. At the moment there are too many areas of government activity which are not effectively scrutinised. These include secondary legislation, treaties, the oversight of quangos and public appointments. A democratic Upper House with enhanced powers could rectify this democratic deficit"

The Constitution Unit:⁴³

The Constitution Unit today gave a partial welcome to the Wakeham Commission's report on House of Lords reform. The Unit expressed

⁴² "Wakeham's missed opportunity – Maclennan", text of PN, 20 January 2000

⁴³ *Constitution Unit gives two cheers to Royal Commission report*, 20 January 2000 (at <http://www.ucl.ac.uk/constitution-unit/>). The Unit is a research body on constitutional reform issues, based at University College London, which much research work for the Royal Commission.

disappointment at the small proportion of elected members, the continuing presence of the Law Lords, and the weak links suggested with devolution.

Senior Research Fellow Meg Russell said: “The Royal Commission have made some very sensible proposals, which move the UK towards good practice internationally. However, the composition of the second chamber under these plans would remain anachronistic, which could damage the chamber’s ability to carry out the important roles it has been given.”

Constitution Unit Director Robert Hazell said: “Wakeham’s model is certainly an improvement on the current second chamber. It is a step in the right direction, and we must now build on the Wakeham proposals. We must keep up the pressure on Lords reform, which we plan to do through our big conference organised with the Royal Commission in March. The second chamber is much too important to be left simply as it is.”

The Unit welcomed the following aspects of the Royal Commission’s report:

- *Legislative powers*: The proposal that the new chamber be at least as powerful as the present House of Lords gives it the power to force Government and the Commons to think again.
- *Constitutional guardian*: The stronger role for the upper house as a ‘constitutional watchdog’, with a new Constitutional Committee, and specific responsibility for checking that new legislation complies with the Human Rights Act. Such roles are common overseas.
- *Elected members from nations and regions, serving long terms*: This goes some way to providing a democratic element, whilst encouraging independence amongst members.
- *Independent Appointments Commission*: Putting this on a statutory basis, with requirement that 20% of members are non-party, at least 30% women, and a fair ethnic and regional mix, will end political patronage and help boost confidence in the chamber.
- *Breaking the link with the peerage, and increasing allowances to members*: This will help to emphasise that membership of the second chamber is a job and not an honour.

However, the Unit is concerned by the following proposals:

- *Mix of elected and appointed members*: If no more than a third (at most) of upper house members are elected, the chamber may not win sufficient public support to do its job. At a minimum half the members of the chamber should be elected.
- *Size of the chamber*: The proposed size of the chamber is 550, which is rather unwieldy. If no more than half the members were appointed this would also cut the chamber’s size. At present the largest second chamber in the world - the Italian Senate - has only 326 members.
- *Link to devolution*: The Commission have recognised the benefit of linking the upper house to devolution, but the links are too weak. Only the 12 to 35 per cent who are elected will represent the nations and regions. This is not enough. Experience from overseas suggests that stronger links need to be made with devolution from the start.

- *Constitutional powers*: The Commission should have done more in this area - eg. so the upper house could block future constitutional reform proposals unless they were put to a referendum. Many second chambers can block constitutional reform altogether.
- *Future of the Law Lords*: No other country has its senior judges sitting in Parliament. It is time we had a properly resourced and independent Supreme Court.

*Charter 88:*⁴⁴

Today's eagerly awaited report by the Wakeham Commission has fallen for the myth that dominated the debate about Lords reform. That is - whatever replaces the 'old' House of Lords will by that very virtue have more legitimacy.

In fact the 'authoritative confident' house they seek to create will be no more legitimate in the eyes of the public than the patronage ridden existing chamber.

At best the commission recommend only a 20% elected element

It has clung to keeping the house an informal chamber, only those with sufficient resources will find it practicable to participate.

The majority of members will still have no democratic mandate. This flies in the face for overwhelming support for direct elections amongst the public and in the House of Commons.

The commission puts great store in the independence of the appointments commission, and yet the Prime Minister will have the ultimate say over who is on it.

Pam Giddy, Director of Charter88 said:

"The reformed second chamber should be chosen by the people it is there to protect, rather than the politicians it is there to keep a check on. That point is simple and it is fundamental, if faith is to be restored in the political process. In poll after poll it has been shown that the majority of people want a fully elected Second Chamber. This is not the end of the debate. There is plenty of time for the public to exert pressure and to get the Second Chamber that they want. The Labour manifesto promised a representative and democratic solution to the problem posed by the House of Lords. Appointment does not achieve this aim and if Labour attempt to implement it, however attractive to Blair, they will face a backlash from the public and their own Parliamentary party."

A Charter88 survey of backbench Labour MPs showed overwhelming support for direct elections to the second chamber. Of the 103 MPs who responded, well over two thirds favoured a majority elected house, over half of these opting for a 100% directly elected second chamber.

⁴⁴ *Royal Commission updates status quo*, 20 January 20.00. See also the Charter 88 Parliamentary Briefing prepared for the Lords debate on 7 March
<http://www.charter88.org.uk/pubs/brief/0003lords.html>

The press: A brief summary of initial press reaction prepared for *BBC News Online* did not record an entirely favourable response in the newspapers.⁴⁵

The papers do not exactly give rave reviews to the Wakeham report on reform of the House of Lords. "A dog's dinner of a report which ducks or fudges the issues", says **The Guardian**, "Timid and indecisive", says the **Financial Times** while **The Independent** calls it "deeply disappointing". It all adds up to the view reflected throughout that the report will be shelved. As the sketch-writer in **The Times** puts it, "Lord Wakeham has unveiled the new constitution that we aren't going to have". **The Daily Telegraph** says the report went wrong by "failing to address the issue of too much power in the hands of the executive". **The Independent** comes down in favour of a proposal for a mostly elected chamber. But the overwhelming tone is one of a missed opportunity. Their proposals, says **The Times**, would create a eunuch's house - with responsibility but no power.

C. The context of the Commission's work

Earlier Research Papers considered 'stage two' issues, and these are not repeated here other than to provide a context to the Report itself and reaction to it.⁴⁶ This section is arranged in a series of themes, not all mutually exclusive.

1. The constitutional and political context

The Royal Commission clearly interpreted its terms of reference as ruling out the option of abolition of the Upper House, and the creation of a unicameral Parliament.⁴⁷ This meant that it was being asked to provide a blueprint for one of the two Houses of the UK Parliament, an exercise in constitutional reform, undertaken at a time of other significant constitutional changes. The current Government's programme of constitutional reform has been significant in its scope, but has been criticised by some as being fragmented, without an overall consistency or 'master plan'.⁴⁸ Further, the House of Lords embodies in its composition and powers many of the key aspects of the unwritten constitution, and the Commission's terms of reference expressly placed Lords reform within the context of the Government's wider constitutional reform programme. In this situation, it was perhaps inevitable that the Royal Commission would be seen and used in some quarters as a convenient surrogate for a official review into the wider British constitution,

⁴⁵ "Papers deride 'timid' Lords reform", *BBC News Online*, 21 January 2000. See further this website's special section on Lords reform:

http://news.bbc.co.uk/1/hi/english/special_report/1999/01/99/lords_reform/newsid_252000/252856.stm

⁴⁶ See Research Papers 99/6, 99/7 and 99/88

⁴⁷ A significant feature of the Lords reform debate in the last few years has been the virtual absence of any serious discussion of what was once regarded as a genuine option

⁴⁸ This was explored further in Section III of Research Paper 99/7

something not seen since the Kilbrandon Royal Commission on the Constitution, which reported in 1973.⁴⁹

The composition, remit and timescale of the Royal Commission appeared to indicate that the exercise was intended to be a search for what may be described as a ‘practical solution’ to the long-running problem of Lords reform.⁵⁰ Its work was to be an essential part of the second stage of Lords reform promised by the Government. However it was undertaken in a climate of scepticism, in some quarters, as to the Government’s genuine desire for, or commitment to, the implementation of any further stage of reform beyond that provided by the *House of Lords Act 1999*.⁵¹

Lord Wakeham himself has described how, when asked by the Prime Minister to chair the Commission, he set out two conditions:⁵²

“That the exercise was indeed to come up with a workable and widely acceptable solution; and that the membership of the Commission would be conducive to achieving that. The Prime Minister immediately agreed. I was therefore confident from the outset that we had a real opportunity to lay the foundation for successful long-term reform of the House of Lords.”

The report of the Royal Commission reflects these various political and constitutional contexts. The historical intractability of the issue, as well as the diverse range of hopes, fears and expectations of political, academic and media commentators, may have made the task of producing a universally supported Report virtually impossible. For example, what is seen by some as political realism and traditional British pragmatism may be regarded as evidence of shallow thinking and of a missed opportunity by others. This has arisen in reaction both to matters clearly fundamental to the immediate issue (such as methods of composition) and to matters, constitutionally important in themselves, but perhaps not so central to Lords reform itself (such as the judicial role of the House). Some enthusiastic constitutional reformers may be disappointed that the Commission may not have, in their view, gone down the road of being a Royal Commission on the Constitution; some supporters of the present constitutional settlement, however that may be defined, may regard any form of second stage as potentially disruptive and dangerous. Some commentators may have regarded some of the Commission’s scheme as too

⁴⁹ Cmnd 5460. In practice that inquiry was generally regarded as one concentrating on the devolution issue

⁵⁰ In that sense it could perhaps be seen to be part of the recent tradition of exercises such as the initial (Nolan) Committee on Standards in Public Life, 1995, and, especially, the (Jenkins) Independent Commission on the Voting System, 1998

⁵¹ This is considered further below

⁵² Constitution Unit speech, 8 March 2000, transcript, p 3. The very first paragraph of the Report reiterates this approach, stating the Commission’s determination “to produce recommendations which were not only coherent and intellectually persuasive but also realistic, workable and politically achievable. Our aim has been to produce a report that could command a reasonable degree of consensus across the political spectrum and that would therefore stand a good chance of being implemented in the near future”

tailored to the perceived desires of the Government; others may regard the Report as crafted so as to make it as difficult as possible for the Government to delay the implementation of a 'stage two' reform.

Another source of potential dispute over the Commission's approach is different interpretations of key concepts such 'democratic', 'legitimacy' or 'representativeness'. This has arisen, for example, in the context of the ways in which people become members of a reformed House. If election of some form is assumed to be a prerequisite for democracy, then appointment mechanisms could be regarded as undemocratic.⁵³ The Commission's approach has been less directed at democracy in the abstract but 'parliamentary democracy' as a key component of the British system. By 'parliamentary democracy' the Commission meant the formation and legitimacy of governments in accordance with the will of the people as expressed in elections to the House of Commons. This approach fits with the clear emphasis in the Commission's remit on the primacy of the House of Commons. Lord Wakeham explained this in his 7 March speech in the House:⁵⁴

I want to stress that our report is not anti-democratic. Just because the United Kingdom is a major democracy, it does not follow that the reformed Chamber should be largely, if not wholly, elected. Such arguments are, with respect, wrong and dangerous. It is because members of the Royal Commission support parliamentary democracy that we recommended a largely appointed House. The reformed Chamber should not ultimately be able to frustrate the will of the electorate as expressed in general elections. They confirm a government in power, or result in power being transferred to others. They give governments a mandate to govern and put them in a position to implement their manifesto commitments. I simply do not believe that it would be wise to create an institution with a democratic mandate which could come to rival that conferred on the Government by the results of a general election. Whatever rules of pre-eminence one might write in, the political reality is that such an institution could very easily come into conflict with the Government and with the other place.

A serious second risk is that because elections can in reality only be won by organised political parties, a wholly or largely elected second Chamber would be no more than a clone of the other place. That would be in no one's interest. It would not add value to the parliamentary process. It would risk becoming a rubber stamp for government or an opportunity for the Opposition to engage in spoiling tactics.

Moreover--and this is the key point--by appearing to rely on its democratic mandate to justify its opposition to whatever the Government or Members of the other place want it to do, a wholly or largely elected Chamber would, in my view, be doomed to failure. In any trial of electoral strength, the other place would be bound to win. Even those who argue for a wholly or largely elected Chamber accept and make provision for that.

⁵³ See, for example, the initial response of Charter 88, quoted above

⁵⁴ HL Deb vol 610 cc 934-5

The Royal Commission's answer to that conundrum is to say that when the reformed second Chamber challenges the Government and the other place, as we believe that it should continue to do, it should do so by strength of argument rather than relying on an electoral mandate. We set out in paragraph 10.6 of our report a list of the alternative sources of authority on which a reformed second Chamber could draw. They are sufficient to ensure that the House will continue to be taken seriously.

2. Designing a House of Parliament

As already noted, the work of the Commission was to provide a blueprint for one of the two Houses of the UK Parliament. Its terms of reference confirmed the existing relationship between the two Houses by emphasising the “position of the House of Commons as the pre-eminent chamber of Parliament.” Any proposals for the role, functions, powers and composition of the second chamber would have to take account of this, and the Commission's report makes clear that it underpinned its whole approach.⁵⁵

In the absence of a formal or written constitution familiar to other states around the world, it is sometimes difficult to be precise about defining and describing basic constitutional concepts and rules. The development, over many centuries, of the two Houses of the Westminster Parliament, and the relationship between them, has been a long and complex story. The formal and practical supremacy of the House of Commons has emerged relatively recently in that history, in part due to the ‘democratisation’ of that House when compared to the House of Lords. A parallel development has been the means by which the executive (whether personally by the Sovereign, or by his or her political ministers) has sought to operate through Parliament. The very democratisation of the Lower House, which gave it its legitimacy and supremacy over the Lords, also gave the executive its legitimacy over Parliament as a whole. One of the Commission's key tasks therefore, as it saw it, was to design a House which would be a legitimate and effective parliamentary chamber, without being so at the expense of the primacy of the House of Commons.

British constitutional theory and practice abounds with potential confusion about the appropriate identification of the main actors, especially in distinguishing ‘Parliament’ and the ‘Executive’. Because of the usual control of the Commons by a government with a working majority, what is expressed in terms of the House of Commons may well relate in practice to the position of the government of the day. This can be seen, for example, in discussion of the ‘Salisbury Convention’. A statement that the House of Commons is, and should remain, the pre-eminent House, therefore, in the sense discussed here, could

⁵⁵ An interesting perspective on the role and functions of the House of Lords is provided by the current inquiry by the (Neill) Committee on Standards in Public Life into peers' standards of conduct. See in particular the ‘Issues & Questions’ consultation paper issued by the Committee on 4 April (available on the Committee's website: <http://www.public-standards.gov.uk/>), and the debate on the issue in the Lords on 10 May (HL Deb vol 612 c1657-1714). A Standard Note on this issue is available from the Parliament & Constitution Centre of the Library.

be said to mean also the retention of the pre-eminence of the government of the day over Parliament through its Commons majority.

This emphasises the extent to which the Commission was not being asked to undertake a fundamental review of the UK constitution, or even of Parliament. It was not a ‘Constitutional Convention’ working with a blank sheet of paper. Its report recognises this not only in terms its terms of reference, but implicitly also in terms of producing proposals acceptable to the House of Commons, as any reforms would be need to be implemented by means of ordinary primary legislation, in the same way as ‘stage one’ was implemented by the *1999 Act*.⁵⁶

Thus the Commission was producing a scheme which would not only deal with the relationship between the two Houses, but also with the relationship between Government and Parliament. Distribution of the powers and functions of the two Houses would have to take account of, for example:

- the practicalities of the relevant legislative or scrutiny processes within each House and between them,
- the parliamentary obligation of holding the government to account, and
- the perceived constitutional conventions that require the government of the day to have full opportunity to implement its legislative mandate through Parliament.

The House of Commons has been undergoing a period of change under successive governments over the last twenty years, including the ‘modernisation’ programme under the present Government. Nevertheless, some disquiet remains in certain quarters, both with the nature and the pace of change in the procedures and practices of the Lower House. Generally both Houses have addressed internal change separately, although they have sought to ensure that any changes are complementary. A significant portion of the Wakeham Commission’s work, as expressed in its Report, has been directed towards matters of procedure and operational practice, especially in the legislative and scrutiny functions.⁵⁷ More generally the Commission has clearly wished to retain what it regards as the best features of Lords practice, such as the degree of self-regulation that peers enjoy.

By a conscious policy of building upon the best of the existing House of Lords, and with a remit which sought to entrench the essentials of the relationship between the two Houses, there was relatively little scope for, or apparent desire by, the Commission to

⁵⁶ In his Constitution Unit speech on 8 March, Lord Wakeham, said that it would be “anti democratic” to suggest that a second chamber should prevail over the Commons: “In any event, none of the political parties would support it and the House of Commons wouldn’t vote for it”

⁵⁷ See generally the interesting Lords debate on 10 May initiated by Lord Peston, [HL Deb vol 612 cc. 1574-1657](#), and the information on the House of Lords’ section of the Parliament website <http://www.publications.parliament.uk/pa/ld/ldinfo.htm>

recast fundamentally what it describes as the ‘trilateral relationship’ of Government, Commons and Lords. This can be seen in its analysis of the legislative powers of the two Houses, where it found that the balance of formal powers “is about right and should not be radically disturbed” (*para 4.7*).

This meant that the Commission was drafting a blueprint for a *secondary* chamber of a Parliament where the distribution of powers and functions would, to a large extent, be pre-determined. The Commission had no desire to propose either what it described, in the legislative context, as a “basically unicameral” or a pre-1911 Act “fully bicameral” system (*para 4.7*). It rejected notions of a reformed Upper House as some form of non-political ‘grand council of the nation’ as “pure fantasy” (*para 3.12*).

The Commission’s approach was therefore for a second chamber of Parliament that was both *secondary* to, and *complementary* to the first chamber. These two criteria were regarded as essential for a viable and effective reformed House of Lords, and can be seen throughout the Commission’s proposals on composition, powers and functions. Reference is made throughout the Report to the need to respect and preserve the pre-eminent position of the House of Commons, which emerges as perhaps the pivotal aspect of the Commission’s remit in terms of its analysis and prescription. This accommodation of existing political and constitutional realities, and their transformation into more permanent features, whether by legislation, convention or otherwise, may become a key test of the robustness of the Commission’s reform scheme.

3. The legislative role of a reformed second chamber⁵⁸

The legislative role of the House of Lords is key to the issue of Lords reform, as it relates not only to a central operational function of a legislature,⁵⁹ but also to that chamber’s relations with the ‘first chamber’ and with the government of the day. In that context there are some particular matters,⁶⁰ such as the ‘Salisbury Convention’, resort to the *Parliament Acts*, and treatment of delegated legislation, on which there have been some developments in the period under review in this Paper. It may however be useful to begin with a general overview.

One reason why Lords reform has always been a particularly knotty problem has been that any change in one aspect of the Upper House, whether to its composition, powers, procedures or practices, generally will have some impact on other aspects. Perhaps the central example of this is the relationship between the House’s composition and *actual*

⁵⁸ This aspect of the second chamber was considered in Research Paper 98/103, *Lords reform: the legislative role of the House of Lords*, 1 December 1998, <http://www.parliament.uk/commons/lib/research/rp98/rp98-103.pdf>

⁵⁹ Setting aside, for present purposes, any suggestion that a second chamber at Westminster should have no formal legislative role, at least in terms of being able to amend, reject or delay legislation

⁶⁰ Other than the obvious and important one of the operational efficiency and effectiveness of the legislative process itself in that chamber

exercise of its legislative powers. This is based on notions of legitimacy, and the Opposition have been deploying this argument in what they have described, based on remarks made at various times by the Leader of the Lords, as the 'Jay Doctrine'. A good example of this came in the speech of Lord Mackay of Ardbrecknish during the debate on the GLA election orders on 22 February:⁶¹

Secondly, and much, much more important, is the fact that this is a new House. It is the House that Tony built. It is the House governed by the Jay doctrine. Perhaps I may remind your Lordships of what the noble Baroness the Lord Privy Seal said in the House Magazine on 27th September last. She said:

"The House of Lords ... will be more legitimate, because its members have earned their places, and therefore more effective".

She went further in the Parliamentary Monitor in November of that year when she said:

"A decision by the House not to support a proposal from the Government will carry more weight because it will have to include supporters from a range of political and independent opinion. So the Executive will be better held to account".

If those words from the noble Baroness mean anything, I hope that we shall have no complaint from her if a combination of Conservative, Liberal Democrats, Cross-Benchers, and I even hope a few Labour Peers, combine to hold the executive to account. That is what the noble Baroness wants of her new House and I venture to suggest that is what she will get later this afternoon. Is it too much to ask the Government to listen to what your Lordships are saying?

The Opposition Leader, Lord Strathclyde, made the same point during his speech in the 7 March debate on the Wakeham Report:⁶²

It falls to this House to build something anew, something better than we have lost. I believe that we stand at a cusp in the history of parliamentary democracy; we stand at a point where the changes forced on this House by the House of Lords Act 1999 enable this House to begin to rebuild a long-lost political authority to set alongside the moral authority it has always retained. That may not have been the Government's intention, but it will certainly be its effect.

The Leader of the House has argued as much in what I have called the "Jay Doctrine". She has said that the new House would be more legitimate, more effective, more authoritative and more influential on the Government. It is true that the Government have not always listened--as shown by the Home Secretary's deplorable attempts to revive his jury trial Bill--but more and more cross-party votes in this House will make them listen.

⁶¹ [HL Deb vol 609 c143, 22 February 2000](#)

⁶² [HL Deb vol 609 c919, 22 February 2000](#)

I believe that as this House rebuilds its authority it will help to rekindle a spirit of independence in another place. We may see the rebirth of a stronger Parliament, in which this House and the other place, in partnership, can check the overweening ambitions of the executive. A stronger Parliament is, and will remain, a central objective of my party's policy.

We on this side of the House do not fear a stronger Parliament. If a government carries confidence in a free, independent and respected Parliament--one not cowed by patronage or by party whips--then that government is the more authoritative and respected. What destroys respect for any government is backstairs' arm-twisting, trading of favours, a culture of cronyism, the bypassing of Parliament and the handing of power to unelected and unaccountable advisers.

As already noted, two particular aspects of the legislative role, which exemplify the issues of the Lords' legitimacy and its relationships with the other House and with the Government, are the so-called Salisbury Convention and the treatment of delegated legislation.

In so far as the Salisbury Convention⁶³ was based on the long-standing party imbalance in the Upper House, it may have been thought that it would have less or no relevance once the provisions of the *House of Lords Act 1999* were implemented. However the Royal Commission took a wider view of the convention, one based on the fundamental relationship between the two Houses, as it saw it:

Recommendation 7: The principles underlying the 'Salisbury Convention' remain valid and should be maintained. A version of the 'mandate' doctrine should continue to be observed: where the electorate has chosen a party to form a Government, the elements of that party's general election manifesto should be respected by the second chamber. More generally, the second chamber should be cautious about challenging the clearly expressed views of the House of Commons on any public policy issue. It is not possible to reduce this to a simple formula, particularly one based on manifesto commitments. The second chamber should pragmatically work out a new convention reflecting these principles. (Paragraph 4.24.)

While the Government has supported this analysis,⁶⁴ it has been suggested from time to time that the Conservative Opposition in the Lords have supported the narrower view of the convention, and that they regard it as inappropriate for the transitional or fully-reformed House. Lord Strathclyde has denied this, in a letter to the *Financial Times*, responding to an article by Professor Vernon Bogdanor:⁶⁵

⁶³ This is discussed more fully in RP 98/103, Lords reform: the legislative role of the House of Lords, 1 December 1998, chap V

⁶⁴ See Baroness Jay's 7 March speech, vol 610 c 912

⁶⁵ "Attacking Lords will strengthen executive", *Financial Times*, 27 April 2000. Professor Bogdanor's article, 'Time for peers to learn humility' appeared in the 25 April issue

“I have not ‘declared the Salisbury Convention no longer holds’. Clearly the elected chamber must have priority. That has never meant slavish adherence to everything a government tries. ... It is futile to pretend that the relationship between Lords and Commons has not been altered by the 1999 Act. Our constitution has been deliberately unsettled by Tony Blair. It will take time to settle again. We should all take care to ensure that, as and when it does settle, parliament emerges stronger and the executive is more effectively scrutinised and restrained. Attacking the Lords’ modest use of its powers will strengthen not parliament but the executive. That would be to the detriment of us all.”

The role and practice of the Lords in dealing with delegated legislation was examined generally in Research Paper 98/103.⁶⁶ In summary, the House of Lords’ right and power to deal with, and decide upon, delegated legislation is unrestricted by the provisions of the Parliament Acts, and this was re-asserted in 1994, but there is generally a convention that it will not reject a statutory instrument. Until very recently (after the Wakeham Report had been published), there had been no defeat of an SI since the Rhodesian Sanctions Order in 1968,⁶⁷ when, on 22 February, the Lords voted against two orders relating to the forthcoming GLA elections.⁶⁸

The Report’s key proposals on delegated legislation were as follows:⁶⁹

15. The absolute (but unused) power of the House of Lords to veto Statutory Instruments should be adapted so that any vote against a Statutory Instrument in the new second chamber could be overridden by an affirmative vote in the House of Commons. While this would represent a diminution in the formal power of the second chamber, it would give it a mechanism which it could use in order to delay, and demonstrate its concern about, specific Statutory Instruments. The House of Commons should have the last word but would have to take full account of the second chamber’s concerns, Ministers’ responses and public opinion.

⁶⁶ [RP 98/103, Lords reform: the legislative role of the House of Lords, 1 December 1998, chap VI](#)

⁶⁷ See further para 7.11 of the Wakeham Report

⁶⁸ It passed a motion declining to approve a draft order on election expenses and a motion to annul an order on election rules: [HL Deb vol 609 cc. 136-185, 22 February 2000](#)

⁶⁹ It also made a series of proposals on detailed scrutiny procedures, which are not considered here (see Chapter 7)

D. The Government's approach to 'Stage Two'

Perhaps the most detailed explanation of the Government's current thinking on further Lords reform, in terms of its views on the content of the reform and its proposals to take forward the Stage Two process, came in the debate on the Wakeham Report in the Upper House on 7 March.⁷⁰ Opening the debate the Leader of the Lords said (c. 912):

However, these hypothetical visions of the longer term do not mean that the Government will consign the Royal Commission's report to a dusty top shelf. We do not intend that to happen. I am well aware that there has been detective work in the press; for example, trying to read the entrails of the wording of the advertisements for the interim appointments commission and attempting to calculate the date of the next general election, all aimed at showing that the Government intend to kick the report into the long grass. That is all speculation. The Government's record on reform of this House speaks for itself: it is that we say what we intend to do, and then we do it. We plan to proceed in the same way in the future.

So today perhaps I may say it clearly. The Government accept the principles underlying the main elements of the Royal Commission's proposals on the future role and structure of this House, and will act on them. That is, we agree that the second Chamber should clearly be subordinate, largely nominated but with a minority elected element and with a particular responsibility to represent the regions. We agree that there should be a statutory appointments commission.

The principles that underlie the Royal Commission's recommendations, and the Government's acceptance of them, are these. First, the second Chamber must be clearly that -- a second Chamber, subordinate to the House of Commons. If both Houses were of equal authority that would be a recipe for gridlock. Secondly, it should have the powers and the authority to act as one of the checks and balances within the constitution. It should be equipped to make a significant and distinctive contribution to the legislative process. It should foster independent judgment. Thirdly, following devolution, it should provide a parliamentary voice for the nations and regions at the heart of the nation's affairs.

And (cols 915-6)

The Government have always said that we hope to proceed to the next stage of reform by consensus. That is why we are not today advancing cut and dried conclusions on anything except the overall approach. One of the main purposes of this debate is, I hope, to begin to build a constructive consensus.

⁷⁰ [HL Deb vol 610 cc 910-1036, 7 March 2000](#). A Cabinet Office PN that day (CAB 102/00), entitled "Government backs elections for the House of Lords", summarised her speech as follows: "the Government accepted the overall approach of the Wakeham report and specifically accepted that:

- * a small elected minority will ensure a voice in Parliament for the devolved assemblies and regions;
- * there should be a permanent Appointments Commission with its powers and functions set in statute."

As I said earlier, we are encouraged by the fact that the Royal Commission's report was unanimous. All political parties were represented on the commission. So at least *prima facie* it seems sensible to suggest that a way forward which is consistent with its conclusions should have a good chance of commanding wide agreement. My noble and learned friend the Attorney-General and I, and my right honourable friend the President of the Council in another place, are currently undertaking informal consultations to see what the basis for a consensus might be.

I have already had preliminary conversations with the Conservative and Cross-Bench leaders in this House. We have also discussed the report with representatives of Scotland, Wales and Northern Ireland. We are in contact with the Church of England and other denominations over the proposals on religious representation. We shall also want to listen to what the other faith communities say. I know that the noble Lord, Lord Wakeham, is happy to make himself available to discuss the details of the report's proposals, and I am sure that other commissioners would probably do the same.

The aim of gathering these views and voices is obviously to try to formulate broad agreement, at least on the principles of the commission's recommendations. If this can be achieved, the details of the proposals and their implementation will then require careful consideration. Much of the reform agenda will affect both Houses of Parliament, and needs to be considered by both Houses. In their White Paper, the Government proposed a Joint Committee to look at these issues. Inevitably the timing and nature of further, formal proceedings to elaborate the commission's proposals will depend to some degree on the extent of prior agreement on principles. The Government hope that by making clear their position to support the framework at this stage, it will be possible to move soon to detailed discussion.

I hope that there is no one either in Parliament or outside who is sceptical of the Government's intentions to act further on reform. If nothing else, the fact that we have not yet completely achieved our 1997 manifesto commitment in respect of the hereditary Peers is a powerful incentive. The Royal Commission report seems to us a good basis to build on. We agree with its overall approach to the issues it was asked to consider. Obviously, there is a great deal more work to be done on the detail. Nothing I have said today indicates that the Government accept any particular one of the report's detailed proposals. We shall be working on these during the months ahead, we hope with the active co-operation of others. But this is where we will start from in delivering on the second stage of reform. We agree with the broad thrust of the conclusions the Royal Commission has reached. It is evolutionary; it ties in with our constitutional history and principles.

Winding up for the Government, the Attorney General, Lord Williams of Mostyn, said (c 1301):

Our discussions this evening encourage me ... to think on the basis of this report-which is a considerable achievement indeed, if one bothers to read it as opposed

to reading summaries in newspapers--that we have the opportunity to move forward with all deliberate speed to reform.

It is short-sighted and foolish to say we should take a little piece of this and a little piece of that and address it all at once. It is short-sighted and foolish on at least two bases: first, we have the advice given to us by the noble Lord, Lord Wakeham, not to cherry-pick; and secondly, we need to heed the advice of the noble Lord, Lord Denham, that, if we are embarked on constitutional change, we ought, if at all possible, to do it on a comprehensive basis. We want consensus. It is idle to think of having a Joint Committee unless the general parameters of agreement in this House have already been established for that Joint Committee.

Let us also not forget that, although we are reforming and reinvigorating ourselves with a transfusion of new ideas, we are not the only determining Chamber in this matter ... The other Chamber has a legitimate interest in that and plainly, as everyone in your Lordships' House knows, the other Chamber has not debated these issues.

If we as a government say that we want to have consensus, that we want to hear different views, I readily accept the indication given, again by the noble Lord, Lord Elton--I hope this does not qualify him for expulsion from his party--that we have to bear in mind that these are constitutional arrangements for the future. So we are trustees, as he said, and we should be servants to a greater purpose than our present convenience.

And (cc 1033-4):

My noble friend the Leader of the House said that she would not be addressing and dealing with particulars today. That is the right way to approach this. Only a foolish person would read the Wakeham Commission report and come to immediate conclusions. I believe that noble Lords are quite right to say that we do have more than a passing duty to listen to views, not least views from the other end of the corridor, because they have an interest in what we do and it is a proper, lawful, constitutional interest.

I hope that we do get on now. Speaking as neutrally as I can, we have not waited 90 years and invested all those hours of fascinating, non-repetitious discussion of these various issues which have so concerned us, to have no outcome other than the departure of most of the hereditary Peers. That would be a pretty indecent and craven outcome. We want to move forward.

As my noble friend the Leader of the House said earlier, we have started discussions. I know that she has had discussions with some of the opposition parties. I pay tribute to the generous way in which a response has come from the main opposition party We have had good discussions so far with the Leader of the Liberal Democrat Party and the Convenor of the Cross-Bench Peers. We have made inquiries as to what is wanted by our colleagues in Scotland and Northern Ireland. There is a real opportunity here for those who feel that their voices have not been heard sufficiently still to feel themselves bound in to the constitutional settlement that we have in this country.

One thing about this country that I believe is good is the fact that it is capable of periodic, organic renewal and change. For too long in past years, that change has not been occurring. No one wants a revolution, but we can work together to get a workable, sensible outcome that will, as the noble Lord, Lord Alderdice, said, have to derive its authority from acceptance by the public.

Responding to two questions posed by Lord Strathclyde, he said (c 1035):

The first question was whether there is any area or "aspect" of either the Wakeham recommendations or of our deliberations today that could usefully be put into effect. Plainly, the answer to that question is yes. There may be particular aspects of resource as regards committees, and other aspects of that sort. We ought to be very careful about falling into the trap that we know perfectly well of saying, "Let's have an appointments committee", and nothing else would happen. That is the answer to the first question. One would have to look at the matter deliberately, carefully and discreetly--and I use that term in both senses....

It seems to us that the joint committee has work to do of this nature. It needs to establish the general consensus--I imagine that it will never be a perfect one--and then it will have to attend to the parliamentary devices that will be needed to put that consensus into effect. The one thing we do not want is another visitation to the ground that has already been traversed by the noble Lord, Lord Wakeham, to see if those conclusions can be second-guessed. Otherwise, it will be 1968 all over again. Time is passing and my life is simply not long enough to contemplate it.

In advance of any further clarification it may provide during the forthcoming debate, the development of the Government's thinking on the timetable for 'stage two' reform may be summarised. The 1997 Labour manifesto stated:

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

The White Paper of December 1998 stated:⁷¹

LONGER-TERM REFORM

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

⁷¹ *Modernising Parliament: reforming the House of Lords*, Cm 4183, paras 22-25 (executive summary)

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

As noted in the extracts from the ministerial speeches in the 7 March debate, Ministers have stated that, following the publication of the Royal Commission report, they are undertaking a period of consultation on the Commission's proposals, with representatives of various interests such as other political parties, churches and other faith communities and local government. In a press release on Baroness Jay's meeting with representatives of the British and Irish Churches, she was quoted as saying:⁷²

"The Government's aim is to reach a consensus on how best to proceed. This is why I am hearing from interested parties to gauge the views of some of the key players who submitted evidence to the Wakeham Commission and those who will have a key role to play in reaching further reform."

It would therefore appear that the Government's approach is to explore the options for general consensus on 'stage two' reforms before triggering the promised Joint Committee of the two Houses.

⁷² "Margaret Jay consults on Lords reform recommendations", Cabinet Office PN 187/00, 17 May 2000